

# Review of the Constitution

Preliminary report of the Attorney General – for discussion

24 April 2023

## Contents

<b>Introduction</b> .....	4
<b>Background – the legal background to the current Constitution</b> .....	4
<b>Process for amending the Constitution</b> .....	5
<b>Activities undertaken by the previous Select Committee</b> .....	6
<b>Chapters of the Constitution – A summary of the key provisions</b> .....	6
<b>Chapter 1 – Protection of Fundamental Rights and Freedoms of the Individual</b> .....	6
<b>Chapter 2 – The Governor</b> .....	11
<b>Chapter 3 – The Legislature</b> .....	11
<b>Chapter 4 – Powers and procedures of the Legislative Assembly</b> .....	12
<b>Chapter 5 – The Executive</b> .....	13
<b>Chapter 6 – Finance</b> .....	15
<b>Chapter 7 – The Public Service</b> .....	15
<b>Chapter 8 – The Administration of Justice</b> .....	16
<b>Chapter 9 – Complaints Commissioner</b> .....	16
<b>Chapter 10 – Miscellaneous</b> .....	17
<b>Annex A – Rules for the enactment of laws</b> .....	17
<b>Annex B – Oaths and Affirmations</b> .....	17
<b>Constitutions of other British Overseas Territories</b> .....	17
<b>Issues which the Chairman of the former Select Committee had proposed to pursue</b> .....	17
<b>Public written representations</b> .....	18
<b>Issues identified by Members of the Legislative Assembly</b> .....	18
<b>Issues identified by others</b> .....	18
<b>Issues for consideration not requiring constitutional change</b> .....	19
<b>A Personal Perspective</b> .....	19
<b>Summary of Specific Recommendations</b> .....	20
<b>Appendices</b> .....	22
<b>List of Appendices</b> .....	22
<b>Appendix 1 – The Falkland Islands Constitution Order</b> .....	23
<b>Appendix 2 – List of other Overseas Territory Constitutions (with hyperlinks)</b> .....	83
<b>Appendix 3 – Bibliography</b> .....	84
<b>Appendix 4 – Submissions received from members of the public and elected members</b> ...	85
<b>Appendix 5 – Summary assessment of the Constitution, including potential areas for change (Select Committee 2018-2021)</b> .....	119
<b>Appendix 6 – Qualifications/Disqualifications of electors and electors</b> .....	147
<b>Appendix 7 – List of Major Human Rights Treaties and Conventions</b> .....	149

**Appendix 8 – Query regarding provisions of section 16 of the Constitution on protection from discrimination. .... 151**

## Introduction

1. The purpose of this report is to assist and inform the initiation and planning of the Review of the Constitution being undertaken by the Legislative Assembly, and, in particular:
  - a. to set out what work was done under the auspices of the previous Legislative Assembly between 2018 and 2021, and the Select Committee it had established; and
  - b. to highlight certain issues which may merit further consideration.
2. The nature of this report is not to seek to give legal advice on any of the matters it contains. Legal advice will often depend on the specific factual circumstances giving rise to the request for advice. Nor is the purpose of the report to make recommendations about matters which are more properly for elected members to consider, though some such issues are raised.

## Background – the legal background to the current Constitution

3. The Falkland Islands is a British Settlement, and the Constitution is mainly made under the British Settlements Acts 1887 and 1945. The 1887 Act provides in section 2 that:

*It shall be lawful for Her Majesty the Queen in Council from time to time to establish any such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as shall appear to Her Majesty in Council to be necessary for the peace order and good government of Her Majesty's subjects and others within any British Settlement.*

4. Section 3 of the 1887 Act, as amended by the 1945 Act, provides that:

*It shall be lawful for Her Majesty the Queen from time to time, by any instrument passed under the Great Seal of the United Kingdom, including any Order of Her Majesty in Council or by any instructions under Her Majesty's Royal Sign Manual referred to in such instrument as made or to be made, as respects any British settlement, to delegate to any specified person or persons or authority within the settlement all or any of the powers conferred by this Act on Her Majesty in Council, either absolutely or subject to such conditions, provisions, and limitations as may be specified in such instrument or instructions.*

*Provided that, notwithstanding any such delegation, the Queen in Council may exercise all or any of the powers under this Act: Provided always, that every such instrument or instruction as aforesaid shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively.*

5. The contents of the Constitution in part reflect certain international obligations, for example, the European Convention on Human Rights, which has been extended to the Falkland Islands.

6. The UK Parliament at Westminster retains unlimited power to legislate directly for the Overseas Territories<sup>1</sup>. There remain a number of UK enactments which directly apply in the Overseas Territories. In accordance with the Colonial Laws Validity Act 1865<sup>2</sup>, any attempt by the legislature of the Falkland Islands to pass laws which are not compatible with directly applicable UK law (including arguably the Constitution) would be considered void and of no effect.
7. The Falkland Islands Constitution Order 1985 was the first time a codified constitution was made in relation to the Falkland Islands. Prior to that the governance arrangements for the Islands derived from the Letters Patent issued to the Governor, and a series of separate Orders in Council.<sup>3</sup> The 1985 Order was amended twice, by the Falkland Islands Constitution (Amendment) Order 1997, and Falkland Islands Constitution (Amendment) (No.2) Order 1997, before being repealed by the 2008 Order. The 2008 Order is set out in full in Appendix 1.
8. The institutions and model very broadly form a “Westminster model” of government which involves the separate institutions of the judiciary and courts, the legislature, and the executive (the government). There is some degree of separation of functions – the judiciary and courts are functionally independent, and there is some separation between the different roles of the executive and the legislature, albeit in current practice all members of the Legislative Assembly are informed in advance of matters being considered by the Executive Council, and are able to discuss and give their views in advance of the Executive Council meeting about those matters.
9. As with the operation of the uncodified constitution of the UK, there are a number of written and unwritten conventions, subject to which the Constitution operates in practice. So, whilst the Constitution is clear that executive authority is exercised on behalf of His Majesty by the Governor directly, or via officers subordinate to her, in practice, most decisions in relation to formulation of policy and exercise of government functions are made following consultation with the Executive Council and, subject to certain limitations, the Governor must accept the advice of the Executive Council and act accordingly. In this context only the three elected members of the Executive Council have the right to vote on decisions made by the Council. Executive Council has approved Standing Orders which further describe how it is expected that, in practice, the various functions of the Executive Council will be undertaken.

## Process for amending the Constitution

10. There is not a single prescribed method by which amendments to the Constitution can be agreed. Ultimately, in large part<sup>4</sup>, the Constitution will be amended by the making of an Order in Council. It can be amended or supplemented by a new Order in Council, or, where the proposed changes are sufficiently extensive, it can be superseded by a new Order in Council.

---

<sup>1</sup> See 2012 White Paper, page 14

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/Vict/28-29/63/contents>

<sup>3</sup> See, for example, the reference in Appendix 6 to the Falkland Islands (Legislative Council) Order 1948

<sup>4</sup> It is possible for some changes to be made by Ordinance – see for example section 27 of the Constitution which specifically acknowledges that amendments may be made to that section (dealing with constituencies) by Ordinance.

11. Policy statements made by UKG have indicated that there is a need for those proposing change to an Overseas Territory's Constitution to demonstrate that the proposals have support of the people of the Territory. There is no prescribed method for demonstrating popular support, but examples have tended to indicate that this may depend on the nature of the change proposed, and the impact it might have on individuals living and working in the territory concerned. For small changes, cross-party support or support of the whole of the legislature has been considered sufficient. For larger changes, a thorough process of public engagement, as proposals have developed, has also been sufficient. In some cases, a referendum has been held on proposed changes. It will be important to develop and keep under review a process of public engagement – and the nature of what is required may depend on the proposals for change that develop. It is important to note that this is a two-way process.

## Activities undertaken by the previous Select Committee

12. The previous Select Committee was established on December 2018.
13. It held a number of formal meetings, including meetings in the chamber at the Town Hall, Stanley, as well as meetings at Hill Cove, Fox Bay and Goose Green. Records are available in relation to those meetings.
14. It issued a call for evidence in 2019 and received the written submissions listed and set out in Appendix 4.
15. There were then several meetings held with officers, the Speaker of the Legislative Assembly and the then Chairman of the Select Committee, which are summarised in the document set out in Appendix 5. The matters contained within this document were discussed, but it has only been finalised after the general election in 2021, and therefore has not been agreed by the Chairman, nor was it presented to the Select Committee. It is suggested that this may assist the new Select Committee in considering which areas of the Constitution they may wish to review, and which they are content remain fit for purpose.

## Chapters of the Constitution – A summary of the key provisions

16. The main Constitution document, as it stands, is set out in Appendix 1. This needs to be read with supplementing provisions, such as the Overseas Territories (Constitutional Modifications) Order 2020, which made provision to permit virtual meetings of the Legislative Assembly.

### Chapter 1 – Protection of Fundamental Rights and Freedoms of the Individual

17. Chapter 1 sets out certain “fundamental rights and freedoms”, and the framework within which these operate. They impose a direct limitation on the actions that can be taken by the Government, including in relation to the laws which can be made in the Falkland Islands. The fundamental rights translate international convention rights into rights which are directly enforceable by persons in the Falkland Islands. Most

important are the provisions of the European Convention on Human Rights (ECHR)<sup>5</sup>. Also of general application is the International Covenant on Civil and Political Rights (ICCPR). A list of the core Human Rights treaties and conventions is set out in Appendix 7. A number of the rights have been interpreted to impose positive obligations on the government to take steps, not merely obligations not to do certain acts. The various rights are listed below, in some cases with some further explanation.

18. Section 1 - Fundamental rights and freedoms of the individual. This section is in the form of several recitals, setting the broad context for the provisions which follow it. This includes provision that “every person in the Falkland Islands” is entitled to the protections afforded.
19. Section 2 – Protection of right to life. This derives from international instruments, including, in particular, Article 2 of the European Convention on Human Rights (and Article 6 ICCPR). This is one of the rights where there are a mix of negative and positive obligations. Section 2 as currently framed fails to fully translate the provisions of the Convention, and it is believed this was an oversight, rather than deliberate choice. The substantive omission is in the first sentence of Article 2, paragraph 1, of ECHR, which reads “Everyone’s right to life shall be protected by law.” This has been construed as imposing a positive obligation on a state or territory. If the Constitution is subject to a substantive amendment, **it is recommended that section 2 of the Constitution be proposed for amendment to reflect the full text of Article 2 the European Convention on Human Rights [recommendation 1]**.
20. Section 3 – Protection from inhuman treatment. This derives from Article 3 of ECHR, as well as Article 7 ICCPR, and prohibits torture and inhuman or degrading treatment. Again, this is a right which imposes positive obligations on the government, for example to ensure that effective official investigations are undertaken, where an individual raises an arguable claim of breach, and also a positive obligation to take measures in particular to protect children and vulnerable adults.
21. Section 4 – Protection from slavery and forced labour. This derives from Article 4 of ECHR, as well as Article 8 ICCPR. “forced labour” does not include requirements to perform certain activities, including labour required in consequence of a sentence or order of a court.
22. Section 5 – Protection of right to personal liberty [Article 5 ECHR and Article 9 ICCPR]. This provides that persons may not be deprived of their liberty except as may be authorised by law in certain specified cases, including as a result of a sentence of a court.
23. Section 6 – Provisions to secure protection of law [Articles 6 and 7 ECHR and Articles 14 and 15 ICCPR]. This section contains detailed rights which apply in relation to the charging and trial of criminal allegations. These are reflected in the detailed local laws made in relation to crimes and criminal procedure. The section also provides that in relation to the determination of the existence or extent of civil rights and obligations, a

---

<sup>5</sup> European Convention on Human Rights and Protocols – note: not all rights contained in the protocols have been applied to the Falkland Islands.

person has a right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

24. Section 7 – Protection of rights of prisoners to humane treatment [Article 10 ICCPR].
25. Section 8 – Protection of freedom of movement Article 12 ICCPR [note ECHR provision not extended]. This is a qualified right that persons may move freely throughout the Falkland Islands etc. It is possible for restrictions to be put in place by law restricting movement, including where required in the interests of defence, internal security, public safety, public order, or public health. The restrictions on movement put in place by means regulations in order to protect public health, during the COVID-19 pandemic were considered to be consistent with section 8.
26. Section 9 – Protection for private and family life and for privacy of home and other property [Article 8 ECHR and Article 17 ICCPR]. This is arguably a broad provision, and the interpretation of Article 8 of ECHR by the European Court of Human Rights has perhaps broadened the scope of matters which are protected, beyond the intentions of those who drafted ECHR. Again, it is a qualified right, with the ability for laws to provide for interference with the right on specified grounds (including a number similar to those referred to in relation to section 8 – for example, public safety, defence, and internal security).
27. Section 10 – Protection of right to marry and found a family [Article 12 ECHR and Article 23 ICCPR]. This provides that every man and woman of marriageable age has the right to marry. It also provides that no person shall be compelled to marry. Again, it is a qualified right. “marriageable age” is a matter to be determined by law.
28. Section 11 – Protection of freedom of conscience [Article 9 ECHR and Article 18 ICCPR]. This is another qualified right protecting freedom of conscience, including thought, religion and belief.
29. Section 12 – Protection of right to education [Protocol 1(2) ECHR]. This provides the right to a primary education, which (subject to certain qualifications), shall be free of charge.
30. Section 13 – Protection of freedom of expression [Article 10 ECHR Articles 19 & 20 ICCPR]. This provides that no person shall be hindered in the enjoyment of their freedom of expression, which includes freedom to:
  - a. hold opinions, without interference;
  - b. to receive information and ideas, without interference;
  - c. to disseminate information and ideas, without interference.This is, again, a qualified right, where laws can interfere with the right on specified grounds.
31. Section 14 – Protection of freedom of assembly and association [Article 11 ECHR, Articles 21 & 22 ICCPR]. This qualified right protects the right of persons to assemble and associate with others, in particular to form trade unions or other associations for the promotion and protection of interests.

32. Section 15 – Protection from deprivation of property [Protocol 1(1) ECHR]. This protects against compulsory acquisition of property from persons, except as provided by law – and the applicable law must operate in a way which provides for prompt payment of adequate consideration, and secure the right of a person to access the Supreme Court for the determination of matters including the legality of the “taking” of the property and the amount of the compensation to which they are entitled.
33. Section 16 – Protection from discrimination [Article 14 ECHR Articles 2,3 &26 ICCPR]. This provides for protection from discrimination by persons acting by virtue of written laws, and from persons performing the functions of public office or of a public authority. It is important to consider how this provision differs from the version which appeared in the 1985 Constitution. It is not clear whether the change in wording was intended to convey a different meaning, or whether both instruments were intended to mean the same. A note on this issue is set out at Appendix 8, and the issue has been raised with the FCDO. This arose, in part, from the work being done to consider what legislation, regarding the promotion of equality and protection against discrimination, ought to be adopted in the Falkland Islands.
34. Section 17 – Derogations from fundamental rights and freedoms under emergency powers. This allows certain (but not all) protected rights to be overridden temporarily under emergency powers during a public emergency. The relevant provisions for emergency powers are set out in [the Emergency Powers \(Overseas Territories\) Order 2017](#). There was an active debate in relation to the response to the COVID-19 pandemic as to whether emergency public health legislation involved derogation from fundamental rights and freedoms, or whether such legislation was put in place in a manner which was compliant with the scope of those rights and freedoms. In the Falkland Islands we took the view that the legislation was compliant with fundamental rights and freedoms, and did not necessitate derogation from those rights, and from treaty obligations.
35. Section 18 – Protection of persons detained under emergency laws. This sets out procedural safeguards required when persons are detained under emergency laws.
36. Section 19 – Enforcement of protective provisions [Article 13 ECHR]. One of the obligations under the ECHR is that a government must provide for a person to obtain an effective remedy before an appropriate national authority. This section provides for direct access to the Supreme Court, and gives the court appropriate powers to give a remedy. It also sets the framework for consideration of such matters, including a requirement to “take into account” “any judgment, decision, declaration or advisory opinion of the European Court of Human Rights”, as well as other matters. It is worth noting that the UK Government has published and laid before Parliament a “Bill of Rights Bill”, which is intended to deal with some of these issues in the context of the UK. It will be worth reviewing and monitoring the progress of this Bill, particularly if any part of Chapter I is reviewed by the Select Committee on the Constitution.
37. Section 20 – Proceedings which might affect freedom of conscience. This provides that where a court is determining any question under Chapter I which might affect the exercise by a religious organisation (or its members) of the right protected by section 11, it must have “particular regard to the importance of that right.”

38. Section 21 – Proceedings which might affect freedom of expression. This includes specific provisions in relation to court proceedings which might affect the exercise of the right to freedom of expression. Again, it is to have “particular regard to the importance” of that right. It contains specific provision in relation to journalistic, literary or artistic material.
39. Section 22 – Interpretation. This contains provisions for the interpretation of Chapter I.
40. Section 22 is a critical section as it defines key concepts, such as who belongs to the Falkland Islands – who has (or may be granted) Falkland Island Status. In doing so, the interpretation section contains substantive law which creates fundamental individual rights. This is not where you would ordinarily expect to find such provision. **It is recommended that consideration is given to separating out the provisions relating to Falkland Islands Status into a separate section, rather than leaving them as part of an interpretation section [recommendation 2].**
41. As highlighted in section 4 of, and Annex 1 to, Executive Council report reference 43/22 entitled “Falkland Islands Status (Amendment) Ordinance 2017 and further proposed amendments 2022”, it appears that there may have been some confusion about the section 22 provisions of the Constitution and proposals in relation to FI Status.
42. It appears that the section 22 provisions in relation to FI Status have consequences which seem to be inadvertent or to have been overlooked, rather than chosen. **It is recommended that the Select Committee should start from the position of considering who should (as of right, by virtue of the Constitution) be considered to have FI Status, and then compare their conclusions with the current text, before deciding whether any changes should be made [recommendation 3].**
43. By way of example, if
- a. a person is born outside the Falkland Islands,
  - b. is a British citizen at birth,
  - c. their father or mother was born in the Falkland Islands, and
  - d. the father or mother had FI Status at the time of the person’s birth,
- then, that person will have FI Status, regardless that neither their birth mother or father was permanently resident in the Falkland Islands at the time of birth (section 22(5)(e)).
44. However, if the person described in the above paragraph is born inside the Falkland Islands, whilst their parents are temporarily visiting the Islands, then the person will not have FI Status as of right. It seems unlikely this was intended.
45. If the definition of a person having Falkland Islands status is to be reviewed and potentially amended, the Select Committee may wish to debate the merits or otherwise of replacing the phrase “Falkland Islands status” where it is used in the Constitution (and elsewhere) with “Falkland Islander”.

46. The relevant definition states “ a person [is] regarded as belonging to the Falkland Islands if [the person] enjoys Falkland Islands status and a person enjoys such status if...”.
47. Historically such persons were sometimes described (although not in the Constitution itself) as “belongers” – a phrase which is used in a number of other Overseas Territories Constitutions. However, “belongers” appears to have been perceived to be a word tainted with colonialism (or otherwise inappropriate), and the phrase “Falkland Islands status” was preferred (“belonger” appears to be no longer in regular use in the Falkland Islands). However, some may consider that this does not go far enough, and that the Falkland Islands Constitution should use the phrase “Falkland Islander”; being a label which is more commonly used in connection with relevant persons.

## Chapter 2 – The Governor

48. The office of Governor is re-established by the provisions in Chapter 2. The Governor is to have such powers and duties as are conferred by the Constitution, by other laws, and as His Majesty may from time to time assign. In the exercise of her functions, the Governor may be subject to instructions made through a Secretary of State. In relation to any function which appears to the Governor to relate to defence or internal security (with the exception of the police), the Governor is to consult the Commander British Forces and to accept their advice<sup>6</sup>.

## Chapter 3 – The Legislature

49. There is established a Legislative Assembly for the Falkland Islands. It consists of eight elected members (five from the Stanley Constituency, and three from the Camp Constituency), two ex officio members (the Chief Executive and Financial Secretary<sup>7</sup>), and the Speaker.
50. This Chapter sets out the qualifications for election to the Legislative Assembly, as well as the grounds on which someone is disqualified for election. It provides for the vacation of seats. It also provides for the qualifications of electors, and the grounds on which someone is disqualified from being an elector.
51. This Chapter also sets the framework around elections. Whenever a vacancy arises a proclamation of election is to be made, setting the date for an election to be held to fill the vacancy. It provides also for the dissolution of the Legislative Assembly and a general election to be held every four years.
52. Under section 36, the Supreme Court has jurisdiction to hear and to determine any question as to whether a person has been validly elected as a member of the Legislative Assembly or whether any member of the Assembly has vacated his or her

---

<sup>6</sup> See paragraph 68 later in relation to the effect of this on Executive Council

<sup>7</sup> Note the role of “Financial Secretary” was re-titled “Director of Finance” in the 2008 Constitution, but the new title was not used in practise, with the role continuing to be referred to as Financial Secretary. See recommendation in paragraph 102.

seat. No appeal shall lie from any determination of the Supreme Court under this section.

53. A recent issue has arisen in relation to questions relating to disqualification from election to the Legislative Assembly, and disqualification from registering as an elector. This is subject to a referral to the Supreme Court, but is discussed in Appendix 6.
54. Some of the provisions now contained in the Constitution were, prior to 1985, contained in a local Ordinance. Arrangements in other Overseas Territories indicate that a range of approaches have been taken. A number of OTs have detailed electoral provisions for local laws. **It is recommended that the Select Committee give specific consideration to the question of what the qualifications (and disqualifications) should be in relation to standing for election to the Legislative Assembly, and registering as an elector, and should also give consideration to which provisions should be within the Constitution and which may be better set out in a local Ordinance [recommendation 4].**
55. It should be noted that “the Legislature” is defined in section 100 as meaning “the Governor acting with the advice and consent of the Legislative Assembly and includes the Governor acting in exercise of the powers conferred on him or her by section 55”. This is formulated differently in some other Overseas Territory Constitutions, and may merit specific consideration.

#### Chapter 4 – Powers and procedures of the Legislative Assembly

56. Section 37 provides that the “Governor”, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Falkland Islands. It makes provision for the election of a Speaker and Deputy Speaker, and for a Clerk of the Legislative Assembly. In addition to the members of the Legislative Assembly, section 41 provides for participation by non-members. The Commander British Forces shall have the right to take part in proceedings, and the Attorney General shall, with the consent of the person presiding, also have the right to take part in proceedings. Oaths of office and of allegiance are required to be made.
57. The quorum for proceedings of the Legislative Assembly is six elected members, which ensures that there must always be representation from both constituencies, Stanley and Camp. Section 46 provides for Standing Orders to be made for regulation and orderly conduct of proceedings and for passing Bills. There is provision for privilege and immunity from suit of members of the Legislative Assembly, and the Legislative Assembly (Privileges) Ordinance 1989<sup>8</sup>, makes further provision about this.
58. Sections 50 to 55 deal with the role of the Legislative Assembly in relation to the making of laws. Section 55 contains a reserved power for the Governor to make laws and pass motions without the consent of the Legislative Assembly. This was a reserved power which the UK Government had indicated it would be content to remove in Cayman Islands. However, following the failure of the legislature there to pass legislation in relation to same-sex partnerships, the power was used by the Secretary of

---

<sup>8</sup> See [Legislative Assembly \(Privileges\) Ordinance 1989](#)

State instructing the Governor to pass the legislation. The offer to remove this power was then withdrawn.<sup>9</sup>

59. The Overseas Territories (Constitutional Modifications) Order 2020 made specific provision to allow the Legislative Assembly to hold virtual meetings. A substantial amendment to, or replacement of, the current constitution, could directly incorporate these provisions.

