

EXECUTIVE COUNCIL PUBLIC

Title:	Law & Regulation Directorate – Staffing Establishment Changes
Paper Number:	16/2017
Date:	25 January 2017
Responsible Director:	Attorney General
Report Author:	Attorney General
Portfolio Holder:	MLA Edwards & MLA Summers
Reason for paper:	This paper is submitted to Executive Council: For policy decision (including budgetary policy)
Publication:	Yes
Previous papers:	235/14 (Attorney General’s Directorate Review) 51/16 (Legal Traineeship Programme)
List of Documents:	Revised staffing structure – Appendix 1

1. Recommendations

Honourable Members are recommended to approve:

- (a) The continuation of the post of Statute Law Commissioner for two years from May 2017;
- (b) The creation of a new post of “Legislation & Gazettes Manager” as a permanent post;
- (c) The creation of a new post of “Legal Casework Manager” as a permanent post;
- (d) The redesign of the post of “Office Manager & PA to the Attorney General” to continue as a permanent post once redesigned;
- (e) To remove the post of Law Clerk and one Legal Secretary post from the establishment within the Directorate to provide contribution to funding of the other posts;
- (f) To agree in principle an exchange of letters to the effect of amending the MOU with the Government of South Georgia and the South Sandwich Islands to part fund the post of Casework Manager and also to provide additional consultancy budget to be used in providing legal services on South Georgia and South Sandwich Islands

matters. The total sum to be contributed is anticipated to be in the region of £15-20,000;

- (g) To agree to the establishment of the post of Senior Crown Counsel (Prosecution) to be held vacant and used occasionally on an “acting up” basis as a cost saving measure for the management of complex criminal matters as described more fully in paper 235/14 (26 November 2014). Agreement is on the basis that this post does not increase establishment costs but simply allows serious cases which might otherwise require Counsel to be brought in from the UK to be covered by existing staff members;
- (h) Actively pursue the appointment of a Paralegal to be funded through the Community Development Scheme in accordance with previous practice;
- (i) The implementation of the proposal will be dependent on full staff consultation and the necessary Standing Finance Committee approval; and
- (j) The additional financial implications be referred to the Standing Finance Committee.

2. Additional Budgetary Implications

	201718	Annual Recurring
Operating Budget		
New Establishment Changes	£18,240	£18,240
Continuation of Law Commissioner	£84,198	£84,198
Total	£102,438	£102,438

- 2.1 It is understood that the Law Commissioner’s post is already shown as a recurring post in the Government’s budget, albeit that it was originally only approved for two years.
- 2.2 It is anticipated that the Government of South Georgia and the South Sandwich Islands will increase its funding by £15-20,000 per annum, which can be used to part-fund the post of Case Work Manager. Applying £15,000 to the post, it is estimated that the actual increased costs to the Falkland Islands Government will be £3,320 net or £3,702 gross.

3. Executive Summary

- 3.1 Substantial progress has been made with the plan launched following the review of the Law & Regulation Directorate reported by Executive Council in November 2014. Progress has been slower and therefore the benefits delayed due to the inability to fill support posts (Legal Secretary, Law Clerk and Paralegal) two of which were created in the 15/16 budget cycle.
- 3.2 The failure to fill these key posts continues to have a detrimental effect on the output of senior staff in particular. Although accurate assessment is impossible, experience suggests the ability to increase output from the most senior posts in Legal Services by a minimum of 30% per post. Significant backlogs and delays remain despite

commitment shown by individuals. The absence of support staff creates both inefficiency and opportunity cost.

- 3.3 The Chief Executive has invited a review of capacity to assist in addressing Members concerns about support to key projects across Government including the legislative programme. Additionally there is a recognised need to ensure that the work of the Statute Law Commissioner continues beyond the end of the current project to maximise the value of the investment in that project.
- 3.4 Subject to agreement on the services to be provided, the Government of South Georgia and the South Sandwich Islands (SGSSI) considers that realigning and enhancing the provision of legal services under the direct line management of the Attorney General would best serve its longer-term interests. They have offered some funding to support the delivery of South Georgia work and the proposals put forward are designed to underpin the successful delivery of that work.
- 3.5 The paper proposes a strategic redesign of the posts that remain vacant in order to address the challenges highlighted.

