

EXECUTIVE COUNCIL

PUBLIC

Title:	Annual Report: Statute Law Database, Programme of Law Revision etc
Paper Number:	140/18
Date:	26 September 2018
Responsible Director:	Attorney General
Report Author:	Attorney General and 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 for: (a) information (Statute Law Database performance etc) (b) consultation with Executive Council (on Law Revision programme proposals); (c) for policy decision (staffing proposal)
Publication:	Yes
Previous papers:	16/17 – Law and Regulation Directorate – Staffing Establishment Changes – <i>January 2017</i> 27/17 - Post Revised Laws Project - Processes for Potential Ongoing Programme of Law Revision - <i>May 2017</i> 150/17 – Revised Laws Project – Project Closure Report to Executive Council - <i>September 2017</i> 92/18 – Interim Programme of Law Revision etc - <i>June 2018</i>
List of Documents:	Annex 1 - Summary of information for Annual Report to LegAssy Annex 2 - Summary of Interim Law Revision Programme Annex 3 - Public Consultation on Law Revision Programme Proposals Annex 4 - Responses to Public Consultation Annex 5 - Summary of Government Legislative Drafting Programme Priorities

1. Recommendations

Honourable Members are recommended to:

- (a) note the summary of information to be provided to the Legislative Assembly in the Statute Law Commissioner's Annual Report about performance of the Statute Law Database in its first year;
- (b) comment on the proposals for a law revision programme 2018 to 2023 to be included in that Report;
- (c) agree that the Law Commissioner role should be widened to incorporate working on the development of a wider programme of law reform and the subsequent management of delivery of the programme;
- (d) agree in principle that the Law Commissioner post, which is currently approved for a period of two years from May 2017, should be converted to a permanent established post from June 2019, and authorise the Attorney General, following consultation with the Director of Human Resources, to finalise the job description and attendant functions and responsibilities for evaluation in accordance with the job evaluation scheme.

2. Additional Budgetary Implications

	2018/19	2019/20	Annual Recurring
Operating Budget			
Continuation of Law Commissioner post *	£7,700	£95,000	£98,700
Additional external legislative drafting resource for law reform programme		£10,000	£10,000
Total		£105,000	£108,700

* Budget figures show this post as permanently established, ie the cost of the post is already included in budget projections – but Executive Council authority for the post only exists on a temporary basis until May 2019.

3. Executive Summary

This paper:

- (a) provides a summary of information to be contained in the 2017/18 Annual Report on the Statute Law Database to be laid before the Legislative Assembly;
- (b) consults Executive Council about proposals for the programme of law revision (ie the programme required under the Law Revision and Publication Ordinance 2017 and to be considered by the Assembly as part of the Annual Report);
- (c) makes proposals for; (i) the development of a wider programme of law reform; and (ii) the permanent establishment of the Law Commissioner post.

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 Database was published in accordance with the Law Revision and Publication Ordinance 2017. Section 8 requires the Statute Law Commissioner to lay an annual report before the Legislative Assembly about the performance of the Commissioner's functions under the Ordinance. The annual report is required to include the following:

- (a) usage statistics for the Statute Law Database (eg details of search-activity, download activity, service faults and reliability)
- (b) statistics in respect of the Commissioner's revision programme under this Part during the year to which the report relates;
- (c) specific proposals for priorities and objectives in respect of the Commissioner's revision programme under this Part for the following year;
- (d) a long-term plan for priorities and objectives in respect of the Commissioner's revision programme under this Part for the following 5 years;
- (e) submissions made to the Commissioner about the performance of functions under this Ordinance in the year to which the report relates, together with the Commissioner's response to those submissions.

4.3 For information, this paper provides a summary of the statistical, performance and related information to be included in the first annual report for 2017/18; as set out in Schedule 1.

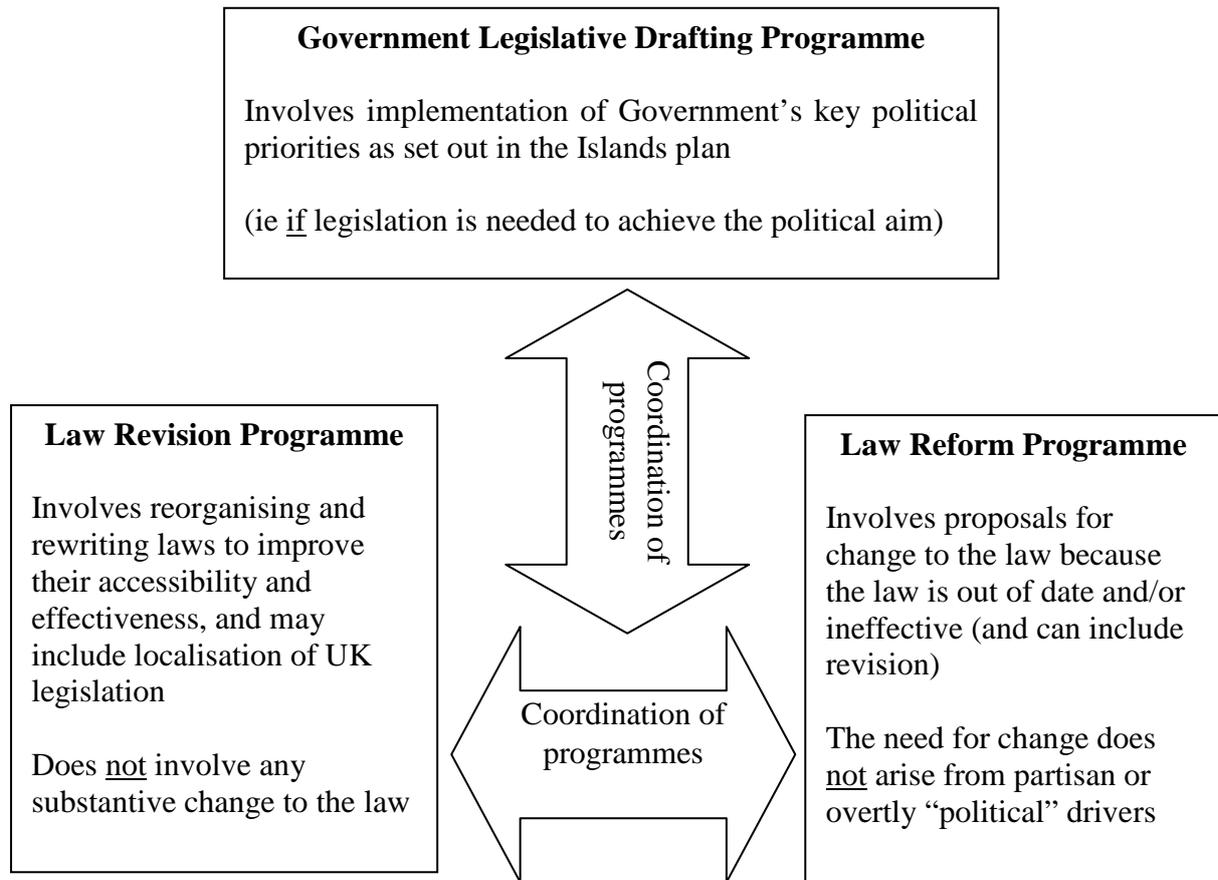
4.4 As part of the preparation of the annual report, the Commissioner has reviewed the effectiveness of the Law Revision and Publication Ordinance 2017, and will be making detailed proposals to Executive Council for tightening the effectiveness of its provisions in the light of that review work in due course.