## Chapter 5 – The Executive

60. The “executive” effectively refers to the functions of the Falkland Islands Government. The seat of executive authority sits in different places, depending on the nature of the governmental function which is being discharged. It might be helpful when thinking about this issue to draw a distinction between the “legal form” of decisions made, and the “real” decision.
61. In most cases, the “legal form” of the decision will be taken by the Governor. In some cases, the “real” decision is also taken by the Governor personally or by public officers to whom the Governor has entrusted that function or task. In delivery of those functions, the official is directly accountable to the Governor, and must take direction from the Governor personally. It is not possible to give a definitive list of those functions which are discharged by the Governor personally, as, to some extent, this is a matter for interpretation and for judgement of the Governor.
62. In relation to most decisions, whilst the “legal form” of the decision is still made by the Governor or officers (perhaps by signing a document to notify or give effect to the decision), the “real” decision is made by the elected members sitting on the Executive Council. The constitution is structured this way as there is not provision for direct exercise of executive authority by elected members – this is in contrast to the governance arrangements now in place in most inhabited overseas territories; St Helena is the territory which has most recently moved to having an executive form of governance, with some decisions being made directly by individual elected members. See the St Helena Political Governance Review, December 2019, and St Helena Political Governance Review (Report Two), February 2020, as listed in Annex 3, for more details about how the recent changes there came to be proposed. The proposals for change were put to a referendum in 2021, and were subsequently put into effect by amendment to the St Helena Constitution.
63. The Executive Council comprises three elected members of the Legislative Assembly (elected by the Assembly) and two ex officio members- the Chief Executive and Financial Secretary. Only the elected members are voting members of the Council.
64. Similarly to the Legislative Assembly, the Commander British Forces and Attorney General have the right to attend the Executive Council and take part in its proceedings.
65. The Executive Council shall not be summoned except by the Governor personally – but the Governor must summon a meeting if at least two members of the Council request the Governor to do so (this could include a request by the ex officio members). The

---

<sup>9</sup> See [Explanatory Memorandum to the Cayman Islands Constitution \(Amendment\) Order 2020](#), paragraphs 7.2 and 10.1

Governor must include on the agenda for a meeting any item requested by an elected member, as well as any item which the Governor personally thinks fit. In practice, the Chief Executive will settle the content of the agenda for meetings of the Executive Council, following consultation with other officers, elected members and the Governor. **It is recommended that the conventions around settling the agenda for Executive Council meetings be documented (perhaps in Executive Council Standing Orders), or that the provisions of the Constitution be recommended for change [recommendation 5].**

66. Two key sections in relation to the operation of the Executive Council are sections 66 and 67.
67. Under section 66(1), "Subject to subsection (2), in the formulation of policy and in the exercise of the functions conferred on the Governor under this Constitution or any other law, the Governor shall consult with the Executive Council and, subject to section 67, shall accept its advice." This, in practice, means that, in most cases, the references to the Executive Council giving "advice" mean that they are directing the Governor to take a particular decision/action. This is the "real" decision, directing what the "legal form" of the decision should be.
68. Subsection (2) then lists the circumstances in which the Governor does not need to consult the Executive Council – this means that the "real" decision may sit with the Governor personally, or that the "real" decision has been taken by someone else, including a Secretary of State, or Commander British Forces. Although the Governor is not obliged to consult Executive Council on a matter falling within subsection (2), and would usually not do so (and may even be directed not to do so), this does not mean that the Governor must not consult the Council on any matter falling within subsection (2). If the Governor then does consult the Council, then, subject to section 67, the Governor shall accept its advice. In practice this is only likely to happen in relation to matters which might otherwise be considered "too unimportant".
69. Section 67 makes provision for when the Governor, having consulted Executive Council, may act against the advice given by the Council. Firstly, this is where, in the Governor's judgement it would be right to do so in the interests of good governance. Secondly, where the advice would affect one or more of the following:
  - a. External affairs;
  - b. Defence;
  - c. Internal security, including the police;
  - d. Administration of justice;
  - e. Audit;
  - f. Appointments to the public service, the discipline and removal from office of public officers and the management of the public service.
70. If a Governor decides to act against the advice of the Executive Council, they must report the matter to a Secretary of State; and convey to the Secretary of State the views of the Executive Council on the matter. Where this has occurred, any member of

the Council may require that the minutes record the advice or opinion they gave on the question at issue and their reasons for that advice or opinion. It is understood that, in practice, there are few, if any, examples of a Governor having decided to act against the advice of the Executive Council under the current Constitution, which means, in practice, that the “real decisions” on matters considered by the Council have, without exception, been taken by elected members.

71. Chapter 5 also contains provision for the establishment of the Advisory Committee on the Prerogative of Mercy and for the exercise by the Governor, acting after consultation with the Committee, of the power of pardon, the power to grant respite from punishment, the power to substitute a less severe sentence, and the power to remit punishment imposed for an offence.
72. Section 72 gives specific powers to the Attorney General in relation to criminal proceedings. These powers are to be exercised by the Attorney General personally, and the Attorney General is not to be subjected to the direction or control of any other person or authority. It is considered that these remain necessary provisions, that they are appropriate to the current circumstances of the Falkland Islands.
73. Finally, Chapter 5 also includes provisions in relation to grants of land. These appear to remain appropriate – consideration could be given to who completes the “legal form” of grants and dispositions, but this can be addressed without any need for a change to the Constitution.

## Chapter 6 – Finance

74. Chapter 6 contains the framework within which public finances are managed, and audited. The views of the Financial Secretary should be sought in relation to any proposals to make changes to Chapter 6. Section 74 provides for monies to be paid into the Consolidated Fund, and section 75 makes provisions for withdrawal of funds from the Consolidated Fund – funds can only be withdrawn if a specific law makes provision for this (there are numerous examples of this being in place), or if an appropriation Ordinance authorises the withdrawal (there is also provision, in conjunction with section 77, for withdrawal in advance of appropriation). Expenditure is authorised in accordance with section 76, which provides for estimates of expenditure to be laid before the Legislative Assembly and for these to be incorporated into an appropriation Ordinance. There is provision for a contingencies fund to be established, and provision for public debt.
75. Section 80 contains provision for the arrangements to be made for the audit of the public accounts of the Falkland Islands, and for the independence of the auditor.
76. Section 81 makes provision for a Public Accounts Committee with the function of examining and reporting on all public accounts, and with powers to enable this to be done. The provisions are to be supplemented by Ordinance. The Committee’s independence is also secured.

## Chapter 7 – The Public Service

77. Chapter 7 contains provisions in relation to the Public Service. It provides for public offices to be created, and for appointment to and removal from public office.

78. The office of Chief Executive is established, and the Constitution provides for the Chief Executive to be the head of the public service. The Chief Executive is to be appointed by the Governor “acting in agreement with the Executive Council”. This has to be taken to be a deliberate difference of wording – the Governor is not taking the advice of the Executive Council, and it is considered that both the Governor and the elected members on the Executive Council must agree the appointment.
79. Section 84 provides that the power to make appointments to public office is to be exercised by the Chief Executive, except in relation to certain specified offices. Personal prior approval of the Governor is required in relation to such public offices of or above the level of Head of Department or equivalent as the Governor may direct.
80. Section 85 provides for discipline and removal of public officers, and provides for an appeal to the Governor from any “final decision” resulting from disciplinary or management action relating to removal from office, demotion or significant financial penalty (or affecting payments of gratuity or pension). It provides for there to be a Management Code, which is to be issued by the Governor, with the approval of the Secretary of State, and with the agreement of the Executive Council. Provisions of the Management Code dealing with discipline or removal of public officers require the prior approval of the Secretary of State. Separate provisions should be in place in relation to police officers (other than the Chief of Police), and for FIDF personnel (other than the Officer Commanding that force).

## Chapter 8 – The Administration of Justice

81. Chapter 8 provides for the establishment of the Supreme Court for the Falkland Islands, and the Court of Appeal for the Falkland Islands. The provisions deal with the appointment of Justices of those courts, and for the qualifications for office.
82. Section 88 also deals with the appointment of the Senior Magistrate by the Governor personally. The role of “Senior Magistrate” appears to have evolved and changed over time. Provisions relating to the Senior Magistrate consist in a single subsection (4), and **it is recommended that the provisions in relation to the qualifications and appointment to office of Senior Magistrate are reviewed, in consultation with the Chief Justice and the Ministry of Justice [recommendation 6].**
83. The Chapter also includes provision for the tenure in office of judges, and for the process to be followed if it is considered that a judge should be removed from office. It is considered that these provisions remain fit for purpose, save that it might be considered appropriate to review the threshold of £5000, above which appeal as of right lies to the Court of Appeal, though this has not, in practice caused any difficulty. It would require consultation via the FCDO, as the threshold is the same as that provided in the Falkland Islands (Appeals to Privy Council) Order 1985. It may be worth a broader review of general developments in the UK, for example, for dealing with poor judicial behaviour, in order to improve the provisions, whilst protecting the integrity of the system and judicial independence.

## Chapter 9 – Complaints Commissioner

84. Section 95 gives the Governor the power to appoint a Complaints Commissioner to investigate any complaint of maladministration in the government of the Falkland

Islands or such other matters as may be prescribed by Ordinance. Section 96 provides that a Complaints Commissioner shall have such functions, powers and jurisdiction as may be prescribed by Ordinance. It also provides for the functional independence of a Complaints Commissioner. These provisions are supplemented by the Complaints Commissioners Ordinance 2010 .

## Chapter 10 – Miscellaneous

85. Chapter 10 makes provision for a public seal to be kept and used, for appointments, and, in section 100, for interpretation of the Constitution. Section 100 is an important section to consult when considering what other substantive parts of the Constitution are intended to mean.

## Annex A – Rules for the enactment of laws

86. Annex A sets out a general framework for the enactment of laws. This includes rules about how laws are to be put together, referenced and published. It also includes provisions for laws on certain issues to be subjected to prior approval and instruction from a Secretary of State. These merit review, in an effort to improve clarity.

## Annex B – Oaths and Affirmations

87. Annex B contains the form of the required oath (or affirmation) of allegiance, oath (or affirmation) for due execution of office, oath (or affirmation) of secrecy, and the judicial oath (or affirmation) which is to be taken by those entering into judicial office.

## Constitutions of other British Overseas Territories

88. All UK Overseas Territories have a constitution. The other constitutions contain many similar provisions to those contained in the Falkland Islands Constitution. However, different provision is made in a number of detailed areas, according to the circumstances of each territory. A list of other overseas territory constitutions (with links, where available) is set out in Appendix 2. **It is recommended that where the Select Committee is considering proposals for change to the Constitution, they should consider the other Overseas Territory constitutions to see how the issue has been addressed in other places, and consider seeking information directly about how those provisions operate in practice [recommendation 7].** This may assist in formulating proposals for change, or give the confidence that constitution change is not necessary.

## Issues which the Chairman of the former Select Committee had proposed to pursue

89. The table set out at Appendix 5 sets out the areas discussed as possible matters for change by the Chairman of the former Select Committee on the Constitution (2018-2021). The proposals were never settled, nor were they discussed with the Select Committee, but provide a basis for discussions.

## Public written representations

90. In 2019, following a call for evidence, a number of members of the public submitted written representations to the former Select Committee on the Constitution. The full representations are set out in Appendix 4, and **it is recommended that the Select Committee consider the written representations received from members of the public in 2019, and determine whether any proposals should be taken forward for further consideration [recommendation 8]**. The representations were taken into account in preparation of the document at Appendix 5.

## Issues identified by Members of the Legislative Assembly

91. Appendix 4 also includes the matters raised for discussion by the then members of the legislative assembly in 2019, and **it is recommended that the Select Committee consider the representations submitted by former Members of the Legislative Assembly in 2019, and determine whether any proposals should be taken forward for further consideration [recommendation 9]**. Members still serving on the Legislative Assembly will, of course, have the opportunity to directly put forward proposals afresh, and participate in debate. The representations were taken into account in preparation of the document at Appendix 5.
92. **It is also recommended that all Members of the Legislative Assembly, bring forward their own proposals for issues worthy of consideration by the Select Committee [recommendation 10]**. It is considered that this would help focus and frame public participation in the process.

## Issues identified by others

93. Foreign Affairs Select Committee in 2018/2019 conducted a review of the relationship between the UK and its Overseas Territories. The Committee's report was published in February 2019, and the UK Government response was published in May 2019<sup>10</sup>.
94. In the report, the Committee made a number of recommendations. Most relevant to the review of the Constitution is the recommendation that:

*The UK Government should initiate a consultation with the elected governments of the OTs and work with them to agree a plan to ensure that there is a pathway for all resident UK and British Overseas Territory citizens to be able to vote and hold elected office in territory. In its response to this report the FCO should lay out a timetable for this consultation process and set a deadline for phasing out discriminatory elements of belonging, or its territory-specific equivalents.*

95. The UK Government response to this recommendation was as follows:

*The UK Government understands the committee's concerns and continues to impress upon OT governments the importance of allowing people who have made their*

---

<sup>10</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmcaff/1464/1464.pdf> and see the response to this at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcaff/2174/2174.pdf>

*permanent home in the territories the ability to vote and engage fully in the community, but recognises the desire of island communities to maintain their cohesion, hence the need for a reasonable qualifying process. We understand the OTs' concerns, sensitivities and historical background on this issue.*

*Our vision for the OTs is as vibrant and flourishing communities, with the widest possible opportunities for their people. We expect Territory Governments to meet the same high standards as the UK Government in maintaining the rule of law, respect for human rights and integrity in public life, delivering efficient public services, and building strong and successful communities. In the spirit of a relationship based upon partnership, we will continue to support and encourage consistent and open political engagement on belonging and its territory-specific equivalents, whilst respecting the fact that immigration decisions are primarily a matter for OT governments.*

*The FCO does not plan at a future date to publish such a timetable.*

96. Given the relationship between the UK and its Overseas Territories, it is considered worthwhile to consider the Foreign Affairs Committee recommendation, when considering whether to propose changes to the arrangements for qualifications to vote or to stand for elected office.

## Issues for consideration not requiring constitutional change

97. There were a number of issues identified by those who responded to the work of the previous Select Committee, which are valid matters for consideration, the acceptance of which would require change to legislation or to government policy, rather than change to the Constitution.
98. It would be worthwhile considering whether any of these items should be included in the government policy or legislative programmes (where not already covered). The form for doing so would be for the Select Committee to recommend to the Governor that action be taken, and ask the Governor to report back to the Assembly – in the same way that reports from the Public Accounts Committee are considered. In practice this means that the matters will be discussed and considered by Executive Council.

## A Personal Perspective

99. It can seem at times that the structure of the governance arrangements set by the Constitution are not fully understood by many of those who operate within those arrangements – including at times elected members and public officers. This may in part be due to a lack of clear information available to all, but I would suggest it is perhaps also in part due to the difference between legal forms/requirements, and the ways that functions are exercised in practice.
100. I suggest that it would be helpful, even if changes are not made to the Constitution, for the conventions, subject to which the Constitution operates, to be discussed by the Select Committee, and **it is recommended that a description of key conventions is set down in writing, whether as part of Executive Council Standing**

**Orders or otherwise [recommendation 11]**, to ensure that these are at least understood and in the main agreed by all key stakeholders.

101. There has, understandably, been a focus in looking at the arrangements between the UK and its Overseas Territories – including review of the Constitutions of other Overseas Territories, noting how these are framed and how they operate in practice. **It is recommended that, as part of the review of the Constitution, consideration is given to reviewing the arrangements between other countries and their overseas territories (or equivalent), between devolved administrations in the UK and their arrangements with the UK Government, and perhaps also between devolved administrations elsewhere (for example Provinces and Territories in Canada), to consider whether there may be anything to learn from those arrangements [recommendation 12]**
102. It is recommended that the Select Committee considers whether the references to the “Director of Finance” in the Constitution should be returned to references to the “Financial Secretary” and, whatever decision, that the Governor be recommended to implement the decision in practice, including amendments to job title, use of the preferred title and making any necessary consequential amendments, to legislation, policies and otherwise [recommendation 13].

## Summary of Specific Recommendations

103. It is recommended that section 2 of the Constitution be proposed for amendment to reflect the full text of Article 2 the European Convention on Human Rights [recommendation 1] (paragraph 19).
104. It is recommended that consideration is given to separating out the provisions relating to Falkland Islands Status into a separate section, rather than leaving them as part of an interpretation section [recommendation 2] (paragraph 40).
105. It is recommended that the Select Committee should start from the position of considering who should (as of right, by virtue of the Constitution) be considered to have FI Status, and then compare their conclusions with the current text, before deciding whether any changes should be made [recommendation 3] (paragraph 42).
106. It is recommended that the Select Committee give specific consideration to the question of what the qualifications (and disqualifications) should be in relation to standing for election to the Legislative Assembly, and registering as an elector, and should also give consideration to which provisions should be within the Constitution and which may be better set out in a local Ordinance [recommendation 4] (paragraph 54).
107. It is recommended that the conventions around settling the agenda for Executive Council meetings be documented (perhaps in Executive Council Standing Orders), or that the provisions of the Constitution be recommended for change [recommendation 5] (paragraph 65).

108. It is recommended that the provisions in relation to the qualifications and appointment to office of Senior Magistrate are reviewed, in consultation with the Chief Justice and the Ministry of Justice [recommendation 6] (paragraph 82).
109. It is recommended that where the Select Committee is considering proposals for change to the Constitution, they should consider the other Overseas Territory constitutions to see how the issue has been addressed in other places, and consider seeking information directly about how those provisions operate in practice [recommendation 7] (paragraph 88).
110. It is recommended that the Select Committee consider the written representations received from members of the public in 2019, and determine whether any proposals should be taken forward for further consideration [recommendation 8] (paragraph 90).
111. It is recommended that the Select Committee consider the representations submitted by former Members of the Legislative Assembly in 2019, and determine whether any proposals should be taken forward for further consideration [recommendation 9] (paragraph 91).
112. It is also recommended that all Members of the Legislative Assembly, bring forward their own proposals for issues worthy of consideration by the Select Committee [recommendation 10] (paragraph 92).
113. it is recommended that a description of key conventions is set down in writing, whether as part of Executive Council Standing Orders or otherwise [recommendation 11] (paragraph 100)
114. It is recommended that, as part of the review of the Constitution, consideration is given to reviewing the arrangements between other countries and their overseas territories (or equivalent), between devolved administrations in the UK and their arrangements with the UK Government, and perhaps also between devolved administrations elsewhere (for example Provinces and Territories in Canada), to consider whether there may be anything to learn from those arrangements [recommendation 12] (paragraph 101).
115. It is recommended that the Select Committee considers whether the references to the “Director of Finance” in the Constitution should be returned to references to the “Financial Secretary” and, whatever decision, that the Governor be recommended to implement the decision in practice, including amendments to job title, use of the preferred title and making any necessary consequential amendments, to legislation, policies and otherwise [recommendation 13] (paragraph 102).

# Appendices

## List of Appendices

1. Appendix 1 – The Falkland Islands Constitution Order
2. Appendix 2 – List of other Overseas Territory Constitutions (with hyperlinks)
3. Appendix 3 – Bibliography
4. Appendix 4 – Submissions received from members of the public and elected members
5. Appendix 5 – Summary assessment of the Constitution, including potential areas for change (Select Committee 2018-2021)
6. Appendix 6 – Qualifications/Disqualifications of electors and electors
7. Appendix 7 – List of Major Human Rights Treaties and Conventions
8. Appendix 8 – Query regarding provisions of section 16 of the Constitution on protection from discrimination.

## Appendix 1 – The Falkland Islands Constitution Order

---

### STATUTORY INSTRUMENTS

---

#### Falkland Islands Constitution Order

<i>Made</i>	- - - -	<i>5th November 2008</i>
<i>Laid before Parliament</i>		<i>12th November</i>
<i>2008 Coming into force</i>		<i>1 January 2009</i>

At the Court at Buckingham Palace, the 5th day of November 2008

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887 and 1945<sup>11</sup> and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

#### **Citation, publication and commencement**

- 1.—(1) This Order may be cited as the Falkland Islands Constitution Order 2008.
- (2) This Order shall be published in the Gazette.
- (3) This Order shall come into force on the appointed day.

#### **Interpretation**

- 2.—(1) In this Order—

“the appointed day” means such day as may be prescribed by the Governor, acting in his or her discretion, by proclamation published in the Gazette;

---

<sup>11</sup> 1887 c.54 and 1945 c.7.

“the Constitution” means the Constitution set out in the Schedule;

“the former Constitution” means the Constitution set out in Schedule 1 to the Falkland Islands Constitution Order 1985<sup>12</sup>;

“Legislative Assembly” means the Legislative Assembly established by the Constitution;

“Legislative Council” means the Legislative Council established by the former Constitution.

(2) Sections 98 to 100 of the Constitution shall apply for the purposes of interpreting sections 1 to 11 of this Order and otherwise in relation to those sections as they apply for the purpose of interpreting and in relation to the Constitution.

### **Revocations**

3. The Falkland Islands Constitution Order 1985<sup>13</sup>, the Falkland Islands Constitution (Amendment) Order 1997<sup>14</sup>, and the Falkland Islands Constitution (Amendment) (No. 2) Order 1997<sup>15</sup> are revoked with effect from the appointed day.

### **Establishment of Constitution**

4. The Constitution shall have effect in the Falkland Islands on the appointed day.

### **Existing laws**

5.—(1) The existing laws shall, as from the appointed day, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), that prescription or provision shall, as from the appointed day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution) as if it had been made under the Constitution.

(3) The Governor may by order made at any time within twelve months after the appointed day make such alterations to any existing law as may appear to him or her to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect or enabling effect to be given to the Constitution.

(4) This section is without prejudice to any powers conferred by the Constitution or by any other law on any person or authority to make provision for any matter, including the alteration of any existing law.

(5) For the purposes of this section “existing law” means any Ordinance, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as part of the law of the Falkland Islands immediately before the appointed day,

---

<sup>12</sup> S.I. 1985/444, as amended by S.I. 1997/864 and 1997/2974

<sup>13</sup> S.I. 1985/444.

<sup>14</sup> S.I. 1997/864.

<sup>15</sup> S.I. 1997/2974.

but does not include any Act of Parliament of the United Kingdom or Order in Council or other instrument made under any such Act.

### **Existing offices and officers**

6.—(1) Any office established by or under the former Constitution and existing immediately before the appointed day shall on and after that day, so far as consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in an office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office or the corresponding office established by the Constitution as if he or she had been appointed to hold or act in it in accordance with or under the Constitution; but any person who under the law in force immediately before the appointed day would have been required to vacate his or her office at the expiration of any period shall vacate that office at the expiration of that period.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath required to be made before assuming the functions of his or her office shall be deemed to have made any like oath so required by the Constitution or any other law.

(4) The person who immediately before the appointed day holds or is acting in the office of Financial Secretary shall, on and after that day, hold or act in the office of Director of Finance as if he or she had been appointed to hold or act in that office under the Constitution.

### **Legislative Assembly**

7.—(1) Any person who immediately before the appointed day is a member of the Legislative Council shall on that day become a member of the Legislative Assembly, shall be deemed to have complied with section 42 of the Constitution, and shall hold his or her seat in accordance with the Constitution.

(2) The Governor shall dissolve the Legislative Assembly not later than the expiration of four years from the date when the Legislative Council first met after the last general election before the appointed day.

### **Standing Orders**

8. The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, until it is otherwise provided under section 46 of the Constitution, be the Standing Orders of the Legislative Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

### **Pending legal proceedings**

9.—(1) Any proceedings pending immediately before the appointed day in the Supreme Court or the Court of Appeal established by the former Constitution may be continued on and after that day in the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

(2) Any judgment or order of the Supreme Court or the Court of Appeal established by the former Constitution given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a judgment or order of the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

### **Management Code**

10. Until a Management Code has been issued in accordance with section 85(3) of the Constitution, the management code in operation immediately before the appointed day shall continue in operation.

### **Power reserved to Her Majesty**

11. There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Falkland Islands including, without prejudice to the generality of the foregoing, laws amending this Order or the Schedule.