4. Background and Links to Islands Plan and Directorate Business Plan/s

4.1 In November 2014 Honourable Members considered a paper from the Attorney General setting out the outcomes of a review of his Directorate during the first six months of his appointment. The paper highlighted his strategic priorities:

- (1) to improve corporate working (common endeavour);
- (2) to increase capacity;
- (3) to improve corporate memory and medium term planning;
- (4) to improve communication; and
- (5) to allocate resources to the most valuable activities.

4.2 Whilst a great deal has been achieved, the paper highlighted the need to increase resources and highlighted a number of individual actions under each priority. The progress with projects connected with each priority area is detailed below.

Strategic priorities		
Common endeavour/single directorate		
Balancing reporting lines (6.2)	Complete Jan 15	G
Directorate wide role for central admin team (6.2)	Delayed due to staffing	A
Changing and communicating name as a single directorate (7)	Complete Jan 15	G
Increasing uncommitted capacity (5.3)		
Increased level of staffing resources (6.2)	Establishment increased but posts could not be filled	R
Communicate development plan for staff (5.7)	Complete Jan 15 & ongoing	G
Introduce system to support legal training (5.7 & 6.2)	Substantially complete Sep 16	A
Improving corporate memory		
Development and publication of a drafting manual (7.19)	Substantially complete. Yet to be finalised and published	A

Improving communication		
Production of annual report for 2015 & 2016 (5.9.2)	Complete 15; developed 16	G
Production of Charity Commissioners report (5.9.2)	On track	G
Production of Board of Trade report (5.9.2)	On track	G
Development of Directorate web pages (5.9.2)	Complete and ongoing	G
Collecting customer feedback (7.16)	Implemented, need to maintain	G
Publication of the laws through the Revised Laws Project (7.21)	Well managed project on track	G
Development of guidance notes – prosecutions (5.9.2)	Series complete awaiting commencement of CPE Ordinance	G
Development of guidance notes – Registry (7.30)	Capacity has delayed production	A
Allocating resources efficiently		
Develop contracting standards (precedents) (5.9.3 & 7.27)	Substantially developed awaiting roll-out	A
Develop instruction process from Directorates (7.14)	Delayed not yet implemented	A
Develop matter management system	Developed to be launched December 2016	G
Develop quality manual in Civil Aviation	Developed and rolled out	G
Support effective decision making by the development of Exco Standing Orders (5.9.3 & 7.21)	Developed and implemented now subject to revision	G
Review process connected with Lands Committee (5.9.3)	Process improved now under review	A
Trial of Principal Crown Counsel (Prosecutions) “Acting up” (7.25 & 9.2)	Trial successful. Seeking extension	G
Review of GLS library (7.28)	Review on hold due to lack of resources	R

Revised Laws Project

4.3 The Revised Laws Project has been properly planned and resourced. The role of Law Commissioner was established for two years from May 2015 (when handover to a new Head of Legal Services was achieved). The project is progressing very well but was always accepted to be a very challenging role and timescale. It is still believed that the project will be delivered within two to three months of the originally anticipated deadline. The issue now to be addressed is how the maximum return on the Government’s investment to date is to be achieved once this initial project is completed.

Administrative Support to Directorate

4.4 In the 15/16 budget process Honourable Members agreed to the creation of two new permanent posts within the Directorate. The posts were created to try and increase support and output from the Head of Legal Services and Attorney General roles. Honourable Members accepted that providing additional administrative support would create output improvements and therefore increase delivery from these two key posts.

The post of legal secretary (to support the Head of Legal Services) and Law Clerk (to support the Directorate Office Manager) were created.

