

## SCHEDULE

### The Constitution of the Falklands Islands

## CHAPTER IV

### POWERS AND PROCEDURES OF THE LEGISLATIVE ASSEMBLY

#### **Power to make laws**

**37.** Subject to this Constitution, the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Falkland Islands.

#### **Sittings of the Legislative Assembly**

**38.—**(1) Each sitting of the Legislative Assembly shall be held at such place within the Falkland Islands and shall begin at such time as the Governor may appoint by proclamation published in the Gazette; but a period of twelve months shall not elapse between the date when the Assembly last sat and the date appointed for its next sitting.

(2) Each sitting of the Legislative Assembly shall terminate when the Assembly is adjourned or is dissolved without having been adjourned.

#### **Presiding**

**39.—**(1) Subject to subsection (4), there shall preside at each sitting of the Legislative Assembly—

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly as shall be elected to preside at that sitting by the Assembly.

(2) The Legislative Assembly shall elect a Speaker and a Deputy Speaker, who shall be persons, whether or not members of the Assembly, who are qualified and not disqualified to be members of the Assembly.

(3) The Speaker and the Deputy Speaker shall be elected for the life of the Legislative Assembly and shall be removable by a vote of no fewer than six of the elected members voting in favour of the motion.

(4) The Legislative Assembly shall elect a Speaker before proceeding to any other business, and the Attorney General shall preside for the purpose of that election.

#### **Clerk of the Legislative Assembly**

**40.** There shall be a Clerk of the Legislative Assembly whose office shall be a public office.

#### **Participation by non-members**

**41.—**(1) The Commander British Forces shall have the right to take part in the proceedings of the Legislative Assembly, except that he or she may not vote.

(2) The Attorney General shall, with the consent of the person presiding, have the right to take part in the proceedings of the Legislative Assembly, except that he or she may not vote.

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(3) The person presiding may, provided the Legislative Assembly considers it desirable, summon any other person to a meeting of the Assembly even though that person is not a member of the Assembly.

### **Oaths**

**42.—**(1) No *ex officio* or elected member of the Legislative Assembly shall take part in its proceedings (other than proceedings for the purposes of this subsection) unless he or she has made and subscribed before the Speaker, or other person presiding at the sitting, the oath of allegiance and the oath of office.

(2) Neither the Commander British Forces nor the Attorney General shall take part in the proceedings of the Legislative Assembly (other than proceedings for the purposes of this subsection) unless he or she has made and subscribed before the Speaker, or other person presiding at the sitting, the oath of allegiance.

### **Quorum**

**43.—**(1) If at any sitting of the Legislative Assembly any member of the Assembly who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Assembly the person presiding at the sitting ascertains that a quorum is still not present, the Assembly shall be adjourned.

(2) For the purpose of subsection (1) a quorum shall consist of six elected members excluding the person presiding at the sitting.

### **Voting**

**44.—**(1) Save as otherwise provided in this Constitution, any question proposed for decision at a sitting of the Legislative Assembly shall be determined by a majority of the votes of the elected members present and voting.

(2) Subject to subsection (3), the person presiding at a sitting of the Legislative Assembly shall not vote unless on any question the votes are equally divided, in which case he or she shall have and shall exercise a casting vote.

(3) The person presiding shall have a casting vote if he or she is an elected member of the Legislative Assembly; and if on any question before the Assembly the votes of the members are equally divided and the person presiding is not an elected member, the motion shall be declared lost.

### **Transaction of business notwithstanding vacancies**

**45.** Subject to section 43, the Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings in the Assembly shall be valid even though some person who was not entitled to do so took part in them.

### **Standing Orders**

**46.—**(1) Subject to this Constitution, the Legislative Assembly may make Standing Orders for—

- (a) the regulation and orderly conduct of its own proceedings and the despatch of business at its sittings; and
- (b) for the passing, entitling, numbering and publication of Bills and their presentation to the Governor for assent.

(2) Subject as aforesaid the procedure of the Legislative Assembly at any sitting shall be determined by the person presiding at the sitting.

#### **Penalty for sitting or voting when unqualified**

47.—(1) Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall, if the Attorney General refers the matter to the Assembly and the Assembly so decides, be liable to such fine as may be determined by the Assembly; but no such fine shall exceed the maximum from time to time provided for by the Standing Orders of the Assembly.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit of the Attorney General.

#### **Privileges of Legislative Assembly and members**

48. Provision may be made by Ordinance prescribing the privileges, immunities and powers of the Legislative Assembly and its committees, or the privileges and immunities of the members and officers of the Assembly or of other persons concerned in the business of the Assembly or its committees, for the purpose of ensuring the due discharge of the functions of the Assembly and its members at sittings of the Assembly; but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members of that House.