*Judith Simpson*

Clerk of the Privy Council

SCHEDULE  
The Constitution of the Falklands Islands

CONTENTS

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS OF THE INDIVIDUAL

1. Fundamental rights and freedoms of the individual
2. Protection of right to life
3. Protection from inhuman treatment
4. Protection from slavery and forced labour
5. Protection of right to personal liberty
6. Provisions to secure protection of law
7. Protection of rights of prisoners to humane treatment
8. Protection of freedom of movement
9. Protection for private and family life and for privacy of home and other property
10. Protection of right to marry and found a family
11. Protection of freedom of conscience
12. Protection of right to education
13. Protection of freedom of expression
14. Protection of freedom of assembly and association
15. Protection from deprivation of property
16. Protection from discrimination
17. Derogations from fundamental rights and freedoms under emergency powers
18. Protection of persons detained under emergency laws
19. Enforcement of protective provisions
20. Proceedings which might affect freedom of conscience
21. Proceedings which might affect freedom of expression

22. Interpretation

## CHAPTER II

### THE GOVERNOR

23. The Governor
24. Acting Governor
25. Defence and internal security

## CHAPTER III

### THE LEGISLATURE

26. Establishment and composition of the Legislative Assembly
27. Constituencies
28. Qualifications for election
29. Disqualifications for election
30. Vacation of seats
31. Vacation of seat on sentence
32. Qualifications of electors

33. General elections and filling vacant seats
34. Dissolution
35. Recalling dissolved Legislative Assembly in case of emergency
36. Determination of questions as to membership

## CHAPTER IV

### POWERS AND PROCEDURES OF THE LEGISLATIVE ASSEMBLY

37. Power to make laws
38. Sittings of the Legislative Assembly
39. Presiding
40. Clerk of the Legislative Assembly
41. Participation by non-members
42. Oaths
43. Quorum
44. Voting
45. Transaction of business notwithstanding vacancies
46. Standing Orders
47. Penalty for sitting or voting when unqualified
48. Privileges of Legislative Assembly and members
49. Freedom of speech in proceedings
50. Rules for the enactment of laws
51. Introduction of Bills, etc
52. Assent to Bills
53. Publication and commencement of laws
54. Disallowance of laws
55. Governor's reserved power

## THE EXECUTIVE

56. Executive authority
57. Executive Council
58. Election of elected members of the Executive Council
59. Tenure of office of elected members of the Executive Council
60. Temporary members of the Executive Council
61. Attendance of non-members at meetings of the Executive Council
62. Summoning of meetings and agenda of the Executive Council
63. Presiding in the Executive Council
64. Oaths
65. Quorum
66. The Governor to consult the Executive Council
67. The Governor may act against advice of the Executive Council
68. The Governor may call for public officers, official papers, information or advice
69. Minutes
70. Advisory Committee on the Prerogative of Mercy
71. Power of pardon, etc
72. Powers of Attorney General in relation to criminal proceedings
73. Grants of land

## CHAPTER VI

### FINANCE

- 74. Consolidated Fund
- 75. Withdrawals
- 76. Authorisation of expenditure
- 77. Expenditure in advance of appropriation
- 78. Contingencies Fund
- 79. Public debt
- 80. Audit
- 81. Public Accounts Committee

## CHAPTER VII

### THE PUBLIC SERVICE

- 82. Power to constitute offices
- 83. Chief Executive
- 84. Power to make appointments
- 85. Discipline and removal of public officers

## CHAPTER VIII

### THE ADMINISTRATION OF JUSTICE

- 86. Supreme Court
- 87. Court of Appeal
- 88. Appointment of judges and Senior Magistrate
- 89. Acting judges
- 90. Tenure of office of judges and Senior Magistrate
- 91. Oaths
- 92. Jurisdiction of the Court of Appeal

- 93. Practice and procedure on appeals to the Court of Appeal
- 94. Appeals to the Court of Appeal

## CHAPTER IX

### COMPLAINTS COMMISSIONER

- 95. Complaints Commissioner
- 96. Functions of Complaints Commissioner

## CHAPTER X

### MISCELLANEOUS

- 97. The Public Seal
- 98. Reappointments and concurrent appointments
- 99. Resignations
- 100. Interpretation

ANNEX A TO THE CONSTITUTION - RULES FOR THE ENACTMENT OF LAWS

ANNEX B TO THE CONSTITUTION - OATHS AND AFFIRMATIONS

# CHAPTER I

## PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

### **Fundamental rights and freedoms of the individual**

#### **1. Whereas—**

- (a) all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co- operation, based upon the principle of mutual benefit and international law;
- (b) the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;
- (c) every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—
  - (i) life, liberty, security of the person, the enjoyment of property and the protection of the law;
  - (ii) freedom of conscience, of expression (including freedom of the press), of movement and of peaceful assembly and association;
  - (iii) protection for his or her family, his or her personal privacy, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid individual rights and freedoms, and to related rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

### **Protection of right to life**

**2.—(1)** No person shall be deprived intentionally of his or her life.

(2) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny, or if he or she dies as the result of a lawful act of war.

### **Protection from inhuman treatment**

3. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Protection from slavery and forced labour**

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (c) any labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

### **Protection of right to personal liberty**

5.—(1) Every person has the right to liberty and security of person.

(2) No person shall be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his or her unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for the Falkland Islands or some other country, in respect of a criminal offence of which that person has been convicted;
- (c) in execution of an order of a court punishing that person for contempt of that court or of another court;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on that person by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
- (e) for the purpose of bringing that person before a court in execution of the order of a court;

- (f) on reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;
- (g) in the case of a minor, under the order of a court or in order to bring that person before a court or with the consent of his or her parent or guardian, for his or her education or welfare;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into the Falkland Islands or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Falkland Islands or for the purpose of restricting that person while he or she is being conveyed through the Falkland Islands in the course of his or her extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of an order of a court requiring that person to remain within a specified area within the Falkland Islands or prohibiting him or her from being within such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or relating to such an order after it has been made, or to such an extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of the Falkland Islands in which, in consequence of any such order, his or her presence would otherwise be unlawful.

(3) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands, of the reason for his or her arrest or detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor, he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as the court may approve.

(5) Every person who is arrested shall be informed, as soon as reasonably practicable and in a language that he or she understands, of his or her rights under subsection (4); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and his or her whereabouts.

(6) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, shall be brought promptly before a court.

(7) If any person arrested or detained as mentioned in subsection (6)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or on reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(8) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

(9) For the purposes of subsection (2)(b), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

### **Provisions to secure protection of law**

6.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, he or she shall have the right to a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved to be or has pleaded guilty;
- (b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter at any court hearing at which that person is required to be present if he or she cannot understand or speak English; and
- (g) shall, when charged on information or indictment in the Supreme Court, have the right to trial by jury or before a judge sitting alone, as he or she may choose.

(3) Except with his or her own consent, the trial of a person charged with a criminal offence shall not take place in his or her absence, unless—

- (a) that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed and the trial to proceed in his or her absence; or
- (b) the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.

(4) When a person is tried for any criminal offence, that person or any person authorised by him or her in that behalf shall, if he or she (the accused person) so requires and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(6) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal, or save where a court makes an order under an Ordinance permitting a person to be retried for an offence of which he or she has been acquitted where in all the circumstances a retrial is in the interests of justice.

(7) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.

(8) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(10) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

(11) Except with the agreement of all the parties to them, all proceedings for the trial of any criminal charge or for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(12) Nothing in subsection (11) shall prevent the court or other authority from excluding from the proceedings persons other than the parties to them and their legal representatives to such an extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, internal security, public safety, public order or public morality.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

- (b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (6), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, but any court so trying such member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

### **Protection of rights of prisoners to humane treatment**

7. All persons deprived of their liberty have the right to be treated with humanity and with respect for the inherent dignity of the human person.

### **Protection of freedom of movement**

8.—(1) A person shall not be deprived of his or her freedom of movement, that is to say—

- (a) the right to move freely throughout the Falkland Islands;
- (b) the right to reside in any part of the Falkland Islands; and
- (c) the right of a person who belongs to the Falkland Islands, or to whom a permanent right to remain has been granted, to enter, remain in and leave the Falklands Islands.

(2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence in the Falkland Islands or on the right to leave the Falkland Islands of persons generally or any class of persons that are reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Falkland Islands of any person or on any person's right to leave the Falkland Islands either in consequence of his or her having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court at a later date for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Falkland Islands;
- (c) for the imposition of restrictions on the freedom of movement of persons who do not belong to the Falkland Islands or who have not been granted a permanent right to remain; but—
  - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Falkland Islands, to move freely throughout the Falkland Islands and to reside anywhere within the Falkland Islands;

- (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Falkland Islands; and
- (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Falkland Islands unless the requirements specified in subsection (4) are satisfied;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Falkland Islands;
- (e) for the imposition of restrictions on the movement or residence within the Falkland Islands or on the right to leave the Falkland Islands of any public officer that are reasonably required for the proper performance of his or her functions;
- (f) for the removal of a person from the Falkland Islands to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted;
- (g) for the imposition of restrictions on the right of any person to leave the Falkland Islands that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or
- (h) for the removal of a person suffering from a mental disorder from the Falkland Islands for treatment or detention in the United Kingdom or such other place as may be decided, where the removal is ordered by a court which is satisfied that the disorder cannot be effectively treated in the Falkland Islands and that removal is necessary in the interests of the person or to protect the public.

(4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) (that is to say, before a person who does not belong to the Falkland Islands or who has not been granted a permanent right to remain may be expelled from the Falkland Islands) are as follows—

- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, internal security, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person designated in that behalf by the competent authority.

### **Protection for private and family life and for privacy of home and other property**

9.—(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence and, except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, internal security, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons;
- (b) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be;
- (c) to authorise, for the purpose of enforcing the judgment or order of a court in any proceedings, the search of any person or property by order of the court or the entry on any premises by such order; or
- (d) that is reasonably required for the purpose of preventing or detecting breaches of the criminal, customs or immigration law,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection of right to marry and found a family**

**10.—**(1) Every man and woman of marriageable age (as determined by or under any law) has the right to marry and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law makes provision that is reasonably required—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

## **Protection of freedom of conscience**

11.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and either in public or in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(2) Except with his or her own consent (or, if he or she is under the age of sixteen years, the consent of his or her parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his or her own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

## **Protection of right to education**

12.—(1) This section is without prejudice to section 11.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless the law otherwise provides, in a private school (that is to say a school or teaching facility other than one established by a public authority) and in such school to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law makes provision requiring private

schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection of freedom of expression**

13.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression.

(2) For the purposes of this section, a person's freedom of expression includes his or her freedom to hold opinions without interference, his or her freedom to receive information and ideas without interference, his or her freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and his or her freedom from interference with his or her correspondence or other means of communication.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Legislative Assembly and the courts, or regulating telecommunications, post, broadcasting or public shows; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection of freedom of assembly and association**

14.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
  - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

### **Protection from deprivation of property**

15.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with the provisions of a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right to or over the property; and
- (c) provision is made by a law applicable to the taking of possession or acquisition—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right to or over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed in respect of its remission) to any country of his or her choice outside the Falkland Islands.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law makes provision for the taking of possession or the acquisition of any property, interest or right—

- (a) for the purpose of controlling its use in accordance with the general interest;
- (b) as a consequence of a breach of the law;
- (c) to secure the payment of taxes or other like impositions; or
- (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons *inter se* in respect of property.

## **Protection from discrimination**

16.—(1) Subject to subsections (4), (5) and (6), no law shall make any provision which is discriminatory either in itself or in its effect.

(2) Subject to subsections (6) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Subsection (1) shall not apply to any law so far as the law makes provision—

- (a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Falkland Islands of persons who do not belong to the Falkland Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or
- (b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any of the grounds of discrimination referred to in subsection (3)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.

## **Derogations from fundamental rights and freedoms under emergency powers**

17. Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 3, 4, 6(2)(a), 6(5), 6(6), 6(7) and 6(8) to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Falkland Islands during that period.

## **Protection of persons detained under emergency laws**

18.—(1) When a person is detained by virtue of any such law as is referred to in section 17 the following provisions shall apply, that is to say—

- (a) he or she shall, as soon as reasonably possible, and in any case not more than seven days after the commencement of his or her detention, be informed in a language that he or she understands, and in detail, of the grounds on which he or she is detained and furnished with a written statement, in a language that he or she understands, or if this is not reasonably practicable, in English specifying those grounds in detail;
- (b) not more than fourteen days after the commencement of his or her detention a notification shall be published in a public place (and thereafter as soon as possible in the Gazette) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (c) not more than one month after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable facilities to consult a legal representative of his or her own choice (or, if he or she is unable to retain a legal representative, such person as the tribunal may approve) who shall be permitted to make representations to the tribunal appointed for the review of his or her case;
- (e) at the hearing of his or her case by the tribunal appointed for its review he or she shall be permitted to appear in person or be represented by a legal representative of his or her own choice or, if he or she is unable to retain a legal representative, by such person as the tribunal may approve.

(2) On any review by a tribunal of the case of a detained person in pursuance of this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.

### **Enforcement of protective provisions**

19.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (4),

and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled; but the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) (a) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the foregoing provisions of this Chapter has been contravened in relation to any person, it may order or, as the case may be, declare that the court which made the reference to it under subsection (4) (“the referring court”) has the power to order (within such limits as the Supreme Court may declare) the award to that person of such damages as the Supreme Court or, as the case may be, the referring court considers just and appropriate.

(b) An award of damages may not be made in pursuance of this subsection in respect of the enactment of any law by the Legislature or the making, under such a law, of any subordinate legislation, but such an award may be made in respect of anything done by any person acting by virtue of any such law or subordinate legislation or in the performance of the functions of any public office or any public authority.

(c) This subsection is without prejudice to section 5(8).

(4) If in any proceedings in any court (other than the Supreme Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(5) Where any question is referred to the Supreme Court in pursuance of subsection (4), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(6) (a) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Chapter, every court shall take into account any—

- (i) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (ii) opinion of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
- (iii) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
- (iv) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
- (v) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

(b) In this subsection, references to the Convention are references to it as it has effect for the time being, except that—

- (i) the references in subparagraphs (ii) and (iii) of paragraph (a) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;
- (ii) the reference in subparagraph (iv) of paragraph (a) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and

- (iii) the references in paragraph (a) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).
- (c) In this subsection “the Convention” means the European Convention on Human Rights; “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and “a superior court in the United Kingdom” means any of the following—
  - (i) the High Court or the Court of Appeal in England;
  - (ii) the High Court of Justiciary or the Court of Session in Scotland;
  - (iii) the High Court or the Court of Appeal in Northern Ireland;
  - (iv) the House of Lords; and
  - (v) the Judicial Committee of the Privy Council.

(7) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(8) The Legislature may by law confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(9) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Supreme Court under subsection (4),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

### **Proceedings which might affect freedom of conscience**

20. If a court’s determination of any question arising under this Chapter might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of conscience as defined and protected by section 11, it must have particular regard to the importance of that right.

### **Proceedings which might affect freedom of expression**

21.—(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the right to freedom of expression as defined and protected by section 13.

(2) If the person against whom the application for the relief is made (“the respondent”) is neither present nor represented, no such relief shall be granted unless the court is satisfied—

- (a) that the applicant has taken all available steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief shall be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court shall have particular regard to the importance of the right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
  - (i) the material has become, or is about to become, available to the public; or
  - (ii) it is, or would be, in the public interest for the material to be published; and
- (b) any relevant privacy code.

## **Interpretation**

22.—(1) In this Chapter, unless the contrary intention appears—

“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in the Falkland Islands, including Her Majesty in Council but excepting a court constituted by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force of the Falkland Islands;
- (c) the prison service of the Falkland Islands;

“legal representative” means a person entitled to be in or to enter the Falkland Islands and to practise there before a court;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline; and

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law.

(2) In relation to any person who is a member of a disciplined force raised under a law enacted, or having effect as if enacted, by the Legislature, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Chapter other than sections 2, 3 and 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Falkland Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(4) In this Chapter “period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) Regulations made under the Emergency Powers (Overseas Territories) Order 2017, or emergency regulations made under any Ordinance, are in operation in the Falkland Islands.

*[S 12(1) S.I. 181/2017/w.e.f. 16/3/2017]*

(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.

## CHAPTER II THE GOVERNOR

### **The Governor**

23.—(1) There shall be a Governor of the Falkland Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty’s pleasure.

(2) The Governor shall have such powers and duties as are conferred on him or her by or under this Constitution or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him or her and, subject to this Constitution and any other law, the Governor shall do or execute all things that belong to his or her office according to such instructions, if any, as Her Majesty may, through a Secretary of State, from time to time see fit to give him or her; but the question whether the Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

(3) A person appointed to the office of Governor shall, before entering upon the functions of that office, make the oath of allegiance and the oath of office.

(4) Where the Governor is directed by this Constitution to exercise any function in accordance with the advice of or after consultation with any person or authority, the question whether he or she has so exercised that function shall not be enquired into in any court of law.

### **Acting Governor**

24.—(1) During any period when the office of Governor is vacant or the holder of it is absent from the Falkland Islands or is for any reason unable to perform the functions of that office those functions shall, during Her Majesty’s pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, the person designated shall make the oaths directed by section 23(3) to be made by the Governor.

(3) The person designated shall not continue to act in the office of Governor after the Governor has notified that person that he or she is about to assume or resume the functions of that office.

### **Defence and internal security**

25. The Governor shall consult with the Commander British Forces before exercising any function which appears to the Governor to relate to defence or internal security (with the exception of the police) and shall act in accordance with the advice which the Commander British Forces then tenders to him or her; and the Governor shall likewise act in accordance with the advice of the Commander British Forces on any matter on which the Commander British Forces considers it necessary in the interests of defence or internal security (with the exception of the police) to give advice to the Governor.

## **CHAPTER III THE LEGISLATURE**

### **Establishment and composition of the Legislative Assembly**

26.—(1) There shall be a Legislative Assembly for the Falkland Islands.

(2) The Legislative Assembly shall consist of eight elected members and two *ex officio* members, namely the Chief Executive and the Director of Finance, and the Speaker.

(3) The *ex officio* members shall not have the right to vote in the Legislative Assembly.

### **Constituencies**

27.—(1) The Falkland Islands shall be divided into two constituencies, Camp and Stanley. Camp shall return three elected members to the Legislative Assembly and Stanley five elected members and the members shall be elected in such a manner as shall be prescribed by Ordinance.

(2) For the purposes of this section the boundaries of the Stanley constituency shall be such as shall be prescribed by the Ordinance which shall make provision for elections to the Legislative Assembly and “Camp” shall be the remainder of the Falkland Islands.

(3) Subsections (1) and (2) may be amended by Ordinance; but no Bill for any such Ordinance shall be enacted unless it has been supported in a referendum by at least two-thirds of those voting who are registered as electors in each constituency.

(4) In any referendum held under subsection (3), any person registered as an elector pursuant to section 32 at the time of the referendum shall be entitled to vote.

## Qualifications for election

28. Subject to section 29, any person who has attained the age of eighteen years and who is registered as an elector pursuant to section 32 is qualified to be elected as a member of the Legislative Assembly in respect of either constituency.

## Disqualifications for election

29.—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;
- (b) is a member of the regular armed forces of Her Majesty;
- (c) holds, or is acting in, a public office except as may be specified (either individually or by reference to a class of office or otherwise) by Ordinance;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
- (f) at the date of election, is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (g) is disqualified for membership of the Legislative Assembly by any law relating to offences connected with elections; or
- (h) is disqualified for election by any law by reason of his or her holding, or acting in, any office the functions of which involve—
  - (i) any responsibility for, or in connection with, the conduct of any election; or
  - (ii) any responsibility for the compilation or revision of any register of electors.

(2) The reference in subsection (1)(b) to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.

(3) For the purposes of subsection (1)(f)—

- (a) where a person is serving two or more terms of imprisonment that are required to be served consecutively he or she shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(4) If it is so prescribed by Ordinance—

- (a) a person may stand as a candidate for election even though he or she holds or is acting in a public office which has not been specified, in the manner prescribed in subsection (1)(c), if he or

she undertakes to relinquish or, as the case may be, to cease to act in that office if he or she is elected as a member of the Legislative Assembly; and

- (b) any office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(5) Any Ordinance made in pursuance of subsection (1)(c) or subsection (4)(a) may contain incidental and consequential provisions, including provision that a member who has given such an undertaking as is referred to in subsection (4)(a) shall be incapable of taking his or her seat in the Legislative Assembly until he or she has fulfilled that undertaking and shall vacate his or her seat if he or she has not fulfilled it within such time as is specified by such Ordinance; and for the avoidance of doubt it is hereby declared that, where provision is made in pursuance of subsection (4)(b) in respect of any office, provision may also be made in pursuance of subsection (1)(c) or subsection (4)(a) in respect of that office.

### **Vacation of seats**

**30.**—(1) The seat of an elected member of the Legislative Assembly shall become vacant—

- (a) at the next dissolution of the Legislative Assembly after his or her election;
- (b) if he or she resigns it by writing under his or her hand addressed to the Governor;
- (c) if he or she is absent from the meetings of the Legislative Assembly in such circumstances and for such period as may be prescribed by the Standing Orders of the Assembly;
- (d) if he or she ceases to have Falkland Islands status;
- (e) if any circumstances arise that, if he or she were not a member of the Legislative Assembly, would cause him or her to be disqualified for election to the Assembly by virtue of paragraph (a), (b), (c), (d), (e), (g) or (h) of section 29(1); or
- (f) in the circumstances specified in section 31.

(2) In this section, “Falkland Islands status” has the meaning defined in section 22(5).

### **Vacation of seat on sentence**

**31.**—(1) Subject to the provisions of this section, if a member of the Legislative Assembly is sentenced by a court in any country to imprisonment (by whatever name called) for a term of at least twelve months, he or she shall forthwith cease to perform his or her functions as a member of the Assembly and his or her seat shall become vacant at the expiration of a period of thirty days thereafter; but the Governor may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his or her conviction and sentence.

(2) If at any time before the member vacates his or her seat he or she is granted a free pardon or his or her conviction is set aside or his or her sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, the seat of that member in the Legislative Assembly shall not become vacant under subsection (1), and that member may again perform his or her functions as a member of the Assembly.

(3) For the purposes of this section—

- (a) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively he or she shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment as an alternative to or in default of the payment of a fine.

### **Qualifications of electors**

**32.—**(1) Subject to subsection (2), a person shall be qualified to be registered as an elector for the purpose of the election of members of the Legislative Assembly if he or she has attained the age of eighteen years and either—

- (a) he or she is a citizen and has Falkland Islands status; or
- (b) his or her name appeared on the register of electors for a constituency in force on the date of commencement of this Constitution,

and, in either case, he or she was resident in the Falkland Islands on the qualifying date in relation to which his or her entitlement to be registered as an elector falls to be considered and had on that qualifying date been so resident for the qualifying period.

(2) No person shall be qualified to be registered as an elector under this section who on the qualifying date—

- (a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
- (b) is serving a sentence of imprisonment (by whatever name called) for a term of at least twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court;
- (c) is disqualified by or under any law from being registered as an elector by reason of having been convicted of an offence relating to elections;
- (d) is a member of the regular armed forces of Her Majesty, unless he or she possesses Falkland Islands status; or
- (e) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State.

(3) Section 29(3) shall apply for the purposes of subsection (2)(b) as it applies for the purposes of section 29(1)(f).

(4) The reference in subsection (2)(d) to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.

(5) In this section—

- (a) “citizen” means a British citizen, a British overseas territories citizen or a British Overseas citizen;
- (b) “Falkland Islands status” has the meaning defined in section 22(5);

- (c) “qualifying date” and “qualifying period” means such date or period as may be prescribed by or under any Ordinance as the date or period with reference to which the qualifications of persons for registration as electors for elections of members of the Legislative Assembly are to be ascertained; and a different qualifying period may be prescribed in respect of persons not born in the Falkland Islands;
- (d) “resident” has such meaning as may be prescribed by or under any Ordinance.

### **General elections and filling vacant seats**

33.—(1) A general election shall be held at such time after every dissolution of the Legislative Assembly as the Governor shall appoint by proclamation published in the Gazette; but the date so appointed shall not be more than 70 days after the date of dissolution.

