

EXECUTIVE COUNCIL

PUBLIC

Title:	Interim Programme of Law Revision, etc
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Responsible Director:	Attorney General
Report Author:	Statute Law Commissioner
Portfolio Holder:	MLA Roger Spink (MLA Roger Edwards) Treasury, Finance & Regulatory Services
Reason for paper:	This paper is submitted to Executive Council (a) for information; and (b) for policy decision
Publication:	Yes
Previous papers:	27/17 - Post Revised Laws Project - Processes For Potential Ongoing Programme of Law Revision 150/17 – Revised Laws Project – Project Closure Report to Executive Council
List of Documents:	Appendix – List of legislative issues/problems identified under the Revised Laws Project

1. Recommendations

Honourable Members are recommended to:

(a) note the proposed interim programme of law revision which is to be put before the Legislative Assembly in May (*see paragraph 8*);

(b) note that Executive Council will be consulted in July/August in relation to the substantive annual law revision programme and 5 year plan before submission to the Assembly (*see paragraphs 5.13-5.15*);

(c) agree that:

(i) proposals for consultation about the annual programme for law revision should be simplified (*see paragraph 5.12*); and

(ii) the Statute Law Commissioner should work with the Attorney General to consider the potential to undertake a wider programme of law reform work, and to formulate recommendations as appropriate (*see paragraph 6*).

2. Additional Budgetary Implications

There are no additional budgetary implications arising from this paper.

3. Executive Summary

The purpose of this paper is to advise Executive Council about proposals around the programme of law revision required under the Law Revision and Publication Ordinance 2017.

4. Background and Links to Islands Plan

4.1 The Statute Law Database, published in July 2017, gives effect to the 2014-18 Islands Plan commitment to produce and maintain an authoritative statement of Falkland Islands legislation which will be freely and publicly available.

4.2 The Law Revision and Publication Ordinance 2017, which gave effect to the Database, also provides for a programme of ongoing law revision. The purpose of a programme of law revision is to prevent the statute book becoming cluttered with ineffective and obsolete law - hampering the efficient operation of society, and which, if allowed to continue over a very long period, could ultimately threaten the rule of law.

4.3 A law revision programme could also, as identified in the Davies/Greenberg report (2013), form the basis of a move towards localisation of our laws; ie moving away from the reliance on the adoption of UK laws (where appropriate and convenient), to make the Falkland Islands more self-sufficient in its law.

4.4 So, the on-line publication of our laws in July 2017 was just the starting point for realising a long term ambition of an accessible, modern, and localised statute book.

5. Law Revision

What is law revision?

5.1 Law revision is not defined within the Law Revision and Publication Ordinance, but does have a generally accepted meaning. That is; it involves reorganisation of the law and improvement of its accessibility and clarity, but it is not intended to alter the law.

What about law reform?

5.2 Law revision may also be supplemented by wider law reform; which does aim to change the law (although generally in a non-partisan or non-controversial way). In England and Wales, for example, the Law Commission is required to carry out programmes of both law revision and law reform. However, the Law Revision and Publication Ordinance 2017

does not provide for a programme of law reform in the Falkland Islands, so this paper also recommends that the potential for wider law reform is further explored (paragraph 6).

How is law revision carried out?

5.3 Under the Law Revision and Publication Ordinance, law revision includes the following four main areas of work;

- (a) preparation of reports to the Assembly about the development of United Kingdom laws;
- (b) the repeal/revocation of obsolete laws;
- (c) revision/consolidation of Falkland Islands laws; and
- (d) the process of consolidating adopted UK laws into the form of a local statute; ie replacing the application of the UK law with a self-sufficient local statute.

5.4 The work at (a) is already occurring through the regular (ordinarily monthly) preparation and submission of reports to the Assembly about the development of UK laws. This paper is focussed on how the work at (b) to (d) is best undertaken.

5.5 The work at (b) is fairly self-explanatory in nature – a statute book containing obsolete laws can be confusing and will become less effective over time.

