

**LEGISLATIVE ASSEMBLY
OF THE
FALKLAND ISLANDS**



**RECORD OF THE
SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION
HELD ON WEDNESDAY 13 FEBRUARY 2019
IN THE COURT & ASSEMBLY CHAMBERS
STANLEY, FALKLAND ISLANDS**

**Select Committee of Elected Members on the Review of the Constitution
Court & Assembly Chambers**

Wednesday 13 February 2019

Attendance:

Elected Members

The Honourable Roger Edwards (Chair)

The Honourable Stacy Bragger

The Honourable Dr Barry Elsby

The Honourable Ian Hansen

The Honourable Mark Pollard

The Honourable Leona Roberts

The Honourable Roger Spink

Keith Biles JP (Deputy Chair)

Apologies

The Honourable Teslyn Barkman

Officers

Rosalind Cheek, Statute Law Commissioner

Richard Hyslop, Senior Policy Advisor

SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION

WEDNESDAY 13 FEBRUARY 2019

IN THE COURT & ASSEMBLY CHAMBERS

Introduction

The Honourable Roger Spink

I shall open the Select Committee on the Review of the Constitution.

The first item on the agenda is the Chairmanship. I would like to propose that Mr Roger Edwards should be Chair of the Committee, despite the fact that I was asked to Chair the Committee during the Legislative Council I would like to hand the Chairmanship to Roger Edwards.

Is everyone happy for that to take place?

Honourable Members

Yes

The Honourable Roger Spink

Good, we will change seats then shall we?

The Honourable Roger Edwards

Thank you Roger, and we will need a Deputy Chair for this in case of illness or absence or other reasons and it has been proposed that the Speaker of the House, Mr Keith Biles, be elected as Deputy Chair.

Does anyone have any objections to that?

Honourable Members

No objection.

The Honourable Roger Edwards

So everyone is content with Speaker of the House as Deputy Chair. Mr Speaker, would you like to join us at the table.

Agenda item two is the Scope of the Review; however before we go on to that I would just like to make a few points about this particular Select Committee. This is a Select Committee

of the whole House, not of just Members. Therefore, similar rules apply as what applies to the Legislative Assembly.

There are a few changes to that however. During the Select Committee, if any committee members wish to speak would they please raise their hand and make it absolutely plain they wish to speak. If it is not made plain who is speaking by the Chair, i.e I invite the Honourable Ian Hansen to speak, would he please state his name before he speaks until we get used to the voices being recorded. During a previous Select Committee we had great problems when we were transcribing the record people were muttering and we couldn't make out what they were saying, or we didn't know the voices as they were not clear enough to identify who had been speaking. The second point is please identify yourself, either the Chair will do it or please do it yourself.

A change to the normal rules; if you are speaking at the Select Committee you do not have to stand while you are speaking, you may remain seated. I have already mentioned please speak clearly; this is purely to make it easier for those who are transcribing the meeting.

Please can I ask that we have no mobile phones in the Select Committee meetings - if you do have a mobile phone, please ensure it is turned off and if you have any other electronic devices please ensure that they are on silent so that we are not disturbed and it doesn't break into the recordings.

I will remind everyone that the Select Committee, the whole process, is open to the public and we welcome those members of the public here today.

At some time we will probably need some professional advice as to the Constitutional matters and we will have to give that thought as to who and what and when, but that is not in the scope of today's review.

Once we begin to review the Constitution then other agencies, such as the United Kingdom Government and the Foreign Office, may wish to make inputs also to the Constitutional change. On that basis, in 2016 the previous Assembly looked at the Constitution to see if there was a case for reviewing the Constitution. They determined that it was necessary, there were some pretty minor amendments but some they thought were more weighty. They did write a letter to the then Governor, Colin Roberts, and asked if he would consult as necessary to seek agreement that a review would be welcomed by Her Majesty's Government and provide any feedback or recommendations from the appropriate sources. To my knowledge we have not had a response so action one of this Select Committee is to chase up where this letter went and what response we have had from it.