(2) Whenever an elected member of the Legislative Assembly vacates his or her seat for any reason other than a dissolution of the Assembly, an election shall be held to fill the vacancy, on such date as the Governor shall appoint by proclamation published in the Gazette, within 70 days of the occurrence of the vacancy unless the Assembly is sooner dissolved or under section 34(2) will be dissolved within 126 days of the occurrence of the vacancy.

### **Dissolution**

34.—(1) The Governor may dissolve the Legislative Assembly by proclamation published in the Gazette.

(2) The Governor shall dissolve the Legislative Assembly at the expiration of four years from the date when the Assembly first meets after any general election, unless it has been sooner dissolved.

### **Recalling dissolved Legislative Assembly in case of emergency**

35. If, between a dissolution of the Legislative Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor, it is necessary for the Assembly to be recalled, the Governor may summon the Assembly that has been dissolved, and that Assembly shall thereupon be deemed (except for the purposes of section 33(1)) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

### **Determination of questions as to membership**

36.—(1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as a member of the Legislative Assembly; or
- (b) any member of the Legislative Assembly has vacated his or her seat or is required, under section 31, to cease to perform his or her functions as such.

(2) An application to the Supreme Court for the determination of—

- (a) any question under subsection (1)(a) may be made by any person entitled to vote in the election to which the application relates, or by any person who was a candidate at the election, or by the Attorney General;
- (b) any question under subsection (1)(b) may be made by any person registered as an elector in the constituency for which the member concerned was elected, or by any elected member of the Legislative Assembly, or by the Attorney General,

and if any application under this subsection is made by a person other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

(3) Provision may be made by Ordinance with respect to—

- (a) the circumstances and manner in which, and the imposition of conditions on which, any application may be made to the Supreme Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(4) No appeal shall lie from any determination by the Supreme Court in proceedings under this section.

(5) In the exercise of his or her functions under this section the Attorney General shall not be subject to the direction or control of any other person or authority.

## CHAPTER IV POWERS AND PROCEDURES OF THE LEGISLATIVE ASSEMBLY

### **Power to make laws**

**37.** Subject to this Constitution, the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Falkland Islands.

### **Sittings of the Legislative Assembly**

**38.—**(1) Each sitting of the Legislative Assembly shall be held at such place within the Falkland Islands and shall begin at such time as the Governor may appoint by proclamation published in the Gazette; but a period of twelve months shall not elapse between the date when the Assembly last sat and the date appointed for its next sitting.

(2) Each sitting of the Legislative Assembly shall terminate when the Assembly is adjourned or is dissolved without having been adjourned.

## **Presiding**

39.—(1) Subject to subsection (4), there shall preside at each sitting of the Legislative Assembly—

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly as shall be elected to preside at that sitting by the Assembly.

(2) The Legislative Assembly shall elect a Speaker and a Deputy Speaker, who shall be persons, whether or not members of the Assembly, who are qualified and not disqualified to be members of the Assembly.

(3) The Speaker and the Deputy Speaker shall be elected for the life of the Legislative Assembly and shall be removable by a vote of no fewer than six of the elected members voting in favour of the motion.

(4) The Legislative Assembly shall elect a Speaker before proceeding to any other business, and the Attorney General shall preside for the purpose of that election.

## **Clerk of the Legislative Assembly**

40. There shall be a Clerk of the Legislative Assembly whose office shall be a public office.

## **Participation by non-members**

41.—(1) The Commander British Forces shall have the right to take part in the proceedings of the Legislative Assembly, except that he or she may not vote.

(2) The Attorney General shall, with the consent of the person presiding, have the right to take part in the proceedings of the Legislative Assembly, except that he or she may not vote.

(3) The person presiding may, provided the Legislative Assembly considers it desirable, summon any other person to a meeting of the Assembly even though that person is not a member of the Assembly.

## **Oaths**

42.—(1) No *ex officio* or elected member of the Legislative Assembly shall take part in its proceedings (other than proceedings for the purposes of this subsection) unless he or she has made and subscribed before the Speaker, or other person presiding at the sitting, the oath of allegiance and the oath of office.

(2) Neither the Commander British Forces nor the Attorney General shall take part in the proceedings of the Legislative Assembly (other than proceedings for the purposes of this subsection) unless he or she has made and subscribed before the Speaker, or other person presiding at the sitting, the oath of allegiance.

## **Quorum**

43.—(1) If at any sitting of the Legislative Assembly any member of the Assembly who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Assembly the person presiding at the sitting ascertains that a quorum is still not present, the Assembly shall be adjourned.

(2) For the purpose of subsection (1) a quorum shall consist of six elected members excluding the person presiding at the sitting.

## **Voting**

44.—(1) Save as otherwise provided in this Constitution, any question proposed for decision at a sitting of the Legislative Assembly shall be determined by a majority of the votes of the elected members present and voting.

(2) Subject to subsection (3), the person presiding at a sitting of the Legislative Assembly shall not vote unless on any question the votes are equally divided, in which case he or she shall have and shall exercise a casting vote.

(3) The person presiding shall have a casting vote if he or she is an elected member of the Legislative Assembly; and if on any question before the Assembly the votes of the members are equally divided and the person presiding is not an elected member, the motion shall be declared lost.

## **Transaction of business notwithstanding vacancies**

45. Subject to section 43, the Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings in the Assembly shall be valid even though some person who was not entitled to do so took part in them.

## **Standing Orders**

46.—(1) Subject to this Constitution, the Legislative Assembly may make Standing Orders for—

- (a) the regulation and orderly conduct of its own proceedings and the despatch of business at its sittings; and
- (b) for the passing, entitling, numbering and publication of Bills and their presentation to the Governor for assent.

(2) Subject as aforesaid the procedure of the Legislative Assembly at any sitting shall be determined by the person presiding at the sitting.

## **Penalty for sitting or voting when unqualified**

47.—(1) Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall, if the Attorney General refers the matter to the Assembly and the Assembly so decides, be liable to such fine as may be determined by the

Assembly; but no such fine shall exceed the maximum from time to time provided for by the Standing Orders of the Assembly.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit of the Attorney General.

### **Privileges of Legislative Assembly and members**

48. Provision may be made by Ordinance prescribing the privileges, immunities and powers of the Legislative Assembly and its committees, or the privileges and immunities of the members and officers of the Assembly or of other persons concerned in the business of the Assembly or its committees, for the purpose of ensuring the due discharge of the functions of the Assembly and its members at sittings of the Assembly; but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members of that House.

### **Freedom of speech in proceedings**

49. Without prejudice to any provision made by Ordinance pursuant to section 48, no civil or criminal proceedings may be instituted against any member of the Legislative Assembly for words spoken before, or written in a report to, the Assembly or any of its committees or by reason of any matter or thing brought by such member therein by petition, Bill, resolution, motion or otherwise.

### **Rules for the enactment of laws**

50.—(1) All laws made under section 37 shall be styled “Ordinances” and the words of enactment shall be “Enacted by the Legislature of the Falkland Islands, as follows”.

(2) The Governor and the Legislative Assembly shall in the making of laws observe the rules set forth in Annex A to this Constitution.

### **Introduction of Bills, etc**

51.—(1) Subject to this Constitution and the Standing Orders of the Legislative Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

(2) Except on the recommendation of the Governor, the Legislative Assembly shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding—
  - (i) makes provision for imposing or altering any tax, imposing or altering any charge on the revenues or other funds of the Falkland Islands, or for compounding or remitting any debt due to the Government; or
  - (ii) would constitute any public office, or effect any alteration in the salary, allowances or other conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or his or her widow or widower, children, dependants or personal representatives; or

- (b) proceed upon any motion (including any amendment to a motion) the effect of which in the opinion of the person presiding is that provision would be made for any of the purposes aforesaid.

### **Assent to Bills**

52.—(1) A Bill passed by the Legislative Assembly shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his or her assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State, and the Governor has signified that assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his or her assent, the Governor shall, acting in his or her discretion but subject to this Constitution and any instructions given through a Secretary of State, declare that he or she assents or refuses to assent to it, or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which in his or her judgement is in any way repugnant to, or inconsistent with, this Constitution.

(3) Before refusing assent to any Bill, the Governor shall explain to the members of the Legislative Assembly the reasons why he or she proposes to do so, if necessary in confidence, and shall allow those members the opportunity to submit their views on the matter in writing to a Secretary of State.

### **Publication and commencement of laws**

53. No law made under section 37 shall come into operation until it has been published in the Gazette, but, where the law in question expressly so provides, the coming into operation of any such law may be postponed and any such law may be given retrospective effect.

### **Disallowance of laws**

54.—(1) Any Ordinance to which the Governor has given his or her assent may be disallowed by Her Majesty through a Secretary of State; but no Ordinance shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Legislative Assembly an opportunity to reconsider the Ordinance in question.

(2) Whenever any Ordinance has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in the Gazette and the Ordinance shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978<sup>16</sup> shall apply to the annulment of any Ordinance under this section as it applies to the repeal of an Act of Parliament of the United Kingdom, save that any enactment repealed or amended by or in pursuance of that Ordinance shall have effect as from the date of the annulment as if that Ordinance had not been made.

---

<sup>16</sup> 1978 c.30.

## **Governor's reserved power**

55.—(1) If the Governor considers that it is necessary that any Bill introduced or any motion proposed at any sitting of the Legislative Assembly held in accordance with this Chapter should have effect, then, if the Assembly fails to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable, the Governor may, at any time that he or she thinks fit, and notwithstanding any provision of this Constitution or of any Standing Order of the Assembly, declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Assembly, including any committee of the Assembly; and the Bill or motion shall be deemed thereupon to have been so passed or carried and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) Before exercising his or her powers under subsection (1) the Governor shall inform the Executive Council of his or her intention to do so and his or her reasons, and shall allow members of the Council the opportunity to express their views.

(3) The Governor shall not exercise his or her powers under subsection (1) without prior instructions from a Secretary of State.

(4) If any member of the Legislative Assembly objects to any declaration made under this section, he or she may, within fourteen days of its making, submit to the Governor a statement in writing of his or her reasons for so objecting and the Governor shall forthwith forward a copy of such statement to a Secretary of State.

(5) Any declaration made under this section, other than a declaration relating to a Bill, may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and section 16(1) of the Interpretation Act 1978 shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(6) The powers conferred on the Governor by this section shall be exercised by the Governor in his or her discretion.

(7) The motions to which this section applies are—

- (a) any motion relating to or for the purposes of a Bill;
- (b) any motion proposing or amending a resolution which, if passed by the Legislative Assembly, would have the force of law; and
- (c) any motion proposing or amending a resolution upon which the coming into force or continuance in force of any subordinate legislation depends.

## **CHAPTER V THE EXECUTIVE**

### **Executive authority**

56.—(1) The executive authority of the Falkland Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Falkland Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred on them by any law.

### **Executive Council**

**57.**—(1) There shall be an Executive Council which shall consist of three of the elected members of the Legislative Assembly, elected in accordance with section 58, and two *ex officio* members, namely the Chief Executive and the Director of Finance.

(2) The *ex officio* members shall have no right to vote on any matter that is put to the vote at a meeting of the Executive Council.

(3) The Executive Council may delegate any of its functions to a Committee established under its authority, but anything done by such a Committee shall be reconsidered by the Executive Council should any member of the Council or the Governor, in his or her judgement, consider this to be appropriate.

### **Election of elected members of the Executive Council**

**58.**—(1) At the first meeting of the Legislative Assembly after every general election the elected members shall elect three of their number to be members of the Executive Council for a period of twelve months from the date of their election to the Executive Council.

(2) Thereafter such elections shall be held before the expiry of each period of twelve months (or as soon as practicable thereafter) or when the Legislative Assembly first meets after any dissolution of the Assembly.

(3) A person shall be eligible for election to the Executive Council even though he or she is a member of the Executive Council then in being.

(4) If the seat of an elected member of the Executive Council becomes vacant during any such twelve-month period the elected members of the Legislative Assembly shall as soon as possible meet and elect one of their number to fill the seat for the remainder of the duration of that twelve-month period.

(5) To be effective for the purposes of this section, or section 60(1), any election must result in the Executive Council being composed of at least one elected member representing the Camp constituency and at least one elected member representing the Stanley constituency.

### **Tenure of office of elected members of the Executive Council**

**59.** The seat of an elected member of the Executive Council shall become vacant—

- (a) if he or she resigns his or her seat in the Executive Council by writing under his or her hand addressed to the Governor;
- (b) when the Legislative Assembly first meets after any dissolution of the Assembly;
- (c) if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
- (d) if he or she is absent from three consecutive meetings of the Executive Council without the permission of the Governor, acting in his or her discretion;

- (e) if at the expiry of the period for which he or she is elected to sit on the Executive Council he or she has not been re-elected for a further period; or
- (f) if his or her election to the Executive Council is revoked by a resolution of the Legislative Assembly.

### **Temporary members of the Executive Council**

**60.**—(1) Whenever an elected member of the Executive Council is by reason of his or her illness or absence from the Falkland Islands or for any other reason incapable of performing the functions of his or her office, then the elected members of the Legislative Assembly shall, if they consider it desirable, elect a person from among their number to be temporarily a member of the Executive Council.

(2) A person elected under this section to be temporarily a member of the Executive Council shall vacate his or her seat when he or she is informed by the Governor that the circumstances giving rise to his or her election have ceased to exist.

(3) Subject to subsections (1) and (2), this Constitution shall apply in relation to a person elected to be temporarily a member of the Executive Council as it applies in relation to the member on account of whose incapacity he or she was elected.

### **Attendance of non-members at meetings of the Executive Council**

**61.**—(1) The Commander British Forces and the Attorney General shall have the right to attend all meetings of the Executive Council and take part in its proceedings, except that if a matter is put to the vote they may not vote.

(2) The person presiding may, when in his or her judgement the business before the Executive Council makes it desirable, summon any person to a meeting of the Council even though that person is not a member of the Council.

### **Summoning of meetings and agenda of the Executive Council**

**62.**—(1) The Executive Council shall not be summoned except by the Governor, acting in his or her discretion, who may summon a meeting of the Council at any time; but the Governor shall summon a meeting of the Council if requested to do so by at least two members.

(2) The Governor shall include on the agenda of a meeting any item requested by an elected member as well as any item the Governor, acting in his or her discretion, thinks fit; and other business that is not on the agenda may be discussed at the meeting at the request of the person presiding or any elected member.

### **Presiding in the Executive Council**

**63.** There shall preside at any meeting of the Executive Council—

- (a) the Governor; or

- (b) in the absence of the Governor, such member of the Executive Council as the Governor, acting in his or her discretion, may appoint to preside at that meeting.

### **Oaths**

64. No member of the Executive Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he or she has made and subscribed the oath of secrecy before the Governor or some other person authorised for that purpose by the Governor, acting in his or her discretion; and no other person shall take part in the proceedings of the Council (other than proceedings as aforesaid) unless he or she has so made and subscribed the oath of secrecy; but the Executive Council may exempt any person who is not a member of it from this requirement.

### **Quorum**

65.—(1) No business (except that of adjournment) shall be transacted at a meeting of the Executive Council if fewer than four members are present, at least two of whom are elected members.

(2) Where it is not possible to elect a temporary member to satisfy subsection (1), the requirements of that subsection shall be deemed to be satisfied if the person presiding and two members of the Executive Council, at least one of whom is an elected member, are present at the meeting, and they and members absent from but participating in the meeting are able to communicate with each other in a manner that all agree is appropriate in the circumstances; but no decision of the Council shall be taken unless the person presiding is satisfied that the manner of communication allows all those taking part to hear and be heard and that all have seen any documents relevant to the proposed decision.

### **The Governor to consult the Executive Council**

66.—(1) Subject to subsection (2), in the formulation of policy and in the exercise of the functions conferred on the Governor by this Constitution or any other law the Governor shall consult with the Executive Council and, subject to section 67, shall accept its advice.

(2) The Governor shall not be obliged to consult with the Executive Council—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State pursuant to section 23;
- (b) when the matter is one on which the Governor is required by section 25 to consult the Commander British Forces or on which the Commander British Forces has, in accordance with that section, given advice to the Governor;
- (c) when exercising any function conferred on the Governor by this Constitution or any other law where it is provided, either expressly or by necessary implication, that the Governor exercise such function in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (d) if, in his or her judgement, the service of Her Majesty would sustain material prejudice by such consultation;
- (e) if, in his or her judgement, the matter is too unimportant; or

- (f) if, in his or her judgement, the urgency of the matter requires him or her to act before he or she can consult the Executive Council.

(3) In any case falling within subsection (2) the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he or she has adopted and the reasons for them, unless he or she is instructed not to do so by a Secretary of State.

### **The Governor may act against advice of the Executive Council**

**67.**—(1) In any case in which the Governor consults the Executive Council, he or she may act against the advice given to him or her by the Council—

- (a) if, in his or her judgement, it would be right to do so in the interests of good governance; or
- (b) if, in his or her judgement, such advice would affect any of the matters mentioned in subsection (2).

(2) The matters referred to in subsection (1)(b) are—

- (a) external affairs;
- (b) defence;
- (c) internal security, including the police;
- (d) administration of justice;
- (e) audit; and
- (f) appointments to the public service, the discipline and removal from office of public officers, and the management of the public service.

(3) If the Governor decides to act against the advice given to him or her by the Executive Council pursuant to subsection (1), the Governor shall forthwith—

- (a) report the matter to a Secretary of State; and
- (b) convey to a Secretary of State the views of the Executive Council on the matter.

(4) Whenever the Governor acts against the advice of the Executive Council any member of it may require that there shall be recorded in the minutes any advice or opinion he or she gave on the question at issue and his or her reasons.

### **The Governor may call for public officers, official papers, information or advice**

**68.** The Governor, acting in his or her discretion, may at any time require the attendance of any public officer or the provision of any official papers or any official information or advice relating to any aspect of the government of the Falkland Islands.

## **Minutes**

**69.**—(1) Minutes shall be kept of all the proceedings of the Executive Council and, whenever practicable, at every meeting of the Council the minutes of the last preceding meeting shall be confirmed, with or without amendment as the case may require, before proceeding to the despatch of any other business.

(2) A copy of the minutes of the Executive Council for the preceding meeting shall be transmitted to a Secretary of State.

## **Advisory Committee on the Prerogative of Mercy**

**70.**—(1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

- (a) two elected members of the Legislative Assembly appointed by the Governor after consultation with the elected members of the Assembly;
- (b) the Chief Executive;
- (c) the Attorney General; and
- (d) the Chief Medical Officer.

(2) An appointed member of the Advisory Committee shall vacate his or her office—

- (a) if his or her appointment is revoked by the Governor, acting in his or her discretion;
- (b) if he or she ceases to be a member of the Legislative Assembly or is required, under section 31, to cease to perform his or her functions as such; or
- (c) in any other case, at the expiration of four years from the date of his or her appointment.

(3) The Advisory Committee shall adopt its own rules of procedure, but such rules shall require the approval of the Legislative Assembly by resolution.

## **Power of pardon, etc**

**71.**—(1) The Governor, acting after consultation with the Advisory Committee on the Prerogative of Mercy, may in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of an offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) This section shall not apply in relation to any conviction by a court-martial established under any Act of Parliament of the United Kingdom, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

### **Powers of Attorney General in relation to criminal proceedings**

72.—(1) The Attorney General shall have power in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(2) The powers of the Attorney General under subsection (1) may be exercised by the Attorney General in person or through other persons acting in accordance with his or her general or special instructions.

(3) The powers conferred on the Attorney General by subsection (1)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of the powers conferred on him or her by this section the Attorney General shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law, shall be deemed to be part of those proceedings.

### **Grants of land**

73. Subject to the provisions of any law, the Governor or any person duly authorised by the Governor in writing under his or her hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute under the public seal grants and dispositions of any land or other immovable property in the Falkland Islands that may be lawfully granted or disposed of by Her Majesty.

## **CHAPTER VI FINANCE**

## **Consolidated Fund**

74. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

## **Withdrawals**

75.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure that is charged on the Fund by this Constitution or by any other law; or
- (b) where the issue of those moneys has been authorised by an appropriation Ordinance or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 77.

(2) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in such manner as may be prescribed by Ordinance.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents or the investment of any such moneys in such securities as may be prescribed by Ordinance or in which a trustee would be entitled to invest shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

## **Authorisation of expenditure**

76.—(1) The Director of Finance shall cause to be prepared and laid before the Legislative Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of the Falkland Islands for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged on the Consolidated Fund by this Constitution or any other law) shall be included in a Bill, to be known as an appropriation Bill, introduced in the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

(3) If in any financial year it is found—

- (a) that the amount appropriated by the appropriation Ordinance for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation Ordinance; or
- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation Ordinance or for a purpose for which no amount has been appropriated by the appropriation Ordinance,

the Director of Finance shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Legislative Assembly, and the heads of expenditure shall be included in a supplementary appropriation Bill to provide for the appropriation of those sums which shall be introduced in the Legislative Assembly before the end of the financial year or, if that is not possible, within thirty days thereafter.

## **Expenditure in advance of appropriation**

77. If the appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Director of Finance may, to such extent and subject to such conditions as may be prescribed by Ordinance, authorise the withdrawal of moneys from the Consolidated Fund or the Capital Equalisation Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation Ordinance, whichever is the earlier.

## **Contingencies Fund**

78 .—(1) There shall be such provision as may be prescribed by Ordinance for the establishment of a Contingencies Fund and for authorising the Director of Finance, if he or she is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Legislative Assembly and an appropriation Bill shall be introduced in the Assembly as soon as possible for the purpose of replacing the amount so advanced.

## **Public debt**

79.—(1) All debt charges for which the Falkland Islands are liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, Capital Equalisation Fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the Falklands Islands or the Consolidated Fund and the service and redemption of debt thereby created.

## **Audit**

80.—(1) The Governor, acting in his or her discretion, shall make appropriate arrangements for the audit of the public accounts of the Falkland Islands and of all courts of law and all authorities and offices of the Government and of statutory bodies; and any person or authority conducting such an audit shall have access to all books, records, reports and other documents relating to those accounts.

(2) All reports of audits conducted pursuant to subsection (1) shall be submitted to the Governor who shall cause them to be published and laid before the Legislative Assembly and the Public Accounts Committee.

(3) Any person or authority conducting an audit pursuant to subsection (1) shall not be subject to the direction or control of any other person or authority.

## **Public Accounts Committee**

**81.**—(1) There shall be a Public Accounts Committee which shall consist of—

- (a) a chairman and two other members appointed by the Governor, acting after consultation with the elected members of the Legislative Assembly, from among persons who are not members of the Assembly; and
- (b) two elected members of the Assembly, who shall be elected by the Assembly by a majority of the elected members of the Assembly;

but the Director of Finance and the Chairman and the Deputy Chairman of the Standing Finance Committee of the Assembly shall be disqualified for membership of the Public Accounts Committee.

(2) A person may be appointed or elected under subsection (1) for any period not exceeding four years.

(3) A member of the Public Accounts Committee shall vacate his or her seat on the Committee—

- (a) at the expiration of the period for which he or she was appointed or elected;
- (b) if he or she resigns by writing under his or her hand addressed to the Governor;
- (c) in the case of an appointed member, if he or she is removed by the Governor, acting after consultation with the elected members of the Legislative Assembly, or if he or she is appointed to the office of Director of Finance; or
- (d) in the case of an elected member, if he or she ceases to be a member of the Legislative Assembly, is removed by resolution of the Assembly or becomes the Chairman or the Deputy Chairman of the Standing Finance Committee of the Assembly.

(4) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

(5) The Public Accounts Committee shall examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly, and shall have such other functions, and shall operate under such procedures, as may be prescribed by or under an Ordinance.

(6) The Public Accounts Committee shall have power—

- (a) to summon any person to appear before it; and
- (b) subject to the provisions of any law, to require any person so summoned to answer questions and to provide information to the Committee.

(7) The Public Accounts Committee shall report on its activities to the Legislative Assembly, keeping the Governor closely informed, as often as it may consider necessary but at least annually, and the Committee shall publish all such reports without delay.

