

*Consolidated Version of the Falkland Islands Constitution Order 1985 incorporating amendments made by the Falkland Islands Constitution (Amendment) Order 1997 and the Falkland Islands Constitution (Amendment) (No 2) Order 1997.  
(Page numbers do not correspond with the original document).*

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## STATUTORY INSTRUMENTS

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**1985 No. 444 (incorporating amendments from 1997 No. 864)**

### SOUTH ATLANTIC TERRITORIES

**The Falkland Islands Constitution Order 1985  
(as amended by the Falkland Islands Constitution (Amendment) Order 1997)**

*Made:* 20th March 1985 (19th March 1997)  
*Laid before Parliament:* 28th March 1985 (26th March 1997)  
*Coming into Operation:* 18th April 1985 (1st September 1997)

At the Court at Buckingham Palace, the 20th day of March 1985 (19th March 1997)

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by the British Settlements Acts 1887 and 1945<sup>(a)</sup>, and of all other powers enabling Her in that behalf is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Citation, publication and commencement*

- 1.—(1) This Order may be cited as the Falkland Islands Constitution Order 1985.
- (2) This Order shall be published in the Gazette.
- (3) This Order shall come into operation on the 18th day of April 1985 (amendments come into operation on 1st September 1997).

*Interpretation*

- 2.—(1) In this Order, unless the context otherwise requires—

“the appointed day” means such day (being the day appointed for polling at the general election of elected members of the Legislative Council next following the commencement of this Order) as may be prescribed by the Civil Commissioner by proclamation published in the Gazette;

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<sup>(a)</sup> 1887 c. 54 and 1945 c. 7 (9 & 10 Geo. 6).

“the Constitution” means the Constitution set out in Schedule 1 to this Order;

“the Falkland Islands” means the colony of the Falkland Islands.

(2) The provisions of sections 87 to 89 of the Constitution shall apply for the purposes of interpreting sections 1 to 5 of, and Schedules 2 and 3 to, this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

*Constitution*

**3.** Subject to the transitional provisions set out in Schedule 3 to this Order, the Constitution shall come into effect in the Falkland Islands on the appointed day.

*Revocation*

**4.** The instruments specified in Schedule 2 to this Order are revoked with effect from the appointed day.

*Power reserved to Her Majesty*

**5.** 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 or revoking this Order or the Schedules hereto.

*G. I. de Deney,*  
Clerk of the Privy Council.

SCHEDULE 1 TO THE ORDER

**THE CONSTITUTION OF THE  
FALKLAND ISLANDS**

Arrangement of Sections

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## CHAPTER I

### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Whereas 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;

And whereas the realization of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;

And whereas every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression (including freedom of the press) and of peaceful assembly and association; and
- (c) protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation:

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

1. The provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid individual 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 of his life intentionally save in execution of the sentence of a court in respect of a crime of treason of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;

- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

**Protection of right to personal liberty.**

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

- (a) in consequence of his 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 he has been convicted;
- (c) in execution of an order of a court punishing him for contempt of that court or of another court or of a tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;
- (e) for the purpose of bringing him before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence under any law;
- (g) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (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 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 is being conveyed through the Falkland Islands in the course of his extradition or removal as a convicted prisoner from one country to another; or



(k) to such an extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within the Falkland Islands or prohibiting him 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 extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of the Falkland Islands in which, in consequence of any such order, his presence would otherwise be unlawful.

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

(3) Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communications with him, and in the case of a minor he shall also be afforded a reasonable opportunity for communication with his parent or guardian:

Provided that when the person arrested or detained is unable to retain a legal practitioner of his own choice or be represented by a legal practitioner at the public expense, he may be represented, and hold private communication with, such person as the court may approve.

(4) Any person who is arrested or detained—

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under any law,

and who is not released, shall be brought without undue delay before a court.

(5) If any person arrested or detained as mentioned in subsection (4)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial and such conditions may include bail.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from the person who made the arrest or effected the detention, from any person or authority on whose behalf the person making the arrest or effecting the detention was acting or from them both:

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

(7) For the purposes of subsection (1)(b) of this section, a person charged with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he 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.

#### **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, the expression “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period of public emergency or, in the event of any other emergency or calamity that threatens the life and 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 from inhuman treatment.**

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

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

6.—(1) A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout the Falkland Islands, the right to reside in any part of the Falkland Islands, the right to enter the Falkland Islands, the right to leave the Falkland Islands and immunity from expulsion from the Falkland Islands.

(2) Any restrictions on a person's freedom of movement that is involved in his 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 within the Falkland Islands, of any person or on any person's right to leave the Falkland Islands that are reasonably required in the interests of defence, internal security, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within 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 the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) 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 having been found guilty of a criminal offence under a law or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings relating to his extradition or lawful removal from the Falkland Islands;
- (d) for the imposition of restrictions on the freedom of movement of any person who does not belong to the Falkland Islands;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Falkland Islands;
- (f) for the imposition of restrictions upon 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 functions;
- (g) 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 country or to undergo imprisonment in some other country in execution of the sentence

of a court in respect of a criminal offence under a law of which he has been convicted; or

- (h) 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 the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue only of such provision as is referred to in subsection (3)(a) of this section so requests at any time after that restriction was imposed or six months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal consisting of a president appointed by the Chief Justice and two other members appointed by the Governor, acting in his discretion.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity for or expediency of continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

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

7.—(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 possession of or acquisition is for public purposes; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right 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 over the property a right of access to the Supreme Court, whether direct or on appeal from a tribunal or authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled, and for the purpose of obtaining that compensation.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
  - (i) in satisfaction of any tax, rate, statutory contribution, levy or due;
  - (ii) by way of penalty for breach of the law of forfeiture in consequence of breach of the law;
  - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
  - (iv) in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
  - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
  - (vi) in consequence of any law with respect to the limitation of actions or acquisitive prescriptions;
  - (vii) for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

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

- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including any interest in or right to or over property), that is to say—
  - (i) enemy property;
  - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the person entitled to the beneficial interest therein;

- (iii) the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.