4.5 This paper also seeks Executive Council's views in connection with the Statute Law Commissioner's proposals for a law revision programme 2018-2023. This will enable the Commissioner to finalise the proposals and submit them to the Legislative Assembly for consideration. In particular, Executive Council is asked to give views having regard to the Government legislative drafting programme.

4.6 The paper also makes additional proposals in connection with the development of a wider programme of law reform; because of the limitations of law revision, and because of a perceived need for a wider law reform programme to sit alongside the Government legislative drafting programme.

4.7 The diagram below explains the essential differences between law revision, law reform, and the Government legislative drafting programme. The diagram also highlights that the programmes should be coordinated to achieve the most effective solutions without duplication:

Illustration of the potential operation of the three legislation programmes



4.8 Finally, this paper proposes the permanent establishment of the post of Law Commissioner. This is proposed partly in conjunction with proposals to broaden the role to include wider law reform work referred to above, but it is proposed as a necessary step regardless of whether the role includes wider law reform work going forward, in light of the proposal to, potentially, enshrine in the role a greater function in relation to the Government Legislative Drafting Programme.

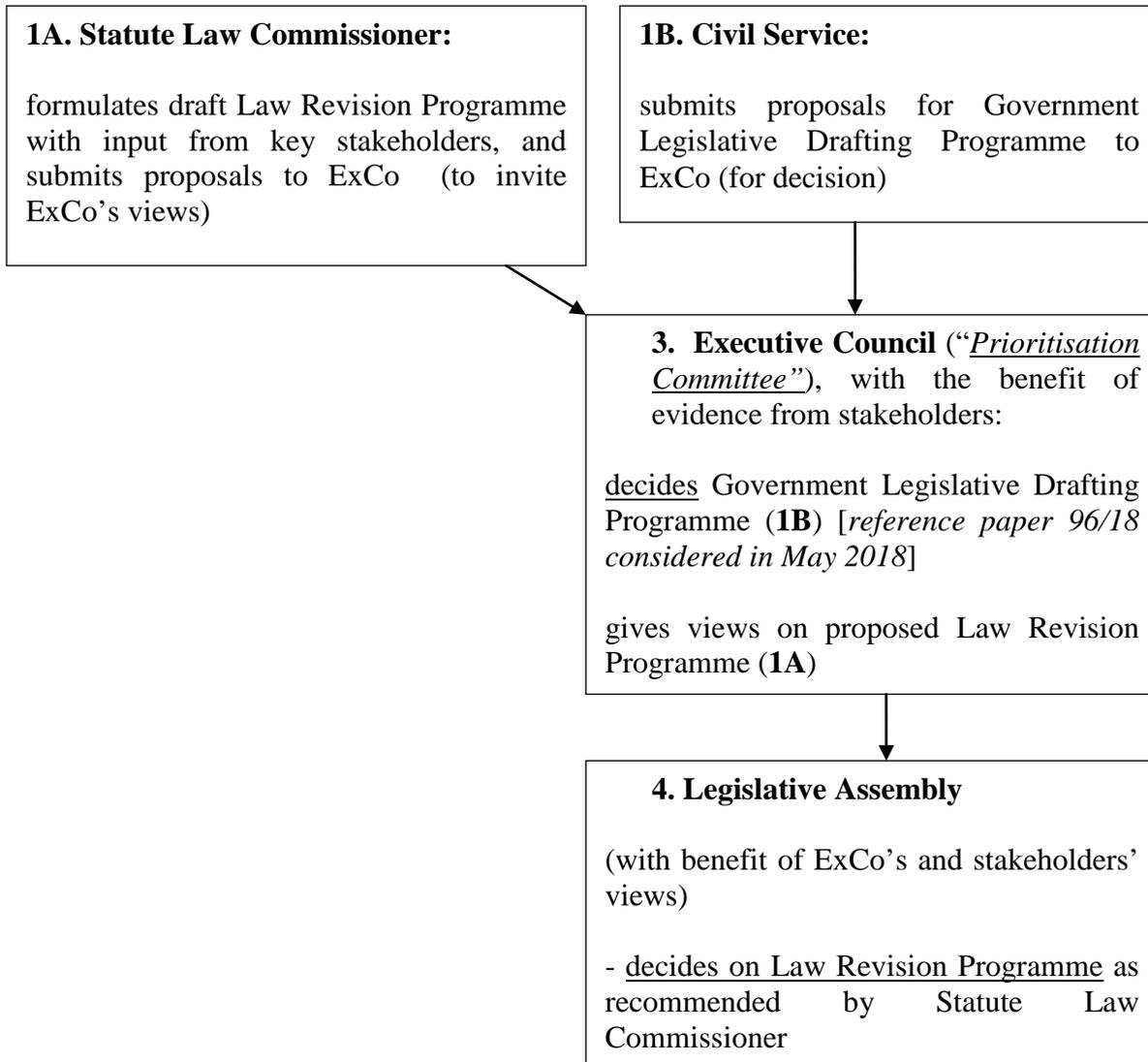
5. Consultation with Executive Council - Law Revision Programme Proposals

5.1 The background to law revision in the Falkland Islands was set out in ExCo paper 92/18, which proposed an interim programme of law revision (see Annex 2) whilst the Statute Law Commissioner consulted on and compiled proposals for a long term law revision programme.