5.6 The work at (c) involves reorganising and/or bringing together laws on a particular subject, and modernising and simplifying the language used; in order to make the law on that subject clearer, more accessible, and more effective (but without changing it).

5.7 The work at (d) is particularly significant to the Falkland Islands in terms of advancing localisation of our laws. This type of consolidation brings with it the advantage of breaking the policy dependence on the UK, but of course must be balanced against our limited resources for maintaining our own policy development and producing our own legislation.

Who is responsible for the law revision programme?

5.8 The Statute Law Commissioner was appointed for two years from June 2017, with the post to be reviewed after 18 months; to enable Members to determine the value of a full time post. The Statute Law Commissioner has the duty of keeping the Statute Law Database up to date as well as undertaking a continual programme of law revision.

What are Executive Council and Legislative Assembly roles?

5.9 Section 8 of the Law Revision and Publication Ordinance requires the Law Commissioner to report annually to the Legislative Assembly about use of the Database, and to include:

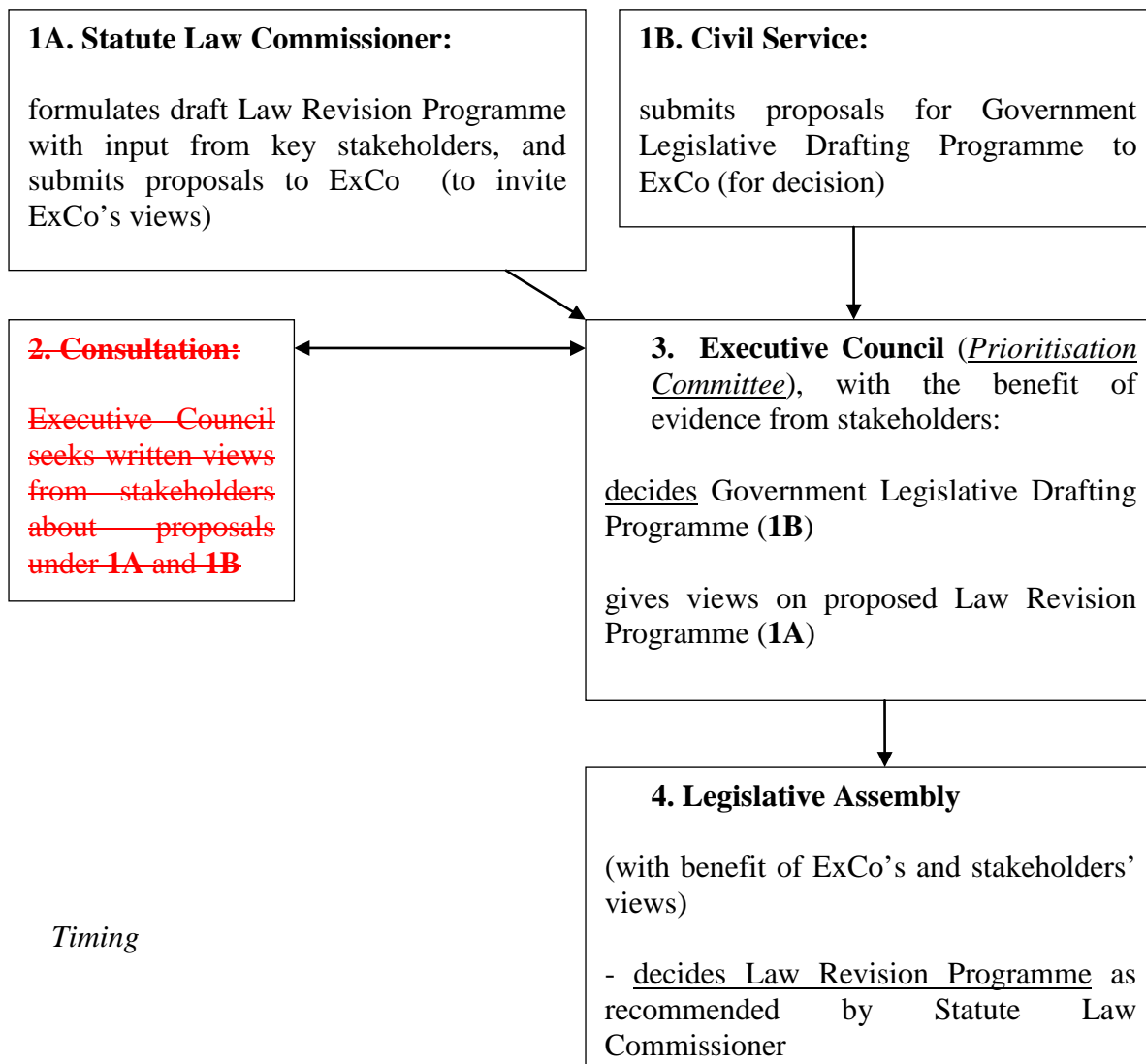
- (a) proposals for priorities and objectives for the programme of law revision for the coming year; and