(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 for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right to or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided from the public funds of the Falkland Islands.

(4) For the purposes of subsection (1) of this section “purposes” are “public” if they are intended to result or result in a benefit or advantage to the community and, without prejudice to the generality of the expression, includes the development, utilization or disposal of property (in whole or in part) for the promotion of the physical, economic, social or aesthetic well-being of the community; and “property” does not include any minerals in, under or upon any land or waters.

#### **Protection of person or property from arbitrary search or entry.**

**8.—**(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his 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 in the interests of defence, internal security, public safety, public order, public morality, public health, public revenue, town and country planning, the development or utilization of mineral resources, or the development and utilization of property in such a manner as to promote the public benefit;
- (b) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon 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 to that authority or body corporate, as the case may be;

- (c) that is reasonably required for the purpose of preventing or detecting crime;
- (d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (e) that authorises, 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 a court or entry upon any premises by such order,

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

### **Protection of freedom of conscience.**

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

(2) Except with his own consent (or, if he is under the age, of eighteen years, the consent of his 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 own or is contrary to his belief.

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

(4) Nothing contained 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, internal security, 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 to observe and practise any religion without the unsolicited intervention of members of any other religion,

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

(5) Reference 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 freedom of expression including freedom of the press.**

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

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

(3) For the purposes of this section expression may be oral or written or by codes, signals, signs or symbols and includes recordings, broadcasts (whether on radio or television), printed publications, photographs (whether still or moving), drawings, carvings and sculptures or any other means of artistic expression.

(4) 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 Council and the courts, or regulating telephony, posts, telegraphy, broadcasting or public shows; or

(b) that imposes restrictions upon 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 the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

**11.**—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully 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 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 order, public morality or public health; or
  - (ii) for the purpose of protecting the rights or freedoms of other persons; or
- (b) that imposes restrictions upon 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 the authority thereof is shown not to be reasonably justifiable in a democratic society.

**Protection from discrimination on grounds of race, sex, etc.**

**12.**—(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.

(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.

(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.

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

- (a) for the appropriation of public revenues or other public funds;
- (b) with respect to persons who do not belong to the Falkland Islands; or
- (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.

(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 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) 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.

(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 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.

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

**13.—**(1) If any person is charged with a criminal offence then, unless the charge is withdrawn, he shall be afforded 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 is proved or has pleaded guilty;
- (b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he understands, of the nature of the offence with which he is charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal practitioner of his own choice or, where so provided by any law, by a legal practitioner at the public expense or, when he is unable to retain a legal practitioner of his own choice or at the public expense, by such person as the court may approve;
- (e) shall be afforded facilities to examine in person or by the legal practitioner or approved person representing him 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 behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

- (f) shall be permitted to have without payment the assistance of an interpreter if, in the opinion of the court, he has an insufficient understanding of the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence—

- (i) except where, under the provisions of any law entitling him thereto, he is given adequate notice of the charge, the date, time and place of the trial or continuance thereof and afforded a reasonable opportunity of appearing before the court:

Provided that where the foregoing conditions have been complied with, and the court is satisfied that owing to circumstances beyond his control he cannot appear, the trial shall not take place or continue in his absence; or

- (ii) unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

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

(4) 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 more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he 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 criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

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

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

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners (or approved persons) representing them 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 persons under the age of eighteen years 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.

(11) 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) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e) of this section 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 (5) of this section, 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 a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2), and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that it authorises the trial of a defendant by a magistrate for a summary offence to take place in the defendant's absence.

(14) In this section “criminal offence” means a criminal offence under any law.

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

**14.** Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of sections 3, 6(1) and (3), 8, 10, 11 or 12 of this Constitution 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.**

**15.—(1)** When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say—

- (a) he shall, with reasonable promptitude and in any case not more than seven days after the commencement of his detention, be informed in a language that he understands and in detail of the grounds upon which he is detained and furnished with a written statement in a language which he 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 detention a notification shall be published in a public place (and thereafter as soon as possible in the Gazette) stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter during the detention at intervals of not more than six months, his 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 shall be afforded reasonable facilities to consult a legal practitioner of his own choice (or, if he is unable to retain a legal practitioner, such person as the tribunal may approve) who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal practitioner of his own choice or if he is unable to retain a legal practitioner by such person as the tribunal may approve.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his 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) of this section shall be construed as entitling a person to legal representation at public expense.

## **Enforcement of protective provisions.**

**16.—**(1) If any person alleges that any of the provisions of sections 1 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (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) of this section; and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3) of this section,

and may make such declaration 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 provisions of sections 1 to 15 (inclusive) of this Constitution:

Provided that 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) If in any proceedings in any court (other than the Supreme Court, the Court of Appeal, or a court-martial) any question arises as to the contravention of any of the provisions of sections 1 to 15 (inclusive) of this Constitution, 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 his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose 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.

(5) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed by Ordinance for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

## **Interpretation and savings.**

**17.—(1)** In this Chapter, unless the context otherwise requires—

“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 having jurisdiction in the Falkland Islands, other than a court established by a disciplinary law, and includes Her Majesty in Council and, in section 2 of this Constitution, a court established by a 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) the Police Force; or
- (c) a prison service;

“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;

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

(2) In relation to any person who is a member of a disciplined force raised in accordance with such provisions as may be prescribed by Ordinance, 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 other than sections 2, 4 and 5 of this Constitution.