On to agenda item two, the Scope of the Review, you will all be asked to comment on the Constitution and why you think we need to go forward with the Review. As I mentioned, in 2016 the previous Assembly thought there was a case and indeed following the election of the current Assembly, we did say in our Islands Plan that we would look to reviewing the Constitution. This is the opening meeting of that Review and we need to set out a scope of that.

Firstly we need to present a case for undertaking a Review of the Constitution. Those attending will be free to comment and provide their own thoughts on that and I will be asking that this Committee comments shortly, and we have already elected a Chair and Deputy Chair for this Select Committee.

Does anyone wish to speak on the Scope of the Review?

The Honourable Ian Hansen

Mr Chairman, very broadly of course, I think it is good practice for any country, any Overseas Territory in our case, to take a review of the Constitution every ten years or perhaps less. It has now been ten years since our Constitution came into being so I think very broadly that is, from my view, a very good reason for this review to take place.

The Honourable Roger Edwards

Thank you. Anyone else?

The Honourable Mark Pollard

Thank you Mr Chairman.

I think our Constitution already probably is one of the more modern amongst the OTs, but things change over time, and I think it is pertinent to review the Constitution. This was something I was committed to before the election and remain now.

The Honourable Roger Edwards

Thank you.

The Honourable Leona Roberts

Mr Chairman, just to say very much the same really. I think it is appropriate that we do review our Constitution on a fairly regular basis and I think, particularly in the light of some of the amendments that were noted in that letter, we do want to see some progress on that.

This is obviously a first for me; I very much look forward to seeing how the process works and to getting into the detail of this.

Thank you.

The Honourable Roger Edwards

Thank you, anyone else?

The Honourable Stacy Bragger

Thank you, I think it is only natural that there is gap of ten years to undertake a review of the Constitution; it is only natural if we want to continue developing as an internally self-governing overseas territory and to make sure our Constitution is in line with current practice. I think there is a lot of issues that I would like to see addressed in the review such as reconsider our ministerial system of Government. I think a point I made at the Legislative Assembly meeting was that we have a very lengthy legislative and policy list of things to be getting on with, and I am very keen that we tackle those areas so I wouldn't like us to get too bogged down or devote a disproportionate amount of time to Constitutional review; it has to be proportionate to the other important work that we all want to see.

I support this work going forward.

The Honourable Roger Edwards

Thank you, does any other Member wish to comment? Thank you then for those comments.

I will remind you that the previous review of the Constitution was done purely by Members and perhaps Members in due course would like to look and see if they wish to continue with that, looking at it from Members point of view, from members of the public and members of Associations and businesses and so on, or whether we need to take it to a Constitutional Commission even. That will be done outside of this meeting.

I remind you that the last Constitutional Review started in May 2000 and took until December 2006 before it was finally agreed and that was presented in January 2007 for the final deliberations. It did not come into being; it took a full two years from that date before it finally came into being on the 1st January 2009. It took over eight years. I think we are being rather ambitious in our outlook on the proposals and the plan, however a plan is a basis for change and we have got to look at it in that respect. I think we need to do it as quickly as possible but also we need to do it as thoroughly as possible.

So the 'Procedure for the Review', which is agenda item three, this is the preliminary scoping meeting only. We have already elected a Chair and we have had Members thoughts on why we need the review. The next stage we will be calling for written evidence and we will be calling for oral evidence and people who wish to give oral evidence may attend the Committee and speak to us and ask us questions which we can answer or think about and answer at a later date.

It is intended that there will be eight different sessions for giving oral evidence and the response to that. We will also need to go out into Camp and hold meetings in Camp so that the members of our Camp community can also comment on the Constitutional Review and so we will have to go out and I would suspect that we will hold a minimum of three or four on East Falkland and a minimum of three or four meetings on West Falkland. We can certainly combine the first of those meetings when we do our annual pilgrimage to the Camp, normally towards the end of the austral winter period.

We are hoping that we can get some sort of formulation, recommendations in preparation of a final draft report by the end of 2021. That is a very ambitious programme.

Does anyone have any queries on the procedure going forward for this Review of the Constitution?

The Honourable Leona Roberts

Mr Chair, will this Committee be reporting back to the Legislative Assembly with any regularity on the process?

The Honourable Roger Edwards

We can do if you feel that we have things to report back on the progress, or indeed if we wish to take it further and go for a Constitutional Commission we will probably have to take it back to the Legislative Assembly.

