

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Public Accounts Committee

Paper No: 19/09

Date: 29 January 2009

Report of: Attorney General

1.0 Purpose

The purpose of this paper is to discharge the remit in Item 1 of the Executive Council Task Status Report and enable Executive Council to consider the policy issues that arise in relation to the establishment of the Public Accounts Committee, so that the necessary legislation can be drafted.

2.0 Recommendations

Executive Council is recommended to:—

- (a) agree the proposals made in the attached paper; and
- (b) agree that the paper should form the basis for public consultation on the proposals.

3.0 Summary of Financial Implications

No specific financial implications arise from agreement to the recommendations, but financial implications will arise from the establishment of the Public Accounts Committee which will need to be addressed as part of the budget process.

4.0 Background

4.1 Section 81 of the 2008 Constitution establishes the Public Accounts Committee.

4.2 A Public Accounts Committee Ordinance is required to put flesh on the bones of section 81, and in particular to establish the functions of the PAC.

4.3 In order to draft that legislation, policy decisions are required on a number of issues, which are set out in the attached paper.

4.4 It is proposed that, if approved by Executive Council, the paper will then form the basis for public consultation, and the intention is to get the Bill to the Legislative Assembly in July 2009.

5.0 Financial Implications

As in section 3 above.

6.0 Legal Implications

As set out in the paper.

7.0 Human Resources Implications

None

PUBLIC ACCOUNTS COMMITTEE

Introduction

1. Section 81 of the new Constitution makes provision for the establishment of a Public Accounts Committee (PAC).
2. ExCo has asked for a paper on the PAC for the fourth quarter of 2008. This paper addresses the policy issues that need to be decided so that the legislation to establish the PAC can be drafted, and also flags up some other issues that will arise in relation to the PAC.
3. The key issues are the duties of the PAC (see paragraphs 21 to 30), the source of advice to the PAC (paragraph 31) and the funding of the PAC (paragraphs 32 to 33).

Section 81

4. The key aspects of section 81 are:—
 - the PAC consists of a Chairman and two other members appointed by the Governor (acting after consultation with the elected members of the Assembly) from persons who are not members of the Assembly, and two elected members of the Assembly elected by the Assembly;
 - the Director of Finance and the Chairman and Deputy Chairman of SFC are disqualified from membership of the PAC;
 - the PAC can invite any person to assist it in its work and to participate in its proceedings;
 - the PAC shall examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly and shall have such other functions, and shall operate under such procedures, as may be prescribed by or under an Ordinance;
 - the PAC shall have power to summon any persons to appear before it, and require a person so summoned to answer questions and provide information to it;
 - the PAC is to report on its activities to the Legislative Assembly, keeping the Governor closely informed, as often as it may consider necessary but at least annually, and the PAC is to publish all such reports without delay;
 - the PAC is not in the exercise of its functions subject to the direction or control of any person.

Section 80

5. Also relevant is the Audit provisions of section 80, which provides that it is for the Governor to make appropriate arrangements for the “audit of the public accounts of the FI and of all courts of the law and all authorities and officers of the Government

and of statutory bodies”. All reports of audits are submitted to the Governor, who publishes them and lays them before the Legislative Assembly and the PAC.

2006 Report published by the Commonwealth Parliamentary Association on the role of PACs

6. This report concluded that the elements that PACs have in common (examining expenditure retrospectively and working closely with the Auditor General) are few, and their diversity is substantial.
7. The role and relationship of the PAC and the Auditor General are seen as mutually supportive mechanisms in facilitating transparency and minimising the potential for corruption in government’s financial operations.
8. The Report identified an ideal PAC as having the following features:—
 - PACs must be relatively small;
 - senior opposition figures should chair PACs;
 - the Chairperson should be a senior parliamentarian;
 - the Committee should be appointed for a full term and adequately resourced;
 - Committee rules and remits must be clear;
 - the Committee should meet frequently;
 - PAC hearings should be open to the public;
 - the Auditor General’s report should be automatically referred to the PAC and the Auditor General should meet with the Committee to go over report highlights;
 - the PAC should issue formal and substantive reports to Parliament at least annually; and
 - the PAC should establish a procedure with the government for following up on its work.
9. It may not be possible to replicate all of these features (particularly the second and third) in the Falkland Islands.