- 4.5 For over 18 months the Directorate has been trying to recruit to these posts without much success. The posts have been occupied temporarily but it is difficult to attract anyone to fill the vacancies. Indeed, the position has become worse when a very experienced legal secretary was attracted to a different role with the private sector.
- 4.6 The Legal Secretary posts are, in the view of the Attorney General, incorrectly graded to reflect the specialist knowledge and skills required to operate effectively as a Legal Secretary. This appears to be borne out by the inability to recruit and is supported by exit interview feedback. The posts are simply more demanding and therefore less attractive than similarly graded posts in Government.
- 4.7 As a result the administrative support levels in the Directorate remain too low with current resources extremely stretched. There is a considerable impact on output and effectiveness.

South Georgia and the South Sandwich Islands

- 4.8 The Attorney General also serves as the Attorney General for SGSSI. For many years the pressure on the role from the Falkland Islands has left limited capacity to deliver significant work for SGSSI. In May 2014 SGSSI appointed a legal adviser primarily to lead the legislative review project. With the legislative review project expected to be substantively complete by mid-2017 SGSSI is reviewing where and how legal support can best be provided over the longer-term. It considers that the interests of SGSSI are likely best served by contributing to a strengthening of capacity in, and aligning activities back through, the post of the Attorney General. An indication from the Chief Executive of SGSSI is that additional funding in the region of £15-20,000 would be made available to the Attorney General's Directorate annually from mid-2017, on the basis that structural improvements could be made to ensure that SGSSI legal work is efficiently delivered within the Government Legal Services structure and/or appropriate consultancy.

Continuation of Senior Crown Counsel (Prosecution) as temporary promotion option

- 4.9 In Executive Council paper 235/14 (26 November 2014) Honourable Members approved the establishment of a post of Senior Crown Counsel (Prosecution) for a trial period of 12 months to allow the temporary promotion of suitably qualified Crown Counsel to appear for the Crown in serious cases when they would otherwise require Counsel to be brought from the UK. In the 12 month trial period this arrangement was used for three cases over a period of three months between Jan-April 2015 at an additional total cost of £3020.18 for the 3 months). This saved approximately £13,000 (based on other costs we have assumed £7,200 per case plus £1,500 for the preparation on the third case.
- 4.10 With the changeover of Crown Counsel these savings could not be repeated in the short term. However, if this arrangement can be established permanently, the opportunity for future savings remains.

5. Options and Reasons for Recommending Relevant Option

Revised Laws Project

Law Commissioner (Ref: 451LC - Currently established until May 2017)

- 5.1 The Revised Laws project will result in the online publication of our laws. The laws will need to be kept up to date on the online system. Publication will also highlight three issues:
- a) that the Falkland Islands relies heavily on a large number of adopted UK laws.
 - b) that some Falkland Islands law is significantly out of date and requires revision
 - c) that there are some areas where the law does not adequately address matters of importance to Honourable Members.
- 5.2 The current post was established as a grade A1 for a fixed period of two years. Whilst work is ongoing to establish the scope and size of the long term requirement in the Falkland Islands it is clear that legislative review and the maintenance of the system once created will be immediate priorities when the current post is due to expire. The precise nature of the long term requirements will be explored by the LREAC and a report will be prepared and issued to Exco towards the end of the project. In the immediate term and to provide some security and peace of mind to the current post holder and to stabilise the department Honourable Members are invited to agree that the post as currently constituted is continued for a further period of two years expiring in May 2019. This decision will not undermine the ability of LREAC to make a recommendation to Exco about the future needs of the Falkland Islands. In future options include:
- a) a part time Statute Law Commissioner post focusing solely on law revision and the maintenance of the publication platform
 - b) the post at a) above combined with responsibility for the programme of new legislative priorities or
 - c) variations on the above including the potential to have a contracted law commissioner (possibly overseas) (although this is not preferred)
- 5.3 Recommended option: Continue the post of Law Commissioner for a period of two years until May 2019. This will ensure that the success of the project is fully imbedded and that work can commence on some law revision – addressing general concerns about the quality of our laws and the need to make improvements.
- 5.4 Option 2: Allow the Law Commissioner post to expire in May 2017. The current post holder would return to the substantive post of Head of Legal Services. This would provide strength to the Government Legal Service function given the recent departure of the Attorney General, but there is a cost to the law revision programme and potentially stretching the Head of Legal Services across two functions in practice.
- 5.5 Option 3: Option 2, but recruiting a Law Revision port on a part-time basis. In practice this is likely to be an international appointment. It is unlikely that an international appointee will understand the needs and ambitions of the Falkland Islands and

