

EXECUTIVE COUNCIL

PUBLIC

Title:	Review of the Constitution
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Responsible Director:	Chief Executive
Report Author:	Attorney General/Senior Policy Advisor
Portfolio Holder:	MLA Roger Spink
Reason for paper:	This paper is submitted to Executive Council: For policy decision (including budgetary policy)
Publication:	Yes
Previous papers:	None
List of Documents:	None

1. Recommendations

Honourable Members are recommended to:

- (a) Endorse the proposed Timetable for the Review of the Constitution and recommend this to the Select Committee.
- (b) Instruct the Chief Executive, Director of Policy & Economic Development, Attorney General and all other relevant public officers to support the work of the Select Committee.
- (c) Request a budget of £20,000 in 2019/2020 to support the work of the Select Committee.

2. Additional Budgetary Implications

2.1 The additional budgetary implications cannot be assessed with any certainty at this point. It will depend on whether any additional resources are required. This could

include advisers or other staff to support the Select Committee, or could include staff to provide extra capacity in Departments whilst existing staff work to support the Select Committee. It will depend on the extent of the work required, time constraints, and whether other work can be re-prioritised. It is suggested that a budget of £20,000 be requested as part of the 2019/2020 budget process to support the work of the Select Committee.

3. Executive Summary

- 3.1 A review of the Constitution of the Falkland Islands was a commitment in the Islands Plan. The Legislative Assembly has resolved to constitute a Select Committee to review the Constitution of the Falkland Islands. The format and conduct of the Review is a matter for the Select Committee to determine. This report considers suggestions for how that review may progress, and recommends that it be supported in the manner described below.
- 3.2 It is recognised that the Review will involve collection of a range of information, the gathering of written and oral evidence, analysis of the information and preparation of a report or series of reports. The resources to fully support the Constitutional Review are not currently available in FIG, as the work involved will be significant and commitment to this work would mean the delay or deferral of other priority projects.
- 3.3 This report recognises that, in addition to the support which will be required from a range of Falkland Islands Government departments, the review may benefit from the availability of independent expert advice and/or dedicated administrative support, particularly in the preparation of background materials for the topic-based sessions. It is therefore recommended that Standing Finance Committee be asked to provide a budget of £20,000 to meet all costs associated with the Review.
- 3.4 Appended to this report is an outline of how the review could be conducted, together with a suggested timeline for the review. It is important that Members and Public Officers are able to appropriately prioritise the work of the review, alongside all the other matters which the Islands Plan requires to be done. Executive Council is therefore asked to endorse the proposal in Appendix 1, and recommend to the Select Committee that it adopts this approach.

4. Background and Links to Islands Plan

- 4.1 Under the heading “Self Determination and good governance”, it was said that we will: “Review our Constitution to ensure it remains modern and fit for purpose in the light of our ambitions for the Islands”. The Select Committee will ensure that this objective is achieved.
- 4.2 The current Constitution is contained in the Schedule to the UK Falkland Islands Constitution Order 2008 made in the UK Privy Council under the British Settlements Acts 1887 & 1945.
- 4.3 The current constitution came about following a previous review. The process followed in the previous review can be summarised as follows:
 - (a) May 2000 – scope and procedure agreed

- (b) June 2000 – meeting with FCO legal adviser
- (c) December 2000 – Evidence session involving Attorney General, Chief Executive and representative from the Commonwealth Parliamentary Association
- (d) February 2001 – February 2004 – Evidence/discussion sessions
- (e) October 2004 – March 2005 – Formulation of proposals
- (f) October 2005 – First Report prepared
- (g) January 2006 – August 2006 – Further refinement of proposals
- (h) August 2006 – Second Report prepared
- (i) December 2006 – Public presentations
- (j) January 2007 – April 2007 – Final deliberations
- (k) May 2007 – Third (and Final) Report prepared
- (l) May 2007 – November 2008 – Discussions with FCO/drafting of the new Constitution
- (m) 5 November 2008 – Constitution Order made
- (n) 1 January 2009 – New Constitution came into force.

4.4 The previous review select committee reports, read alongside the final constitution, provide a useful starting point for some discussions.

4.5 Each of the Overseas Territories has its own constitution. Whilst there are similarities between all of the constitutions, there are also differences in form. There are also differences in how the Governments of the different territories operate in practice. It will be useful to consider the similarities and differences when considering whether changes to the Falkland Islands Constitution are required.

