

SCHEDULE

The Constitution of the Falklands Islands

CHAPTER V

THE EXECUTIVE

Executive authority

56.—(1) The executive authority of the Falkland Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Falkland Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as are or may be conferred on them by any law.

Executive Council

57.—(1) There shall be an Executive Council which shall consist of three of the elected members of the Legislative Assembly, elected in accordance with section 58, and two *ex officio* members, namely the Chief Executive and the Director of Finance.

(2) The *ex officio* members shall have no right to vote on any matter that is put to the vote at a meeting of the Executive Council.

(3) The Executive Council may delegate any of its functions to a Committee established under its authority, but anything done by such a Committee shall be reconsidered by the Executive Council should any member of the Council or the Governor, in his or her judgement, consider this to be appropriate.

Election of elected members of the Executive Council

58.—(1) At the first meeting of the Legislative Assembly after every general election the elected members shall elect three of their number to be members of the Executive Council for a period of twelve months from the date of their election to the Executive Council.

(2) Thereafter such elections shall be held before the expiry of each period of twelve months (or as soon as practicable thereafter) or when the Legislative Assembly first meets after any dissolution of the Assembly.

(3) A person shall be eligible for election to the Executive Council even though he or she is a member of the Executive Council then in being.

(4) If the seat of an elected member of the Executive Council becomes vacant during any such twelve-month period the elected members of the Legislative Assembly shall as soon as possible meet and elect one of their number to fill the seat for the remainder of the duration of that twelve-month period.

(5) To be effective for the purposes of this section, or section 60(1), any election must result in the Executive Council being composed of at least one elected member representing the Camp constituency and at least one elected member representing the Stanley constituency.

Tenure of office of elected members of the Executive Council

59. The seat of an elected member of the Executive Council shall become vacant—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) if he or she resigns his or her seat in the Executive Council by writing under his or her hand addressed to the Governor;
- (b) when the Legislative Assembly first meets after any dissolution of the Assembly;
- (c) if he or she ceases to be a member of the Legislative Assembly for any reason other than a dissolution of the Assembly;
- (d) if he or she is absent from three consecutive meetings of the Executive Council without the permission of the Governor, acting in his or her discretion;
- (e) if at the expiry of the period for which he or she is elected to sit on the Executive Council he or she has not been re-elected for a further period; or
- (f) if his or her election to the Executive Council is revoked by a resolution of the Legislative Assembly.

Temporary members of the Executive Council

60.—(1) Whenever an elected member of the Executive Council is by reason of his or her illness or absence from the Falkland Islands or for any other reason incapable of performing the functions of his or her office, then the elected members of the Legislative Assembly shall, if they consider it desirable, elect a person from among their number to be temporarily a member of the Executive Council.

(2) A person elected under this section to be temporarily a member of the Executive Council shall vacate his or her seat when he or she is informed by the Governor that the circumstances giving rise to his or her election have ceased to exist.

(3) Subject to subsections (1) and (2), this Constitution shall apply in relation to a person elected to be temporarily a member of the Executive Council as it applies in relation to the member on account of whose incapacity he or she was elected.

Attendance of non-members at meetings of the Executive Council

61.—(1) The Commander British Forces and the Attorney General shall have the right to attend all meetings of the Executive Council and take part in its proceedings, except that if a matter is put to the vote they may not vote.

(2) The person presiding may, when in his or her judgement the business before the Executive Council makes it desirable, summon any person to a meeting of the Council even though that person is not a member of the Council.

Summoning of meetings and agenda of the Executive Council

62.—(1) The Executive Council shall not be summoned except by the Governor, acting in his or her discretion, who may summon a meeting of the Council at any time; but the Governor shall summon a meeting of the Council if requested to do so by at least two members.

(2) The Governor shall include on the agenda of a meeting any item requested by an elected member as well as any item the Governor, acting in his or her discretion, thinks fit; and other business that is not on the agenda may be discussed at the meeting at the request of the person presiding or any elected member.

Presiding in the Executive Council

63. There shall preside at any meeting of the Executive Council—

- (a) the Governor; or

- (b) in the absence of the Governor, such member of the Executive Council as the Governor, acting in his or her discretion, may appoint to preside at that meeting.

Oaths

64. No member of the Executive Council shall take part in its proceedings (other than proceedings for the purposes of this section) unless he or she has made and subscribed the oath of secrecy before the Governor or some other person authorised for that purpose by the Governor, acting in his or her discretion; and no other person shall take part in the proceedings of the Council (other than proceedings as aforesaid) unless he or she has so made and subscribed the oath of secrecy; but the Executive Council may exempt any person who is not a member of it from this requirement.

Quorum

65.—(1) No business (except that of adjournment) shall be transacted at a meeting of the Executive Council if fewer than four members are present, at least two of whom are elected members.