#### **Freedom of speech in proceedings**

49. Without prejudice to any provision made by Ordinance pursuant to section 48, no civil or criminal proceedings may be instituted against any member of the Legislative Assembly for words spoken before, or written in a report to, the Assembly or any of its committees or by reason of any matter or thing brought by such member therein by petition, Bill, resolution, motion or otherwise.

#### **Rules for the enactment of laws**

50.—(1) All laws made under section 37 shall be styled “Ordinances” and the words of enactment shall be “Enacted by the Legislature of the Falkland Islands, as follows”.

(2) The Governor and the Legislative Assembly shall in the making of laws observe the rules set forth in Annex A to this Constitution.

#### **Introduction of Bills, etc**

51.—(1) Subject to this Constitution and the Standing Orders of the Legislative Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

(2) Except on the recommendation of the Governor, the Legislative Assembly shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding—
  - (i) makes provision for imposing or altering any tax, imposing or altering any charge on the revenues or other funds of the Falkland Islands, or for compounding or remitting any debt due to the Government; or
  - (ii) would constitute any public office, or effect any alteration in the salary, allowances or other conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions,

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- gratuities or other like benefits to any public officer or his or her widow or widower, children, dependants or personal representatives; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which in the opinion of the person presiding is that provision would be made for any of the purposes aforesaid.

### **Assent to Bills**

**52.**—(1) A Bill passed by the Legislative Assembly shall not become a law until—

- (a) the Governor has assented to it in Her Majesty’s name and on Her Majesty’s behalf and has signed it in token of his or her assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State, and the Governor has signified that assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his or her assent, the Governor shall, acting in his or her discretion but subject to this Constitution and any instructions given through a Secretary of State, declare that he or she assents or refuses to assent to it, or that he or she reserves the Bill for the signification of Her Majesty’s pleasure; but the Governor shall reserve for the signification of Her Majesty’s pleasure any Bill which in his or her judgement is in any way repugnant to, or inconsistent with, this Constitution.

(3) Before refusing assent to any Bill, the Governor shall explain to the members of the Legislative Assembly the reasons why he or she proposes to do so, if necessary in confidence, and shall allow those members the opportunity to submit their views on the matter in writing to a Secretary of State.

### **Publication and commencement of laws**

**53.** No law made under section 37 shall come into operation until it has been published in the Gazette, but, where the law in question expressly so provides, the coming into operation of any such law may be postponed and any such law may be given retrospective effect.

### **Disallowance of laws**

**54.**—(1) Any Ordinance to which the Governor has given his or her assent may be disallowed by Her Majesty through a Secretary of State; but no Ordinance shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Legislative Assembly an opportunity to reconsider the Ordinance in question.

(2) Whenever any Ordinance has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of such disallowance to be published in the Gazette and the Ordinance shall be annulled with effect from the date of the publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978<sup>(1)</sup> shall apply to the annulment of any Ordinance under this section as it applies to the repeal of an Act of Parliament of the United Kingdom, save that any enactment repealed or amended by or in pursuance of that Ordinance shall have effect as from the date of the annulment as if that Ordinance had not been made.

### **Governor’s reserved power**

**55.**—(1) If the Governor considers that it is necessary that any Bill introduced or any motion proposed at any sitting of the Legislative Assembly held in accordance with this Chapter should have effect, then, if the Assembly fails to pass the Bill or to carry the motion within such time and in such

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form as the Governor thinks reasonable, the Governor may, at any time that he or she thinks fit, and notwithstanding any provision of this Constitution or of any Standing Order of the Assembly, declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Assembly, including any committee of the Assembly; and the Bill or motion shall be deemed thereupon to have been so passed or carried and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) Before exercising his or her powers under subsection (1) the Governor shall inform the Executive Council of his or her intention to do so and his or her reasons, and shall allow members of the Council the opportunity to express their views.

(3) The Governor shall not exercise his or her powers under subsection (1) without prior instructions from a Secretary of State.

(4) If any member of the Legislative Assembly objects to any declaration made under this section, he or she may, within fourteen days of its making, submit to the Governor a statement in writing of his or her reasons for so objecting and the Governor shall forthwith forward a copy of such statement to a Secretary of State.

(5) Any declaration made under this section, other than a declaration relating to a Bill, may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and section 16(1) of the Interpretation Act 1978 shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(6) The powers conferred on the Governor by this section shall be exercised by the Governor in his or her discretion.

(7) The motions to which this section applies are—

- (a) any motion relating to or for the purposes of a Bill;
- (b) any motion proposing or amending a resolution which, if passed by the Legislative Assembly, would have the force of law; and
- (c) any motion proposing or amending a resolution upon which the coming into force or continuance in force of any subordinate legislation depends.