(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 “public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) the provisions of Part II of the Emergency Powers Order in Council 1939(a) are in operation in the Falkland Islands.

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(a) See S.I. 1952 at p. 621.

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

- (a) a citizen who was born in the Falkland Islands; or
- (b) a citizen who was born outside the Falkland Islands—
  - (i) whose father or mother was born in the Falkland Islands; or
  - (ii) who is domiciled in the Falkland Islands and whose father or mother became, while resident in the Falkland Islands, a citizen by virtue of having been naturalised or registered as such or as a British subject or as a citizen of the United Kingdom and Colonies; or
- (c) a citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands; or
- (d) a Commonwealth citizen who is domiciled in the Falkland Islands who either
  - (i) was ordinarily resident in the Falkland Islands for the seven years immediately preceding 1st September 1997; or
  - (ii) has been granted such status under the provisions of an Ordinance providing for the grant of that status to Commonwealth citizens who have been ordinarily resident in the Falkland Islands for a period of at least seven years and has not, in accordance with the provisions of that Ordinance, lost or been deprived of such status; or
- (e) the spouse, widow or widower of such a person as is referred to in any of the preceding paragraphs of this subsection, and, in the case of a spouse, is not living apart from her husband or his wife, as the case may be, under a decree of a competent court or a deed of separation; or
- (f) under the age of eighteen years and is the child, stepchild, or child adopted in a manner recognised by law, of such a person as is referred to in any of the preceding paragraphs of this subsection.

## CHAPTER II THE GOVERNOR

### **The Governor.**

**18.**—(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 upon him 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 and, subject to the provisions of this Constitution and any other law, he shall do or execute all things that belong to his 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:

Provided that 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 oaths of allegiance and for the due execution of that office.

(4) All references to the Civil Commissioner or to the officer administering the Government in any law in force in the Falkland Islands immediately before the appointed day shall, unless the context otherwise requires, be construed as references to the Governor.

(5) 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 has so exercised that function shall not be enquired into in any court of law.

#### **Acting Governor.**

**19.**—(1) During any period when the office of Governor is vacant or the holder thereof is for any reason unable to perform the functions of his 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 18(3) of this Constitution 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 him that he is about to assume or resume the functions of that office.

#### **Defence and internal security.**

**20.** 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; and he 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:

Provided that the question whether the Governor has on any matter consulted with the Commander British Forces or acted in accordance with his advice shall not be enquired into in any court of law.

### CHAPTER III THE LEGISLATURE

#### **Establishment and composition of the Legislative Council.**

**21.**—(1) There shall be a Legislative Council for the Falkland Islands.

(2) The Legislative Council shall consist of eight elected members and two *ex-officio* members, namely, the Chief Executive and the Financial Secretary, and at any time when there is a person holding the office of Speaker, the Speaker.

#### **Constituencies.**

**22.**—(1) The Falkland Islands shall be divided into two constituencies, Camp and Stanley. Camp shall return three elected members to the Legislative Council 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 Council and “Camp” shall be the remainder of the Falkland Islands.

#### **Qualifications for election.**

**23.** Subject to the provisions of section 24 of this Constitution, any person who has attained the age of twenty-one years and who is registered as an elector pursuant to section 27 of this Constitution is qualified to be elected as a member of the Legislative Council in respect of either constituency.

#### **Disqualifications for election.**

**24.**—(1) No person shall be qualified to be elected as a member of the Legislative Council who—

- (a) is, by virtue of his 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 part of the Commonwealth 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 under sentence of death imposed on him by a court of law in any part of the Commonwealth, or 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 by such a court or substituted by competent authority for some other sentence imposed on him 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 Council by any law relating to offences connected with elections; or
- (h) is disqualified for election by any law by reason of his 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 voters.

(2) The reference in subsection (1)(b) of this section 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) of this section—

- (a) where a person is serving two or more terms of imprisonment that are required to be served consecutively he 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 as such notwithstanding that he holds or is acting in a public office which has not been specified, in the manner prescribed in subsection (1)(c) of this section, if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as a member of the Legislative Council; 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 paragraph (c) of subsection (1) of this section or of paragraph (a) of subsection (4) of this section may contain incidental and consequential provisions, including provision that a member who has given such an undertaking as if referred to in the said paragraph (a) shall be incapable of taking his seat in the Legislative Council until he has fulfilled that undertaking and shall vacate his seat if he 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 paragraph (b) of subsection (4) of this section in respect of any office, provision may also be made in pursuance of the said paragraph (c) or the said paragraph (a) in respect of that office.

#### **Vacation of seats.**

**25.** The seat of an elected member of the Legislative Council shall become vacant—

- (a) if he resigns it by writing under his hand addressed to the Governor;
- (b) if he is absent from the meetings of the Legislative Council in such circumstances and for such period as may be prescribed by the Standing Orders of the Council;
- (c) if he ceases to be a Commonwealth citizen or, by virtue of his own act, becomes under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;
- (d) if any circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election thereto by virtue of paragraphs (a), (b), (c), (d), (e), (g) or (h) of section 24(1) of this Constitution; or
- (e) in the circumstances specified in the next following section.

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

**26.—(1)** Subject to the provisions of this section, if a member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council and his seat shall become vacant at the expiration of a period of thirty days thereafter:

Provided that 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 conviction or sentence.

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

(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 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.

### **Qualifications of electors.**

**27.—**(1) Subject to the provisions of subsection (2) of this Section, a person shall be qualified to be registered as an elector for the purpose of the election of members of the Legislative Council if he is a Commonwealth citizen who has attained the age of 18 years and either—

- (a) he enjoys Falkland Islands status; or
- (b) his name appeared on the register of electors for a constituency in force on 1st September 1997.

and, in either case, he was resident in the Falkland Islands on the qualifying date in relation to which his 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 under sentence of death imposed on him by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever named called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him 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 is, for the purposes of Chapter 1 of this Constitution, regarded as belonging to the Falkland Islands; or

(e) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State.