accordingly the quality of the law revision insofar as it meets the needs of the Legislative Assembly could be in question.

Administrative Support to the Directorate

Directorate Office Manager (Ref: 451 LPA)

- 5.6 Change of Job Title to: Directorate Office Manager (PA to the Attorney General)
- 5.7 The current post is a wide reaching role which extends to the responsibility for the Gazettes for the Falkland Islands and South Georgia and other appointments and publications. The practical consequence of the extended role is an inability to provide effective PA support to the Attorney General. There are significant consequences. Legal work and the role of Strategic Director inevitably requires considerable document production and email traffic. The lack of capacity to support the Attorney General (and Head of Legal Services) creates considerable waste because documents are being less efficiently produced by more highly paid/qualified staff.
- 5.8 It is proposed that the Directorate Office Manager post is constituted in a similar manner to other Personal Assistants within Government. There is an argument that the specialist legal experience required for such a post should grade this post higher than equivalent PA posts but this has not been considered in current calculations. It has been assumed that the post will be filled as a grade E1. It is assumed greater efficiency will be created by passing some of the current post holder's work to Legislation and Publication Manager.

Legislation and Gazettes Manager (New Post)

- 5.9 The demand for the maintenance of Legislation and Gazettes has expanded significantly over recent years. The current PA to the Attorney General carries out proofreading and gazetting duties. There is also a requirement for technical support in relation to the new laws database (online publication as a result of the revised laws project). The Greenberg/Davis Report estimated at least 0.5 FTE post in relation to the technical support function. The creation of a Legislation and Gazettes Manager will allow greater capacity in both areas, streamlining the production of the laws. The creation of the new post will enable Legal Services to appropriately manage the publication of all legislation and manage the online information platform and its content. The role will also work with the Law Commissioner and Legislative Drafters, dealing with the proof reading of Bills and be responsible for the publication of public announcement and proclamations.
- 5.10 Initial assessment of the post for Job Evaluation purposes indicates that a grade of E2 may be achieved when the post is formally evaluated in the coming weeks. For planning purposes the proposed post has been costed at Grade E2.

Case Work Manager (New Post)

- 5.11 Reporting to the Head of Legal Services, the proposed post will provide the necessary capacity to better manage case work within Legal Services. This post is designed to ensure better work flow management within the Government Legal Service. The new

Case Work Manager post sits with a newly created electronic matter management system (designed and ready for launch in January 2017). The Government Legal Service currently handles high volumes of work, often with complex delivery deadlines. Traditionally, the Government of South Georgia has suffered because its work has not received adequate priority. In a larger jurisdiction, this would be addressed by bringing in a junior lawyer who would track projects and work with specialists across the department to ensure the necessary projects were delivered on time. The post would inevitably work closely with the Attorney General and the Head of legal Services in an executive officer-type role. The Case Work Manager's exposure to increasingly varied matters, working closely with specialists is a perfect way to develop their own legal skills. Over time, it is expected that the Case Work Manager would take on more responsibility for individual cases as they became more experienced and confident – making it a perfect development role.