5.2 The Statute Law Commissioner has formulated proposals for; (a) the law revision programme for 2018/19, and (b) a five year plan 2018-2023, as required by the Law Revision and Publication Ordinance. The proposals are summarised in the public consultation document at Annex 3. The responses received to the public consultation are set out in Annex 4 for information.

5.3 The process for this consultation with Executive Council acting as a “Prioritisation Committee” in coordination of the Government drafting and law revision programmes, was agreed as follows in May 2017 and June 2018 reference papers 27/17 and 92/18:

Process for submission of Law Revision Programme Proposals to Legislative Assembly



5.4 The criteria used to select the laws proposed for revision are as follows:

- the relevant law uses outdated language and style
- related areas of law could be consolidated into one area of law
- the UK Act applying in the Falkland Islands has been repealed and replaced in UK
- the relevant law is in frequent use or affects a significant section of the public
- the relevant law will be more accessible if revised, consolidated, or localised

5.5. In addition, regard was had to the Government legislative drafting priorities programme. For ease of reference, the priorities agreed by Executive Council on consideration of paper 96/18 at their meeting of 28 May 2018 are set out in Annex 5 (and drafting legislation in support of the holiday travel credit scheme was subsequently given extraordinary priority by Executive Council in July).

5.6 In particular, a number of laws selected for revision are known to require substantive law reform (ie Administration of Justice, Contracts/Consumer Protection, Companies/Bankruptcy/Insolvency, Charities, and Law of Property). However in the light of the very heavy Government legislative drafting priorities programme, it appears unlikely that any of these matters will receive sufficient priority within the Government programme to allow progress for some time (ie they are unlikely to progress for a number of years).

5.7 Including these matters in the law revision programme allows some progress to be made, and has the advantage that the product of the law revision can assist a future substantive law reform project of those matters; ie it is easier to reform the law in due course when it is plain what current the law is.

5.8 However, including these matters in the proposed law revision programme has the disadvantage of potentially creating complacency that progress is being made, so further reform is delayed. There is also the argument that revision of law which is likely to be reformed within coming years is not the most efficient use of resources (ie because some of the revision work is likely to be overtaken/repealed by the subsequent wider reform work).

5.9 For this reason, the Attorney General recommends that the work of the Law Commissioner be broadened to involve the development and management of a programme of wider law reform alongside the law revision programme (see paragraph 6 below). This is believed to provide the most efficient solution to the range of challenges in moving towards a more modern and effective statute book for the Falkland Islands.

5.10 Nonetheless, feedback is sought from Executive Council in relation to the proposed revision programme as it stands (which will be submitted to the Assembly in the first instance as envisaged by the Law Revision and Publication Ordinance 2017).

6. Proposals for Law Reform - Options and Reasons for Recommending Relevant Option

6.1 ExCo paper 96/18, considered in May, 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.

6.2 Production of the proposed law revision programme has highlighted that there is a strong overlap between those laws which would most benefit from revision (including localisation), and those laws which also require substantive reform. For example:

Company law - the law on Falkland Islands companies is made up of a combination of the following laws:

Companies and Private Partnership Ordinance 1922

Companies (Auditors) Ordinance 2003
Companies (Amendment) Ordinance 2006
Companies Act 1948
Companies Act 1985
Companies Act 1989

6.3 The law on companies in UK has moved on considerably; and is now reflected in the Companies Act 2006. Reorganising the laws above currently applying in the Falkland Islands into a single law using modern language (ie law revision) would undoubtedly have advantages in making the law more accessible and effective. However, it is also recognised that the laws above do not reflect modern standards of company administration; and merely revising the law would not change that. Ideally the law needs to be brought into one statute with modern language *and* modern effect, ie involving substantive change to the law. Such change could be based to a certain extent on current UK legislation, substantially modified to suit the unique needs of the Falkland Islands (or could perhaps be based on modern company laws of a smaller territory than UK, ie something having a more natural fit).

6.4 The position is very similar in relation to many of the laws most in need of revision. Whilst law revision would be of considerable benefit, a more efficient solution might be complementary programmes of law revision and reform. The following areas of law which are included in the proposed programme for law revision were noted in Executive Council paper 96/18 as also being in need of substantive change/updating:

Administration of Justice (civil)
Bankruptcy and Insolvency
Charities
Companies
Consumer Protection

6.5 The additional law reform work could be carried out, to an extent, through the existing Law Commissioner role. The Law Commissioner post is already committed to undertaking the statutory duties of the Statute Law Commissioner. However, there is some capacity in the role to balance the statutory law revision role with a wider law reform role, ie the Statute Law Commissioner would continue to undertake a programme of law revision, but alongside that could also develop and manage the delivery of a programme of law reform.

6.6 However, for any substantial progress to be made in the work, additional resources would be required to support the Law Commissioner. It is proposed that this be provided by additional funding for external legislative drafting resource (a further £10,000 per year as a starting point; to be reviewed after the first year) and a commitment that some internal legislative drafting time be made available to the Law Reform and Law Revision programmes.