(3) The provisions of section 24(3) of this Constitution shall apply for the purposes of paragraph (b) of the foregoing subsection as they apply for the purposes of paragraph (f) of section 24(1).

(4) (a) In this section “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 Council are to be ascertained; and a different qualifying period may be prescribed in respect of persons not born in the Falkland Islands.

(b) In this section “resident” shall have such meaning as may be prescribed by or under any Ordinance.

(5) The reference in subsection (2)(d) of this section 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.

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

**28.—**(1) A general election shall be held at such time after every dissolution of the Legislative Council as the Governor shall appoint by proclamation published in the Gazette:

Provided that the date so appointed shall not be more than 70 days after the date of dissolution.

(2) Whenever an elected member of the Legislative Council vacates his seat for any reason, other than a dissolution of the Council, 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 Council is sooner dissolved or under Section 29(3) will be dissolved within 126 days of the occurrence of the vacancy.

#### **Prorogation and dissolution.**

**29.—**(1) The Governor may at any time prorogue the Legislative Council by proclamation published in the Gazette.

(2) The Governor may at any time dissolve the Legislative Council by proclamation published in the Gazette.

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

**Determination of questions as to membership.**

**30.**—(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 Council; or
- (b) any member of the Legislative Council has vacated his seat or is required, under the provisions of section 26 of this Constitution, to cease to perform his functions as such.

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

- (a) any question under paragraph (a) of the last foregoing subsection 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 that election or by the Attorney General;
- (b) any question under paragraph (b) of the last foregoing subsection may be made by any person registered as a voter in the constituency for which the member concerned was elected or by any elected member of the Legislative Council or by the Attorney General;

and if an 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 upon 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 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 COUNCIL

#### **Power to make laws.**

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

#### **Sessions of the Legislative Council.**

**32.—**(1) Each session of the Legislative Council 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:

Provided that a period of twelve months shall not elapse between the date when the Legislative Council last sat and the date appointed for the first sitting of its next session.

(2) Each session of the Legislative Council shall terminate when the Council is prorogued or is dissolved without having been prorogued.

#### **Presiding.**

**33.—**(1) There shall preside at each sitting of the Legislative Council—

- (a) the Governor; or
- (b) at any time when there is a person holding the office of Speaker, the Speaker; or
- (c) in the absence of the Governor or, as the case may be, of the Speaker, such member of the Legislative Council as the Governor, acting in his discretion, may appoint to preside at that sitting; or
- (d) if no such appointment has been made, such person as shall be prescribed by the Standing Orders of the Council.

(2) The Legislative Council may elect a Speaker of the Council, who shall be a person, whether or not a member of the Council, who is qualified and not disqualified to be a member of the Council.

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



### **Clerk of the Legislative Council.**

**34.** There shall be a Clerk of the Legislative Council whose office shall be a public office.

### **Participation by non-members.**

**35.—(1)** The Commander British Forces shall have the right to take part in the proceedings of the Legislative Council except that he 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 Council, except that he may not vote.

(3) The person presiding may, provided the Legislative Council considers it desirable, summon any other person to a meeting of the Council notwithstanding that that person is not a member of the Council; and any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Council relating to the matter in respect of which he was summoned, except that he may not vote.

### **Oaths.**

**36.** No *ex officio* or elected member of the Legislative Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he has made and subscribed before the Governor, or such other person authorised in that behalf by him, the oath of allegiance.

### **Quorum.**

**37.—(1)** If at any sitting of the Legislative Council any member of the Council 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 Council the person presiding at the sitting ascertains that a quorum is still not present, the Council shall be adjourned.

(2) For the purpose of the preceding sub-section a quorum shall consist of six members excluding the person presiding at the sitting.

### **Voting.**

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

(2) Subject to the provisions of the next following subsection, the person presiding at a sitting of the Legislative Council shall not vote unless on any question the votes are equally divided, in which case, except as otherwise provided in this section, he shall have and shall exercise a casting vote.

(3) The person presiding shall have a casting vote only if he is an elected member of the Legislative Council; and if upon any question before the Council 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.**

**39.** Subject to section 37 of this Constitution, the Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so took part therein.

#### **Standing Orders.**

**40.—(1)** Subject to the provisions of this Constitution, the Legislative Council 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 his assent:

Provided that no such Standing Orders shall have effect until the Governor, acting in his discretion, by writing under his hand approves them.

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

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

**41.—(1)** Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to such fine as may be provided for by the Standing Orders of the Council.

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

#### **Privileges of Legislative Council and members.**

**42.** Provision may be made by Ordinance prescribing the privileges, immunities and powers of the Legislative Council and its committees, or the privileges and immunities of the members and officers of the Council or of other persons concerned in the business of the Council or its committees, for the purpose of ensuring the due discharge of the functions of the Council and its members at sittings of the Council,

but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

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

**43.** Without prejudice to any provision made by Ordinance pursuant to the provisions of the preceding section of this Constitution, no civil or criminal proceedings may be instituted against any member of the Legislative Council for words spoken before, or written in a report to, the Council or a committee thereof when sitting in public or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

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

**44.—(1)** All laws made under section 31 of this Constitution 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 Council shall in the making of laws observe, so far as practicable, the rules set forth in Annex A to this Constitution.

