

SCHEDULE

The Constitution of the Falklands Islands

CHAPTER VIII

THE ADMINISTRATION OF JUSTICE

Supreme Court

86.—(1) There shall be a Supreme Court for the Falkland Islands which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The Supreme Court shall, subject to section 89, consist of one judge, that is to say, the Chief Justice.

Court of Appeal

87.—(1) There shall be a Court of Appeal for the Falkland Islands.

(2) The Court of Appeal shall, subject to section 89, consist of—

- (a) a President and two Justices of Appeal or such greater number of Justices of Appeal as may be prescribed by Ordinance; and
- (b) the Chief Justice of the Supreme Court as an *ex officio* member of the Court of Appeal for all purposes except for the purpose of constituting the Court of Appeal for the hearing and determination of an appeal from his or her own decision.

(3) The office of a Justice of Appeal shall not without his or her consent be abolished during his or her continuance in office.

(4) For the purposes of any determination of the Court of Appeal—

- (a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and
- (b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.

Appointment of judges and Senior Magistrate

88.—(1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) No person shall be qualified for appointment as Chief Justice, President of the Court of Appeal or Justice of Appeal unless—

- (a) he or she is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or of a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.

(3) For the purpose of subsection (2), a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he or she has been called, enrolled or otherwise

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

admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) even though—

- (a) he or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
 - (b) he or she does not hold a practising certificate or has not satisfied any other like condition of his or her being permitted to practise.
- (4) The Senior Magistrate shall be appointed by the Governor, acting in his or her discretion.

Acting judges

89.—(1) If—

- (a) the office of Chief Justice is vacant, or if the holder of that office is for any reason unable to perform the functions of that office; or
 - (b) it appears to the Governor that the state of business in the Supreme Court so requires,
- the Governor, acting in his or her discretion but whenever possible after consulting the Chief Justice, may appoint a person possessing such legal qualifications and experience as he or she may deem appropriate—

- (i) to sit as an acting judge of the Supreme Court; and
- (ii) to discharge such of the functions of the office of Chief Justice and for such period as may be specified in the instrument of appointment.

(2) If the office of the President of the Court of Appeal is vacant, or if the holder of that office is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his or her discretion, may appoint for the purpose shall discharge those functions.

(3) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is for any other reason unable to perform the functions of his or her office, the Governor, acting in his or her discretion, may appoint a person possessing such legal qualifications and experience as the Governor, after consultation with the President, may deem appropriate to sit as an acting judge of the Court of Appeal.

(4) Any person appointed under this section to sit as an acting judge of the Supreme Court or of the Court of Appeal shall, unless he or she is removed from office under section 90, continue to sit for such period as may be specified in the instrument of his or her appointment; but a person whose appointment so to sit has expired may, unless he or she has been removed from office under section 90, continue so to sit for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceedings that were commenced before him or her before the expiration of his or her appointment.

Tenure of office of judges and Senior Magistrate

90.—(1) Subject to subsections (4) and (7), a person holding the office of Chief Justice, President of the Court of Appeal, Justice of Appeal or Senior Magistrate shall vacate his or her office on the expiration of such period as may be specified in the instrument of his or her appointment to that office; but a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he or she has been removed from office under subsection (4), sit after the date on which he or she vacates his or her office under this subsection as an acting judge of the Supreme Court or, as the case may be, of the Court of Appeal for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceedings commenced before him or her before that date.

(2) In subsections (3), (4), (5) and (7) “judge” means the Chief Justice, the President of the Court of Appeal, a Justice of Appeal, or an acting judge of the Supreme Court or of the Court of Appeal.

(3) A judge or the Senior Magistrate may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (4).

(4) A judge or the Senior Magistrate shall be removed from office by the Governor if the question of the removal of that judge or, as the case may be, of the Senior Magistrate from office has, at the request of the Governor made in pursuance of subsection (5), been referred by Her Majesty to the Judicial Committee of Her Majesty’s Privy Council under section 4 of the Judicial Committee Act 1833⁽¹⁾ or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge or, as the case may be, the Senior Magistrate ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If the Governor considers that the question of removing a judge or the Senior Magistrate from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge or, as the case may be, of the Senior Magistrate should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(6) Sections 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance shall apply in relation to a tribunal appointed under subsection (5) as they apply in relation to the Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this section; but the tribunal may sit outside the Falkland Islands at such place as the Governor may appoint.

(7) If the question of removing a judge or the Senior Magistrate from his or her office has been referred to a tribunal under subsection (5), the Governor may suspend him or her from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

- (a) if the tribunal advises the Governor that he or she should not request that the question of the removal of the judge or, as the case may be, of the Senior Magistrate from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge or, as the case may be, the Senior Magistrate ought not to be removed from office.

(8) The powers of the Governor under this section shall be exercised by the Governor in his or her discretion.

Oaths

91. Before entering upon the functions of his or her office, the Chief Justice, any acting judge of the Supreme Court, every judge of the Court of Appeal, and the Senior Magistrate shall make and subscribe before the Governor or some other person authorised for that purpose by the Governor, acting in his or her discretion, the oath of allegiance and the judicial oath set out in Annex B to this Constitution.

(1) 1833 c.41.

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

Jurisdiction of the Court of Appeal

92.—(1) The Court of Appeal shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) In connection with any appeal from the Supreme Court the Court of Appeal shall, subject to this Constitution and any other law, have all the jurisdiction and powers of the Supreme Court; and decisions of the Court of Appeal on such appeals shall, subject as aforesaid, be enforced in the Falkland Islands in the same way as decisions of the Supreme Court.

(3) The Court of Appeal may, in accordance with such directions as the President may from time to time issue, sit in the Falkland Islands or elsewhere for the purpose of exercising its jurisdiction in respect of the Falkland Islands.

Practice and procedure on appeals to the Court of Appeal

93.—(1) Subject to this Constitution, the President of the Court of Appeal may make rules for regulating the practice and procedure of the court with respect to appeals and, in connection with such appeals, for regulating the practice and procedure of the Supreme Court.

(2) Subject to section 87(4), rules made under this section may fix the number of judges who may sit for any purpose.

Appeals to the Court of Appeal

94.—(1) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal as of right, that is to say—

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of £5000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £5000 or upwards; but the figure of £5000 may be increased from time to time by Ordinance;
- (c) final decisions in proceedings under section 19;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by Ordinance.

(2) In the following cases an appeal shall lie from decisions of the Supreme Court to the Court of Appeal, with the leave of the Supreme Court or the Court of Appeal, that is to say—

- (a) where the decision appealed against is a final decision in civil proceedings and in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great or general importance or otherwise, ought to be submitted to the Court of Appeal; and
- (b) in such other cases as may be prescribed by Ordinance.

(3) Subsections (1) and (2) shall be without prejudice to section 36(4).

(4) In this section the references to final decisions of a court do not include any determination of that court that any application made to it is merely frivolous or vexatious.