6.7 It is proposed as a starting point that approximately 300 hours of internal drafting resource be committed to the law revision programme - ie equivalent to 2 months' continuous work (to be made available across both full time legislative drafting posts in the most efficient way). This would impact to an extent on the Government's legislative drafting programme, but should not do so substantially. Currently drafters' time isn't always used to its maximum efficiency because of difficulties in obtaining drafting instructions. So the proposal can be seen as a way of maximising the efficiency of drafting resources. We are

also taking the opportunity to develop some additional internal resource, on a short-term basis, in anticipation of the demands in relation to the production of new legislation.

6.8 The proposal, if agreed in principle, should ideally be reflected by amendment to the Law Revision and Publication Ordinance 2017 – to ensure that the correct framework is in place for delivery of an additional programme of law reform; including appropriate provision as to appropriate independence in the work (ie the focus being on law reform, not political drivers). It is proposed that this is based on a fairly standard model for delivery of law reform (eg the UK Law Commission model); albeit without the establishment of a Commission body. The amendment would be put before Executive Council together with the amendments referred to in paragraph 4.7 above.

6.9 The social and economic benefits of a programme of law reform are derived from the fact that law reform is generally aimed at improving the law to make it more effective; in terms of fairness and accessibility as well as cost effectiveness. The particular advantage of a law reform programme is that there is a focus on work based on objective need for reform, without significant distraction by political priorities. But as set out above, the various legislative programmes need to be coordinated, and of course law reform work also needs to be realistic in terms of political appetite for the relevant reform (otherwise the preparatory work will never result in proposed changes to the law being approved by the Assembly).

6.10 The main options surrounding this proposal are as follows:

(A) **Option 1** – Agree to the development of a programme of law reform as set out above

(in practical implementation terms, this is dependent on approval being given to the Law Commissioner’s post being permanently established reference the proposal below)

(B) **Option 2** – No change

(ie the Statute Law Commissioner’s work remains; maintaining the Statute Law Database, reporting on UK laws, and a programme of law revision)

(C) **Option 3** – Further work is done to develop proposals around potential law reform

(ie alternative models and resourcing are considered in respect of this work)

Option 1 is preferred.

7. Proposals for Permanent Establishment of Law Commissioner Post – Options and Reasons for Recommending Relevant Option

7.1 The full time post of Law Commissioner was originally approved for a two year period from May 2015 to enable completion of the Revised Laws Project; the principal aim of which was to improve access to Falkland Islands laws by making the laws freely available to the public through the internet. The project was completed in September 2017.

7.2 Before 2015, appointment of a Law Commissioner had not been held on a full time basis, or had remained vacant. This resulted in the laws of the Falkland Islands becoming largely inaccessible and increasingly outdated.

7.3 In anticipation of successful completion of the Revised Laws Project, extension of the post of Law Commissioner for two years from June 2017 was approved in principle in January 2017 (paper 16/17). The detailed framework for the post was agreed by Executive Council in May 2017 (paper 27/17), ie providing for the Commissioner to maintain the Statute Law Database, monitor and report on UK laws, and undertake a programme of law revision. That paper failed to make proper distinction between law revision work and wider law reform work, which is now sought to be addressed by this paper.

7.4 It was agreed that the post would be further reviewed after 18 months (ie around December 2018/January 2019). However, it appears to be the right time to review the post now in the light of the proposals contained in this paper.

7.5 In practical terms, the work of the Statute Law Commissioner currently consists of:

- (a) undertaking the publication and maintenance of the statute law database;
- (b) monitoring and reporting to the Legislative Assembly on UK laws;
- (c) undertaking a continual programme of law revision;
- (d) assisting the Attorney General and Head of Legal Services in raising appropriate quality standards in the production of government legislation; and
- (e) undertaking line management of the post of Legislation and Gazette Manager..

7.6 The Commissioner is assisted by the Legislation and Gazette Manager (LGM). The LGM currently undertakes all day to day work on publication of the Gazette. The LGM took up post in July 2018 and is currently undertaking a programme of on the job training with a view to being able to provide increasingly substantial assistance in (a) and (b) above in particular. This should free some of the Commissioner's time for other work.

7.7 In addition, the Commissioner has a small budget (£10,000 per year) to contract external legislative drafting assistance for the law revision programme.

7.8 As set out above, there is some capacity for the Commissioner to include some wider law reform work. This additional work would impact on the law revision work that the Commissioner could undertake, but balancing the two is believed to be the most appropriate and efficient use of the Commissioner's time in the overarching aim of working towards a modern and effective statute book.

7.9 It is also likely that additional law reform work being undertaken by the Commissioner would impact on the work of assisting in maintaining appropriate quality standards in the production of government legislation.

7.10 In the circumstances, additional legislative drafting resource would be required to enable satisfactory progress to be made with both law revision and law reform programmes.

A modest increase is proposed – a combination of some internal legislative drafting resource being made available for the law reform programme, and an increase in funding for external legislative drafting resource.

7.11 Clearly each Assembly will have priorities for action, some of which will require changes to legislation or completely new legislation. Society and the economy move forward progressively, and laws are incrementally changed. In reality the task of law revision, and law reform is also ever-present. Use of language changes over time, as does understanding about how to write and present laws clearly. Developments in technology can present new opportunities, but also risks. As a result, there will always be a need to review the existing national statute book, and make recommendations for consolidation, revision and reform.

7.12 In order that such work be progressed in step with the prevailing Government legislative drafting programme, it will be important to ensure sufficient capacity is allocated to this work. Accordingly, it is considered that as part of the proposal to make the Statute Law Commissioner post permanent, there is a need to review the structure of the Government Legal Service in this area. Making the post permanent gives the opportunity to best ensure that the Government legislative programme, law revision programme and proposed law reform programme are co-ordinated, so that all three progress.

7.13 If the post was not to be made permanent, this would result in a significant drop in capacity. At the same time as the demand for legislative change is high, so the demand for legal advice and assistance has also risen. Without the capacity offered by a new permanent role, progress will be hampered.

7.14 The precise nature of the permanent role requires some further development and consultation with affected staff. It also needs to be considered in the wider context of the team and prospects for other staff to progress.