- 5.12 It is proposed to establish this role as a succession planned role whereby a member of staff undertaking Institute of Legal Executives qualification could develop in the role whilst getting qualifications and then moving into one of the more specialist roles in Chambers in due course.
- 5.13 The creation of this post is also considered to offer a career development route within the legal profession. It fits with the Attorney General's push towards long-term personal development within the Directorate. Initial assessment of the role indicates a career progression grade (Grade F to C). It is envisaged that suitable candidates will be either part-qualified (starting on a grade E) or unqualified but working towards a legal qualification (starting on grade F), ideally as part of a Chartered Institute of Legal Executive career pathway. The post would progress to C on full qualification. Fellowship (which occurs a little time after full qualification) is likely to be consistent with seeking a different specialist role within the Department.
- 5.14 The Head of Legal Services, is increasingly faced with conflicting priorities given the increase the demands placed on the role. The creation of the Case work Manager post will release the Head of Legal Services to focus on the key work streams and deliver better value for money from this senior position as activities which could be better managed at a much lower cost will be passed to the Case Work Manager. The proposed post will also provide the Crown Counsel posts, and others within the service with a vital resource that also releases them from general case management activities, thus enabling them to focus on actual case work activities.
- 5.15 Progression within Grade will be based on a set of clear milestones relating to work based competence and achievement qualifications.

Deleted Posts

- 5.16 This new structure still leaves a gap in admin support. There can be no doubt that a PA to support the Head of Legal Services and a Clerk would be an advantage, even with this differently constructed capacity. However, we are realistic. The function has operated for many years with limited capacity. The resources of the Falkland Islands Government are limited. Whilst there is still a compelling argument that it is more efficient to provide more admin support to senior staff, this is not considered realistic. Accordingly it is suggested that the post of Legal Clerk and Legal Secretary (PA to

Head of Legal Services) are deleted thereby maintaining the same headcount and reducing the additional cost to the Government.

Administrative Staff Options

- 5.17 Option 1: Do nothing. It is likely that the current delays in output will continue if additional support cannot be secured. In addition, we rely upon the goodwill of two very longer term members of staff. It is likely that, as with the previous experienced secretary, we could lose another if the post cannot be properly financially recognised and/or recognised in terms of real personal development.
- 5.18 Option 2: Upgrade existing Legal Secretaries to reflect the specialist skills and experience or provide a market supplement. Whilst this might make it easier to find new staff, it does not directly reflect either the requirements of the new revised laws project, law publication platform or the needs of South Georgia and the South Sandwich Islands. It is unlikely that additional funding would be made available from South Georgia simply for an upgrading without structural change. This option does not create personal development opportunities but these will be addressed in part through individual personal development plans within the directorate.
- 5.19 Option 3: Restructure and create and delete posts as described in this paper. This is as close to establishment and cost-neutral as possible whilst providing real personal development opportunities and further reinforcing support within the directorate.
- 5.20 Option 4: Agree the changes but do not delete the posts. This option is likely to create the greatest productivity from the Government Legal Service. This would create a step change in departmental performance. Very honestly, there are two dangers. First, that the department will perform so much more strongly than other departments that the rest of Government will not be able to keep pace or that the rest of Government will delay production from the department resulting in some of the capacity sitting idle.

Recruit to the Paralegal post

- 5.21 Attempts have been made to recruit to the post from time to time. In order to recruit someone, we need to begin engagement with school and university leavers towards the end of the academic year. This will mean advertising in August and September following some publicity about the forthcoming opportunity. This is a post that is ordinarily funded from the Community Development Scheme at a grade G. The Directorate has now put in place a framework for the Legal Traineeship Programme with two potential English firms of solicitors in the manner proposed in paper 51/16 (22nd March 2016). This now provides a clear and complete pathway to qualification via the degree route and the structure proposed in this paper also completes the pathway for the non- degree route to equivalent legal qualification. These are clear and positive messages that can be given in engagement with FICS and post 16 Falkland Islands Students studying in the UK.

