

# EXECUTIVE COUNCIL

## PUBLIC

**Title:** Referendum on Single Constituency

**Paper Number:** 97/19

**Date:** 26 June 2019

**Responsible Director:** Attorney General

**Report Author:** Simon Young / Beth Dent (Registrar General)

**Portfolio Holder:** MLA Roger Spink

**Reason for paper:** This paper is submitted to Executive Council:  
For policy decision (including budgetary policy)

**Publication:** Yes, with redactions as **highlighted**

**Not Recommended:**

*Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld*

*The category which is relevant to this paper is paragraph 12 – information about legal advice.*

**Previous papers:**

**List of Documents:** Annex 1 – Alternative Questions

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### 1. Recommendations

Honourable Members are recommended:

- (a) to approve Option 3 as described in paragraph 6.3 below
- (b) to confirm the referendum question as set out in paragraph 8.5
- (c) to note that a date for the referendum will be confirmed by Members of the Legislative Assembly before 31 July 2019.

- (d) to authorise the Attorney General to prepare a Single Constituency Bill, and Referendum (Single Constituency Bill) Bill
- (e) to authorise the Attorney General liaise with officials in the Foreign and Commonwealth Office about the proposals set out in paragraphs 7.3 and 7.4
- (f) to request that a timetable for the referendum be brought to a future meeting of Executive Council.

## **2. Additional Budgetary Implications**

- 2.1 Provision for the costs associated with the holding of the referendum were included in the budget submissions for the Law & Regulation Department for the 2019/2020 financial year.

## **3. Executive Summary**

- 3.1 The proposed November referendum is an occasion for all electors to express their voice as to whether they want a single constituency or not. A number of decisions are required to be made in relation to voting arrangements for this referendum.
- 3.2 In summary the process to be followed is as follows:
  - (a) Executive Council approves draft Single Constituency Bill.
  - (b) The Bill is introduced to the Legislative Assembly and is put through the various stages up to the end of the Report Stage, at which point the third reading is postponed (until the outcome of the referendum is known).
  - (c) Executive Council at the same time will approve the Referendum (Single Constituency Bill) Bill.
  - (d) The Referendum Bill will be introduced to the Legislative Assembly and will be enacted.
  - (e) The administrative arrangements will be completed, and the referendum will be held. It is currently proposed that Members confirm and announce a referendum date by 31 July 2019.
  - (f) Two-thirds of all votes cast in the referendum, in both the Stanley and Camp Constituencies must be in favour of the proposal to proceed with enactment of the Single Constituency Bill in order to adopt a single constituency.
  - (g) If the result of the referendum does not achieve the necessary 2/3 majority in favour of the Single Constituency Bill, that Bill cannot be enacted and should be withdrawn.
  - (h) If the result of the referendum gives the necessary 2/3 majority in favour of the Single Constituency Bill, the Legislative Assembly can proceed to the third reading, and enact the Ordinance, and the Constitution will thereby be changed.
  - (i) In November 2021, elections to the Legislative Assembly will be held under the arrangements decided by this referendum.
- 3.3 The Referendum Bill will make provisions specific to the holding of a referendum. The poll will otherwise be held in accordance with the procedures set out in the Electoral Ordinance 1988. Further subsidiary legislation may be required, but this is unlikely, as

most arrangements are already in place. Some decisions will also be required of the Returning Officer and of the Governor (acting in his discretion).

#### **4. Background**

- 4.1 Under the heading of Self-Determination and Good Governance, the Islands Plan agreed by Members of the Legislative Assembly states “that during this Assembly we will:...
- Review our Constitution to ensure it remains modern and fit for purpose in light of our ambitions for the Islands;
  - Update the Electoral Ordinance to ensure that the Islands have modern and proportionate legislation, and voting processes and procedures;”
- 4.2 Members have announced their intention to hold a referendum to ask voters whether they wish to move from having two constituencies for the Falkland Islands, to having a single constituency. Making this change would require changing both the Constitution and the Electoral Ordinance 1988. This in part meets the objectives in the Islands Plan.
- 4.3 A previous referendum was held in 2011 asking essentially the same question. The outcome was that there was not sufficient support for the change in constituencies to be made as had been proposed.
- 4.4 In order to hold the referendum there needs to first be a Bill drafted proposing to make the required change to section 27(1) and (2) of the Constitution. Such Bill cannot be enacted unless supported by two-thirds of those voting in Stanley *and* two-thirds of those voting in Camp.
- 4.5 An Ordinance is required to be made setting out the legal framework for the holding of the proposed Referendum.
- 4.6 This report seeks confirmation of the decision to proceed with the proposed referendum, and agreement to the proposed arrangements, so that the necessary Bills can be prepared.