(8) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the chairman of the Committee, considers that a member of the Committee has a conflict of interests, the Governor, acting after consultation with the elected members of the Legislative Assembly, may appoint another person temporarily to replace that member of the Committee for the purpose of dealing with the business in question; and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(9) In the exercise of its functions, the Public Accounts Committee shall not be subject to the direction or control of any other person or authority.

## CHAPTER VII THE PUBLIC SERVICE

### **Power to constitute offices**

**82.** The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for the Falkland Islands.

### **Chief Executive**

**83.—(1)** There shall be a Chief Executive whose office shall be a public office and who shall be appointed by the Governor, acting in agreement with the Executive Council.

(2) Under the authority of the Governor, the Chief Executive shall be the head of the public service, and in exercising that responsibility the Chief Executive shall comply with any directions given to him or her by the Governor, acting in his or her discretion.

### **Power to make appointments**

**84.—(1)** Subject to subsections (2), (3) and (4), power to make appointments to any public office is vested in the Governor; but the Chief Executive shall exercise that power, and may delegate the exercise of that power to other public officers.

(2) The Governor may give directions regarding the exercise of the powers referred to in subsection (1) by the Chief Executive or by other public officers, and the Chief Executive and any other public officer shall comply with any such directions.

(3) Subject to subsection (4), the prior approval of the Governor shall be required for appointments to such public offices of or above the level of Head of Department or equivalent as the Governor may specify by directions.

(4) Power to make appointments to the offices of Attorney General, Chief of Police and Officer Commanding the Falkland Islands Defence Force is vested in, and shall be exercised by, the Governor.

(5) The powers conferred on the Governor by this section shall be exercised by the Governor in his or her discretion.

(6) This section shall not apply to the office of Chief Executive.

### **Discipline and removal of public officers**

**85.**—(1) Disciplinary control of public officers, and the removal from office of any public officer, shall be in accordance with the Management Code for the time being in operation.

(2) The Governor shall be informed of any disciplinary or other management action that is likely to lead to removal from public office, demotion or significant financial penalty, or that is likely to have any adverse consequence as regards the payment of any gratuity or pension to a public officer; and a final decision resulting from any such action may be appealed to the Governor by a public officer who is the subject of the decision.

(3) In this section “Management Code” means a code for the management of the public service issued by the Governor with the approval of a Secretary of State and with the agreement of the Executive Council; and any amendment of the Management Code that affects the discipline or removal of public officers shall require the prior approval of a Secretary of State.

(4) This section shall not apply to—

- (a) any office in the police force except that of Chief of Police; or
- (b) any office in the Falkland Islands Defence Force except that of Officer Commanding that Force.

## **CHAPTER VIII THE ADMINISTRATION OF JUSTICE**

### **Supreme Court**

**86.**—(1) There shall be a Supreme Court for the Falkland Islands which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The Supreme Court shall, subject to section 89, consist of one judge, that is to say, the Chief Justice.

### **Court of Appeal**

**87.**—(1) There shall be a Court of Appeal for the Falkland Islands.

(2) The Court of Appeal shall, subject to section 89, consist of—

- (a) a President and two Justices of Appeal or such greater number of Justices of Appeal as may be prescribed by Ordinance; and
- (b) the Chief Justice of the Supreme Court as an *ex officio* member of the Court of Appeal for all purposes except for the purpose of constituting the Court of Appeal for the hearing and determination of an appeal from his or her own decision.

(3) The office of a Justice of Appeal shall not without his or her consent be abolished during his or her continuance in office.

- (4) For the purposes of any determination of the Court of Appeal—
- (a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and
  - (b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.

### **Appointment of judges and Senior Magistrate**

**88.**—(1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) No person shall be qualified for appointment as Chief Justice, President of the Court of Appeal or Justice of Appeal unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or of a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.

(3) For the purpose of subsection (2), a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he or she has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) even though—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of his or her being permitted to practise.

(4) The Senior Magistrate shall be appointed by the Governor, acting in his or her discretion.

### **Acting judges 89.**—

(1) If—

- (a) the office of Chief Justice is vacant, or if the holder of that office is for any reason unable to perform the functions of that office; or
- (b) it appears to the Governor that the state of business in the Supreme Court so requires,

the Governor, acting in his or her discretion but whenever possible after consulting the Chief Justice, may appoint a person possessing such legal qualifications and experience as he or she may deem appropriate—

- (i) to sit as an acting judge of the Supreme Court; and

- (ii) to discharge such of the functions of the office of Chief Justice and for such period as may be specified in the instrument of appointment.

(2) If the office of the President of the Court of Appeal is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his or her discretion, may appoint for the purpose shall discharge those functions.

(3) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is for any other reason unable to perform the functions of his or her office, the Governor, acting in his or her discretion, may appoint a person possessing such legal qualifications and experience as the Governor, after consultation with the President, may deem appropriate to sit as an acting judge of the Court of Appeal.

(4) Any person appointed under this section to sit as an acting judge of the Supreme Court or of the Court of Appeal shall, unless he or she is removed from office under section 90, continue to sit for such period as may be specified in the instrument of his or her appointment; but a person whose appointment so to sit has expired may, unless he or she has been removed from office under section 90, continue so to sit for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceedings that were commenced before him or her before the expiration of his or her appointment.

#### **Tenure of office of judges and Senior Magistrate**

**90.**—(1) Subject to subsections (4) and (7), a person holding the office of Chief Justice, President of the Court of Appeal, Justice of Appeal or Senior Magistrate shall vacate his or her office on the expiration of such period as may be specified in the instrument of his or her appointment to that office; but a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he or she has been removed from office under subsection (4), sit after the date on which he or she vacates his or her office under this subsection as an acting judge of the Supreme Court or, as the case may be, of the Court of Appeal for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceedings commenced before him or her before that date.

(2) In subsections (3), (4), (5) and (7) “judge” means the Chief Justice, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court or of the Court of Appeal.

(3) A judge or the Senior Magistrate may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (4).

(4) A judge or the Senior Magistrate shall be removed from office by the Governor if the question of the removal of that judge or, as the case may be, of the Senior Magistrate from office has, at the request of the Governor made in pursuance of subsection (5), been referred by Her Majesty to the Judicial Committee of Her Majesty’s Privy Council under section 4 of the Judicial Committee Act 1833<sup>17</sup> or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge or, as the case may be, the Senior Magistrate ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If the Governor considers that the question of removing a judge or the Senior Magistrate from office for inability as aforesaid or misbehaviour ought to be investigated, then—

---

<sup>17</sup> 1833 c.41.

- (a) the Governor shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge or, as the case may be, of the Senior Magistrate should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(6) Sections 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance shall apply in relation to a tribunal appointed under subsection (5) as they apply in relation to the Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this section; but the tribunal may sit outside the Falkland Islands at such place as the Governor may appoint.

(7) If the question of removing a judge or the Senior Magistrate from his or her office has been referred to a tribunal under subsection (5), the Governor may suspend him or her from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge or, as the case may be, of the Senior Magistrate from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge or, as the case may be, the Senior Magistrate ought not to be removed from office.

(8) The powers of the Governor under this section shall be exercised by the Governor in his or her discretion.

## **Oaths**

**91.** Before entering upon the functions of his or her office, the Chief Justice, any acting judge of the Supreme Court, every judge of the Court of Appeal, and the Senior Magistrate shall make and subscribe before the Governor or some other person authorised for that purpose by the Governor, acting in his or her discretion, the oath of allegiance and the judicial oath set out in Annex B to this Constitution.

## **Jurisdiction of the Court of Appeal**

**92.—(1)** The Court of Appeal shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) In connection with any appeal from the Supreme Court the Court of Appeal shall, subject to this Constitution and any other law, have all the jurisdiction and powers of the Supreme Court; and decisions of the Court of Appeal on such appeals shall, subject as aforesaid, be enforced in the Falkland Islands in the same way as decisions of the Supreme Court.

(3) The Court of Appeal may, in accordance with such directions as the President may from time to time issue, sit in the Falkland Islands or elsewhere for the purpose of exercising its jurisdiction in respect of the Falkland Islands.

## **Practice and procedure on appeals to the Court of Appeal**

93.—(1) Subject to this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the court with respect to appeals and, in connection with such appeals, for regulating the practice and procedure of the Supreme Court.

(2) Subject to section 87(4), rules made under this section may fix the number of judges who may sit for any purpose.

## **Appeals to the Court of Appeal**

94.—(1) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal as of right, that is to say—

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of £5000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £5000 or upwards; but the figure of £5000 may be increased from time to time by Ordinance;
- (c) final decisions in proceedings under section 19;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by Ordinance.

(2) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal, with the leave of the Supreme Court or the Court of Appeal, that is to say—

- (a) where the decision appealed against is a final decision in civil proceedings and in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great or general importance or otherwise, ought to be submitted to the Court of Appeal; and
- (b) in such other cases as may be prescribed by Ordinance.

(3) Subsections (1) and (2) shall be without prejudice to section 36(4).

(4) In this section the references to final decisions of a court do not include any determination of that court that any application made to it is merely frivolous or vexatious.

## **CHAPTER IX COMPLAINTS COMMISSIONER**

### **Complaints Commissioner**

95.—(1) The Governor, acting in his or her discretion, may from time to time appoint a Complaints Commissioner to investigate, in accordance with any Ordinance enacted pursuant to section 96(1), any

complaint of maladministration in the government of the Falkland Islands or such other matters as may be prescribed by Ordinance.

(2) No person shall be qualified for appointment as a Complaints Commissioner if he or she is a member of the Legislative Assembly or a public officer.

(3) A Complaints Commissioner shall vacate office—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of the Legislative Assembly or is appointed to hold or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

### **Functions of Complaints Commissioner**

**96.**—(1) A Complaints Commissioner shall have such functions, powers and jurisdiction as may be prescribed by Ordinance.

(2) In the investigation of any complaint or other matter, a Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

## **CHAPTER X MISCELLANEOUS**

### **The Public Seal**

**97.** The Governor shall cause to be kept and used a public seal for the Falkland Islands which shall be used for sealing all things that should pass the seal.

### **Reappointments and concurrent appointments**

**98.**—(1) Where any person has vacated any office established by this Constitution he or she may, if qualified, again be appointed or elected to that office in accordance with this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, even though some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance

of this subsection, then for the purposes of any function conferred on the holder of that office, the person last appointed shall be deemed to be the sole holder of that office.

## **Resignations**

**99.**—(1) Any person who is appointed or elected to any office established by or pursuant to this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it or when the resignation is expressed to take effect, whichever is the later.

## **Interpretation**

**100.**—(1) In this Constitution, unless the context otherwise requires—

“Commander British Forces” means the Officer for the time being commanding Her Majesty’s Forces in the Falkland Islands;

“financial year” means any period of twelve months beginning on 1 July in any year or such other date as may be prescribed by Ordinance;

“the Gazette” means the Falkland Islands Government Gazette; “the Government” means the Government of the Falkland Islands;

“the Governor”, in relation to any power conferred on the Governor, means the Governor acting in accordance with the advice of the Executive Council when the Governor has consulted the Council, except where this Constitution specifies that the Governor—

- (a) acts on instructions given by or through a Secretary of State; or
- (b) acts in his or her discretion or judgement; or
- (c) acts after consultation with, or in accordance with the advice of, any person or authority other than the Executive Council; or
- (d) may act against the advice of the Executive Council in accordance with section 67;

“law” means any law in force in the Falkland Islands or any part of them, including any instrument having the force of law and any unwritten rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“the Legislature” means the Governor acting with the advice and consent of the Legislative Assembly and includes the Governor acting in exercise of the powers conferred on him or her by section 55;

“mineral” means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;

“oath” includes affirmation;

“oath of allegiance” means the oath of allegiance set out in Annex B to this Constitution;

“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Annex B to this Constitution;

“oath of secrecy” means the oath of secrecy set out in Annex B to this Constitution; “public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office:

“the public service” means, subject to subsections (2) and (3), the service of the Crown in a civil capacity in respect of the government of the Falkland Islands, and includes the Police Force and the Falkland Islands Defence Force;

“sitting” means, in relation to the Legislative Assembly, the period during which the Assembly is sitting continuously without adjournment and includes any period during which it is in committee.

(2) In this Constitution, unless the context otherwise requires, references to an office in the public service shall not be construed as including references to the office of—

- (a) an elected member of the Legislative Assembly;
- (b) a member of the Advisory Committee on the Prerogative of Mercy;
- (c) a judge or acting judge of the Supreme Court or of the Court of Appeal, or Senior Magistrate;
- (d) a member of the Public Accounts Committee;
- (e) a Complaints Commissioner;
- (f) save in so far as may be provided by Ordinance, a member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he or she is in receipt of a pension or other like allowance in respect of his or her former tenure of office.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his or her office shall be construed as including, to the extent of his or her authority, a reference to any person for the time being authorised to exercise the functions of that office.

(5) Except in the case where this Constitution provides for the holder of any office to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his or her consent, be nominated for election to any such office or be appointed to or to act in any such office or otherwise be selected for it.

(6) References in this Constitution to the power to remove a public officer from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.

(7) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his or her office shall be without prejudice to the power of any person or authority

to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(8) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder of that office is himself or herself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was able to exercise those functions.

(9) Subject to sections 25, 66 and 67, where the Governor is directed by this Constitution to exercise any power or function after consultation with any person or authority, he or she shall not be obliged to exercise that power or function in accordance with the advice of that person or authority.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Without prejudice to section 14 of the Interpretation Act 1978<sup>18</sup>, where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

## ANNEX A TO THE CONSTITUTION RULES FOR THE ENACTMENT OF LAWS

1. Matters having no proper relation to each other shall not be provided for by the same law; no law shall contain anything foreign to what the title of the law imparts; and no provision having indefinite duration shall be included in any law expressed to have limited duration.

2. All laws shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed a short indication of its contents.

3. All laws shall be numbered consecutively in a separate series for each year commencing in each year with the number one so that—

- (a) a law assented to by the Governor is included in the series for the year in which it is passed or deemed to have been passed by the Legislative Assembly; and its position in such series is determined by reference to the day on which the Governor gave his or her assent to it;
- (b) a law assented to by Her Majesty through a Secretary of State is included in the series for the year in which the Governor signified such assent by proclamation in the Gazette; and its position in such series is determined by reference to the day on which assent was so signified.

4. Copies of all laws shall be printed and each law shall bear the following—

- (a) in the case of a law assented to by the Governor, particulars of the date on which he or she gave such assent;
- (b) in the case of a law assented to by Her Majesty through a Secretary of State, particulars of the day on which the Governor signified such assent to it by proclamation in the Gazette;

---

<sup>18</sup> 1978 c.30.

- (c) particulars of the day on which the law was published in the Gazette; and
- (d) particulars of the day on which the law came into operation or, if that day shall not have been determined, a reference to the provision in the law or otherwise whereby it may be determined.

5. The Governor shall not, without having previously obtained instructions through a Secretary of State, assent to any Bill within any of the following classes, unless such Bill contains a clause suspending its operation until the signification of Her Majesty's pleasure on the Bill, that is to say—

- (a) any Bill whereby any grant of land or money, or other donation or gratuity may be made to the Governor;
- (b) any Bill affecting the currency of the Falkland Islands or relating to the issue of banknotes;
- (c) any Bill establishing any banking association or altering the constitution, rights or duties of any such association;
- (d) any Bill the provisions of which shall appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty;
- (e) any Bill affecting the discipline or control of Her Majesty's Forces by land, sea or air;
- (f) any Bill of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights of property of Her subjects not residing in the Falkland Islands, or the trade, transport or communications of any territory under Her Majesty's sovereignty may be prejudiced;
- (g) any Bill whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;
- (h) any Bill which makes provision for the holder of any public office to stand for election to the Legislative Assembly;
- (i) any Bill vesting in the Crown ownership of any minerals;
- (j) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Assembly or of its members; or
- (k) any Bill containing provisions which have been disallowed;

but the Governor may, without such instructions as aforesaid and although the Bill contains no such clause as aforesaid, assent to any such Bill (except a Bill the provisions of which appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty) if the Governor shall have satisfied himself or herself that an urgent necessity exists requiring that the Bill be brought into immediate operation; but in any such case the Governor shall forthwith transmit a copy of the law to a Secretary of State together with his or her reasons for assenting to it.

6.—(1) Every Bill (not being a Government measure) intended to affect or benefit some particular person, association or corporate body, shall contain a clause saving the rights of Her Majesty, Her Heirs and Successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from or under them.

(2) No such Bill shall be introduced in the Legislative Assembly until due notice has been given by not less than three successive publications of the Bill in the Gazette; and the Governor shall not assent to the Bill in Her Majesty's name unless it has been so published; and a certificate under the hand of the Governor

signifying that such publication has been made shall be transmitted to Her Majesty through a Secretary of State with the Bill.

7. When any law has been enacted, the Governor shall at the earliest convenient opportunity transmit through a Secretary of State, for the signification of Her Majesty's pleasure, a transcript in duplicate of the law duly authenticated under the public seal and by his or her own signature, together with an explanation of the reasons and occasion for the enactment of the law.

## ANNEX B TO THE CONSTITUTION OATHS AND AFFIRMATIONS

### **1. Oath (or affirmation) of allegiance**

I, ....., do swear (or solemnly affirm) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God. (To be omitted in affirmation)

### **2. Oath (or affirmation) for due execution of office**

I,....., do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of the Falkland Islands, and will uphold the Constitution and other laws in force in the Falkland Islands, in the office of (here insert description of the office). So help me God. (To be omitted in affirmation).

### **3. Oath (or affirmation) of Secrecy**

I,.....,do swear (or solemnly affirm) that I will be a true and faithful Councillor and that I will not, except in the course of my duties as a Councillor or with the authority of the Governor, reveal the business or proceedings of the Executive Council at any meeting of the Council or the nature or contents of any document or any other matter communicated to me in my capacity as a Councillor or for the purposes of any such meeting. So help me God. (To be omitted in affirmation).

### **4. Judicial Oath (or affirmation)**

I,....., do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (here insert description of the office) and will do right to all manner of people according to the Constitution and other laws in force in the Falkland Islands, without fear or favour, affection or ill will. So help me God. (To be omitted in affirmation).

## Appendix 2 – List of other Overseas Territory Constitutions (with hyperlinks)<sup>19</sup>

No.	Names of territories	Main Instrument	Note
1.	Anguilla	<a href="#">Anguilla Constitution Order 1982</a>	
2.	Bermuda	<a href="#">Bermuda Constitution Order 1968</a>	
3.	British Antarctic Territory	<a href="#">British Antarctic Territory Order 1989</a>	
4.	British Indian Ocean Territory	<a href="#">British Indian Ocean Territory (Constitution) Order 2004</a>	
5.	British Virgin Islands	<a href="#">Virgin Islands Constitution Order 2007</a>	
6.	Cayman Islands	<a href="#">Cayman Islands Constitution Order 2009</a>	
7.	Gibraltar	<a href="#">Gibraltar Constitution Order 2006</a>	
8.	Montserrat	<a href="#">Montserrat Constitution Order 2010</a>	
9.	Pitcairn	<a href="#">Pitcairn Constitution Order 2010</a>	
10.	South Georgia & South Sandwich Islands	<a href="#">South Georgia and South Sandwich Islands Order 1985</a>	
11.	Sovereign Base Areas	<a href="#">Sovereign Base Areas of Akrotiri and Dhekelia Order 1960</a>	
12.	St Helena Ascension and Tristan Da Cunha	<a href="#">St Helena Ascension and Tristan Da Cunha Constitution Order 2009</a>	
13.	Turks and Caicos Islands	<a href="#">Turks and Caicos Constitution Order 2011</a>	

<sup>19</sup> Note – The references are to the “main” constitution document. These may have been amended since.

## Appendix 3 – Bibliography

This appendix includes publications which are referenced in the report, but are not reproduced here.

1. British Overseas Territory Law – Hendry and Dickson, 2<sup>nd</sup> Edition (2018)
2. [The Overseas Territories – Security, Success and Sustainability](#), June 2012 (Cmd 8374) (the 2012 White Paper)
3. [Global Britain and the British Overseas Territories: Resetting the relationship](#). Foreign Affairs Committee 15<sup>th</sup> Report of Session 2017-19 (HC1464) (21 February 2019), and the [Government response to the Committee’s report](#) 20<sup>th</sup> Special Report of Session 2017-19 (HC2174) (7 May 2019)
4. Final Report of the Select Committee on the Constitution, May 2007 (covering work done from April 2000 onwards).
5. [St Helena Political Governance Review, December 2019](#) and [St Helena Political Governance Review \(Report Two\), February 2020](#).

## Appendix 4 – Submissions received from members of the public and elected members

The Select Committee established by the previous Legislative Assembly in December 2018 generated the following written representations.

No.	Who from	Notes
1.	Christopher Lee and Rebecca Edwards	
2.	Ken Passfield	
3.	Ailsa Heathman	
4.	Jan Cheek	
5.	Tim Miller	
6.	Andrea Stanworth and Andrew Stanworth	
7.	June Besley-Clark	
8.	Eric Goss	
9.	Ruth Taylor	
10.	Leiv Poncet	
11.	Peter Robertson	
12.	MLA Roger Spink	
13.	MLA Mark Pollard	
14.	MLA Ian Hansen	
15.	MLA Mark Pollard	
16.	MLA Teslyn Barkman	
17.	MLA Leona Roberts	
18.	MLA Ian Hansen	
19.	MLA Stacy Bragger	

**Note** – the following pages include scans of emails and documents received – the scanning process has introduced some errors. Original documents are available separately.

---

From: Christopher Lee  
Sent: 01 September 2019 05:1 1  
To: Constitutional Review  
Subject: Comments from Christopher Lee and Rebecca  
edwards

Dear Sir/Madam

Our main concern with the current constitution is the immigration policy towards British citizens. I think that is great that we have an open and welcoming society, but find it embarrassing that we rely on Britain for so much and yet if a British citizen wants to move to the Islands they have no more rights than any other nationality. Yet myself or any member's of my family can move to the UK tomorrow and access the benefits system, NHS etc. I believe that if this anomaly was common knowledge in the UK press it would be disastrous PR for the Falklands. There have been a few cases recently of British citizens wanting to move to the Islands, only to be obstructed by immigration policy, yet it seems if you are coming to the Islands to work for any of the larger employers then anyone can get in.

We believe that the time has for a single constituency has arrived and appreciate that there is shortly to be a referendum on this point.

The other issue that has become clear over the last few years is, that the decision to have full-time MLA's. Having only full-time MLA's has removed the possibility of standing for public office for most people under retirement age, because you are now required to give up your job/career to stand. This has especially affected the camp as most people of working age, who would be likely to stand, are farm owners and not prepared to put the development of their business on hold for the duration of a term in office, Is there not room for the candidates to chose whether they want to be full or part-time? As long as they are clear about this during the election campaign. We would also support a ministerial system, as we would hope this will be designed to make MLA's more accountable for their portfolios. We believe the current system gives the chief executive the ability to censor the information MLA's receive. I would hope there could be more direct interaction between MLA's and people in their departments if they where directly responsible for that department.

Having recently spent a few weeks in the UK we were flabbergasted by how most people that you meet have heard of the Falklands, but then follow that up with "They're part of Argentina, right?" I am not exaggerating when I say that this happened nearly everyday with everyone we met. Even our children encountered this in a play park whilst meeting

two other kids, who even informed them that they had just done a school project on the Falklands!

Why on earth are we sending our politicians to Papa New Guinea, Venezuela, Greenland, Fiji etc (and the list does go on!) when the average person under 60 in the UK is not even sure if we are British? Ultimately it is the British people who will decide our political fate, and as nice as it maybe to have friends in Fiji it will have no effect at all on our future. We need to get the message out to the general public in Britain not just a few politicians in Westminster. We have recently seen how important it is to keep the voting public of the UK well informed as they do vote with their feet (Brexit).

For our final tuppence worth we would also be opposed to lowering the voting age to 16. At 16 a person is still legally a child. Our society sees children mature very quickly as it is - much more so than most UK children. By lowering the voting age to 16 we believe it is sending a strong message to the children that even our government are encouraging them to mature early.