7.15 Legislative drafting is a scarce resource world-wide and there is keen competition for good quality staff. As the team is currently structured, there is little opportunity for another local candidate to emerge to take up a legislative drafting role. The current legislative drafting roles require an individual first to qualify as a lawyer, then to have gained experience in a drafting role. There will perhaps always be a need for someone with those qualifications/experience. In some other jurisdictions, legislative drafters are also developed without necessarily requiring prior qualification as a lawyer. It is therefore considered that, over the next few years, we could develop an internal resource by a combination of local experience and specific external drafting training/ qualifications.

7.16 Making the Statute Law Commissioner post permanent would assist with this development, by securing an experienced leader for this team.

7.17 The main options surrounding this proposal are as follows:

(A) **Option 1** – Law Commissioner post becomes permanently established, in its current form.
(ie the role remains limited to the functions set out at 7.5 above)

(B) **Option 2** – Law Commissioner post ends in mid-2019

(ie the work of the Statute Law Commissioner required under the Law Revision and Publication Post is absorbed within Government Legal Services through appointment of the Attorney General to the role of Statute Law Commissioner; who then delegates the work to other staff within Legal Services)

(C) **Option 3** – There is agreement in principle to the permanent establishment of the Law Commissioner post, subject to further work being done around the functions and responsibilities of the role.

(ie additional options are considered for the work of the Statute Law Commissioner required under the Law Revision and Publication Ordinance 2017, possible additional law reform work, and greater involvement in the Government Legislative Drafting Programme. These are to be discussed with the current post-holder and Director of Human Resources, and approved by the Attorney General)

Option 3 is preferred, and recommended accordingly.

8. Resource Implications

8.1 Financial Implications

	2018/19	2019/20	Annual Recurring
Operating Budget			
Continuation of Law Commissioner *	£7,700	£95,000	£98,700
Additional external legislative drafting resource for law reform programme		£10,000	£10,000
Total	£7,700	£105,000	£108,700

*see note in paragraph 2 above

8.2 Human Resource Implications

8.2.1 The Statute Law Commissioner post has been approved by Executive Council on a temporary basis until May 2019 (see ExCo papers 16/17, 189/14, and 267/13). This paper proposes the post becoming a permanently established post from 1 June 2019.

8.2.2 The post of Statute Law Commissioner is currently filled by the post holder on a secondment arrangement from Head of Legal Services (Grade A1). That secondment is due to complete in May 2019 (although could be extended – an appointment was made to the Head of Legal Services post for two years from October 2017). It will be a management matter to determine how the permanent post might be filled, if approved (the current post holder is interested in continuing in the role).

8.2.3 The post of Law Commissioner for the initial two year project was evaluated at Grade A. Although the role of Law Commissioner was extended in 2017 the duties now have developed beyond the original aims of the post. Although the current role and responsibilities

of the postholder are clear, it is important that this information is accurately captured within a formal Job Description. A working draft documents has been developed and will clearly inform the way forward.

8.2.4 The proposal to make permanent the role of Law Commissioner also presents an opportunity to look at how best to structure the functions within the Office of the Attorney General to ensure this best meets the needs of Government in the longer term.

8.2.5 Ultimately the grade of the post will depend on the evaluation of the new job description. For planning purposes Grade A1 has been used for all costings as it is anticipated that if management of other staff and functions within the service unit fall within the new role then this may drive the current job evaluation from Grade A to Grade A1.

8.3 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.

A targeted stakeholder consultation was undertaken alongside a public consultation; by way of the consultation paper set out at Annex 3, with the results of that consultation set out in Annex 4.

14. Communication

It is recommended that this paper be published in full.

Summary of Statistical Information about Statute Law Database for 2017/18 Annual Report to the Legislative Assembly

1. Usage statistics for Statute Law Database in year 31 July 2017 to 30 July 2018

(a) Information about users:

Total number of users:	2,390
Median number of monthly users	254
Percentage of visitors who returned to site	22.6%

(b) User by reference to nationality (top 10):

United Kingdom	802
Falkland Islands	770
United States	317
Australia	60
Argentina	54
St Helena	53
India	25
Canada	23
[unidentified]	23
Netherlands	21
Ukraine	21

(b) Information about users' viewing behaviour:

Number of viewing sessions	8,341
Viewing sessions by reference to nationality (making up 85% of sessions)	
Falkland Islands	5332
United Kingdom	1814
Total number of pages viewed	14,502
Unique page views	11,997
Average time per session (minutes)	2.48

(c) Main routes for users arriving on the Database:

Direct (generally means using site address [ie URL])	1,154
Organic search (generally means using free search engine)	711
Referral (generally means using link from another site)	673
Social (via social media)	42

Notes: These statistics do not filter Falkland Islands Government users

2. Information about service faults and reliability, and improvements to functions supported by the operating software

(a) Technical information

(i) General response time (ie how quickly Database web-page responds) - 4 seconds

(ii) Up time (ie availability of Database to the public) - 99.97%

Down time (ie when Database is unavailable to the public) – generally less than 10 minutes on each occasion (and limited to system re-starts after planned upgrades)

Note: these figures do not include any Falkland Islands network outages that prevent Falkland Islands residents from accessing the Database servers which are located in the UK

(iii) Improvements to the functions supported by the operating software:

9 upgrades have been applied during the period, which include minor improvements made to:

- content display
- content style
- content security
- administrative operation

(b) Defects in content of legislation:

Reports on defects were made to the Legislative Assembly in April, June, and August 2018 and are summarised as follows:

Number of laws on Database affected by defects: 15

Percentage of laws on Database affected by defects 1.1%

Cause of defects:

Error made by Commissioner in compiling Database	5
Error made by Commissioner in updating Database	0
Error derived from inaccuracy in the Revised Laws of the Falkland Islands	2
Error made by Technical Contractor in entering data on behalf of Commissioner	4
Technical fault	5

3 Information so far as available of use made of facilities for access to hard-copy extracts or archives

(a) Hard copy extracts:

A hard copy of the Falkland Islands made legislation (ie Ordinances and secondary legislation in full) was provided to Stanley Library in May 2018. The Librarian is

unable to provide details of use because of the way the library operates, but has noted that the library is a well used resource generally, and has informally observed that the hard copy of the laws is being used occasionally by visitors to the library.