(2) Where it is not possible to elect a temporary member to satisfy subsection (1), the requirements of that subsection shall be deemed to be satisfied if the person presiding and two members of the Executive Council, at least one of whom is an elected member, are present at the meeting, and they and members absent from but participating in the meeting are able to communicate with each other in a manner that all agree is appropriate in the circumstances; but no decision of the Council shall be taken unless the person presiding is satisfied that the manner of communication allows all those taking part to hear and be heard and that all have seen any documents relevant to the proposed decision.

The Governor to consult the Executive Council

66.—(1) Subject to subsection (2), in the formulation of policy and in the exercise of the functions conferred on the Governor by this Constitution or any other law the Governor shall consult with the Executive Council and, subject to section 67, shall accept its advice.

(2) The Governor shall not be obliged to consult with the Executive Council—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State pursuant to section 23;
- (b) when the matter is one on which the Governor is required by section 25 to consult the Commander British Forces or on which the Commander British Forces has, in accordance with that section, given advice to the Governor;
- (c) when exercising any function conferred on the Governor by this Constitution or any other law where it is provided, either expressly or by necessary implication, that the Governor exercise such function in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council;
- (d) if, in his or her judgement, the service of Her Majesty would sustain material prejudice by such consultation;
- (e) if, in his or her judgement, the matter is too unimportant; or
- (f) if, in his or her judgement, the urgency of the matter requires him or her to act before he or she can consult the Executive Council.

(3) In any case falling within subsection (2) the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he or she has adopted and the reasons for them, unless he or she is instructed not to do so by a Secretary of State.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

The Governor may act against advice of the Executive Council

67.—(1) In any case in which the Governor consults the Executive Council, he or she may act against the advice given to him or her by the Council—

- (a) if, in his or her judgement, it would be right to do so in the interests of good governance; or
- (b) if, in his or her judgement, such advice would affect any of the matters mentioned in subsection (2).

(2) The matters referred to in subsection (1)(b) are—

- (a) external affairs;
- (b) defence;
- (c) internal security, including the police;
- (d) administration of justice;
- (e) audit; and
- (f) appointments to the public service, the discipline and removal from office of public officers, and the management of the public service.

(3) If the Governor decides to act against the advice given to him or her by the Executive Council pursuant to subsection (1), the Governor shall forthwith—

- (a) report the matter to a Secretary of State; and
- (b) convey to a Secretary of State the views of the Executive Council on the matter.

(4) Whenever the Governor acts against the advice of the Executive Council any member of it may require that there shall be recorded in the minutes any advice or opinion he or she gave on the question at issue and his or her reasons.

The Governor may call for public officers, official papers, information or advice

68. The Governor, acting in his or her discretion, may at any time require the attendance of any public officer or the provision of any official papers or any official information or advice relating to any aspect of the government of the Falkland Islands.

Minutes

69.—(1) Minutes shall be kept of all the proceedings of the Executive Council and, whenever practicable, at every meeting of the Council the minutes of the last preceding meeting shall be confirmed, with or without amendment as the case may require, before proceeding to the despatch of any other business.

(2) A copy of the minutes of the Executive Council for the preceding meeting shall be transmitted to a Secretary of State.

Advisory Committee on the Prerogative of Mercy

70.—(1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

- (a) two elected members of the Legislative Assembly appointed by the Governor after consultation with the elected members of the Assembly;
- (b) the Chief Executive;
- (c) the Attorney General; and
- (d) the Chief Medical Officer.

- (2) An appointed member of the Advisory Committee shall vacate his or her office—
 - (a) if his or her appointment is revoked by the Governor, acting in his or her discretion;
 - (b) if he or she ceases to be a member of the Legislative Assembly or is required, under section 31, to cease to perform his or her functions as such; or
 - (c) in any other case, at the expiration of four years from the date of his or her appointment.
- (3) The Advisory Committee shall adopt its own rules of procedure, but such rules shall require the approval of the Legislative Assembly by resolution.

Power of pardon, etc

71.—(1) The Governor, acting after consultation with the Advisory Committee on the Prerogative of Mercy, may in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of an offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) This section shall not apply in relation to any conviction by a court-martial established under any Act of Parliament of the United Kingdom, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

Powers of Attorney General in relation to criminal proceedings

72.—(1) The Attorney General shall have power in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(2) The powers of the Attorney General under subsection (1) may be exercised by the Attorney General in person or through other persons acting in accordance with his or her general or special instructions.

(3) The powers conferred on the Attorney General by subsection (1)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of the powers conferred on him or her by this section the Attorney General shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law, shall be deemed to be part of those proceedings.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Grants of land

73. Subject to the provisions of any law, the Governor or any person duly authorised by the Governor in writing under his or her hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute under the public seal grants and dispositions of any land or other immovable property in the Falkland Islands that may be lawfully granted or disposed of by Her Majesty.