Regards,

Critta and Beccy

## Falkland Islands Constitutional Review

### Written evidence submitted by Kenneth Passfield

30 August 2019

I am submitting this evidence as a private individual. I hold Falkland Islands Status, granted in 2013. My motivation for submitting evidence is to attempt to make the process of applying for and holding Falkland Islands Status fairer and more in line with how other countries grant citizenship.

My comments on the Constitution are restricted to the matter of Falkland Islands Status.

1. The qualifying period for Status is 7 years. I believe this is too long, and should be reduced to 5 years. It can only be to the good of the community to encourage people to make the full commitment to the islands, and become involved in the democratic process as soon as possible.
2. When filling in the forms to apply for Status, you are asked how much money you have. Given that most, if not all, applicants already hold a Permanent Residence Permit (PRP), and are entitled to own property and live the rest of their lives in the Falkland Islands, then all that Status gives them is the right to vote. So in effect you are asking how much money people have before giving them the vote — not very democratic is it? Does this mean we only want rich immigrants to get the vote?
3. Your Falkland Islands Status can be revoked if you leave the Islands for more than 2 years, other than in certain circumstances. I object strongly to this. You are not granted Status unless you make a 100% commitment to the Falkland Islands, but the Falklands is not prepared to make a 100% commitment to you in return. If Falkland Islands Status is to be granted, it should be for life, this would make it equivalent to citizenship.
4. Even though I have made my home in the Falkland Islands since 1992 and have Falkland Islands Status, I do not feel like a full believer, given that my Status can so easily be revoked. I do not have the same rights as a born and bred Falkland Islander, my Falkland Islands Status is not equivalent to citizenship. When I return to the UK for holidays, I do feel grateful to be entering a country where I will always have the right to live, regardless of the fact I left there at the age of 18 and have only spent five years of my adult life there. I would like to have this same feeling when entering the Falklands.

To summarise,

I believe that:

- the qualifying period for Falkland Islands Status should be reduced to 5 years – PRP holders should not be asked for details of their assets when applying for Status – Status should be granted for life (revocable only if the holder is found guilty of a serious criminal offence or carries out activities prejudicial to the national interest)

---

From: Estancia  
Sent: 01 September 2019 23:23  
To: Constitutional Review  
Subject: constitution review

Dear Members,

I apologise for the lastminute.com but as the end of the month fell on the weekend, I am hoping you will still consider my views — thank you.

I have spent today reading through the Constitution.

I have written before on my strongly held views that we should retain two constituencies, one for Camp and one for Stanley so I hope 27 (3) will be strictly adhered to when we have the referendum. I am happy with the 3/5 split that we have at present. We frequently hear that the camp community have no one to vote for but I still believe we should be able to persuade more candidates to stand for camp and overcome the idea that you cannot stand for camp if you do not live there. In the past, some candidates have stated they felt they did not fully understand camp issues because they did not live there but now proclaim to be ready to stand for the whole of the Falklands. To be honest, I do not necessarily approach a camp MLA if I want to raise an issue but I would still like to think that there are camp representatives on the Assembly who are obliged to represent the camp. We are not going to get farmers to stand now that Legco. has become full time but I feel we could still be adequately represented by people who do not live in camp. If future development plans ever materialise, we may one day have a community living in camp who are not farmers. I feel confident at present that all MLAs take an active interest in camp matters and have a reasonable understanding of the issues but my main fear is that this may not always be the case and if we have no representation, our issues may become irrelevant. Already we hear a growing number of young people in FICS have not been to camp and we are fast becoming the minority in our own Country so may well be represented in future by an Assembly with no knowledge of camp at all. Camp issues are also less problematic currently as finances are good but I know some MLAs who were not always camp friendly in other capacities so when the budget gets tighter, we may not have the support that we currently enjoy from all MLAs so I am dead against giving up our representation. It also seems to be a recurring theme in interviews that MLAs are only fully involved in their own portfolios which does not inspire one with the confidence to think they will be up to speed on all camp issues if they are claiming to be in the dark on other issues of national and international importance.

At present, at least one Exco. member also has to be a camp MLA so we would also lose our representation on Executive Council.

I have also heard it mentioned that we should lower the voting age to 16 and again, I am opposed to this. Lots of arguments are put forward that young people can get married, join the forces, become parents, etc. at 16 but in reality, very few do these days. I am not convinced that many 16 year olds know what they want in life. It would be nice if they were consulted on issues that affect and encourage them to become involved in political debate but not to the extent of lowering the voting age. I know of a teacher and some families who have been testing out our young people's knowledge of Government and how it works and they have very little, if any idea, of how the cogs actually turn.

I would further oppose the shortening of the period that residents need to reside before voting. I am not convinced that we have yet sorted the complex immigration issue. We need to encourage folk who wish to stay here and are the right people for the Islands but let them prove their worth before bestowing voting rights on them. We should also be able to say No to people that we consider undesirable without all the wrangle that revolved around a certain individual some years ago. We cannot blame those that wish to take an opportunity to better their lives but we have a growing number of residents now who are not familiar with the language and basic daily activities like driving and much of the money they earn is going out of the Islands rather than contributing to the economy.

I've heard other individuals bemoaning the fact that it costs them too much to apply for status or residency but if they are committed to living here, a few less nights in the pub or on the internet may well provide the necessary cash. Let's encourage those that are committed to the Islands without bestowing all the perks and benefits on anyone and everyone too soon. If they are committed they will wait and respect and we may be saved regret in the long term.

## 1

In 11(3) under Protection of freedom of conscience the rights of religion are set out. Whilst I agree everyone should be able to practice their own religion freely, I wonder if some safe guards should be put in place for religions that lead to extremism and the erosion of human rights as we know and accept them. Neither do I think religions should have precedence over the law as in the wearing of turbans instead of crash helmets for instance or being able to carry out circumcision and FMG on defenceless children.

In 12(2) Protection of right to education I was surprised to see that it only mentions the right to primary education.

Today's PC world has almost over ruled the Protection of freedom of expression. Verbal disagreements now seem to become offensive and abusive behaviour.

Does 15(3)(a) Protection from deprivation of property not give us the right to acquire Keppel Island for instance?

There has been much debate over the past year or two about visitors with unwelcome habits. If other countries are able to ban flags or flag waving, I cannot see any reason why we cannot do likewise. There seemed to be some notion of moving towards a licence but I do not see that being effective at all. Once they have the licence, there is nothing to stop them disappearing over the hill with said flag and doing what they like with it. It would be impossible to police and we would be back to the same situation where an observer may take the time and trouble to gather some evidence and attempt to report it but if it goes no further than cases in the past, it will all be futile and people will not bother so nothing has been resolved. It must be possible to put something into Chapter V under the Powers of the Attorney General to deal with this matter. Just make any flag illegal apart from our own or the Union Jack and St. Georges or make it illegal to fly any other flags apart from at very formal ceremonies perhaps. At the very least there should be some regulation to deal with those causing distress to the residents by way of inconsiderate behaviour. If it was to become law, it would soon become a well known one when one or two individuals had fallen foul of it.

Much has been said recently about our justice system and the court news does leave one wondering sometimes. Last year, I sat through two trials locally, the first time for very many years, and I was amazed at how the system seemed to have changed. In both cases, the matters were

grossly misreported by one section of the local media who only attended intermittently. However it was the method and style of questioning that really amazed me and the fact that witnesses were called who would only have been between 3 and 6 years old at the time of the alleged offence.

Finally, on page 33, 60 (3) on the last line of the paragraph, I believe there is a typo where 'her' should read 'he'.

Thank you for your time,

Ailsa Heathman

---

From: Jan Cheek  
Sent: 02 September 2019 05:54  
To: Cherie Clifford (Clerk of the Legislative Assembly)  
Subject: Constitution  
Attachments: Constitution.docx

Dear Cherie

I attach some thoughts on constitutional review. Please could you forward it to whoever is collating comments. I'll also send it with a note to those MLAs to whom I speak regularly.

Apologies for not sending it before Saturday but travelling in the Highlands makes me realise that some places have no connectivity at all! Many thanks

Kind regards

Jan

Some initial thoughts on the need for constitutional change. Comments on specific sections follow these.

Will there need to be any change as a consequence of the recent law review? Also will there be a requirement for changed legislation following Brexit?

Regarding the side letter on policing, is there any way in which this could be reviewed and then formally incorporated in a revised constitution whilst still protecting the independent role of the police? This would then align with the treatment of the independent justice system which is clearly outlined in some detail in the present constitution.

Much thought and discussion of a potential ministerial system has taken place over many years and I believe the development of such a system should be a long-term aim. I do not believe it would work well with the current size of the Assembly because with a ministerial role and responsibility would come the requirement to resign or stand down if things went awry. With only eight members to share the various portfolios in a four year term two or three resignations could leave the other members overburdened by having to take multiple roles or having to exchange portfolios when just gaining some level of knowledge and expertise. A small increase to the number of members could be justified by the fact that the population is nearly double the size it was when the figure of eight was agreed.

Regarding status, I believe the current seven year residence requirement is right because it gives individuals time to establish whether they wish to become part of our community. We are more generous in this respect than some other overseas territories where it is well nigh impossible to

achieve full status and the rights that go with it. I believe voting rights should be an important part of having status so would not favour their extension to PRP holders.

I believe 18 is the right age for inclusion on the electoral roll for those with status. Any argument for lowering it to 16 could equally be applied to an even younger age. We recognise 18 as being adult and responsible in other areas like contracts and employment so it follows that it should also be the voting age.

Anyone who wishes could set up a political party, there are no bars to doing so as far as I am aware. I have closely observed British politics for many years and I am not convinced that a party system would be beneficial in the Falkland Islands. The small size of the electorate and the Assembly would I believe make a party system very divisive. I am always appalled when looking at party systems in action elsewhere to see how a disproportionate amount of time is spent scoring party political points to the detriment of actually running a country for the benefit of its people.

## Chapter I

### 1. Fundamental Rights

c. There is no reference to ageism so there no protection for perfectly capable older people who wish to continue beyond an arbitrary cut off age. People are often being asked to work longer in many fields to earn a pension and this recognises that many live longer healthier lives and may be very willing to extend their working years. A prime example, of which I've personal knowledge, is that Justices of the Peace are required to retire at 70, when many still have years of valuable experience to offer and probably time to spare. It would soon become clear to colleagues and court officials when an individual had ceased to be competent in the role and they could be quietly dropped from the rota if they did not step aside voluntarily.

### 5. Protection of right to personal liberty

Just a general observation that there appears to be nothing to require a timely trial of someone accused of any crime. Given the presumption of innocence until proven otherwise, is it right that possibly innocent people suffer the worry and stress of waiting many months, sometimes up to a year before trial? What in normal circumstances is a reasonable time?

### 12. Protection of right to education

Right to education should include primary and secondary education at least until the end of year 11 rather than specifying an age as it could be from 15 to 17 years old. My personal view is that we would do well to ensure that everyone is in education or some in work training scheme up to the age of 18.

### 14. Protection of freedom of assembly and association.

Could (2) have some stronger emphasis to enable people to be protected from intimidation or harassment that they experience, for example when larger groups of aggressively nationalist Argentine visitors congregate in public places.

## Chapter III

The current constitution predates members being full time, does this need to be included along with the requirement for members to normally be available for meetings and to answer to their constituents throughout the working week? The two recesses also need to be formalised in some way firstly so that members/potential candidates know to what they are committing and can plan ahead to fit any of their leave they may wish to take at either end of a recess. Secondly the public need to be aware of the dates of the two recess periods so that they can plan and request meetings or activities outside those dates.

## 26. Establishment and composition of the Legislative Assembly

Provision should be made to allow an increase in the number of members in the future without having to undertake a lengthy process to change the constitution each time. There might be a trigger built in such as a percentage increase in the overall population. My preference would be for an odd number of elected members to avoid the situation we have seen in the past when a motion is lost because the vote is 4-4. It could still happen with abstentions but would be less likely.

## 27. Constituencies

Dependent on the outcome of the planned referendum this section may require change. I hope careful thought is being given to how the voting system might change in the event of a vote for a single constituency. I would hope that every individual would be able to cast the same number of votes regardless of where they happen to live.

## Chapter IV

Unless I have misread this section it appears that the Assembly could sit just once a year. If that is the case it would be better if a minimum number of sittings, possibly ten, could be stipulated.

## Chapter V

During the last Assembly members decided to have the option of Executive Council meeting twice a month in order to speed up decisions for the benefit of the public who awaited specific items, for example planning appeals. It also speeded the arrival of legislation to be considered by the Assembly. While not universally popular with civil servants, it was with the public who saw effort being made on their behalf. Clearly this did not require constitutional change but some requirement for timely conduct of business built into the constitution might be no bad thing.

## Grants of Land

During the life of recent assemblies there was an issue over potential 'land banking' with several attempts to acquire large swathes of FIG land in anticipation of oil development but with no immediate plans to develop it all. I feel that FIG land belongs to the people of the Islands and should only be released for genuinely necessary and beneficial projects and forfeit if not developed for the agreed project within a certain period. I know some contracts already require the development to be completed before the land is sold but there are many instances where this has not happened. As a senior civil servant said of land 'they are not making any more!'

## Chapter VI

Ever since the role was created I believe that it has been custom and practice for all Assembly members, not just those on Executive Council, to be involved in the recruitment of the Chief

Executive because they would be working so closely with him or her, but this is not explicit in the constitution. I think it important that this should be covered.

---

From: Jan & Tim Miller  
Sent: 29 May 2019 18:00  
To: Cherie Clifford (Clerk of the Legislative Assembly)  
Subject: Constitutional Review

Dear MLAs,

Thankyou for the opportunity for individual Electors to make suggestions and comments.

My beliefs:

1. Constituencies: Abolish Camp and Stanley and just have 8 members elected representing the entire Falkland Islands regardless of where they actually live in the Islands.

We are well interlinked and all aware of rural and town opportunities/problems - it was different 50years ago! But now we are in the 21<sup>st</sup> century.

2. Declare it illegal to produce in public - of import into the Islands- the flag or banner of a nation which has invaded our homeland before and still actively claims Sovereignty over us, openly against our democratically expressed wishes.

I do NOT believe for one instant that such would be contrary to human rights etc and international law worded in this way. I fully appreciate the Att.General and maybe one or two other very senior FIG/FCO employees might not like it as they would rather nothing like this happened in their time working tin the Islands so as not to have any decisions linked to them on their CVs in their future jobs elsewhere. But it really is time our elected representatives carried out peoples majority wishes here - and I do NOT believe you would find a majority against this proposal!

3. Keep Voting Age at 18 -, 16 is to young for many to fully understand all the arguments as to why this or that can or cannot be done. Would be somewhat daft if you were to say - yes you can have a say in voting who makes the laws in the Islands at 16yrs - but no you cannot have a glass of beer until you are 18 !!

Yours Sincerely,

Tim Miller

Mr and Mrs Stanworth 25 Ross Road West Stanley

FIQQ Izz

22nd July 2019

Written evidence for Constitutional Review being submitted by Andrew and Andrea Stanworth

Dear Sir/Madam

We are writing with regard to Government requests for opinions on the Constitutional Review. Specifically we would like to make representation over the removal of Falkland Islands 'Status' that has been awarded to individuals as children, when they reach adulthood.

Whilst we do not pretend to have an in depth knowledge of the constitution and its legal interpretations, our understanding is that children who currently have Status through successful applications by their parents will lose it on becoming 18 years of age.

Our children arrived in the Islands at age 1 and 4 in August 2010 and have spent their formative years here. They naturally identify the Falklands as their home. As a consequence, we have difficulty in understanding why at a pivotal point in their lives i.e. becoming an adult, and whilst potentially being in the midst of further education, they would lose the rights that they were deemed entitled to have during the majority of their childhood. In the case of our own children who were awarded status in 2018 (aged 6 and 9 years), losing their Status at 18 years of age having spent their childhood of 17 and 14 years in the Islands.

If our understanding is correct, we would like to see consideration of a change in The

Constitution to avoid the loss of Status for individuals who have been awarded it as children (certainly as young children), but lose it on becoming adults. We know how difficult it has been for other adults that arrived in the islands as young children and grew up considering themselves Islanders, but struggled with a feeling of loss of their identity when their status was removed in this way.

Many thanks for your consideration.

Yours faithfully

Andrew and Andrea Stanworth

Mrs B. J. Besley-Clark

16 Ross Road West

Stanley

29<sup>th</sup> July 2019

To All MLA'S

Gilbert House

Ross Road

Stanley

### New Constitution

Good Morning

I hope I am not too late in placing what I feel should be changed in the Constitution.

1. I feel that we should have one vote one person for the whole of the Falklands, the reason is as it stands we are dividing the community.
2. I know this will be a controversial request, but I feel that the Chief Executive should come under the MLA'S as he is not voted into his position, and he is just a person extra for the FCO.

The other reason is that with him in this position he is dictating who we should employ, (please I am not against Contract Officers, as I am aware we need them) but not at the expense of Local people.

I have lived in these Islands for 36 years and it does not seem this has been resolved over these years,, we spend thousands of pounds on educating our students hoping they will return . So often we hear that good qualified people ('slanders) are turned away for a Contract officer, the wages they offer are much lower than the Contract Officers but they are willing to return because this is their home.

Please do something about this urgently, also qualified people living in the Islands get the Job description from Human resources spend the time filling out the forms , get short listed then told but you have not got a charter or you have not something else, this is because they have changed the job description to suit some one they want from over-sea's. This is costing this Country millions of pounds, when we could be spending this money on other things which we need.

I am sorry if I have gone on, but feel these are two issues that needs to be addressed urgently.

Best Wishes

June

---

From: Eric and Shirley Goss  
Sent: 29 August 2019 10:40  
To: Constitutional Review  
Subject: Select Committee on the Review of the Constitution  
Attachments: Select Committee on the Review of the Constitution.docx

Dear Sirs/Madams,

I attach my submission to the Select Committee on the Review of the Constitution.

Should you require a hard copy please let me know.

Yours sincerely,

Eric M. Goss

2, Fitzroy Road East,  
Stanley.

29th. August, 2019

Select Committee on the Review of the Constitution.

I, Eric Miller Goss, resident of Stanley, Falkland Islands have two submissions to make to the Select Committee on the Review Constitution for consideration.

Under SCHEDULE in Chapter 1 , clause 13 Protection of freedom of expression.

1. To be make clear this applies to residents only. To exclude demonstrations by foreign visitors to display banners or flags for the purpose of making political statements.

---

On my next point No. 2 below for consideration by the Review Committee, I am not sure where this fits into The Falkland Islands Constitution but it should have a place.

2. On the subject of purchase of land, properties or businesses in the Falkland Islands, be eligible only to British citizens of the Falkland Islands, or to those who has Falkland Island status.

Yours sincerely,

Eric M. Goss

---

Graham Taylor

Sent: 29 August 2019 1 1:23

To: Constitutional Review

Subject: Select Committee

From the advertisement in the Penguin News, I have selected titles on which I wish to comment as I have strong feelings on these subjects.

### Should we have political parties?

I am wholly against this idea. We can see by the way political parties effect the rest of the world which is muddled, corrupted and not functioning particularly well in favour of the electorate, largely because of in fighting of those parties. It seems to me that the aim of each party is to bring down the other by whatever means. It is hard enough getting consensus here with only 8 participants, imagine the further lack of achievement if politics were to be in the mix. Whilst there is a growing gap of the 'have's and have not's' in this country I don't feel we would gain anything by rigid political ideals becoming the way to solve the country's problems.

### Changes to voting rights

At 18, I believe a person is just about mature enough to vote for what is believed to be the best for him/herself and the country as a whole. Looking at attendance of Public Meetings figures where challenges can be made to the Assembly Members, I doubt if there are many 18 year olds who are interested enough to attend and comment, so lowering the age of voting still further, in my opinion is counterproductive. It could be argued that there is little attendance and comments from the younger element of our society because they don't have a vote or say, but I am yet to be convinced that that is the case.

### Changes to status.

A good number of years ago, I as a British citizen, was interviewed at great length when applying for PRP and then Status in these islands. All of the questions were posed as to what I could do and bring to the Falkland Islands, rather than what I felt would be available to me. From what I see and hear from a number of people who now claim these privileges, that is not the case. Too many 'incomers' of whatever nationality are getting status, believing this will give them the right of abode in the UK with all its benefits.. They seem to see status as a step towards naturalisation as a British citizen. Where is the loyalty to the country that now is sustaining them?

Whilst it is natural to want better living standards for oneself and family, how much integration into our society and way of life are groups making? I see factions of different nations all around me, and very little in the way of commitment to the islands. We have heard that we need to expand our nation for the betterment of us all long term, yet a lot of those gaining PRP now have none of the skills we so badly need. They appear to be of the labouring and unskilled classes who

want good salaries, many of whom cannot even speak or write English to a reasonable standard even after living here for years.

In that respect I do not feel we should be making gaining status easier. I also feel that medicals as part of the process should be extremely vigilant in respect of members of communities that wish to join our society that come from countries rife with aids. If testing is not part of the medical required now, then I feel it should be introduced. I lived in Borneo some 30 years ago and had to undertake yearly testing for aids (so no clean bill of health could be bought) which was done in the hospital, for any foreign person wishing to live in that country, no matter what gender or country of origin.

If change is to be made to status, let it be to truly assist those who wish to make the islands their forever home, and not a means to opening the floodgates for those who want only to keep taking from the system and return nothing to it.

In summation I think we should sincerely be of the mind-set of what we can all pull together and achieve and not thinking 'this is the land of milk and honey, so let's bring in more of my family to benefit from such high standards. Talking to people in the UK recently the resentment expressed at 'foreigners' not integrating into that society might well be something to consider happening here at this very time.

## Rights.

When discussions and enquiries were being made about introducing Human Rights legislation into our constitution I was part of a group that looked into this with input from International groups. What I found interesting was that no mention was ever placed on the Responsibility of the individual. This ties in with my feelings on status being granted much more easily now. Although I do not personally use Facebook I am told many publications on it ( I know not always reliable, but certainly reflecting the mood of individuals) are all about what Social Services and the country as a whole should be doing and giving to newcomers and their families. There is very little about the responsibility of individuals / families to support themselves wherever possible.

The above mentioned are the four areas that I feel more strongly about than others mentioned in the PN advert.

Our justice system works extremely well, is fair to all with no bias. I feel 8 MLA's is quite sufficient to run the country and give balance to decisions. As mentioned earlier, reaching consensus with 8 individuals is cumbersome enough, any more and the system would grind ever more slowly.

Our security system works as well as can be expected — there will always be those who wish to buck the system, unfortunately that is human nature today. It is sad that undesirable elements can enter this country because of the way in which 'clear' medical and criminal backgrounds can be manipulated in certain countries where bribery is available as a means to an end. Even driving licences can be bought.

I would like to see more development in the islands as a whole, but it is very difficult to achieve as everything seems to be drawn out and time consuming. With such a small population numerically it is inevitable that monopolies are the norm, but the communications systems here are extremely costly to the average man, inadequate in service and a disgrace to us in general. As for the monopoly of banking and their exorbitant charges — where to begin.

Government as a whole has asked for written comments, and I sincerely hope that notice will be taken of those opinions expressed by the populace in this instance and not ignored in favour of those with the power to enact change solely on their likes and whims. Too often we are asked to express opinions which are then totally overridden.

Ruth Taylor

2

---

Leiv Poncet

Sent: 30 August 2019 09:20 To: Constitutional  
Review

Hello,

Please find below some comments on the Falkland Islands Constitution as it stands.

Regards,

Leiv Poncet

Beaver Island

Item 67: The Governor may act against Executive Council advice without prior permission from the Secretary of State, i.e. Executive Council can be overruled by the "judgement" a single, non-elected individual.

83 (2): The Governor, a non-elected individual with no accountability to the people he or she governs, has the power to give "any directions" to the head of the civil service.