- (b) Archived legislation has not yet been made available on the Statute Law Database.

Summary of Interim Law Revision Programme (May – August 2018)

- (a) Production of a Statute Repeal Bill to incorporate any laws which can be confirmed for repeal without significant further research or consultation;
- (b) Start of revision of the Interpretation and General Clauses Ordinance 1977;
- (c) Initial research into appropriate prioritisation of consolidation (localisation) of UK laws; and
- (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.



STATUTE LAW COMMISSIONER

2018 Consultation on Law Revision Programme Proposals

Contents:

1. What is this consultation about?
2. How to respond to the consultation
3. How proposals have been compiled
4. Proposed law revision programme 2018-2019
5. Proposed long term plan for law revision programme 2018-2023
6. Background to law revision in the Falkland Islands

Schedule – Estimated timetable for law revision programme

1. What is this consultation about?

1.1 Law revision is a process applied to the laws of the Falkland Islands to make them more accessible and more effective.

1.2 As Statute Law Commissioner, I am seeking public submissions about the draft law revision programmes proposed in paragraphs 4 and 5 below. I welcome your views about:

(a) the laws suggested for the programme; and

(b) whether you think there are any other laws which should be included in the programme.

This consultation is not about wider law reform which involves changes to the substance of the law.

2. How to respond to the consultation:

Please send your comments on the law revision programme to:

Barbara Steen, Legislation and Gazette Manager

e-mail: bsteen@sec.gov.fk

post: Government Legal Services, Old Print Shop, Stanley

by **Monday 10 September 2018** (late submissions may be accepted by prior agreement)

3. How proposals have been compiled

Laws are included in the programme based on one or more of the following considerations:

- the law uses outdated language and style
- related areas of law could be consolidated into one area of law
- the UK Act applying in the Falkland Islands has been repealed and replaced in UK
- the law is in frequent use or affects a significant section of the public
- the law will be more accessible if revised, consolidated, or localised

4. Proposed Law Revision Programme 2018-2019

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Estimated timescale
Interpretation and General Clauses Bill	Interpretation and General Clauses Ordinance 1977	None	Out of date language Substantially amended Will enhance accessibility Significant law in respect of clarity of the whole statute book	Revision already started under interim law revision programme; should be completed in 18/19
Companies Bill	Companies and Private Partnership Ordinance 1922 Companies (Auditors) Ordinance 2003 Companies (Amendment) Ordinance	<i>Companies Act 1948</i> <i>Companies Act 1985</i> <i>Companies Act 1989</i>	Will enhance accessibility: - provisions adopting three different Acts are located in three different Ordinances, and	The relevant provisions involve hundreds of sections and tens of schedules, so the task may continue beyond 2018/19

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Estimated timescale
	2006		<p>are lengthy and complex</p> <ul style="list-style-type: none"> - the adopted Acts have been repealed in UK <p>Will assist future substantive law reform</p> <p>Will achieve localisation of law</p> <p>Law is in frequent use and affects significant section of the public – ie commercial sector</p>	
Administration of Justice Bill	<p>Administration of Justice Ordinance 1949</p> <p>Administration of Justice (Miscellaneous Provisions) Ordinance 1996</p> <p>Administration of Justice (Amendment) Ordinance 2013</p> <p>Administration of Justice (Practice and Procedure) Ordinance 1999</p> <p>Application of Enactments Ordinance 1954 [to the extent it concerns any relevant Acts]</p> <p>Charging Orders Ordinance 1997</p> <p>Civil Procedure (Execution) Ordinance 1938</p> <p>Foreign Judgments (Reciprocal Enforcement) Ordinance 1959</p> <p>Maintenance Orders</p>	<p><i>Attachment of Earnings Act 1971</i></p> <p><i>Coroners Act 1988</i></p> <p><i>County Courts Act 1984</i></p> <p><i>Courts and Legal Services Act 1990</i></p> <p><i>Courts Act 2003</i></p> <p><i>Deserted Tenements Act 1817</i></p> <p><i>Distress for Rent Acts 1689 and 1737</i></p> <p><i>Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968</i></p> <p><i>Execution Act 1844</i></p> <p><i>Judgments Act 1838</i></p> <p><i>Justices of the Peace Act 1361</i></p> <p><i>Landlord and Tenant Acts 1709 to 1851</i></p> <p><i>Law of Distress Amendment Acts 1888 to 1908</i></p> <p><i>Magistrates' Court Act 1980</i></p>	<p>Will enhance accessibility:</p> <ul style="list-style-type: none"> - provisions adopting multiple different Acts are located in multiple Ordinances, are lengthy, and very complex - many of the adopted Acts have been repealed in UK <p>Will assist future substantive law reform</p> <p>Will achieve localisation of law</p> <p>Law is in frequent use and affects a significant section of the public in terms of facilitating access to justice</p>	The relevant provisions run into the thousands, so the task will potentially extend over several years.