### **Introduction of Bills etc.**

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

(2) Except on the recommendation of the Governor, the Legislative Council 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 increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Falkland Islands, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Government of the Falkland Islands; or
  - (ii) would 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 former public officer or his widow, children, dependants or personal representatives;

- (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: or
- (c) receive any petition which, in the opinion of the person presiding, requests that provision be made for any of the purposes aforesaid.

**Assent to Bills.**

**46.**—(1) A Bill passed by the Legislative Council 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 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 assent, he shall, acting in his discretion but subject to the provisions of this Constitution and of any instructions given through a Secretary of State, declare that he assents or refuses to assent to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution.

**Publication and commencement of laws.**

**47.** No law made under section 31 of this Constitution shall come into operation until it has been published in the Gazette but the coming into operation of any such law may be postponed and any such law may be given retrospective effect.

**Disallowance of laws.**

**48.**—(1) Any Ordinance to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(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 law shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(a) 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.

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(a) 1978 c.30.

**Governor's reserved power.**

**49.**—(1) If the Governor considers that it is expedient that any Bill introduced or any motion proposed at any sitting of the Legislative Council held in accordance with the provisions of this Chapter should have effect, then, if the Council fails to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any Standing Order of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council 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 Council, including any committee thereof; 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:

Provided that the Governor shall not exercise his powers under this subsection without prior instructions from a Secretary of State, unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted a Secretary of State.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefore.

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

(4) 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.

(5) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

(6) 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 Council, 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.**

- 50.**—(1) The executive authority of the Falkland Islands is vested in Her Majesty.
- (2) Subject to the provisions of 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.
- (3) The Governor, acting in his discretion but after consultation with the members of the Legislative Council, may assign to one or more members of the Legislative Council responsibility for the conduct of any business in the Legislative Council.
- (4) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred upon them by any law.

#### **Executive Council.**

**51.** There shall be an Executive Council which shall consist of three of the elected members of the Legislative Council, elected in accordance with the provisions of section 52 of this Constitution, and two *ex-officio* members, namely the Chief Executive and the Financial Secretary. 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.

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

- 52.**—(1) At the first meeting of the Legislative Council 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 Council first meets after any dissolution thereof.
- (3) A person shall be eligible for election to the Executive Council notwithstanding that he 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 Council 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 54(1) of this Constitution, 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.**

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

- (a) if he resigns his seat in the Executive Council by writing under his hand addressed to the Governor;
- (b) when the Legislative Council first meets after any dissolution thereof;
- (c) if he ceases to be a member of the Legislative Council for any reason other than a dissolution thereof;
- (d) if he is absent from the Falkland Islands without the permission of the Governor;
- (e) if at the expiry of the period for which he is elected to sit on the Executive Council he has not been re-elected for a further period; or
- (f) if his election to the Executive Council is revoked by a resolution of the Legislative Council.

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

**54.—(1)** Whenever an elected member of the Executive Council is by reason of his illness or absence from the Falkland Islands or for any other reason incapable of performing the functions of his office, then the elected members of the Legislative Council shall, if the Governor informs them that is 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 seat when he is informed by the Governor that the circumstances giving rise to his election have ceased to exist.

(3) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person elected to be temporarily a member of the Executive Council as they apply in relation to the member on account of whose incapacity he was elected.

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

**55.—(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 their proceedings, except that if a matter is put to the vote they may not vote.

(2) The person presiding may, when in his opinion the business before the Executive Council makes it desirable, summon any person to a meeting of the Council notwithstanding that that person is not a member of the Council; and any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Council relating to the matter in respect of which he was summoned, except that he may not vote.

#### **Summoning of meetings of the Executive Council.**

**56.**—(1) Subject to the provisions of this section, the Executive Council shall not be summoned except by the Governor, acting in his discretion, who may summon a meeting of the Council at any time and, subject to the provisions of section 59, shall determine what business shall be transacted at that meeting

(2) The Governor shall summon a meeting of the Executive Council if requested in writing to do so by not less than two of its members.

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

**57.** 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 discretion, may appoint to preside at that meeting.

#### **Oaths.**

**58.** No *ex-officio* or elected member of the Executive Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he has made and subscribed before the Governor the oath of secrecy; and no other person shall take part in the proceedings of the Council (other than proceedings as aforesaid) unless he has so made and subscribed the oath of secrecy:

Provided that the Executive Council may exempt any person who is not a member of it from this requirement.

#### **Quorum.**

**59.** No business (except that of adjournment) shall be transacted at a meeting of the Executive Council if less than three members are present.

#### **The Governor to propose questions.**

**60.** The Governor shall alone be entitled to submit questions to the Executive Council but if he shall decline to so submit any question when requested in writing by any member so to do, it shall be competent for such member to require that there be



recorded in the minutes his written application, together with the answer returned by the Governor thereto.

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

**61.**—(1) Subject to the provisions of this section, in the formulation of policy and in the exercise of the functions conferred upon him by this Constitution or any other law the Governor shall consult with the Executive Council.

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

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State pursuant to the provisions of section 18 of this Constitution;
- (b) when the matter is one on which he is required by the provisions of section 20 of this Constitution to consult the Commander British Forces or on which the Commander British Forces has, in accordance with those provisions, given advice to the Governor;
- (c) when exercising any function conferred upon him by this Constitution or any other law where it is provided, either expressly or by necessary implication, that he exercise such function in his discretion or in his judgment or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council.
- (d) if, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- (e) if, in his judgment, the matter is too unimportant; or
- (f) if, in his judgment, the urgency of the matter requires him to act before he can consult the Executive Council:

Provided that in any case falling solely within paragraph (f) of this subsection he shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons therefor.

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

**62.**—(1) In any case in which the Governor consults the Executive Council, he may act against the advice given to him by the Council if he thinks it right to do so.