The Honourable Dr Barry Elsbey

Just on the back of what Leona said, I was going to leave this until later, but it seems opportune to raise it now, you rightly said these are public sessions and we very much want the public involved and also people contributing from a range of interests from within our community. Have you given thought to how we will circulate minutes from each session and perhaps a summary for the press after every sitting of the Select Committee so people can be informed about what progress is being made, what issues are being discussed, and if any decisions have been arrived at?

The Honourable Roger Edwards

Yes, we will have to do that as we progress through the various meetings. As you are aware, Select Committee minutes are recorded and written up verbatim that is why we need to ensure that we have a good transcript of the sessions. But in shorter term, we do need to make a short report on each meeting we have held and any progress made during that meeting. That is so we can use it for ourselves, but also to keep members of the public up to date with where we are and what we are doing.

Anybody else?

Okay then, if we move on we have 'Timeline for the Review'. I have already indicated what we want to do, both written evidence, oral evidence and how we collect that. We had the agreement to form a Select Committee in January 2019 and this is the initial scoping meeting, now in February 2019. Our next meeting where we will be calling for written evidence is April 2019 and in July we will be looking to consider written submissions and agree a plan for oral evidence sessions.

There will then be several months, August through October 2020, when we have those topic-based oral evidence sessions and there could be up to eight of them, plus our

meetings in Camp at the same time, so there is probably going to be round about sixteen meetings in that period of August 2019 to October 2020.

December 2020 to February 2021 we formulate the recommendations and prepare a draft report. February 2021 to April 2021 is public consultation on the draft report and recommendations – three months, not long, but I am hoping members of the public will respond and take part in that. At the end of that consultation period there will be consideration of consultation responses and agreement of the final report, and maybe the report presented to Legislative Assembly in May 2021.

Of course, that is not the end of the process. We then have to have it approved and it is sent to the United Kingdom for discussions with the FCO because the new Constitution is issued by them. It is up to us to make a report as early as possible and then await comments, but as I say action number one is to find out what happened to the letter that was sent in 2016.

Any other business – does anyone wish to raise any queries, questions?

Cherie Clifford, Clerk of the Assembly

Mr Chair, just to say that on our FIG website there is already facilities for the transcripts to be placed up. Today's agenda is already on that website so the public is able to access it from our Assembly website and we will do our best to keep that up to date as soon as possible.

The Honourable Roger Edwards

Thank you very much.

On that basis we are probably going to be very tight on staff, we have an awful big programme going forward and so the transcribing of the meetings will be done by Gilbert House staff, some will be done by the Attorney General's Chambers and also the Policy Unit will have input to the reports coming out of this meeting. We may also have to ask along the way for some additional outside help to make sure that the meetings and transcriptions are made within a sensible time scale. There is no point in carrying forward with the next meeting if we haven't transcribed the minutes from the previous meetings.

Anything else?

Okay thank you very much then everybody, a very short and brief opening meeting to the Select Committee on the Constitution and I look forward to our next meeting in April 2019.

Tim Blake

Mr Chairman is it permissible for a member of the public to ask a question?

The Honourable Roger Edwards

You are welcome, Mr Tim Blake.

Tim Blake

I don't find anything in the timetable with regards to the timing of the Referendum which is essential under Chapter 3, sections 26, 27 and 28.

The Honourable Roger Edwards

The Referendum on...?

Tim Blake

On the amendments, particularly if you are amending representation.

The Honourable Roger Edwards

That will be part of the discussion and review of the Constitution, but we will have to probably hold a Referendum.

Tim Blake

You have to; it's laid down in the Constitution. You have to hold a Referendum if you change the representation.

The Honourable Roger Edwards

Indeed, that point is noted and as I say we are reviewing the Constitution and that will probably be reviewed as well however we have to comply with the Constitution as is. This is the over-riding law of our...

Tim Blake

That section of the Constitution has remained in it from the very beginning, under all the reviews. No Government can actually change the Constitution without properly examining the public.

The Honourable Mark Pollard

Mr Chair, I believe Tim's talking about the constituency issue within the Constitution. We have committed to a Referendum later on this year, in November.

