

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Revised Laws Project – Appointment of Law Commissioner
Paper No: 267/13
Date: 11 December 2013
Report of: Attorney General

1.0 Purpose

1.1 The purpose of this report is to present to Executive Council proposals to establish the post of Law Commissioner to provide the additional capacity required to drive forward the Revised Laws Project and meet our Constitutional obligations.

2.0 Recommendations

2.1 Honourable Members are recommended:

- a) to approve the establishment of the post of Law Commissioner initially for two years; and
- b) agree to the release of funding allocated for this purpose.

3.0 Additional Budgetary Implications

None.

4.0 Background

4.1 Members will be aware that there are urgent and serious difficulties with the state of the laws in the Falkland Islands, and the inaccessibility of the laws to the people of the Falkland Islands and that work has been undertaken to identify the best way to tackle this issue.

4.2 A report was considered by Executive Council in April 2012 (85/12) which set out the issues in detail and proposed an action plan to address the problem. Executive Council approved the action plan and funding was made available to take forward the action plan. The group established to take forward the action plan identified the need for expert advice on the options. A tendering exercise was undertaken late 2012 and a contract for consultancy advice was awarded to Daniel Greenberg and Philip Davies in January 2013.

- 4.3 Daniel Greenberg and Philip Davies submitted their final report in June 2013 and this was made available to Members at the time in electronic form at Gilbert House (the report was too bulky to circulate by email or in paper format).
- 4.4 A further report was taken to Executive Council in June 2013 (141/13) presenting the final report from Daniel Greenberg and Philip Davies. The report contained 51 recommendations and provided a route map over two years for work that needed to be done to reach the position where an authoritative version of Falkland Islands Law could be published and made accessible to the people of the Falkland Islands. Members at the time were asked for a policy steer on a number of matters including moving toward a Falkland Island statute book and re-establishing the role of Law Commissioner. Executive Council having considered the final report from Daniel Greenberg and Philip Davies supported moving forward toward a Falkland Island statute book and agreed that there should be a further paper concerning the role of a Law Commissioner and further detail on the costs and implementation of the revised laws project.
- 4.5 Due to lack of capacity in the Attorney General's Chambers there has been no substantive progress made on this project since June 2013 and without additional capacity there is unlikely to be any further substantive progress. However, increasing focus on the need to make progress as identified in the recent MOJ report and LFF report has led to a proposal to reinstate the role of Law Commissioner and use that role to drive forward this project and then to continue to be responsible for law revision and consolidation for the Falkland Islands.
- 4.6 This paper sets out the proposal to appoint a Law Commissioner to take forward this project and discharge the substantive role of Law Commissioner.

5.0 Proposal to Appoint a Law Commissioner

- 5.1 In the report of Daniel Greenberg and Philip Davies, in summary, and amongst other things, it was recommended that:
- The existing office of Law Commissioner be revived in a modified form to reflect dual roles for revision and ongoing publication (currently there is a statutory requirement for there to be a Law Commissioner which is not compiled with).
 - The Commissioner should have sufficient operational independence to be effective.
 - The Commissioner should have as part of their remit the consolidation of laws, including UK law in its application to the Falkland Islands; replacing application of UK law with a self-sufficient ordinance (as part of a long-term shift towards legislative self-sufficiency).
 - Serious consideration should be given to the creation of a separate post at full time (or equivalent) level.
 - That the post should be accountable to the Attorney General but the role should not be held by the Attorney General.
 - That for costing purposes the Commissioner role should be considered as a full time senior lawyer role.

- 5.2 It is considered it is not a viable option to continue to try to deliver the revised laws project with current staffing resources as this will be highly unlikely to deliver the aim of publicly accessible laws in any reasonable timescale. The reinstatement of a Law Commissioner role, as a separate full time post with the specific task of delivering this project and thereafter being responsible for the maintenance and future revision and consolidation of the laws of the Falkland Islands takes on board the recommendations of the report by Messrs Greenberg and Davies, but also provides a practical way forward for the delivery of this project.
- 5.3 It is considered and recommended by the Greenberg/Davies report that the responsibilities and demands of the Law Commissioner post would require a senior legal professional. The initial tasks for the post holder going forward include project planning and management combined with a requirement to analyse the existing legislation and produce a baseline text (estimated to take 6-12 months by itself), together with liaison with IT specialists to agree database design and publication requirements. It is recommended that the post form part of the establishment of the Attorney General's Chambers reporting directly to the Attorney General (although lack of space may mean that the post holder has to be located elsewhere).
- 5.4 Funding has been previously allocated for the elements of the revised laws project itself, but only on the basis that the detail of the project be further considered by ExCo before any funding can be released. Because re-establishment of the Law Commissioner is proposed to be a full time initially two year post, that also requires establishment approval. It is estimated that annual cost of a Law Commissioner post could be in the region of circa £80k, although the post has not been evaluated yet.
- 5.5 It is recognised that it is not desirable to create new posts partway through a financial year and that ideally the need for posts is dealt with through the normal budgetary process. However in this case it is considered that the need to make progress on the revised laws project is growing increasingly urgent and as economic activity increases, the risks of not progressing this project increase. These risks concern the uncertainty of the laws, potential adverse effect on inward investment caused by legal uncertainty, the risk of unexpected application and interpretation of laws by the courts, and the continued unacceptable position of the people of the Falklands not being able to access the law.
- 5.6 Executive Council is asked to approve the establishment of a Law Commissioner post initially for two years. A job description will need to be prepared and evaluated before the post could be advertised.

6.0 Financial Implications

- 6.1 As set out in this report it is estimated that establishment of a Law Commissioner post will incur a costs of circa £80k per annum and this is already included in the existing budget provision.

7.0 Legal Implications

7.1 The legal implications are covered in this report.

8.0 Human Resources Implications

8.1 A job description for the post of Law Commissioner will need to be prepared and evaluated before a recruitment exercise can be undertaken.