(2) Where the Governor acts, in pursuance of subsection (1) of this section, against the advice of the Executive Council, he shall without delay report the matter to a Secretary of State with the reasons for his action.

(3) 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 gave upon the question at issue and his reasons.

(4) The question whether the Governor has exercised any power after consultation with the Executive Council shall not be inquired into in any court of law.

### **Minutes.**

**63.**—(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) Twice in each year a full transcript of all minutes of the Executive Council for the preceding half year shall be transmitted to a Secretary of State.

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

**64.**—(1) There shall be an Advisory Committee on the prerogative of mercy which shall consist of—

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

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

- (a) if his appointment is revoked by the Governor, acting in his discretion;
- (b) if he ceases to be member of the Legislative Council or is required, under section 26 of this Constitution, to cease to perform his functions as such;
- (c) in any other case, at the expiration of four years from the date of his appointment.

(3) The Advisory Committee shall determine its own procedure.

### **Power of pardon etc.**

**65.**—(1) The Governor, acting after consultation with the Committee, 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 of forfeiture otherwise due to Her Majesty on account of such an offence.

(2) Whenever any person has been sentenced to death by any court of law in the Falkland Islands, the Governor shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice or, if the Chief Justice presided at the trial, by the Attorney General), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Governor, to be taken into consideration at a meeting of the Committee.

(3) The Governor shall not exercise his powers under this section in relation to any such person as is referred to in the last preceding subsection unless it appears to him to be expedient to do so upon receiving the advice of the Committee thereon; but he shall decide according to his own deliberate judgment, whether the members of the Committee concur therein or not, causing his reasons to be entered in the minutes of the Committee in any case in which he decides to act in opposition to the judgment of the majority of the members of the Committee.

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

(5) In this section “the Committee” means the Advisory Committee on the Prerogative of Mercy.

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

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

- (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 any other person or authority.

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

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, 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 upon him by this section the Attorney-General shall not be subject to the direction or control of any 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.**

**67.** Subject to the provisions of any law, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty's name and on Her 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.**

**68.** 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.**

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

- (a) to meet expenditure that is charged upon 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 71 of this Constitution.

(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 for Oversea Governments and Administrations 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.**

**70.**—(1) The Financial Secretary shall cause to be prepared and laid before the Legislative Council 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 upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an appropriation bill, introduced into the Legislative Council 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 Financial Secretary shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Legislative Council 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 Council before the end of the financial year or, if that is not possible, within 30 days thereafter.

### **Expenditure in advance of appropriation.**

**71.** If the appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Financial Secretary may, to such extent and subject to such conditions as may be prescribed by Ordinance, authorise the withdrawal of moneys from the Consolidated 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.**

**72.—(1)** There shall be such provision as may be prescribed by Ordinance for the establishment of a Contingencies Fund and for authorising the Financial Secretary, if he 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 Council and an appropriation bill shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

### **Public debt.**

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

(2) For the purposes of this section debt charges include interest, sinking 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 Falkland Islands or the Consolidated Fund and the service and redemption of debt thereby created.

### **Audit.**

**74.—(1)** The public accounts of the Falkland Islands and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Principal Auditor and for that purpose the Principal Auditor or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(2) The Principal Auditor shall submit his reports to the Governor who shall cause them to be laid before the Legislative Council.

(3) In the exercise of his functions under this Constitution the Principal Auditor shall not be subject to the direction or control of any person or authority.

## CHAPTER VII

### THE PUBLIC SERVICE

#### **Power to constitute offices.**

**75.** The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for the Falkland Islands and shall so constitute the offices of Chief Executive, Financial Secretary, Attorney General and Principal Auditor.

#### **Power to make appointments, etc.**

**76.** Subject to the provisions of this Constitution, the Governor, acting in his discretion or after consultation with such persons or authority as may be prescribed by Ordinance, may, in Her Majesty's name and on Her Majesty's behalf—

- (a) make, confirm and terminate appointments to any public office;
- (b) exercise disciplinary control over public officers;
- (c) except as otherwise prescribed by law, make and terminate appointments to any other office in the service of the Crown in a civil capacity in the Falkland Islands, and, except as otherwise prescribed by law, all such appointments shall be held during Her Majesty's pleasure.

## CHAPTER VIII

### THE JUDICATURE

#### **Supreme Court.**

**77.—**(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 upon it by this Constitution or any other law.

(2) The Supreme Court shall, subject to section 80 of this Constitution, consist of one judge, that is to say, the Chief Justice.

#### **Court of Appeal.**

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

(2) The Court of Appeal shall, subject to section 80 of this Constitution, consist of—

- (a) a President and two Justices of Appeal or such a 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 own decision.
- (3) The office of a Justice of Appeal shall not without his consent be abolished during his 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.**

**79.**—(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 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 the Republic of Ireland, or of a court having jurisdiction in appeals from any such court; or
- (b) he 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 purposes of this section, a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he 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) notwithstanding that—

- (a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or



- (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

### **Acting Judges.**

#### **80.—(1) If—**

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

the Governor, acting in his discretion but whenever possible after consulting the Chief Justice, may appoint a person possessing such legal qualifications and experience as he 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 thereof is for any reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder thereof has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his 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 reason unable to perform the functions of his office, the Governor, acting in his 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 is removed from office under the next following section, continue to sit for such period as may be specified in the instrument of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in his discretion:

Provided that a person whose appointment so to sit has expired or been revoked may, unless he has been removed from office as aforesaid, continue so to sit for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceedings that were commenced before the expiration or revocation of his appointment.

