

EXPLANATORY MEMORANDUM TO
THE FALKLAND ISLANDS CONSTITUTION ORDER 2008

2008 No. 2846

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument establishes a new Constitution of the Falkland Islands. The new Constitution sets out a modernised Chapter on fundamental rights and freedoms of the individual. It provides for a Governor as Her Majesty's representative in the Islands. It provides for a Legislative Assembly composed of eight elected and two *ex officio* members, and for an Executive Council composed of three of the elected members of the Assembly and two *ex officio* members. It also provides for finance, including a Public Accounts Committee, the public service, the administration of justice, and a Complaints Commissioner for the Islands.

2.2 This instrument revokes the Falkland Islands Constitution Order 1985 (as amended), to which the current Constitution is scheduled.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The current Constitution of the Falkland Islands is scheduled to the Falkland Islands Constitution Order 1985 (S.I. 1985/444), as amended by the Falkland Islands Constitution (Amendment) Order 1997 (S.I. 1997/864) and the Falkland Islands Constitution (Amendment) (No. 2) Order 1997 (S.I. 1997/2974). This instrument, which has a new Constitution for the Islands scheduled to it, will revoke and replace the 1985 Order and the amending Orders. This instrument, like the 1985 Order, and the amending Orders, is made under the British Settlements Acts 1887 and 1945. The Constitution is being replaced following constitutional negotiations between the United Kingdom Government and the Falkland Islands Government, which resulted in agreement to the Constitution scheduled to this instrument.

4.2 In 2002, the Chairman of the Foreign Affairs Committee and the Foreign Secretary agreed that, where appropriate, draft Orders on Overseas Territories Constitutions would be shown to the Committee for information, if possible 28 days before they were made. This instrument and accompanying Memorandum were sent to the Committee on 17 June 2008, and a follow up letter was sent to the Committee drawing its attention to some amendments in the Order on 14 October 2008.

5. Territorial Extent and Application

5.1 This instrument applies to the Falkland Islands, the legislature of which has been consulted and supports the instrument.

6. European Convention on Human Rights

Although this instrument is laid before Parliament, there is no provision for further parliamentary proceedings and no statement is therefore required.

7. Policy background

- *What is being done and why*

7.1 This instrument has the objective of providing a new, modernised, Constitution for the Falkland Islands.

- *Consolidation*

7.2 In its 1999 White Paper “Partnership for Progress and Prosperity - Britain and the Overseas Territories”, the United Kingdom Government noted that there was great diversity within the Overseas Territories in terms of their size, population, economic developments and other factors, but that there was “a degree of coherence and similarity in the constitutional and institutional arrangements in place for [the Territories’] government and administration”. The United Kingdom Government therefore encouraged individual Territories “to review their own structures and arrangements in line with the idea of a new modern partnership” with the United Kingdom. The Falkland Islands Government initiated a review of their Constitution, which subsequently led to negotiations with the United Kingdom Government on the terms of a possible new Constitution. A new Constitution was agreed following two rounds of negotiation between the United Kingdom and Falkland Islands Governments in December 2007 and February 2008.

8. Consultation outcome

8.1 The Constitution scheduled to this instrument was put out for public consultation in the Falkland Islands during summer 2008, as the United Kingdom Government wanted to be assured that it had the broad support of the people of the Islands. Following public meetings, media exposure, and a debate in the Falkland Islands Legislative Council, the United Kingdom Government were satisfied that such support existed among the people of the Islands, and FCO Ministers agreed that the instrument could be submitted to the Privy Council. No consultation in the United Kingdom was required as this Order forms part of the law of the Falkland Islands, not the United Kingdom.

9. Guidance

9.1 No guidance is required in the United Kingdom. The Falkland Islands Government produced guidance on the draft Constitution scheduled to this instrument to assist the public in the Falkland Islands in understanding the draft Constitution prior to the debate in the Legislative Council referred to at 8.1 above.

10. Impact

10.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. It also has no impact on the United Kingdom public sector.

11. Regulating small business

11.1 The instrument does not apply to small business.

12. Monitoring & review

12.1 The changes reflected in the new Constitution are politically important, as they provide for a greater degree of internal self-government of the Islands, and therefore reflect the more modern relationship which now exists between the United Kingdom and the Islands. Although the Constitution scheduled to this instrument, as the Constitution of the Falkland Islands, will be continuously monitored, there is no current plan to undertake a structured review of it at any specific point in the future.

13. Contact

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