Although the constitution frequently calls on the Governor to take and act on advice from individuals, groups and Falklands law, there is complete discretion not to do so. It appears a little contradictory to mention all the situations in which the Governor "shall consult" when in fact he or she is also empowered not to (23(4)), based only on "judgement" (100 (1) (b)).

The phrases "Legislative Assembly" and "Executive Council" occur 110 and 65 times respectively in the constitution, often in relation to limitations or restrictions on those bodies. The phrase "the Governor" occurs 172 times and references to limitations to the governor's power are usually followed by a caveat or exemption to that limitation. While these statistics are obviously simplistic, they nonetheless illustrate how much more power a single appointed individual has than eight elected ones.

The integrity of our democracy and the integrity of the constitution is heavily reliant on the "judgement" of the governor. If we want to be seen as much more than a colony, more concrete limits to the Governor's power is needed. Terms like "judgement" or "thinks fit" are too broad and open to interpretation to grant responsible power to one individual. In the case of the Governor acting against the advice of Executive Council, Executive Council should be obliged to make public that fact. It is important that electors know when decisions are made by their elected representatives rather than a non-elected appointee.

The constitution gives a Governor with bad judgement the ability to overrule virtually any decisions taken by our elected representatives and to command the civil service as he or she sees fit. It is bizarre to read of such sweeping powers granted to one individual in a document whose purpose is to protect rights and freedoms. We are assured that, in practice, governors have good judgement and very rarely exercise their reserve powers. Just as we know that, in reality, slavery has not been an issue in the Falklands for many years. Yet the constitution specifically protects us from slavery. What specifically protects our democracy from the individual with the most power?

---

Peter Robertson

Sent: 30 July 2019 17:10

To: Constitutional Review

Subject: Constitution

1 or 2 Constituencies ?

I write of my own experiences in the past, but nothing to do with Argentine politics.

In 1961 I went to Est Condor ( Waldrons & largest Wool producer on Arg. mainland) at Rio Gallegos as Sub-manager. At that time the first oil well was being drilled in the Province of Santa Cruz at Condor. As it was only less than 1Km. from the Chilean border it was pumped into the latter's network to the terminal at Possession so, like the proposed FI system, none came ashore so to speak, but the money started to pour in.

At that time the the population of Gallegos, and farms around it. was in the region of 12,000. In about 1965-6 a local Gov. contract went out to build 800 houses in Gallegos at a wallop. They were in the position as the Falklands today.....no shortage of money but a dire lack of people to do the work so Capital projects were not finished so cash went into reserves. When I left in 1969 the population had reached 17,000. Today the population is in the region of 90,000 and the Net tells me there are 120 bores on the farm today with gas piped to Buenos Aires.

The preamble above is only to illustrate the reality when oil hits. In another 60 years one might expect to see Lafonia like the 'Green fields of old England' and Stanley with 10-15,000 or more people.

The West & Islands will not get a look in politically in this scenario so, leave it as it is, because camp will always be out voted if attempts are made to reinstate it. Anyway, Camp can nominate/elect anyone in the Islands to represent them.

Who Knows what the future holds...60 years hence Humans might not even exist.

Brexit Constitution:

Under the circumstances I think this is far more important and has caused some concern lately in Merco Press if nowhere else.

The Isle of Man, Jersey & Guernsey, like the Falklands, do not belong to the UK or the EU....i.e have no representation in UK Parliament but are self governing. We are also alike in that we have free trade without the free flow of people with either.... even British citizens need a work permit in them. The big difference is that we are a British Overseas Territory and they are a British Dependency and they have a Lieutenant Governor appointed by the Queen while we have a Governor appointed by the FCO. Maybe we can negotiate with Her Majesty / Mr Johnston & EU or whoever to change our status and have amiable relations with the EU.

Get the Boffins to work on it.

My opinion.

Peter Robertson.

MLA Roger Spink

- 1) Some kind of boundary commission to make representation more proportional to numbers?
- 2) Consider removing CBF from automatic attendance at Exco.
- 3) Exco to be appointed for 2 or 4 years to stop it becoming a rotational appointment.
- 4) Conflict in Governors role as Commissioner for South Georgia needs to be addressed.

---

From: MLA Mark Pollard  
Sent: 28 July 2019 21:07  
To: MLA Roger Edwards  
Subject: Constitution

Hi Roger,

My top five in no particular order; e Better clarity on the Governor, Governor in discretion and Governor in council. Perhaps a change of terms.

- To allow the constitution to allow for system reform. Move some things from the constitution into the ordinance.
- More definition around powers, roles and responsibilities. As well as defining foreign affairs, defense and internal security.
- Immigration to be given it's own subsection rather than in interpretation and look at others that may need to be rehomed.
- I would like to see the enabling of compulsory purchase with all the attached safeguards other countries would use.

Is this what you were after? Or should I be more specific.

Kindest regards,

Mark J Pollard

Member of Legislative Assembly



Falkland Islands Government  
Member of the Legislative Assembly, Gilbert  
House

PO Box 754, Ross Road, Stanley, Falkland Islands, FIQQ IZZ

Tel: 00(500)27451 | Fax: 00(500) 27456 | Mob: 00(500)55888 Skype: FI Assembly

Email: [mpollard@sec.gov.fk](mailto:mpollard@sec.gov.fk) [www.fig.gov.fk/assembly](http://www.fig.gov.fk/assembly)

MLA Ian Hansen

---

From: Sent:

Subject:

In no particular order....Ian

Ministerial system

Governor's powers and  
responsibilities

Constituencies

Number of members on EXCO

Public Accounts Committee

## Constitutional Priorities — Mark Pollard

### General

- Police note should be incorporated.
- Better clarity on the Governor, Governor in discretion and Governor in council.
- How would the constitution allow for reform e.g. a switch to a ministerial system?
  - Do we look to incorporate any points arising from discussion on roles and responsibilities?
    - Should we look to have a local deputy governor and should that be in the constitution?
- Should a National Security Council including MLAs supersede the Governor for Police etc?
- Greater clarity around power, especially in the case of the Governor.
- Foreign affairs needs to be defined better and the Governor and MLAs roles in this. ● Should we be pulling some specific bits out and populating things such as the Electoral Ordinance instead?

### Chapter 1

- Do we include freedom of the press?
  - Citizen duties (tax etc) ● Right to human dignity.
  - Right of petition.
  - Rights to information.
  - Right to privacy.
  - Rights of children.
  - Economic rights (intellectual property, choose occupation etc).
  - Citizenship.
  - Matrimonial equality.
  - Protection of consumers.
  - 9 — Electronic property rights.

- 10 (1) — Man and women should be person.
- 10 (4) — Regardless of marital status.
- 11 & 13 — Consider hate crimes.
- 12 — ensure the religious and moral education to what extent?
- 16 — Protection from discrimination — ensure we can still positively discriminate (employment, status, benefits to status holders, pension etc).
- 22 — Interpretation — separate out immigration and add clarity. The section is a bit of a miscellaneous.

## Chapter 2

- 25 — Better definition of defence and internal security roles,

## Chapter 3

- Electoral oversight.
- 26 & 27 — Could these be better housed in the electoral ordinance?
- 27 — If the referendum stays here, I would like it set at 50%.
- 28 — May have to address if the voting age reduces. ● 29 (1)(c) — Not relevant if full time.

## Chapter 4

- Referenda.
- Should any of the standing orders be pulled into the constitution and vice versa.
- 54 — Review protections.
- 55 — Review section and protections.

## Chapter 5

- Legislative oversight of the executive.
- Civil service recruitment.
- 57(1) — Financial secretary not Director of Finance.
- 62(1) — two elected members.
  - 63 — Should Governor preside over Exco and should they have the power to nominate an other?

● 66 & 67 — Review sections.

● 67(2)(c) Better definitions. ● 73 —To what purpose?

#### Chapter 6

● 77— Why 4 months?

#### Chapter 7

● 82 — Which offices?

● 83 — CE's responsibility to the assembly.

● 84 — Review section.

● 85 — Exco not Secretary of State.

#### Chapter 8

● Should there be any powers to pardon? Are there already?

● Judicial independence.

● Clarify defined roles and responsibilities.

● JP's.

● Guarantee of due process.

● Presumption of innocence. ● Right to a fair trial.

#### Chapter 9

#### Chapter 10

100 — Definitions of the Legislature and an overall review of definitions.

Constitution — Areas for Consideration

#1.1 To consider further whether the denial of the Sovereign Right of HM the Queen should be covered by Freedom of Speech.

--- this should be clarified not to support the use of 'hate speech' aimed to alarm and offend others.

This is reinforced in #5, #14 and #15 to ensure views of expression don't disrupt public order

#10 4. Equal rights over children that is regardless of marital status? i.e. infers equal rights to a couple if they are married or divorced, what if they are unmarried?

#11 Reference to hate crimes ??

#12 Extent of obligations (age, language, etc)

#16(3) some tidying up of out-dated language in protection from discrimination — i.e. 'gender' not 'sex', 'ethnicity' not 'colour'.

(4) & (6) Status, preferences for social programmes, ITQ, vessel registration, are examples of discriminatory preference. There should be clarification as exceptions in the public interest if that is the reasoning agreed.

#25 Definition of Internal Security and clarification of duties. This is an important point for the protection of our people as it is a qualifying mechanism for the overriding of some constitutionally enshrined freedoms. Should the police side-letter be reflected in some way? And should the governor have a duty to consult with the Executive council or legislative assembly?

#26 — correction to Financial Secretary, not director of finance. Also in sections #57 #76#77#81

#27 Numbers and distribution. 6— 2? Could be a question for the public to answer

# 28 to be amended to 16 or 17 if voting age eligibility changed

#32(2)(e) Is the UK a foreign power? Need to clarify ?

#50 ordinances and bills?

#54 Disallowance — further protections. Has to be a rational basis and evidenced.

#55 Govs Reserved Powers. Review.

#56(1) Should overall Executive Authority of governor be transitioned to the people's elected representatives? Is it an appropriate power to bestow to officers "subordinate to him or her" ? Or, should there be a flexibility to allow transition to Ministerial Govt in the future?

#63 strengthen the fact that exco can appoint a presiding officer to exco, not just in Governor's absence.

#66(2)(c) Review of the Governor's scope not to consult.

#67(2)(c) no definition of internal security. Consolidate side letter on police ?

(d) administration of justice too Wide??

#68 should this be an unrestricted power? Should there be a qualifying reason for a governor to inject themselves into the public service without first consulting the CE?

#73 Land Law and Crown Grants Is it necessary for the governor to reserve this executive power?

#83 should the CE also have responsibility to the Assembly?

84(3) the governor should not be unilaterally authoritative for appointments to the civil service.

#85 the discipline and removal of public officers should be a document approved by exco not the secretary of state.

MLA Leona Roberts

Further to the original list from Mike Summers and the comments made by other MLAs so far, below are some of the areas I would like to see discussed (will be some duplication, I expect). Some of these may turn out to be okay, but I think they need debate, whereas some of the smaller issues are tidying up, straight fixes or may be something which I just need clarification...

Overall principles to look at —

- \_ Levels of devolved authority — how can this be expanded to reflect the realities of modern FI and our constitutional relationship with UK?
- \_ Review amount of 'direct rule' and clarity around Governor's role o Governor's powers to act in discretion — particularly in regards to public service appointments/discipline/removal, and direction of CE (83 (2)); Judiciary appear to be subject to Governor in his discretion, etc etc o Governor's reserved powers under Section IV
  - █ Section III — Legislature — constituencies, representation, boundaries
- \_ Section V — Executive — numbers and balance of representation; Governor's ability to act against advice of Exco
- \_ Definition of internal security' — has considerable impact throughout
- \_ How does full-time role impact Constitution? Provides for extra accountability perhaps and take us further towards demonstrating internal good governance? Should portfolio structure be included in some way?
  - █ Chapter 1 interpretations — include definition of FI Status. We recently saw a situation where there was confusion about whether a child born outside the FI was entitled — can these provisions be made clearer?
  - █ Compulsory purchase — should this be permitted in very particular circumstances?
- Hate crimes — can certain acts be defined under this category without risking rights of individuals?
  - \_ Will Brexit have any implications when it comes to Justice and process? Guessing not..?

Questions on specific sections (apologies if some are silly questions):

- \_ Freedom to marry — 10 (2) — are these powers sufficient to prevent arranged marriages? I know it's not currently an issue...
- \_ Freedom of conscience — 11 (2) — if I'm reading it right, this does allow for religious education in schools, but checking
  - █ Right to education — 12 (2) — entitlement to free education — currently states only primary; why? Is this because of Stanley House or what?

Freedom of expression — 3 (II) — any reason why this doesn't inc regulating press?  
Lists radio, public shows etc

Protection from discrimination — 16 (4)(a) and (b) — allow for positive  
discrimination eg in employment, Travel Credits etc — is this sufficient?

Protective provisions — 22 (1) — does 'disciplined force' cover FIDF?

Random tidying up bits –

Improve inclusivity in terminology (gender neutral etc)

Updating on Management Code, titles (FinSec/Head of Finance etc)

Chapter 1 interpretations (8) refers to "the UK and Colonies " —is there any good  
reason for this outdated language?

---

From: MLA Ian Hansen  
Sent: 08 April 2019 12:40  
To: MLA Roger Edwards; MLA Roger Spink; MLA Teslyn Barkman; MLA Barry Elsby; MLA Stacy Bragger; MLA Leona Roberts; MLA Mark Pollard  
Subject: Constitution

Apologies for lateness from me also, below are a few thoughts.

Chapter 1---Can we insert more protection to our people from Argentine intimidation, possibly as Eric Goss suggested in PN under clause 13?

Chapter 2 Governor's powers need more clarification.

Chapter 3 Depends mainly on referendum how much is done on parts of this.

Chapter 4 Clause 55 Governors reserved powers?

Chapter 5 Should there be more than three members on EXCO, Should Governor Chair EXCO? Is this the section to discuss a ministerial system as the way forward?

Chapter 6 fs 74 strong enough for oil? Is PAC in need of a tweak or two?

Chapter 8 Appointments of senior magistrate in particular the extension if asked for rather than the appointment, also tidy up CE 's appointment and extension?

No doubt we will pick up much more as we go along.

Regards Ian

1

MLA Stacy Bragger

Constitution

.. #12 "Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection be free. " Should be primary and secondary education.

█ #27 Two-thirds majority for a referendum should be considered,

█ #41 Removal of CBF from Legislative Assembly meetings. No reason for CBF to be there and sends a bad message. Automatic right of CBF to attend also should be changed. . Consideration of ministerial system

█ #83 Chief Executive/Gov relationship

█ #84 consideration of Gov having power to make appointment

Appendix 5 – Summary assessment of the Constitution, including potential areas for change (Select Committee 2018-2021)

Table setting out discussions with Chairman of the Select Committee on the Constitution (2018-2021).

	Representations received	Changes proposed	Additional comments
<b>Order</b>			Nothing to be noted on the Order.
<b>Schedule</b>			
<b>CHAPTER 1</b>			
	General suggestions for inclusion: Freedom of the press Citizen duties (tax etc.) Right to human dignity Right of petition Rights to information Right to privacy Rights of children		Some of these may be covered in specific suggestions below

	Representations received	Changes proposed	Additional comments
	Economic rights (e.g. intellectual property, choice of occupation)  Matrimonial equality  Protection of consumers  Electronic property rights		
<b>1. Fundamental rights and freedoms of the individual</b>	Why there is no reference to ageism	[1]“without distinction of any kind such as....” add age to the list	Change throughout document where relevant
<b>2. Protection of right to life</b>		[2] Add in missing sections of ECHR	
	Whether/how this section sits with abortion and the possibility of euthanasia legislation		
<b>4. Protection from slavery and forced labour</b>		Change wording to reflect wording of ECHR, adding back in “compulsory”	
<b>5. Protection of right to personal liberty</b>	Does this adequately cover what is needed to detain somebody with dementia for their own/others’ safety?	Satisfied that this is, or can be, adequately covered in local legislation, no change needed	
	No reference to requirement for a timely trial	No change needed	This was discussed – not an issue in the Falkland Islands

	Representations received	Changes proposed	Additional comments
<b>9. Protection for private and family life and for privacy of home and other property</b>	Suggestion: include e-correspondence here?	Satisfied that this is adequately covered in local legislation, no change needed	
<b>10. Protection of right to marry and found a family</b>		[1] Change “man and woman” to “person”. Add reference to civil partnerships as well as marriage	Gender neutral, reflect the fact that marriage is not just between a man and woman, reflect what is legally possible in FI.
	[4] equal rights over children should be regardless of marital status		
	Are these provisions sufficient to prevent arranged marriages?		
<b>11. Protection of freedom of conscience</b>	Add reference to hate crimes in this section (and section 13)	Satisfied that this is adequately covered in local legislation, no change needed	
	Does this allow for religious education in schools?		
<b>12. Protection of right to education</b>	Suggestion: add reference to upskilling local students to take on contractor roles	Not a constitutional issue, no change needed.	

	Representations received	Changes proposed	Additional comments
	Question – does high needs education need to be addressed/referenced somewhere in this section?		
	Should include right to secondary education	[12. [2]] - Change wording to add right to secondary education (as well as primary education)	
	Is it appropriate to have reference to religious education in this section? Views expressed on both sides.		
	Clarification of the extent of religious and moral education		
	Should it reference obligations around language		
<b>13. Protection of freedom of expression</b>	Suggestion: restrict protection of freedom of expression to those with Falkland Islands status	No change proposed	
	Include provision banning the Argentine flag		
	Should freedom of expression cover denial of Sovereign Right of HM the Queen?		

	Representations received	Changes proposed	Additional comments
	Clarified to not support hate speech aimed to alarm and offend others, ensure no disruption of public order		
	Should 3 (ii) include regulating press?		
	How does this relate to freedom of expression e.g. on social media and social media companies?	What is in there already is sufficient to deal with these issues, no change needed	
<b>14. Protection of freedom of assembly and association</b>	Add reference to protection from intimidation in this section	No change	
<b>15. Protection from deprivation of property</b>	Does this adequately cover compulsory purchase orders etc.?	Satisfied that what is in the constitution is fine, no change needed.	Updating local legislation is an issue to be looked at separately.
<b>16. Protection from discrimination</b>	Add in clearer reference to positive discrimination being allowed in certain circumstances e.g. in the public interest	Satisfied that this is adequately covered, no change needed	This is an area which, in part at least is covered by a separate piece of work under the Islands Plan 2022-2026.
	Question raised as to whether we should explicitly allow for positive discrimination outside of Status holders (e.g. for PRP holders?)		
		[16 [3]] – “...affording different treatment to different persons on any grounds such as...” add age to the list	

	Representations received	Changes proposed	Additional comments
	Make sure this covers equality for disabled people and any other groups that have been missed		
	Review for outdated language e.g. gender not sex, ethnicity not colour		
<b>22. Interpretation</b>		Move sections relating to Falkland Islands status out of Interpretation and into a section of their own.	
	The removal of Status awarded to children through successful applications of their parents when they reach adulthood – this should be changed	Change this section so that children who have Status through successful applications by their parents do not lose it when they turn 18	
	Changes to Falkland Islands Status		Some of the representations in relation to Falkland Islands Status can be considered as part of the review of the Falkland Islands Status Ordinance 1998.
	Current 7-year residence requirement for Status should stay as is		
	Include definition of Status to make it clearer		

	Representations received	Changes proposed	Additional comments
	Does “disciplined force” cover FIDF?		
	Is there a reason for the reference to colonies here?		This refers to several “out-dated” forms of citizenship, but would need to remain unless/until there is no prospect of a person within the relevant category still living.
<b>CHAPTER 2</b>			
<b>23. The Governor</b>	Further clarity/specificity around the role and powers of the Governor – nothing should be open to interpretation,	No change	The formulation used in the Constitution of the Falkland Islands is very similar to that used in other OT Constitutions – see sections 19 & 20 Gibraltar Constitution, sections 29-31 of Cayman Islands Constitution.
	MLAs should be advised/represented on the extension of a Governor	Request change to the arrangements	It was advised that this would not likely be agreed.
<b>24. Acting Governor</b>	Make further clarifications around acting Governor, title, appointment etc		Only needed if moving to executive model
	Make provision for a Deputy Governor		Note that in some other OTs the “Deputy Governor” is the Head of the Public Service (equivalent to role of Chief Executive in the Falkland Islands).

	Representations received	Changes proposed	Additional comments
<b>25. Defence and internal security</b>	Clarify definition of internal security and defence	Consider whether further definition could be given	
	Ensure that FIDF reports to Chief Executive, clarification around the “trigger” for CBF control.		Some arrangements, particularly around the use of FIDF for civilian support activities, can be considered as part of the review of the FIDF Ordinance, which is currently programmed.
	Should the Governor have the duty to consult with ExCo or Legislative Assembly?		Note: The current provision is drafted specifically to preclude the need to consult with Executive Council.
<b>Chapter 3</b>			
	Electoral oversight		
	Does this need to be changed to reflect full-time members?		
	Can the two Legislative Assembly recesses be formalised in the Constitution?		
<b>26. Establishment and composition of the Legislative Assembly</b>	Make provision to allow increase in the number of members in the future	Change to permit the number of members to be changed by Ordinance.	

	Representations received	Changes proposed	Additional comments
		Change Director of Finance to Financial Secretary	
	Could this be moved to the Electoral Ordinance?		It ought to be possible to move further provisions in relation to elections and associated issues into local laws.
	Can the portfolio structure of the Legislative Assembly be included?		
<b>27. Constituencies</b>	Could this be moved to the Electoral Ordinance?		It ought to be possible to move further provisions in relation to elections and associated issues into local laws.
	Change majority requirements on referendum to 50%/reconsider 2/3 majority requirement		
<b>28. Qualifications for election</b>		Only needs changing if changing voting age.	[note – other issues have subsequently arisen for consideration]
<b>29. Disqualifications for election</b>	Comment: need to understand impact for potential MLAs with dual nationality		
	Consider changing language of “insane”	Minor issue, leave as is, no change needed.	

	Representations received	Changes proposed	Additional comments
	Is [1 [e]] robust enough? Does it cover where someone may have been unsound of mind but this is addressed through treatment?		
<b>30. Vacation of seats</b>	Is there a possible option for the public or members to remove a member in truly exceptional circumstances?		
<b>32. Qualifications of electors</b>			Will only need to change if changing voting age
	Clarification around “qualifying period”? Some issues arise around “ordinarily resident”		
	Does the UK count as a foreign power under section [2[e]]? Does this need clarification		
	PRP holders (3+ years) should be allowed to vote –this should be looked at and public opinion should be tested		
	Against extending voting rights to PRP holders		

	Representations received	Changes proposed	Additional comments
	Allow one vote for one person for the whole of the Falkland Islands		
	Against lowering voting age to 16		
	In favour of lowering the voting age to 16		
<b>34. Dissolution</b>	Should be ExCo and not Governor in his/her discretion		
<b>35. Recalling dissolved Legislative Assembly in case of emergency</b>	Should be ExCo and not Governor in his/her discretion		
<b>Chapter 4</b>			
	Referenda		
<b>37. Power to make laws</b>	Concerns about Governor role in making laws – should be removed	Change to something similar to Montserrat wording (see section 71 Montserrat Constitution)	
<b>38. Sittings of the Legislative Assembly</b>		Change to clarify virtual meeting arrangements	
	Change this to specify a minimum number of sittings of the Legislative Assembly?		