(b) a five year plan for priorities and objectives for the programme.

5.10 The Law Commissioner is required to give effect to any recommendations of the Legislative Assembly in respect of the proposed programme. So it is the Assembly which controls the programme of law revision.

5.11 However, under Executive Council paper 27/17, various options were put forward for consultation with stakeholders about the programme before it is agreed by the Assembly. It was agreed that Executive Council has an important role in that consultation, in particular to ensure that the law revision programme and Government's ordinary programme of legislative drafting are coordinated as far as reasonably possible.

5.12 It was agreed by Executive Council that the consultation process would be as set out in the diagram below, although changes to it are now proposed. On working through how it will be implemented in practice, the process appears unnecessarily complex – it would take a minimum of four to five months to reach a conclusion given the successive layers of consultation. It is therefore proposed that the process reflected in item 2. in the diagram below should be omitted. Stakeholder consultation in relation to the law revision proposals will form part of step 1A (and formal stakeholder consultation has not previously taken place in relation to the Government legislative drafting programme in any event, so it is not considered critical as part of this process):



Timing

5.13 The Law Commissioner's first annual report including proposals for the coming year's law revision programme (and 5 year plan) will report on the period 31 July 2017 to 31 July 2018, and so will be submitted to the Assembly in August/September 2018.

5.14 Interim proposals for a programme of law revision were to be made during the early part of the 2017/18 reporting year (ie to cover law revision work for the period before the annual report is due), but interim proposals are being made substantially later than envisaged; because of delays in the initial publication project, and the temporary diversion of the Law Commissioner to another role.

5.15 This means that the consultation process cannot be followed in respect of formulation of an interim programme as set out above. Instead Executive Council is being advised of the interim programme at the same time that it is put to the Assembly. However the consultation process will be followed in respect of the proposals for the 2018/19 programme; so Executive Council will be consulted in July/August in respect of that programme.

6. Law Reform

6.1 Executive Council paper 27/17, which outlined the way in which it was proposed that a programme of law revision would work, failed to properly distinguish between; (a) law revision – which does not seek to alter the law; and (b) law reform – which does seek to alter the law.

6.2 However, initial analysis of work which might make up a law revision programme appears to indicate the need for some broader law reform work. That is, work which falls between:

(a) a law revision programme (which excludes substantive alteration of the law); and

(b) the Government's ordinary legislative drafting programme (which is usually made up of significant, policy driven, alteration of the law, rather than improvements to the effectiveness of existing law).

6.3 On this basis, it is proposed that the Statute Law Commissioner carry out further work with the Attorney General to determine whether it is appropriate to propose a programme of law reform, in addition to the programme of law revision, and what additional resources (if any) would be required in respect of that work.