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Estimated timescale
	(Reciprocal Enforcement) Ordinance 1979	<i>Magistrates' Courts (Appeals from Binding Over Orders) Act 1956</i> <i>Sale of Farming Stock Act 1816</i> <i>Senior Courts Act 1981</i>		

5. Proposed long term plan for law revision programme 2018-2023

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Timescale
Interpretation and General Clauses Bill	As above	As above	As above	Should complete 18/19
Companies Bill	As above	As above	As above	To start 18/19; may continue into 19/20
Administration of Justice Bill	As above	As above	As above	To start 18/19; likely to continue well into 19/20
Contracts and Consumer Protection Bill	Consumer Contracts (Unfair Terms) Ordinance 1996 Law of Contract Ordinance 1988	<i>Sale of Goods and Services Act 1979</i> <i>Supply of Goods and Services Act 1982</i> <i>Uniform Laws on International Sales Act 1967</i> <i>Minors' Contracts Act 1987</i> <i>[Consumer Rights Act 2015 – in so far as is a consolidation of any Acts above]</i> <i>[Possibly to include Bills of Sale Acts – various dates]</i>	Will enhance accessibility: <ul style="list-style-type: none"> - provisions adopting several different Acts are located in two different Ordinances, and are lengthy and complex - adopted Acts have been repealed in UK Will achieve localisation of this area of law Will assist future substantive law reform Law affects significant	To start 19/20; likely to continue well into 20/21

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Timescale
			section of the public, but believed to be underutilised because of inaccessibility	
Bankruptcy and Insolvency Bill	<p>Insolvency Ordinance 1992</p> <p>Application of Enactments Ordinance 1954 [to the extent it concerns any relevant Acts]</p>	<p><i>Administration of Justice Act 1925</i></p> <p><i>Bankruptcy Act 1914</i></p> <p><i>Bankruptcy and Deeds of Arrangement Act 1913</i></p> <p><i>Deeds of Arrangement Act 1914</i></p> <p><i>Insolvency Act 1976</i></p> <p><i>Insolvency Act 1986</i></p> <p><i>Law of Property Act 1925</i></p>	<p>Will enhance accessibility:</p> <ul style="list-style-type: none"> - provisions adopting several different Acts are located in two different Ordinances, and are complex - adopted Acts have been repealed in UK <p>Will achieve localisation of this area of law</p> <p>Will assist future substantive law reform</p> <p>Companion piece to Companies Bill above</p>	To start 19/20; may continue into 20/21
Charities Bill	None	<p><i>Charities Act 1960</i></p> <p><i>Charities Act 1985</i></p> <p><i>Charitable Trustees Incorporation Act 1872</i></p>	<p>Will enhance accessibility;</p> <ul style="list-style-type: none"> - existing charity law is largely contained in adopted Acts which have been repealed in UK <p>Will achieve localisation of this area of law</p> <p>Will assist future substantive law reform</p> <p>Law is in frequent use by significant section of the public – active charity sector</p>	To start in 20/21; likely completed within the year
Aviation and Maritime Security Bill	Aviation and Maritime Security Act 1990 (Application of Provisions)	<i>Aviation and Maritime Security Act 1990</i>	Will enhance accessibility through bringing several laws dealing with related	To start in 21/22; likely completed within the year

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Timescale
	Ordinance 2004 Maritime Security and Safety Ordinance 2009 Ship and Port Facility (Security) Ordinance 2004		subject matter together Will achieve localisation of this area of law Law is in frequent use in terms of significant maritime industry in FI	
Law of Property Bill	Agricultural Incentives and Subsidies (Land Charges) Ordinance 1998 Land Ordinance 1949 Land Charges Ordinance 1996 Mortgages and Property Ordinance 1996 Stamp Duties (Abolition) Ordinance 1991	<i>Law of Property Acts (various dates) and associated Acts</i>	Will enhance accessibility; the law of property is found across a range of Ordinances and Acts, with little or no cohesion Will achieve localisation of this area of law Will assist future substantive law reform Law affects significant section of the public in respect of property ownership	To start in 21/22; likely to continue well into 22/23
Marriage Bill	Marriage Ordinance 1996 Registration Ordinance 1949	<i>Marriage Act 1949</i> <i>Marriages Validity (Provisional Orders) Act 1924</i> <i>Provisional Order (Marriages) Act 1905</i>	Will enhance accessibility - provisions concerning marriage are largely contained in the Marriage Ordinance, but some matters are still dealt with under adopted Acts Will achieve localisation of this area of law Law is in frequent use	To start in 22/23; likely completed within the year
Defamation Bill	Defamation Ordinance 1988	<i>Defamation Act 1952</i> <i>Defamation Act 1996</i> <i>Defamation Act 2013</i> <i>Law of Libel Amendment Act 1888</i>	Will enhance accessibility; - provisions concerning the law of defamation are complex and contained in an unusual	To start in 22/23; likely completed within the year

Revision, consolidation or localisation Bill	Ordinance/s to be revised/consolidated	Acts to be incorporated into Bill (localisation)	Reasons for revision/consolidation/localisation	Timescale
		<i>Libel Act 1843</i> <i>Libel Act 1845</i> <i>Newspapers, Printers and Reading Rooms Repeal Act 1869</i>	combination of Ordinance and adopted Acts, making them particularly difficult to understand Will achieve localisation of this area of law	

6. Background to law revision in the Falkland Islands

6.1 The Statute Law Commissioner is required to carry out a continual programme of revision of the laws of the Falkland Islands. Law revision involves reorganisation/rewriting the law to improve its accessibility and clarity, and removing unused laws from the statute book; but it is not intended to alter the law.

6.2 The Law Revision and Publication Ordinance 2017 provides that the law revision programme may include the following:

(a) the repeal or revocation of laws which are no longer of any practical use

The need for this work is fairly self-explanatory – a statute book containing obsolete laws can be confusing and will become less effective over time.

(b) consolidation of Falkland Islands laws

This work 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).

(c) bringing together adopted UK law into the form of a local statute

This work involves replacing an adopted UK law with a self-sufficient local law.

The Falkland Islands currently adopts just under 400 United Kingdom laws. So this type of consolidation is important for the Falkland Islands in terms of breaking the policy and law dependence on the UK, but of course must be balanced with the limited resources in the Falkland Islands for maintaining our own policy development and producing our own legislation; in some cases adopting UK law is the most efficient and appropriate solution.

Local consolidations of adopted UK laws can also make the relevant law much easier to access and to understand. It is often difficult to understand how adopted UK laws apply in the Falkland Islands because law in one area can be made up of a combination

of several UK 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.

There are also a number of areas where the Falkland Islands relies on out-dated versions of UK law. This makes the law particularly difficult to access; because the relevant version of the law will often be 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.