Basic procedures of PAC

10. The basic procedures for the PAC seem straightforward and uncontentious:—
 - Chair appointed by Governor;
 - Deputy Chair appointed by Committee;

- All members to complete a notification of registerable interests based on the notification required from members of the Legislative Assembly and to be required to make a declaration of interest to the Governor and the chairman of the Committee in relation to any matter that it is proposed should come before the Committee;
- meet at such times and such places within Falkland Islands as the Committee determines, with a requirement to meet at least once every six months;
- Quorum three, to include the chair or deputy chair, one member appointed by the Governor, and one elected member;
- all questions to be decided by majority of the votes of members present;
- in case of equality of votes, chair to have casting vote;
- take evidence on oath/affirmation;
- normally sit in public, but to be able to sit in private in particular circumstances (see below);
- evidence to be recorded and, when given in public, published;
- penalty for giving false evidence;
- witness to have same protection/privileges as if giving evidence as a witness in High Court proceedings;
- witness to be paid travel and accommodation expenses.

Public/Private Settings

11. Whilst it is important that the PAC should normally sit in public, circumstances may arise in which sitting in private is appropriate.
12. It is proposed that these circumstances should comprise:—
 - (a) where evidence would involve exempt information as set out in Schedule 2 to the Committees (Access to Information) Ordinance 2000;
 - (b) where evidence would be in breach of the Executive Council oath of secrecy as set out in Annex B to the Constitution; and
 - (c) if the witness giving the evidence requests this, and the Committee is satisfied that the evidence relates to a secret or confidential matter.
13. If evidence is taken in private, neither the Committee, any member, or any other person, shall disclose or publish the whole or any part of that evidence without (in case 12(c)) the consent of the witness, and in all cases, the consent of the Governor.

Policy issues to be determined

14. The key issues on which policy decisions are needed seem to be:—
 - procedure for appointments to PAC;
 - ExCo Councillors to be excluded from membership PAC;
 - payment of expenses to members;
 - advice/assistance to PAC;
 - duties of PAC;
 - funding;
 - follow up to PAC Reports.

Procedure for appointment

15. As has been set out in paragraph 4 above, the Governor has to consult the elected members of the Legislative Assembly on the appointment of persons who are not members of the Assembly.
16. The starting point for the consideration of such appointments should be to seek expressions of interest in the appointments from those ordinarily resident in the Falkland Islands.
17. Whilst this is not a matter for inclusion in the Bill, we will need to decide at the appointment stage whether we need to settle a person and experience specification against which to judge the suitability of those putting themselves forward for consideration. Such a spec might include:-
 - previous experience as a Councillor or in a senior post in the civil service; or
 - previous experience in running a business or other organisation; and
 - an understanding of finance and accounts; and
 - high standing in the Community.
18. Rather than specify that we want to attract persons from different sectors of Falkland Islands society (which seems desirable), it seems more sensible to leave this for the Governor to consult elected members on, once expressions of interest have been received.

Exclusion of ExCo Councillors from membership of PAC

19. Under section 81, the Chairman and Deputy Chairman of SFC are disqualified from membership of the PAC. That does not seem to go far enough, as it must be inappropriate for any ExCo Councillor to be a member of the PAC

Payment of expenses to members of PAC

20. It is proposed, following consultation with members of the Assembly, that PAC members should be reimbursed their travel and accommodation expenses, but should not otherwise receive any wider payment/allowance.