7. Areas of Potential Law Revision Work

The following paragraphs identify the potential work for future law revision; reference the three strands of work set out at paragraphs 5.3 (b), (c) and (d):

Repeal/revocation of obsolete laws:

7.1. During the process of gathering legislation for the Statute Law Database, the Law Commissioner noted a number of inadequacies/errors in our laws which could not be properly dealt with during that project, including a number of laws for potential repeal. Those are set out in the Appendix (laws for potential repeal are listed at paragraph B).

7.2 Any laws which can quickly and confidently be confirmed as suitable for repeal will be identified as part of the interim law revision programme, and a Repeal Bill proposed.

Revision and consolidation of locally made legislation:

Interpretation and General Clauses Ordinance 1977

7.3 The Interpretation and General Clauses Ordinance's primary purpose is to make provision in relation to the construction, application and interpretation of laws in the Falkland Islands, but it also makes general provision in relation to the following things:

- (a) printing and publication of laws;
- (b) Legislative Assembly processes around the making of secondary legislation;
- (c) public officers;
- (d) making of rules for the process of appeals to the Governor in Council;
- (e) fees and charges;
- (f) penalties;
- (g) forfeiture of property; and
- (h) declaration of town, and division of the Falkland Islands into districts.

7.4 The Interpretation and General Clauses Ordinance is key to clarity in the construction, application and interpretation of the laws in the Falkland Islands. Although the Ordinance has been subject to some amendment since it was made, its effectiveness has never been subject to full review, and some of its provisions now appear to be significantly out of date, unclear, or simply inapplicable to current circumstances. For these reasons, revision of this Ordinance is considered to be the first, most obvious, and potentially most beneficial, subject of the proposed law revision programme. However, a revision of the Ordinance in the traditional sense, ie a reorganisation of its provisions to make it clearer, but without changing its substance, is unlikely to address all issues identified during the review process. So this provides the first example where the potential for including work of a law reform nature alongside law revision would likely be beneficial.

Other legislation

7.5 The list of issues set out in the Appendix also highlights a number of other matters which could properly be incorporated into a programme of law revision.

Consolidation of United Kingdom Laws adopted in the Falkland Islands

7.6 The Falkland Islands currently adopts just under 400 United Kingdom Laws (roughly 210 Acts, and 175 secondary instruments).

7.7 Replacing our adoption of some of these laws with text having the same effect in the form of a bespoke Falkland Islands statute is proposed as part of our law revision programme because this would make the relevant law much easier to access and to understand.

7.8 It is often difficult to understand how adopted English laws apply in the Falkland Islands because law in one area can be made up of a combination of several United Kingdom laws of varying age, together with modifications contained in our own adopting law, ie you have to look at two or three documents at the same time to establish what the law is.

7.9 The Revised Laws Project also identified a number of areas where the Falkland Islands relies on out-dated versions of English law. This makes the law particularly difficult to access; because the relevant version will often difficult to find (especially for someone without legal experience or with no access to legal advice); even with the lists of applicable UK laws now being readily available through the Statute Law Database.

7.10 The Statute Law Commissioner believes that the following are the most significant areas where our law is both difficult to access and to understand for at least one of the reasons given above:

- (a) Administration of Justice (civil procedure; including coroners, execution against debts, and bailiffs)
- (b) Companies
- (c) Bankruptcy/Insolvency
- (d) Charities
- (e) Consumer rights
- (f) Adoption
- (g) Mental Capacity

7.11 Consolidating any of these areas of law would involve a project too large to achieve within the short period available for the interim programme of law revision, but preliminary research work will be done to enable a clear programme to be put to the Assembly in due course (and which will be the subject of consultation with Executive Council).

8. Summary of interim law revision programme:

8.1 The Law Commissioner will be reporting to the Assembly in May that the following work will be incorporated into the interim law revision programme (to cover the period May – July/August):

- (a) Production of a Statute Repeal Bill to incorporate any laws which can be confirmed for repeal without significant further research or consultation;
- (b) Revision of the Interpretation and General Clauses Ordinance 1977;
- (c) Initial research into appropriate prioritisation of consolidation of UK laws in the areas referred to in paragraph 7.3 above;
- (d) Work with the Speaker and legislative colleagues to determine whether the Legislative Assembly's Standing Rules and Orders could benefit from amendment to deal most efficiently with any Bills arising from the law revision programme.