## **Tenure of office of judges.**

**81.**—(1) Subject to the provisions of this section, a person holding the office of Chief Justice, of President of the Court of Appeal or of Justice of Appeal shall vacate his office upon the expiration of such period as may be specified in the instrument of his appointment to that office:

Provided that a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he has been removed from office under subsection (3) of this section, sit after the date on which he vacates his 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 to deliver judgment or to do any other thing in relation to any proceedings commenced before him before that date.

(2) 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 may be removed from office only for inability to discharge the functions of his 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 the provisions of the next following subsection.

(3) 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, shall be removed from office by the Governor if the question of removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1933(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

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

- (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 inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge 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.

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(a) 1833 c. 41.

(5) The provisions of sections 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance(a) shall apply in relation to a tribunal appointed under the last foregoing subsection 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:

Provided that the tribunal may sit outside the Falkland Islands at such place as the Governor may appoint.

(6) If the question of removing 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 from his office has been referred to a tribunal under subsection (4) of this section, the Governor may suspend him from performing the functions of his 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 should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers of the Governor under this section shall be exercised by him in his discretion.

### **Oaths.**

**82.** Before entering upon the functions of his office, the Chief Justice, any acting judge of the Supreme Court and every judge of the Court of Appeal shall make and subscribe before the Governor or some other person authorised in that behalf by the Governor the oath of allegiance and the oath of office.

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

**83.—(1)** The Court of Appeal shall have such jurisdiction and powers as may be conferred upon 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 the provisions of 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.

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(a) Chapter 12 of the Laws of the Falkland Islands.

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

**84.**—(1) Subject to the provisions of 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 in the Supreme Court.

(2) Subject to the provisions of section 78(4) of this Constitution, rules made under this section may fix the number of judges who may sit for any purpose.

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

**85.**—(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 £1000 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 £1000 or upwards:

Provided that the figure of £1000 may be increased from time to time by Ordinance;

- (c) final decisions in proceedings under section 16 of this Constitution;
- (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 of 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) The foregoing provisions of this section shall be subject to the provisions of section 30(4) of this Constitution.

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

## CHAPTER IX

### MISCELLANEOUS

#### **The Public Seal.**

**86.** 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.**

**87.—**(1) Where any person has vacated any office established by this Constitution he may, if qualified, again be appointed or elected to that office in accordance with the provisions of 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, notwithstanding that 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 upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

#### **Resignations.**

**88.—**(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 hand addressed to the person or authority by whom he was appointed.

(2) The resignation of any person from any such office as aforesaid 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.**

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

“citizen” means a person who is a British citizen, a British Dependent Territories citizen or a British Overseas citizen;

“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;

“law” means any law in force in the Falkland Islands or any part thereof, 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 Council and includes the Governor acting in exercise of the powers conferred on him by section 49 of this Constitution;

“minerals” includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata;

“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 and includes an office of emolument in the Police Force;

“public officer” means a person holding or acting in any public office and includes an officer or member of the Police Force;

“the public service” means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of the Falkland Islands;

“session” means the meetings of the Legislative Council commencing when the Council first meets after its prorogation or dissolution at any time and terminating when the Council is prorogued or is dissolved without have been prorogued;

“sitting” means in relation to the Legislative Council the period during which the Council 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 Council;
- (b) a member of the Advisory Committee on the Prerogative of Mercy;
- (c) a judge of the Supreme Court or of the Court of Appeal;
- (d) 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 is in receipt of a pension or other like allowance in respect of his former tenure of any office.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his 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 consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(6) References in this Constitution to the power to remove a public officer from his 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 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 thereof is himself 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) 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.

(10) Without prejudice to the provisions of section 14 of the Interpretation Act 1978(a) (as applied by subsection (11) of this section), 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.

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(a) 1978 c. 30.

(11) The Interpretation Act 1978 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

Section 44

## 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 imports; 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 it is passed or deemed to have been passed by the Legislative Council; and its position in such series is determined by reference to the day on which the Governor gave his assent thereto;
  - (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 day on which he 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 thereto by proclamation in the Gazette;
  - (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 the operation thereof until the signification of Her Majesty's pleasure thereon, that is to say—

- (a) any Bill for the divorce of married persons;
- (b) any Bill whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (c) any Bill affecting the currency of the Falkland Islands or relating to the issue of bank notes;
- (d) any Bill establishing any banking association or altering the constitution, rights or duties of any such association;
- (e) any Bill imposing differential duties;
- (f) any Bill the provisions of which shall appear to him to be inconsistent with obligations imposed upon the United Kingdom by treaty;
- (g) any Bill affecting the discipline or control of Her Majesty's Forces by land, sea or air;
- (h) any Bill of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights or 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;
- (i) 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;
- (j) any Bill which makes provision for the holder of any public office to stand for election to the Legislative Council;
- (k) any Bill for such an Ordinance as is referred to in section 76 of the Constitution;
- (l) any Bill vesting in the Crown ownership of any minerals;
- (m) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members; and

(n) any Bill containing provisions which have been disallowed:

Provided that 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 him to be inconsistent with obligations imposed upon the United Kingdom by treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Bill be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the law to a Secretary of State together with his reasons for so assenting.

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 into the Legislative Council 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 thereto 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 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

#### 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).

#### OATH (OR AFFIRMATION) FOR DUE EXECUTION OF OFFICE

I, \_\_\_\_\_ do swear (or solemnly affirm) that I well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office (here insert the description of the office).

So help me God. (To be omitted in affirmation).