Duties of the PAC

21. There are quite a few issues that arise for consideration. The basic function of the PAC is, as has been set out above, to “examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly”.
22. Those accounts/audit reports are those referred to in section 80 relating to audit – “the public accounts of the Falkland Islands and of all courts of law and all authorities and offices of the Government and of statutory bodies” – so it is clear that, for example, FIDC is within the jurisdiction of the audit function and of the PAC.
23. So the basic function is to examine those accounts and audit reports, which would extend to reporting to the Assembly on any comments it has on any items or matters in those accounts/reports.
24. The first issue which arises is whether the PAC is limited to an *ex post* role in examining the public finances after expenditure has taken place, or whether it should have an *ex ante* role in the budget process in examining estimates. Almost all Commonwealth PACs are limited to the *ex post* role, whereas US models include the *ex ante* role. It is proposed that the PAC should have the traditional *ex post* role.
25. A second issue is whether the PAC simply considers the account in a technical sense, or whether in addition it should consider value for money criteria based (as with the UK Parliament PAC) on economy, effectiveness and efficiency. That seems to be essential.
26. But under the UK model, the PAC does not consider the formulation or merits of policy, which fall to be considered by departmental select committees. Given that there are no such committees in the Falkland Islands system, the third question that arises is whether the PAC remit here should extend to policy issues. It is considered that this would be undesirable – policy issues should be for FIG not the PAC.
27. A fourth question is whether the PAC should essentially control its own agenda by inquiring into any matter relating to value for money it considers appropriate or whether it can inquire with such questions only if they are referred to it by the Governor or the Legislative Assembly. A compromise solution might be appropriate – each year the PAC should meet to consider its programme for the following year, should consult the Chief Internal Auditor on that programme, and then submit the programme to the Assembly for approval, or amendment by the Assembly. This would enable the PAC to put forward its own agenda (subject to

any matter specifically referred to them by the Governor or Assembly), but reserve ultimate control to the Assembly.

28. A fifth series of questions are whether the PAC should have a role in advising the Governor on the effectiveness of the audit arrangements made by him under section 80, on audit priorities, and on the performance of the auditor. It is recommended that it should.
29. A sixth set of issues arises from the power of the PAC to require persons to attend to give evidence to it. As has been set out in paragraph 4, section 81 gives the PAC the power to summon any person to appear before it. A summons would not in practice be required for FI public servants, or Councillors, but the power is important for others who the Committee believes can give relevant evidence. It is not proposed to limit the scope of the s.81 power in the Bill, but the Bill will set out the form of the summons, for a warrant to be issued if the person does not appear, and for it to be a criminal offence for a person to fail to comply with a summons.
30. A seventh issue is whether the remit of the PAC should extend to the regulation of monopolies, such as Cable and Wireless, as has been suggested by some. This does not seem appropriate – it is a PAC and the “Public Accounts” has to mean something. But the PAC would be able to look, not at Cable and Wireless directly, but, for example, at how effectively the government regulates Cable and Wireless.

Advice/assistance to PAC

31. It would seem to be necessary to provide in the Bill for the PAC to have a secretary and other staff to provide the administrative back up it will need. But more significantly, the PAC will need accounting/audit assistance to enable it to carry out its functions effectively, particularly in relation to value for money issues. This cannot come from internal FIG staff, as it is their work that will be under scrutiny. Whilst this is not a matter for the Bill, we will need to consider whether the role of the PAC set out in paragraph 28 above means that it is not appropriate for the section 80 auditor to also support the PAC, so that a separate adviser will be required to support the Committee, or whether appropriate arrangements can be devised to permit the section 80 auditor to also support the Committee, which, if it can be achieved, would seem desirable on both knowledge and cost efficiency grounds.

Funding

32. Whilst it would be possible to place a duty on the Assembly to make appropriate financial provision to enable the PAC to carry out its work, the members of the Assembly have pointed out that no such duty has been imposed in any other area, and that it would be better to leave all issues of funding to be determined by the Legislative Assembly as part of the general budget process, which would mean that members of the Assembly would be answerable to the electorate for any allegation that it is trying to neuter the PAC by starving it of funding.
33. A particular concern in relation to funding is the subsection (4) power to “invite any person to assist [the PAC] in its work”, which will include the input from the professional advisers referred to in paragraph 31 above. It is suggested that the programme for the year which is submitted by the PAC to the Assembly under the

procedure set out in paragraph 27 above should make it clear what assistance from others is proposed, and for the Bill to provide that the subsection (4) power can only be exercised by the PAC within the financial provision made available to it by the Assembly.

Follow up to PAC Reports

34. It would seem desirable to put a duty on FIG to respond to all PAC Reports within a specific period. A duty on FIG to lay a Report before the Legislative Assembly within six months of the PAC Report making it clear what recommendations it accepts or rejects and what actions it proposes to take in response to the report is proposed..

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