	Representations received	Changes proposed	Additional comments
<b>41. Participation by non-members</b>		Strengthen language on AG having right to participate - currently "with the consent of the person providing"	
	CBF taken out of this section – no automatic right to attend	No change	
<b>43. Quorum</b>		Add in reference to virtual attendance	
		Change to clarify that if the person presiding is a member, this should count towards quorum	
<b>46. Standing Orders</b>	Should any of the Standing Orders be in Constitution, and vice versa		
<b>50. Rules for the enactment of laws</b>	Suggestion to change Ordinances to Acts	No change needed	Historically, the distinction has been made between territories which have a representative legislature (whose legislatures pass "Acts"), and those which do not (whose legislatures pass "Ordinances"). By way of example, "Ordinances" were made in New Zealand between 1841 and 1854, when its "parliament" first met, after which it passed "Acts". In some respects, it does help to

	Representations received	Changes proposed	Additional comments
			retain a distinction between Falkland Islands laws and UK laws, to avoid some confusion between directly applicable and applied UK Acts, and locally made Ordinances.
<b>51. Introduction of Bills, etc</b>	Should be ExCo not Governor		
<b>52. Assent to Bills</b>		May ask to change wording – see note on 37 (Montserrat wording)	
<b>54. Disallowance of laws</b>	Suggestion that we could ask for this to be removed, or reviewed – further restrictions/protectons	No change	
<b>55. Governor’s reserved power</b>	This should be reviewed and restricted	No change needed	In practice this would only be used in specific circumstances, UK would likely wish to retain
<b>Chapter 5</b>			
	Build in a requirement for timely conduct of ExCo business?		
<b>56. Executive authority</b>	Moving to a ministerial system?  Legislative oversight of Executive	No change at this time, but not ruled out for the future.	

	Representations received	Changes proposed	Additional comments
	Constitution should allow for changes in future		
	Is it appropriate that this is a power that can be exercised through subordinate officers?		
	Should be ExCo		
<b>57. Executive Council</b>	Who in ExCo makes decisions? Is it the Governor or MLAs? Does this need clarification? Clarify relationship between the Governor and ExCo.		
	Whether the public can have a say on the make-up of ExCo (e.g. one member from Camp, one from Stanley, and one "other") – could this be done e.g. by default popularity?		May have an impact on decision-making processes, as the 3 MLAs on ExCo need to be able to command a majority of 8 MLAs – and there needs to be a mechanism for removal if this is not achieved.
<b>58. Election of elected members of the Executive Council</b>	Change ExCo rotational system (to allow one group to be voted in for a longer period)	No change needed	Works well as is, and nothing in current system prevents the same group being voted in for repeated terms
	Don't think three members every 12 months should be specified – should allow for specificity (and above in 57)		

	Representations received	Changes proposed	Additional comments
<b>60. Temporary members of the Executive Council</b>	Could tighten up language around how this works in practice, in particular conflicts of interest?		
		[3] Typo – change to “he or she” not “her or she”	
<b>61. Attendance of non-members at meetings of the Executive Council</b>	Change role of CBF on ExCo e.g. to restrict it so that CBF is only invited when military issues are considered/remove automatic attendance		
<b>62. Summoning of meetings and agenda of the Executive Council</b>	Suggestion to allow for greater transparency e.g. publishing ExCo papers ahead of time		Some of this already addressed in practice, and scope for further changes to be made without the need for Constitutional change.
		“...shall summon a meeting of the Council if requested to do so by at least two members” – clarify that this means members of Legislative Assembly, rather than members of Executive Council.	Note – It is considered that this would likely be interpreted as referring to members of the Executive Council (which would include the two ex-officio members), rather than referring to elected members of the Legislative Assembly, so change would be required if this was desired to be the position in future.
		“at the request of the person presiding or any elected member” - clarify that	

	Representations received	Changes proposed	Additional comments
		this means elected member of Legislative Assembly, rather than elected members of the Executive Council.	
	Executive Council should be the only ones to summon ExCo and set the agenda		
<b>63. Presiding in the Executive Council</b>			Only needs change if opting to include provision for Deputy Governor
	Change to include provision for ExCo to have standing orders	Change to make specific provision for Executive Council Standing Orders to be made.	
	Should the Governor preside over ExCo and should they have the power to nominate another?  ExCo to be able to appoint a presiding officer, not just in Governor's absence		
	Governor should not chair ExCo – either elected chair or independent chair		

	Representations received	Changes proposed	Additional comments
<b>65. Quorum</b>		Change to clarify arrangements for virtual attendance	
		Change to allow <b>everyone</b> to be present virtually at ExCo e.g. not require 3 people to be together in a room. Include better definition of the term “present at the meeting”	
	Could be moved to Standing Orders		
<b>66. The Governor to consult the Executive Council</b>			Only change if suggesting moving to ministerial system
	Suggestions to “tighten up” and review the language in this section – clarify what the Governor does/does not have to consult ExCo on		
<b>67. The Governor may act against advice of the Executive Council</b>			Only change if suggesting moving to ministerial system
	Questions raised as to whether there is enough in the constitution to hold the Governor to account? Suggestion to review	No change needed	There is scope currently for recording advice of elected members and transmitting this to the Secretary of State.
	Definition of external affairs, defence, internal security, administration of justice		

	Representations received	Changes proposed	Additional comments
<b>68. The Governor may call for public officers, official papers, information or advice</b>	Should this be qualified/restricted?		
<b>69. Minutes</b>	Minutes are circulated to all non-voting members to edit before they come to the voting members. There should be at least version control to see what was changed and by who from the original submitted minutes by the Clerk		
<b>70. Advisory Committee on the Prerogative of Mercy</b>			
	Representations received as to whether this is the correct membership or should it be changed?	Works in practice, no change needed	
<b>73. Grants of land</b>	Representations received to review grants of land, language very colonial etc	No change needed	
	Can anything be done to address the issue of “banking” of FIG land in anticipation of oil development?		
	To what purpose?		
	Is it right that the Governor reserves this power?		

	Representations received	Changes proposed	Additional comments
<b>Chapter 6</b>			
<b>Throughout</b>	Change reference Director of Finance back to Financial Secretary	Make change.	
<b>74. Consolidated Fund</b>	Is this strong enough for oil?		
<b>77. Expenditure in advance of appropriation</b>	Why is the time period set at 4 months?		
<b>80. Audit</b>	Audit arrangements should be made clearer – currently an inconsistent approach	Make as a comment but no change needed	
<b>81. Public Accounts Committee</b>	<p>Representations received on changes to PAC make up and membership– MLAs scrutinising their own decisions, conflict of interest?</p> <p>PAC should be comprised of all lay members</p> <p>Could remove reference to MLAs from this section to allow it to be changed in future if needed</p>	Any conflict of interest matters will be dealt with in PAC Ordinance, no change needed	

	Representations received	Changes proposed	Additional comments
	Should any of the additional PAC powers in their Ordinance be added to the constitution?	No change – considered right for additional functions to be provided for in locally made laws.	
	Suggestions received to change the way that PAC operates so that they are not only able to scrutinise after the event/after the decision has been made and can have more emphasis on scrutinising beforehand		PAC will always have to scrutinise after the decision (otherwise they would be involved in decision-making and would end up scrutinising their own decisions) – however some changes are being worked on already
<b>Chapter 7</b>			
<b>82. Power to constitute offices</b>	What offices?		
<b>83. Chief Executive</b>	<p>Several comments received about Governor appointing, and particularly directing, the Chief Executive</p> <p>Change or make this wording clearer</p> <p>Should be clearer relationship on direction, accountability and reporting between MLAs and the Chief Executive</p>	Change to something similar to Cayman wording, which refers to “Cabinet” (here would be ExCo)	

	Representations received	Changes proposed	Additional comments
	<p>It is custom for all MLAs to be involved in the recruitment of the Chief Executive – the constitution should explicitly reflect this</p> <p>Chief Executive should be directed by MLAs/have a responsibility to the Legislative Assembly</p> <p>Similar around extension of Chief Executive</p>		
	Look at what happens if the Chief Executive wants to extend		
	Whether the Governor should have to consult the Legislative Assembly on appointment of a Chief Executive (rather than ExCo?)		
<b>84. Power to make appointments</b>	MLAs should be more involved in appointments to the public service		Independent public service is an important provision, but could be room for discussion about involvement of MLAs, particularly

	Representations received	Changes proposed	Additional comments
	The Governor's role should be looked at– this section should be reviewed		in relation to recruitment to senior posts
	Creation of a body to make appointments in the civil service		
<b>85. Discipline and removal of public officers</b>	ExCo approval not SoS  Reconsider the role of the Governor in the Management Code	Remove that Management Code needs to be approved by Secretary of State and change to approval by Governor in council	
<b>Chapter 8</b>			
	This section should consider being able to get rid of rogues in the justice system		Other OTs have e.g. judicial appointments commission.
	Should there be powers to pardon? Are there already?		
	General suggestions for inclusion:  Judicial independence  Clarify roles and responsibilities  JP's  Guarantee of due process		

	Representations received	Changes proposed	Additional comments
	Presumption of innocence Right to a fair trial		
	Governor's role in judicial appointments to be reviewed		
<b>88. Appointment of judges and Senior Magistrate</b>	Some comments made around looking at the appointment of Senior Magistrate	Change name (Senior Magistrate) to reflect the actual level of the role  Add detail on Senior Magistrate role, e.g. qualifications/requirements etc.	
<b>94. Appeals to the Court of Appeal</b>	Suggestion received to remove or change the value of £5000 in section [1 [b]]	Not necessary as this can be changed by Ordinance, no change needed	
<b>Chapter 9</b>			
<b>95. Complaints Commissioner</b>	Comments received about the role of the Complaints Commissioner – e.g. doesn't have much clout	The details of the role are not included in the constitution – it only makes provision for the appointment of a Complaints Commissioner, no change needed	The issues that have been raised (e.g. why do complaints have to go through an MLA) are dealt with in the Ordinance.
		Change "may" appoint a Complaints Commissioner to "shall" appoint a Complaints Commissioner	

	Representations received	Changes proposed	Additional comments
		Change wording of section 2 from passive to active e.g. to read something like “any person who is a member of the Legislative Assembly or public officer shall not be qualified for appointment as a Complaints Commissioner”	
	Adding something to the constitution to cover the personal conduct of Complaints Commissioners		
<b>100. Interpretation</b>	Representations made to change the definition of “the Legislature”	If changes are made in Chapter 3, we may need to look at this	
	Definition of Government should be reviewed		
	Overall review of definitions needed		
<b>Misc. additional questions/suggestions</b>			
	Should the police be brought fully within the bounds of the civil service?		
	Incorporate the “side letter” on the police into the Constitution itself	Seek to incorporate some elements, as appropriate.	Some elements may be worth incorporating, and provide a note explaining why if we decide not to incorporate certain elements

	Representations received	Changes proposed	Additional comments
		Seek to make the side letter on the police a public document, as there is a legitimate public interest in doing this	
	Should changes be made in the areas of derogations for borrowing, SoS sign off?		This is covered in local laws, not the constitution
	Does the constitution adequately deal with modern slavery/should something be added?		This could probably best be dealt with in local laws, rather than in the Constitution.
	Modernisation of the Public Health Ordinance		This is not a matter for the review of the Constitution – it requires review of the Public Health Ordinance 1894, and agreeing proposals for its amendment/replacement.
	Current “long stop” is the Supreme Court – should we extend constitutional jurisdiction locally?		The final court of appeal is the Judicial Committee of the Privy Council. It is not suggested that any change is necessary to the arrangements in the Constitution for the Falkland Islands Supreme Court or Court of Appeal.
	Local laws on compulsory purchase should be updated		This is not a matter for the review of the Constitution – albeit laws regarding compulsory purchase must be compliant with the

	Representations received	Changes proposed	Additional comments
			provisions of section 15 of the Constitution, for example.
	Enabling of compulsory purchase with safeguard		As above
	Suggestion to consider creating a commission for human rights and equalities – supporting residents to protect and defend their rights (against a government decision), challenge and hold government to account		
	Majority needed to lower voting age – seems incongruous that the UK can leave EU, but this would require a $\frac{3}{4}$ majority		This appears to be a misunderstanding. The voting age is set by the Constitution, and a change would require a change to the Constitution – there is not a requirement for a $\frac{3}{4}$ majority. The requirement in relation to change to Legislative Assembly Constituencies is $\frac{2}{3}$ of those voting in each constituency.
	The issue of recruiting contract officers from overseas over local people should be addressed		This is not a matter relevant to the review of the Constitution
	Address conflict in Governor's role as Commissioner for South Georgia		

	Representations received	Changes proposed	Additional comments
	Better clarity on Governor, Governor in discretion and Governor in council throughout – or removal of all reference to Governor on the advice of ExCo and replace with ExCo		This would represent a change in the governance arrangements – with executive authority being vested in executive council.
	More definition around powers, roles and responsibilities		
	Should there be e.g. a National Security Council including MLAs to supersede the Governor on police?		
	Better definition of foreign affairs (clarity on MLAs/Governor roles)		Note - The reference in the Constitution is to “external affairs”.
	Can some sections of the constitution be taken out and included in e.g. Electoral Ordinance (and possibly others?)		This would be possible, and might be an outcome of the review of the Constitution.
	Levels of devolved authority – how can this be expanded to reflect the realities of modern FI and constitutional relationship with the UK		
	Are we adequately protected from appointed individuals overriding elected members should they		

	Representations received	Changes proposed	Additional comments
	interpret the Constitution in ways that they feel allows them?		
	Responsibility for Police and FIDF should rest with Chief Executive, not Governor		

White rows = covered in meetings with Select Committee Chairman

Blue rows = additional comments from policy officer notes on public sessions

Green rows = additional comments from written evidence

Orange rows = additional MLA comments

## Appendix 6 – Qualifications/Disqualifications of electors and electors

1. The qualifications for election to the Legislative Assembly are set out in section 28 of the Constitution<sup>20</sup>. The grounds on which someone is disqualified from election are set out in section 29<sup>21</sup>.

2. The grounds on which someone is disqualified from election include:

*29 .—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—*

*(a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;*

3. The qualifications to register as an elector are set out in section 32<sup>22</sup>, which also includes the grounds on which someone is disqualified from registering as an elector. This includes:

*(2) No person shall be qualified to be registered as an elector under this section who on the qualifying date—...*

*(e) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State.*

4. The question has arisen as to whether, by virtue of the above provisions any dual nationals would be eligible to register as an elector or eligible to stand for election. This is to be subject to Court proceedings. Such proceedings may be helpful in identifying what, in practice, the current provisions might be taken to mean. This in turn will impact individuals, including potential impact on those who may stand for elected office and also those who may vote.
5. It is clear that some non-British Citizens will remain eligible to register to vote and to stand for election. This is because section 32(1)(b) preserves rights which individuals had at the point at which the current Constitution came into force. Under the 1985 Constitution, as originally made, any Commonwealth citizen, aged 18 or above who had been resident during the qualifying period (the previous 12 months) was eligible to register as an elector. However, the disqualifications apply and have applied throughout.
6. Prior to the 1985 Constitution, the position was different. There was the Falkland Islands (Legislative Council) Order 1948, an Order in Council. This was supplemented by the Legislative Council (Elections) Ordinance 1948. Both the Order in Council and the local Ordinance were amended from time to time over the years before they ceased to have effect. The Ordinance is where the qualifications to register as an elector and to stand for election to the Council were set out.
7. In relation to registering as an elector, the qualification was originally that a person was a British Subject who had resided in the Islands for the qualifying period (12 months), was not

---

<sup>20</sup> See page 49 of this report

<sup>21</sup> See page 50 of this report

<sup>22</sup> See page 52 of this report

subject to any legal incapacity, and was aged 21 or over. This was clearly amended over the years, so the voting age was reduced to 18 in 1977, and the requirement to be “ordinarily resident” was introduced.

8. For some reason the clear choice was made in 1985 to be more restrictive and have the same qualifications for registering as an elector as had “always” (at least as far back as 1948 – I have not looked back any further) applied to standing for election. This is consistent with the evolution of provisions for those “belonging to the Falkland Islands”/ having “Falkland Islands Status”, which have progressively become more restrictive over time.
9. In relation to disqualifications from standing for election, the provisions of the 1948 Ordinance were very similar to what is now contained in the Constitution. Section 15 of the Ordinance, included provision that “(2) No person shall be qualified to be elected as a member who at the time of election: (a) is by virtue of his own act under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State”.
10. The 1948 Order in Council provided for vacation of a seat if a member ceased to be qualified for election.

## Appendix 7 – List of Major Human Rights Treaties and Conventions

Title	Applied to Falkland Islands <sup>23</sup>	Reservations etc	Date applied <sup>24</sup>	Comment
Universal Declaration of Human Rights	N/A – proclaimed by General Assembly of the United Nations 10/12/1948			This is not a multi-lateral convention in the same sense as other documents listed below.
Convention on the Rights of the Child	Yes	Yes	07/09/1994	
European Convention for the Protection of Human Rights and Fundamental Freedoms	Yes	Yes	23/10/1953 (temporarily – renewed every 3-5 years) 14/01/2006 (permanent)	
Convention on the Prevention and Punishment of the Crime of Genocide	Yes	No	30/01/1970	
International Covenant on Economic, Social and Cultural Rights	Yes	Yes	20/05/1976	
International Covenant on Civil and Political Rights	Yes	Yes	20/05/1976	

<sup>23</sup> Sources: <https://www.gov.uk/guidance/uk-treaties>, supplemented by information published by Treaty-administering bodies, such as the United Nations Organisation and its agencies.

<sup>24</sup> Information is correct to best of information and belief, but is subject to correction.

Title	Applied to Falkland Islands <sup>23</sup>	Reservations etc	Date applied <sup>24</sup>	Comment
Convention relating to the status of refugees	Yes	Yes	25/10/1956	
Convention on the Abolition of Slavery the Slave Trade and Institutions and practices similar to slavery	Yes	No	18/06/1927	
Convention against torture and other cruel inhuman or degrading treatment	Yes	No	08/12/1988	
Convention on the rights of persons with disabilities	No	Yes		
Convention on the Elimination of All Forms of Discrimination Against Women	Yes	No	07/05/1986	
Convention on the Elimination of Racial Discrimination	Yes	No	07/03/1969	

**Note:** Protocols and other amendments to treaties and conventions are not listed separately

## Appendix 8 – Query regarding provisions of section 16 of the Constitution on protection from discrimination.

### Query

1. What is the position of the non-discrimination provisions of the Falkland Islands Constitution on requiring express statutory provision for discriminatory measures, comparing the Falkland Islands Constitution Order 1985 and Falkland Islands Constitution Order 2008? If it differs between the two Orders, was any such change intended?

### Falkland Islands Constitution Order 1985

2. Section 12 of the 1985 Constitution (in Schedule 1 to the Falkland Islands Constitution Order 1985) contained protections against discrimination in law. This section prohibited in subsection (1) laws that are discriminatory in themselves or in effect, and in subsection (2) discriminatory treatment by a person acting under the authority of law or in the exercise of public functions.
3. Exceptions to the two primary prohibitions were set out. Subsection (1) was subject to the exceptions contained in subsections (4), (5), and (7)

Subsection (4) allowed discriminatory provisions in relation to (a) the appropriation of public funds, (b) people not belonging to the Islands, and (c) measures that, having regard to their nature and special circumstances, were considered reasonably justifiable in a democratic society.

Subsection (5) allowed discriminatory provisions in relation to the required qualifications (so long as such qualifications are not specifically related to named grounds) for public service.

Subsection (7) allowed discriminatory provisions regarding the restriction of freedom of movement, protection from arbitrary search or entry, freedom of conscience, freedom of expression, and freedom of assembly and association, when provided for in law and related to specific legitimate aims reasonably justifiable in a democratic society.

4. Subsection (2) was subject to exceptions contained in subsections (6), (7), and (8)

Subsection (6) allowed discriminatory treatment authorised expressly or by necessary implication by a law covered by subsection (4) or (5) (public funds/belonging/reasonably justifiable in a democratic society, qualifications for public service)

Subsection (7) allowed discriminatory provisions regarding the restriction of freedom of movement, protection from arbitrary search or entry, freedom of conscience, freedom of expression, and freedom of assembly and association, when provided for in law and related to specific legitimate aims reasonably justifiable in a democratic society.

Subsection (8) excepted the exercise of discretion, provided for in law, relating to the institution, conduct or discontinuance of court proceedings.

### Falkland Islands Constitution Order 2008

5. Following the revision of the Constitution, the protections against discrimination in law are now found in section 16 of the Constitution (in the Schedule to the Falkland Islands Constitution Order 2008). This provision is, in general, a modernised but equivalent section to section 12 of the 1985 Constitution.
6. Changes included updating the language relating to grounds of discrimination and making the specified grounds illustrative rather than definitive, and replacing reference to specified other constitutional rights which could be restricted under certain conditions with a more general provision permitting discrimination under law where it has objective and reasonable justification and is proportionate between its aim and its effect.
7. A significant change is the omission of what was subsection (6) in the 1985 Constitution. This provision had effectively required that if any powers under the law or exercised by a public officer or public authority were to be used in a discriminatory manner regarding public funds, people not belonging to the Islands, or other matters reasonably justifiable in a democratic society, such discriminatory application had to be contained in the law.
8. In addition to that subsection (6) being omitted, the wording in the general exception now contained in subsection (6) (previously subsection (7)) has changed slightly. In the 1985 Constitution, the provision begins

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section ***to the extent that the law in question makes provision...***

9. The current subsection (6) is worded

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section ***to the extent that it has...***

10. The revised wording suggests that the exception can be applied to either in the law itself, or to an act that is done under authority of law. The previous wording clearly requires the exception to be assessed in relation to the law itself. The combined effect of these two changes is to suggest that where a legal power is exercised in a discriminatory manner, this no longer has to be (expressly or by necessary implication) provided for by law, so long as it has objective and reasonable justifiable and is reasonably proportionate between its aim and its effect.
11. It is considered good practice for any discriminatory measures to be expressly permitted in law for the purposes of transparency and scrutiny. Although the requirements for reasonable justification and proportionality do act as safeguards, it is unclear why the additional protection of being provided for in law would have been removed. There is not any record that we can find of this change being actively considered in the constitutional review process. It would be helpful to understand what consideration was given to this particular issue during the constitutional review process in order to better understand the current position.
12. A further question arises in relation to the exercise of public functions not contained in statute. Current subsection (2) distinguishes between a person exercising powers 'by virtue of any written law' and those 'in performance of the functions of any public office or any public authority'. The word 'written' is not included in the equivalent section of the 1985 Constitution. The question is whether a person exercising non-statutory public functions is able to rely on the exceptions contained in current subsection (6). This subsection applies to things 'contained in or

done under the authority of any law'. It is unclear whether the exercise of non-statutory public functions is properly considered an act 'done under the authority of any law', provided that it is applied to a legally appointed public officer acting within the scope of their powers.

13. It is arguable that acts taken outwith a statutory framework should be subject to higher standards of non-discrimination, as any discriminatory effects have not been expressly considered and approved through the legislative process. However, the wording is not clear, in particular given the absence of the word 'written' in subsection (6), when it appears in subsection (2).

s 12 of Schedule 1 to the Falkland Islands Constitution Order 1985	s 16 of the Schedule to the Falkland Islands Constitution Order 2008
<p>(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.</p> <p>(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.</p> <p>(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.</p> <p>(4) Subsection (1) of this section shall not apply to any law so far as the law makes provision –</p>	<p>(1) Subject to subsections (4), (5) and (6), no law shall make any provision which is discriminatory either in itself or in its effect.</p> <p>(2) Subject to subsections (6) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.</p> <p>(3) In this section, the expression "discriminatory" means affording different treatment to different persons on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>

<p>a. For the appropriation of public revenues or other public funds;</p> <p>b. With respect to persons who do not belong to the Falkland Islands; or</p> <p>c. Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.</p> <p>(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to race, place of origin, political opinions or affiliations, colour, creed or sex) for service of a local government authority or a body corporate established by any law for public purposes.</p> <p>(6) Subsection (2) of this section shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.</p> <p>(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this</p>	<p>(4) Subsection (1) shall not apply to any law so far as the law makes provision—</p> <p>(a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Falkland Islands of persons who do not belong to the Falkland Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or</p> <p>(b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.</p> <p>(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any of the grounds of discrimination referred to in subsection (3)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.</p>
--	---

section may be subjected to any restriction on the rights and freedoms guaranteed by sections 6, 8, 9, 10, and 11 of this Constitution, being such a restriction as is authorised by paragraph (a) or (b) of subsection (3) of section 6, subsection (2) of section 8, subsection (4) of section 9, subsection (4) of section 10 or subsection (2) of section 11, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.