#### 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).

## SCHEDULE 2 TO THE ORDER

### THE SPECIFIED INSTRUMENTS

The Falkland Islands Letters Patent 1948**(a)**;  
The Falkland Islands Letters Patent 1954**(b)**;  
The Falkland Islands Letters Patent 1962**(c)**;  
The Falkland Islands (Legislative Council) Order in Council 1948**(d)**;  
The Falkland Islands (Legislative Council)(Amendment) Order in Council 1950**(e)**;  
The Falkland Islands (Legislative Council)(Amendment) Order in Council 1951**(f)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1955**(g)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1964**(h)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1972**(i)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1973**(j)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1975**(k)**;  
The Falkland Islands (Legislative Council)(Amendment) Order 1977**(l)**;  
The Falkland Islands and Dependencies (Interim Administration) Order 1982**(m)**;  
The Falkland Islands and Dependencies (Interim Administration) Order 1983**(n)**;  
The Falkland Islands Court of Appeal Order 1965**(o)**;  
The Instructions passed under the Royal Sign Manual and Signet to the Governor and Commander in Chief of the Falkland Islands and the Dependencies thereof of 13th December 1948, as amended by the Additional Instructions of 27th November 1951, 15th November 1955**(p)**, 10th September 1964**(q)**, 10th April 1973**(r)** and 31st March 1977**(s)**.

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**(a)** Rev. VII, p. 586.

**(b)** S.I. 1954 II, p. 2991.

**(c)** S.I 1962 I, p. 1039.

**(d)** S.I 1948/2573.

**(e)** S.I 1950/1184.

**(f)** S.I 1951/1946.

**(g)** S.I 1955/1650.

**(h)** S.I 1964/1397.

**(i)** S.I 1972/668.

**(j)** S.I 1973/598.

**(k)** S.I 1975/1706.

- (l) S.I 1977/423.
- (m) S.I 1982/824.
- (n) S.I 1983/1110.
- (o) S.I 1965/589.
- (p) S.I 1955 II, p. 3187.
- (q) S.I 1964 III, p. 5254.
- (r) S.I 1973 I, p. 2635.
- (s) S.I 1977 I, p. 2185.

## SCHEDULE 3 TO THE ORDER

### TRANSITIONAL PROVISIONS

#### Arrangement of Paragraphs

#### Paragraph

1. Existing laws.
2. Regulations for first general election.
3. Standing Orders of the Legislative Council.
4. General election.
5. Existing public officers.
6. Pending proceedings.
7. Military Commissioner.
8. Interpretation.

#### **Existing laws.**

1.—(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 paragraph), 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 has 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 to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or otherwise for giving effect or enabling effect to be given to those provisions.

(4) The provisions of this paragraph shall be without prejudice to any powers conferred by the Constitution or by any other law upon any person or authority to make provision for any matter, including the alteration of any existing law.

(5) For the purposes of this paragraph the expression “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 but does not include any Act of Parliament of the United Kingdom or Order in Council or other instrument made under any such Act.

### **Regulations for first general election.**

2.—(1) The Civil Commissioner, acting in his discretion, may at any time after the commencement of this Order by regulations make provision for the election of the elected members of the Legislative Council; and such regulations may contain any matter for which provision is made in, or could by Ordinance be made under, Chapter III of the Constitution.

(2) No election of members of the Legislative Council shall be held under regulations made under this section until the appointed day; but electoral districts may be established, registration of voters take place and all other things necessary or expedient to prepare for such elections may be done in pursuance of such regulations at any time after the commencement of this Order.

(3) Any regulations made under this section may amend or revoke any law relating to elections to the Legislative Council established by the former Constitution and may bring it into conformity with the Constitution.

(4) Regulations made under this section shall be published by the Civil Commissioner in the Gazette.

(5) Until such time as it is otherwise provided by Ordinance made under the Constitution the provisions of any regulations made under this section shall have effect on and after the appointed day as if they had been so made.

### **Standing Orders of the Legislative Council.**

3. The Standing Orders of the Legislative Council under the former Constitution as in force immediately before the appointed day shall, until it is otherwise provided under section 40(1) of the Constitution, be the Standing Orders of the Legislative Council, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

### **General Election.**

4. A general election of members of the Legislative Council shall be held not later than 13th October 1985; and if such election is not held by the date on which, in accordance with the provisions of the former Constitution, the Civil Commissioner is required to dissolve the Legislative Council, the Civil Commissioner may, by order published in the Gazette, prescribe a later date for such dissolution, provided that such date shall be no later than the appointed day.

### **Existing public officers.**

5.—(1) Subject to the provisions of the Constitution every person who immediately before the appointed day held or was acting in an office established under the former Constitution shall, as from the commencement of the Constitution, continue to hold or act in that office or the corresponding office established by the Constitution as if he had been appointed thereto in accordance with the provisions of the Constitution:

Provided that any person who under any law in force immediately before the appointed day would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) The reference in subsection (1) of this section to offices established under the former Constitution does not include a reference to the office of elected member of the Legislative Council or of the Executive Council.

### **Pending proceedings.**

6. Any proceedings pending immediately before the appointed day in the Supreme Court or the Court of Appeal established for the Falkland Islands may be continued after the appointed day in the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

### **Military Commissioner.**

7. As from such day (not being before the commencement of this Order or on or after the appointed day) as may be prescribed by the Civil Commissioner by notice published in the Gazette, the Falkland Islands and Dependencies (Interim Administration) Order 1982(a) shall have effect as follows:

- (a) the provisions regarding the Military Commissioner in sections 3 and 6 thereof shall no longer have effect; and
- (b) the references in sections 5, 7 and 8 thereof to the Military Commissioner shall be construed as references to the Commander British Forces.

### **Interpretation.**

8. In this schedule “the Constitution” means the Constitution set out in Schedule 1 to this Order and “the former Constitution” means the constitution of the Falkland Islands as in force immediately before the appointed day.

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EXPLANATORY NOTE  
*(This Note is not part of the Order.)*

This Order establishes a new Constitution for the Falkland Islands.

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(a) S.I. 1982/824.