#### **5. 2011 Referendum and General Election Arrangements**

- 5.1 The 2011 Referendum was held in accordance with arrangements made under the Referendum (Single Constituency Bill) Ordinance 2011.
- 5.2 The 2011 Ordinance specified the date of the referendum, but made provision for it to be postponed by Order in exceptional circumstances.
- 5.3 It restated the Constitutional eligibility to vote in the referendum.
- 5.4 It prescribed the question to be asked in the referendum, and made provision for prescribed information to be made available to voters both in advance of the poll and at polling places.
- 5.5 The 2011 Ordinance prescribed the form and content of the ballot papers.

- 5.6 It made provision for the appointment of staff for the conduct of the referendum, and for those staff to be paid as costs of the referendum.
- 5.7 It made some provisions specific to the conduct of the referendum, and otherwise provided that the referendum should be conducted in accordance with the Electoral Ordinance 1988 (and subsidiary legislation made under that Ordinance).

## **6. Options and Reasons for Recommending Relevant Option**

- 6.1 **Option 1** is to do nothing – this means that no referendum will be held on this issue for the foreseeable future. This is inconsistent with statements made by Members of the Legislative Assembly, but this is a matter for Members to determine. If this option is chosen, it is recommended that some publicity is given to the decision in order to make the public aware of the change.
- 6.2 **Option 2** is to proceed with arrangements for referendum seeking approval to changing sections 27(1) and (2), but in a different way to that announced. This could include changes to the number of members per constituency, or providing for a different number of constituencies. This is inconsistent with statements made by Members of the Legislative Assembly, but this is a matter for Members to determine. If this option is chosen, it is recommended that some publicity is given to the decision in order to make the public aware of the change. A firm policy decision will be required in order that the necessary Bills can be prepared.
- 6.3 **Option 3** is to proceed with the arrangements for a referendum as proposed in sections 7 and 8 below. This is consistent with statements made by Members of the Legislative Assembly and is in line with public expectations. If this option is chosen, it is suggested that a Single Constituency Bill be prepared in accordance with the proposals in section 7 (subject to the outcome of discussions with the Foreign & Commonwealth Office, in relation to the issues identified in paragraphs 7.3 and 7.4), and that a Referendum Bill be prepared in accordance with the proposals in section 8.

## **7. New Single Constituency Bill**

- 7.1 It is proposed that a Bill be prepared which amends the Constitution as set out below:
- 7.2 Section 27(1) and (2) of the Constitution be deleted and replaced with provisions stating that there is a single constituency in the Falkland Islands for the purposes of electing members to the Legislative Assembly, and that the manner in which the eight members are elected to the Legislative Assembly shall be prescribed by Ordinance. The heading of section 27 “Constituencies” be changed to “Constituency).
- 7.3 **REDACTED.**
- 7.4 **REDACTED.**
- 7.5 The Bill will need to include provision about how and when it will come into effect, and saving provisions for current members of the Legislative Assembly until the end of their current term of office. It is suggested that the current arrangements should continue to apply until the end of the term of the current Legislative Assembly – in

other words, if a by-election is required, it will be held on a constituency basis, depending on whether the vacancy arises in Camp or Stanley.

## 8. New Referendum Bill

- 8.1 It is proposed that a Bill be prepared which sets out the requirement to hold a referendum and the arrangements for that referendum.
- 8.2 It is proposed that the Bill will be on substantially the same terms as the 2011 Referendum, and will make like provision on this occasion.