Tim Blake

You need to make a decision on the changes you need to make before you have a

Referendum on it. You can't have a general Referendum of 'Do you want to change the Constitution?' No, you have to put forward to the public specific changes.

The Honourable Mark Pollard

I know, it is the specific issue on the constituencies, am I right?

Tim Blake

I don't know what changes you have decided to make, the changes in representation in any form have to go to Referendum.

The Honourable Mark Pollard

So around that one very specific part of the Constitution we are planning on having a Referendum later this year, November I believe, to see whether the public want to go to a single constituency or keep it as two constituencies. That will answer the one part of the Constitution that requires a Referendum for any change.

Tim Blake

Providing you don't alter the number of candidates.

The Honourable Roger Edwards

You are referring to Chapter 3 'The Legislative'?

Tim Blake

Yes

The Honourable Roger Edwards

We are already planning, and will start briefing very shortly, on the Referendum which is planned to be held in November, probably around November 9th this year, as to whether or not there will be a single constituency. If the Referendum approves a single constituency that in itself will require changes to the Constitution, because already there are references to 'Camp Members' and 'Stanley Members'. If there is only one constituency it will be 'Falkland Island Members', so we will have to change the Constitution accordingly.

There are other references throughout our Constitution that refer to Camp Members - Members of ExCo, how you elect Members to Executive Council and so on, that will also need to be changed. However we do have a recognised problem in that we can hold a Referendum and agree a change to a constituency i.e a single constituency rather than two, and we can do that prior to the next General Election which currently is in November 2021. We will not have a Constitutional change by then and I have already spoken with the Attorney General as to how we get around that fact because we would have changed the

constituencies by the result, or may have changed them, by the result of the Referendum, but we will not have changed the Constitution by that time. You can't just pick out bits of the Constitution and change it because of a Referendum, so we will have to wait until the final Constitutional changes are complete. How we get around plucking one particular bit out, that I have asked for advice on.

Rosalind Cheek

Chair, if I can assist here perhaps? The Constitution has already been identified as if it is to be amended in relation to constituencies it requires a Referendum first, and the Constitution specifically allows the Legislative Assembly to pass a Bill provided that a Referendum of the relevant result has been carried out. So a Bill would follow and the Constitution could be amended by a Bill in the Legislative Assembly dealing with that very narrow matter of the constituencies.

There is a question, I think you have rightly identified, as to whether any of the consequential matters can be dealt with in that Bill - that still has to be settled, but I don't think that is particularly significant at this stage. The question is if there is a change to the constituency it can be changed, if a Referendum approves a change to the constituency that can be achieved by a Bill through the Assembly.

The Honourable Roger Edwards

Did you hear what Ros is saying Tim?

Tim Blake

Yes, I accept that, you still come up against the problem of qualification of people standing. That's another item that is actually laid down; you will need to change that at the same time.

The Honourable Roger Edwards

Yes, well that's what Ros was referring to. We can change that one little bit about the constituencies and standing if the Referendum approves that, if the required percentage, which is quite a big percentage to get it changed.

Tim Blake

66%

The Honourable Roger Edwards

But that can be changed by Bill, but where we go with all the rest of the references because we have gone down from two to one constituency, elections to ExCo and so on that still needs to be sorted out.

The Honourable Dr Barry Elsby

I believe I heard Mr Blake ask whether we will be changing the number of MLAs, that's not part of the constituency referendum. It is purely on the single constituency or stay as we are at the moment. There is no suggestion that we are advocating more or less Members of the Assembly.

The Honourable Roger Edwards

That is very true, it is not in the scope currently, however, as we go through the Constitution it may be opened up so that we could employ more, or elect more, representatives. It doesn't have to be changed immediately, but we just might be able to put in that we can elect more.

Also, as my Honourable colleague Stacy Bragger mentioned, we may need to put in something in the Constitution that may lead us forward into some form of ministerial system within our Government which we don't currently have.

All these things will have to be looked at during the course of the Review. I cannot predict what the outcomes will be.

Does anyone else wish to speak, and thank you for that Tim.

Okay I will then bring to a close our first meeting of the Select Committee on the Constitution.

Thank you.