Basis for consultation

6.3 The Statute Law Commissioner is required, under the Law Revision Programme, to make proposals the Legislative Assembly in an annual report for:

- (a) the law revision programme for the following year; and
- (b) a long term plan for a revision programme for the following 5 years.

6.4 This paper consults on the draft programmes to be considered in due course by the Legislative Assembly; for 2018-19 and for a five year period starting in 2018/19.

Interim programme of law revision

6.5 The Law Revision and Publication Ordinance came into force on 31 July 2017, and proposals for a short interim programme were agreed by the Assembly pending the Commissioner's first annual report, which will report on the year 2017/2018. The interim programme included; beginning revision of the Interpretation and General Clauses Ordinance 1977, proposals for repeal/revocation of laws; and identifying future work.

Potential for wider law reform work

6.6 The revision work started on the Interpretation and General Clauses Ordinance 1977 has highlighted the limitations of pure law revision, and may result in proposals being made for the law revision programme to be supplemented by a broader programme for law reform, ie which would include proposals for change to the substance of the law. However, the potential for broader law reform is not the subject of this consultation (but may be the subject of future consultation).

Statute Law Commissioner, Ros Cheek
Issued on 27.8.18

SCHEDULE [to consultation paper]

Estimated timetable for law revision programme

17/18	18/19	19/20	20/21	21/22	22/23	23/24
<i>[Interim Programme]</i>	Year 1	Year 2	Year 3	Year 4	Year 5	
Interpretation and General Clauses Bill						
	Companies Bill	[possibly ongoing]				
	Administration of Justice Bill		[possibly ongoing]			
		Bankruptcy and Insolvency Bill				
		Contracts and Consumer Protection Bill		[possibly ongoing]		
			Charities Bill			
				Law of Property Bill		[It is unlikely to complete within the 5 year programme]
				Aviation and Maritime Security Bill		
					Marriage Bill	
					Defamation Bill	

Responses to Public Consultation on Law Revision Programme Proposals

Four responses received (2 external to FIG, 2 from within FIG); summarised as follows:

1. *Company law:*

- 2 respondents suggested that company law requires law reform rather than law revision because of the need to modernise the substance of company law

“company law [in the Falkland Islands]... is up to 70 years old and does not necessarily reflect the modern Falklands economy, let alone the future one”

“the most beneficial use of time would be to look at [the Companies] Act [2006] and to adopt a pared down version of it – ie, to include the reforms made for private companies while excluding provisions for public or listed companies which have no application here. This is as an alternative to consolidating those parts of the 1948, 1985 and 1989 Acts adopted here (which the 2006 Act already does), and then introducing substantive reforms at a later stage. Instead, we would consolidate and modernise in one go”

- 1 respondent noted that if there is to be any substantive law reform of company law, that must be subject to detailed public consultation

2. *Consumer Protection law*

- 2 respondents suggested that consumer protection law requires law reform rather than law revision because of the need to modernise the substance of the law

“Revision on its own would limit the scope for substantive changes to be made: it would not include consideration of the provisions of the Consumer Rights Act [2015] that do not reenact Acts already adopted; nor would it include consideration of adopting consumer credit legislation”

“The UK Consumer Rights Act 2015 might prove a better starting point than trying to consolidate some of the older legislation applying here”

3. *Bankruptcy and Insolvency law*

- 2 respondents suggested that bankruptcy and insolvency law requires law reform rather than law revision because of the need to modernise the substance of the law

“Personal bankruptcy is still governed here by legislation that is not only over 100 years old but which consolidated legislation older than that. That legislation was replaced in England

and Wales over 30 years ago and, while that is not a reason in itself to change our law, it does suggest that reform might be more appropriate than revision”

4. Other legislation which could be included for revision:

Electoral Ordinance and its subsidiary legislation

“it affects everyone entitled to vote and is fundamental to self determination and also that it has been much amended over the years, not necessarily consistently or comprehensively”

Statute Law Commissioner’s comment on responses:

There is merit in the suggestion that the first three areas of law (above) would benefit from law reform; as discussed in this substantive paper (see paragraph 6).

The Electoral Ordinance and its subsidiary legislation is a possible candidate for law revision, but was not included in the proposed law revision programme because it has been given some priority within the Government legislation priorities programme (see Annex 5); so this avoids potential overlap in programmes.

Summary of Government Legislative Drafting Priorities (agreed ExCo 28 May 2018):

1. Commencement of legislation recently made or passed but not yet commenced:

- * Commons Ordinance 2017
- Communications (Enforcement of Orders)(Compensation and Penalties) Regulations 2017
- Crimes (Amendment) Ordinance 2017 (section 9 only left to commence)
- Falkland Islands Status (Amendment) Ordinance 2017
- [*Harbours and Ports Ordinance 2017 – commenced on 1.9.18*]
- * Immigration (Amendment)(No 2) Ordinance 2017
- * Maritime Ordinance 2017
- * Merchant Shipping (Adoption of Legislation)(Amendment) Ordinance 2017

[* requires amendment or supporting legislation to be drafted before can be commenced]

2. Immediate prioritisation of new legislation in the following areas:

- Adult (Safeguarding) Bill 2018
- Child Minding and Day Care Bill 2018 (and supporting regulations and orders)
- Children (Care Planning, Placement and Case Review) Regulations 2018
- Children (Fostering) Regulations 2018

3. Completion of other draft legislation underway:

- Family Law Reform (Amendment) Bill 2018
- Firearms and Ammunition (Amendment) Bill 2014
- Fisheries (Conservation and Management)(Amendment) Bill 2017
- Immigration (General) Regulations 2017
- Merchant Shipping (Registration of Ships) Regulations 2018
- Road Traffic (Designation of Roads) Order 2013/Road Traffic (Amendment) Bill 2013 (*and Road Traffic Bill 2008*)
- Taxes Bills (2013 & 2016)

4. Biosecurity Bill (and supporting Regulations?)
Building (Amendment) Regulations

5. Where spare capacity permits:

Criminal law review 2018
Electoral review
Employment review
Environmental protection
Health and safety
Public Safety
Tax