### Referendum question

- 8.3 The UK Electoral Commission comments on the intelligibility of UK referendum questions and conducts research on the form of questions in order to inform its comments. Their Referendum question assessment guidelines, November 2009 are a useful guide in deciding what the question should be. They state that: “A referendum question should present the options clearly, simply and neutrally. So it should:

- *Be easy to understand*
- *Be to the point*
- *Be unambiguous*
- *Avoid encouraging voters to consider one response more favourably than another*
- *Avoid misleading voters”*

- 8.4 The Electoral Commission produced an Assessment of the proposed EU membership referendum question. Their research and recommendations led to the question/answers in that case changing from:

*“Should the United Kingdom remain a member of the European Union?  
Yes  
No”*

To:

*“Should the United Kingdom remain a member of the European Union or leave the European Union?  
Remain a member of the European Union  
Leave the European Union”*

- 8.5 Having considered the research findings in their report, we would recommend the following referendum question in this case:

*“Should there be two constituencies, Stanley and Camp, or should there be one constituency for the whole of the Falkland Islands?”*

*There should be one constituency. I support the Single Constituency Bill*

*There should continue to be two constituencies. I do not support the Single Constituency Bill”*

- 8.6 Several alternative forms for the question were considered, and some of these are set out in Annex 1.
- 8.7 It is clear from reports regarding referendums in the UK that it is key that public understanding of what the referendum means is important. It is therefore important that neutral information is available to voters, in addition to any materials published by those seeking to promote one or other point of view. The Referendum Bill will therefore contain neutral information, written in clear, unambiguous language, which will be supplied to voters, about what will change as a result of the referendum and what will not.

## **9. Resource Implications**

- 9.1 Financial Implications - Funding for the referendum was requested as part of the budget submission for the Registry.
- 9.2 Human Resource Implications - Additional casual staff will be required for the referendum as is always the case with any referendum or election.
- 9.3 Other Resource Implications – There are no other resource implications.

## **10. Legal Implications**

10.1 REDACTED

10.2 REDACTED

10.3 REDACTED

10.4 REDACTED

## **11. Environmental & Sustainability Implications**

11.1 None

## **12. Significant Risks**

12.1 There are no significant risks arising from this report. The decision as to whether to hold a referendum is a political one.

## **13. Consultation**

13.1 No public consultation has been undertaken in relation to this report.

## **14. Communication**

- 14.1 Immediately upon approval by Executive Council of one of the options recommended in Section 5 of this paper, a media release should be issued noting the intention to announce a Referendum date by 31 July 2019.
- 14.2 Further, a communications plan shall be prepared for MLA endorsement, to be implemented when the referendum date is announced. The plan should include factual, neutral information on election date, voter registration procedures, the referendum question and a fact sheet outlining the consequences of a change to a single constituency.
- 14.3 It is also recommended that Honourable Members conduct public meetings in a number of locations to allow a dialogue between elected Members and the public.

## **Annex 1 – Alternative Questions**

The following alternative forms of question were considered:

1. *Should there be two constituencies, Stanley and Camp, or should there be a single constituency for the whole of the Falkland Islands?*

*There should be a single constituency. I support the Single Constituency Bill*

*There should be two constituencies. I oppose the Single Constituency Bill*

2. *What is your choice for constituencies in the Falkland Islands?*

*One constituency – I vote for the One Constituency Bill 2019*

*Two constituencies – I vote for separate constituencies for Stanley and Camp*

3. *Should there be two constituencies, Stanley and Camp, or should there be one constituency for the whole of the Falkland Islands?*

*One constituency - I support the One Constituency Bill 2019*

*Two constituencies – I oppose the One Constituency Bill 2019*

4. *Do you support the One Constituency Bill 2019?*

*Yes – there should be one constituency*

*No – there should be two constituencies*

5. *I vote for one constituency as provided for in the One Constituency Bill 2019*

*I vote for two constituencies as provided for in the current Constitution*

6. *Should there be two constituencies, Stanley and Camp, or should there be a single constituency for the whole of the Falkland Islands?*

*There should be a single constituency and I support that the Single Constituency Bill be enacted*

*There should be two constituencies and I do not support that the Single Constituency Bill be enacted*

7. *Should there be two constituencies, Stanley and Camp, or should there be a single constituency for the whole of the Falkland Islands?*

*There should be a single constituency and I support the enactment of the Single Constituency Bill.*

*There should be two constituencies and I do not support the enactment of the Single Constituency Bill.*