6. Resource Implications

6.1 Financial Implications

Current Posts:	Grade	Total per post
Legal/PA	E2	37159
Legal Sec Crime	F	23201
Legal Sec Lands	F	24867
Legal Sec HLS	F	23201
Law Clerk	H	17528
		125956

Proposed Posts:	Grade	Total per post
PA to AG/HLS & Office Manager	E1	26136
Legal Casework Manager	E1	26136
Legislation & Gazette Manager	E2	37159
Legal Sec Crime/Civil	F	23201
Legal Sec Lands/Contracts	F	24867
		137499

Difference = £11,543 additional cost

6.2 Human Resource Implications

None.

6.3 Other Resource Implications

None

7. Legal Implications

None

8. Environmental & Sustainability Implications

None

9. Significant Risks

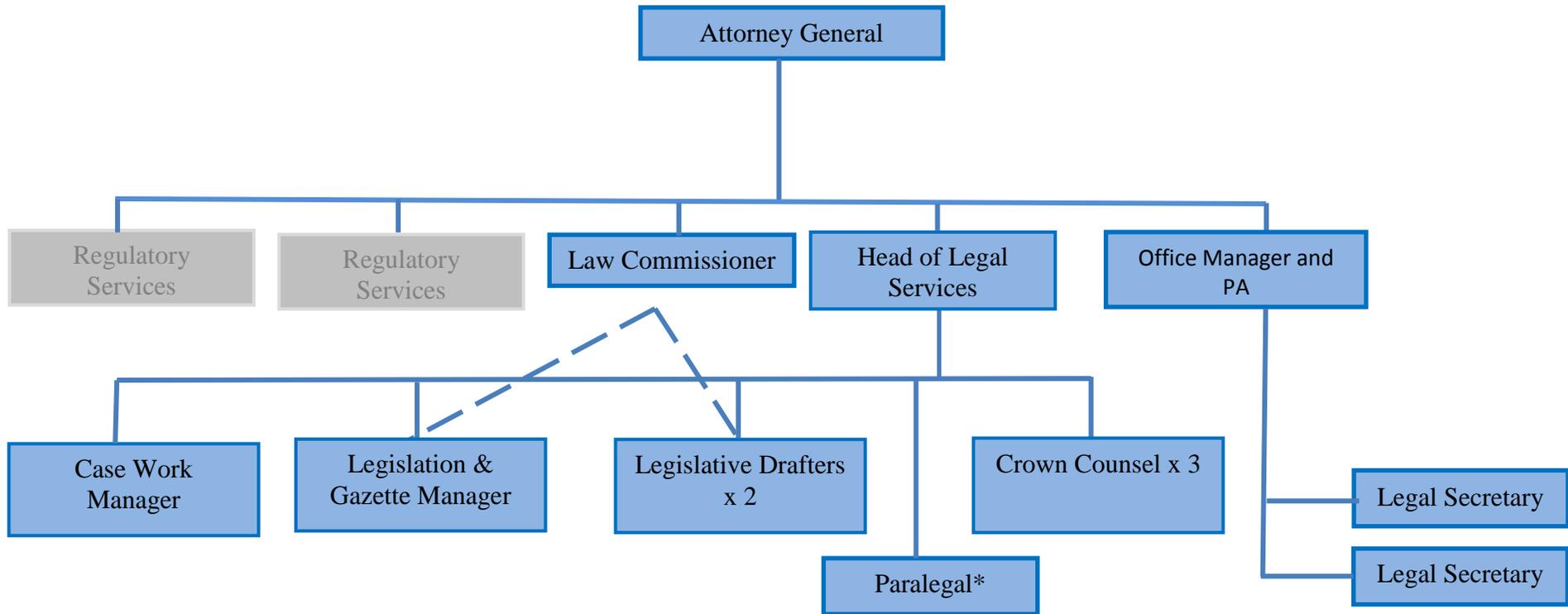
None

10. Consultation

None. Formal consultation with staff will be undertaken if the posts are approved.

11. Communication

11.1 This paper has been shared with the portfolio holder, the Chief Executive and the Director of HR. Some internal discussions have occurred within the Directorate to establish if the proposals might be deliverable.



*Post dependent on CDS funding and currently vacant