5. Options and Reasons for Recommending Relevant Option

5.1 **Option 1** is to endorse the proposed programme suggested in Appendix 1, instruct the Chief Executive, Attorney General, Director of Policy & Economic Development, and other public officers, to support the work of the Select Committee, and recommend this to the Select Committee. This option is recommended as it should ensure that a robust process is followed so that the review can be completed during the period of the current Assembly. It will also ensure that the work of the review can be prioritised appropriately alongside other key commitments.

5.2 It is recommended that a Communications Plan for the Review be agreed at the earliest stage to ensure that all key stakeholders participate to best effect, in order that the output from the Review is thorough. Key stakeholders to engage during the review will include:

- (a) Members of the Legislative Assembly
- (b) Members of the Public
- (c) The Business community
- (d) Public Officers
- (e) UK Foreign & Commonwealth Office
- (f) UK Ministry of Defence

5.3 It is considered that, if this option is supported, a specific budget should be set aside for the committee to cover costs associated with obtaining advice, and matters such as travel and accommodation for witnesses invited to visit the Islands.

- 5.4 **Option 2** would be to recommend a different programme, with or without additional support. This is not recommended. The Select Committee will in any event determine its own programme. Whilst it might be tempting to suggest a shorter programme, it is not considered that this will be realistic if the topic is to be given the attention it deserves. The previous review took seven years from May 2000 to May 2007 to move from formation of the Select Committee to agreement of a final report.
- 5.5 **Option 3** is to make no recommendations, and leave the process entirely in the hands of the Select Committee. This is not recommended. If the review is to achieve its objectives, it is considered that a clear commitment of support from Executive Council is required, including support to be provided by the public service.

6. Resource Implications

- 6.1 Financial Implications The financial implications will not be clear until the Select Committee agrees its programme of work. If independent advice or other support is sought, and there will be costs associated with this, which are difficult to quantify at this time. If the recommendations are agreed, further work will be required to scope the likely costs. Approval to the costs will then be sought, whether through the budget process or separately.

Human Resource Implications

The Select Committee will receive administrative support from the Clerk of Councils and her team. At this stage it is anticipated that the Policy & Economic Development Department and Government Legal Services will provide advice and assistance to the review from within existing resources. However, a more detailed assessment of the work demand will be known once a detailed work plan has been developed. This will inform more clearly how the additional work will impact on the relevant departments and existing priorities. The Officers will assess whether this additional demand can be met by existing resources or whether additional resources will be required to ensure time critical objectives are not unduly delayed. Should additional resources be deemed necessary, then the relevant approval will be sought through the established reporting arrangements.

- 6.2 Other Resource Implications At this stage it is not considered that other resources will be required.

7. Legal Implications

- 7.1 There are no legal implications arising from this report.

8. Environmental & Sustainability Implications

- 8.1 There are no environmental or sustainability implications arising from this report

9. Significant Risks

- 9.1 There is a risk that without a clear commitment and statement of intent regarding the review that the Islands Plan objective will not be achieved. There is also a risk to the

reputation of the Falkland Islands and the Government if the Review of the Constitution is not conducted properly.

10. Consultation

10.1 All Members of the Legislative Assembly have been consulted on the proposals in this report.

11. Communication

11.1 The Review of the Constitution will be subject to a separate communications plan, which will be recommended to the Select Committee. There will be a need to ensure all stakeholders are engaged and that the public are kept informed about the progress of the Committee's work.

Appendix 1 – Proposed Structure and timeline for Constitution Review

Timetable	Activity	Comment
January 2019	Public Service prepares initial reports for the Select Committee.	
February 2019	Initial Scoping Meeting	
April 2019	Second meeting and call for written evidence	
July 2019	Consider written submissions and agree plan for oral evidence sessions	
August 2019 – October 2020	Topic-based oral evidence sessions x 8	Topics could include: <ul style="list-style-type: none"> • Fundamental Rights and Freedoms • Legislature • Executive • Governor • Public Finance • Public Service • Administration of Justice • Miscellaneous
December 2020 – February 2021	Discussion meetings, formulation of recommendations, and preparation of draft report	
February 2021 – April 2021	Public Consultation on draft report and recommendations – 3 months	
April 2021	Consideration of consultation responses and agreement of final report	
May 2021	Report presented to Legislative Assembly	