9. Resource Implications

9.1 Financial Implications

There are no financial implications arising from this paper.

9.2 Human Resource Implications

There are no human resource implications arising from this paper.

9.3 Other Resource Implications

There are no other resource implications arising from this paper.

10 Legal Implications

There are no direct legal implications arising from the subject of this paper; although of course the general subject matter of the paper is about accessing, maintaining, and improving the statute book.

11. Environmental & Sustainability Implications

There are no environmental or sustainability implications arising from this paper.

12. Significant Risks

There are no significant risks arising from this paper.

13. Consultation

MLA Portfolio holders for Law and Regulation have been consulted in relation to this paper.

Due to the timing for and relatively minor nature of the proposed interim programme, there has been no external stakeholder consultation in relation to this paper

14. Communication

It is recommended that this paper be published. The Law Commissioner is also shortly to start stakeholder consultation about issues noted in this paper – in particular concerning the potential law revision programme for 2018/19 (and accompanying 5 year plan).

List of legislative problems/issues identified under the Revised Laws Project

A. Legislation containing apparent error/ineffective provision:

Children Ordinance 2014	- lack of clarity in interaction with adopted UK law
Civil Jurisdiction (Offshore Activities) Order 1998	- lack of clarity in reference to UK laws
Construction and Use (Seat Belts) Regulations Order 1996	- lack of clarity in reference to EU laws
Control of Drinking by Juveniles Ordinance 1993	- apparently conflicting penalty provision
Criminal Justice Ordinance 1989	- various matters
Customs Ordinance 2003 and associated Orders	- various matters
Drug Trafficking Ordinance 1997	- contains arguably ineffective provision
Falkland Islands Status (Form of Application) Regulations 1999	- inconsistent with Constitution
Finance and Audit Ordinance 1988	- inconsistent with Constitution
Interest on Debts Ordinance 2002	- lack of clarity in reference to UK Act
Medicines Ordinance 2006	- ineffective reference to UK “poisons list”
Misuse of Drugs Ordinance 1987 and associated regulations	- arguably ineffective provisions
Nature Reserve/Wild Bird etc Sanctuaries Orders	- arguably ineffective provisions
Proceeds of Crimes Ordinance 2006	- lack of clarity in references to UK legislation

B. Legislation for potential repeal:

Bribery and Corruption Overseas Ordinance 2006	- replaced by provision in Crimes Ordinance 2014?
Currency Notes (Validation) Ordinance 1991	- largely spent?
Publications (Import Prohibition) Ordinance 1938	- replaced by provision in Crimes Ordinance 2014?
Civil Contingencies (Emergency Powers) Ordinance 2006	- overtaken by the Emergency Powers (Overseas Territories) Order 2017 (SI 2017/181)?

C. Legislation either entirely out of date or significantly so:

- Civil Procedure (Execution) Ordinance 1938
- Companies and Private Partnership Ordinance 1922
- Electoral Ordinance 1988
- Family Allowances Ordinance 1960

- Infectious Disease Ordinance 2003
- Misuse of Drugs Ordinance 1987
- Police Reserve Regulations 1969
- Public Health Ordinance 1894
- Road Traffic Ordinance 1948
- Road Traffic (Removal of Vehicles) Regulations 1979

D. Legislation significantly inoperable due to the need for regulation to be made under it:

- Gas Ordinance 1979
- Medicines Ordinance 2006

E. Legislation not yet commenced:

- Aerodromes Regulations 2013
- Medicines Ordinance 2006
- Race Relations Ordinance 1994
- Mining (Amendment) Ordinance 2007
- Proceeds of Crimes Ordinance 2006
- Public Accounts Committee (Form of Summons and Warrant) Order 2010