

2008 No. 2846

SOUTH ATLANTIC TERRITORIES

The Falkland Islands Constitution Order 2008

Made - - - - *5th November 2008*

Laid before Parliament *12th November 2008*

Coming into force in accordance with section 1(3)

At the Court at Buckingham Palace, the 5th day of November 2008

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887 and 1945(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation, publication and commencement

- 1.—(1) This Order may be cited as the Falkland Islands Constitution Order 2008.
- (2) This Order shall be published in the Gazette.
- (3) This Order shall come into force on the appointed day.

Interpretation

- 2.—(1) In this Order—

“the appointed day” means such day as may be prescribed by the Governor, acting in his or her discretion, by proclamation published in the Gazette;

“the Constitution” means the Constitution set out in the Schedule;

“the former Constitution” means the Constitution set out in Schedule 1 to the Falkland Islands Constitution Order 1985(b);

“Legislative Assembly” means the Legislative Assembly established by the Constitution;

“Legislative Council” means the Legislative Council established by the former Constitution.

- (2) Sections 98 to 100 of the Constitution shall apply for the purposes of interpreting sections 1 to 11 of this Order and otherwise in relation to those sections as they apply for the purpose of interpreting and in relation to the Constitution.

(a) 1887 c.54 and 1945 c.7.

(b) S.I. 1985/444, as amended by S.I. 1997/864 and 1997/2974.

Revocations

3. The Falkland Islands Constitution Order 1985(a), the Falkland Islands Constitution (Amendment) Order 1997(b), and the Falkland Islands Constitution (Amendment) (No. 2) Order 1997(c) are revoked with effect from the appointed day.

Establishment of Constitution

4. The Constitution shall have effect in the Falkland Islands on the appointed day.

Existing laws

5.—(1) The existing laws shall, as from the appointed day, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), that prescription or provision shall, as from the appointed day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution) as if it had been made under the Constitution.

(3) The Governor may by order made at any time within twelve months after the appointed day make such alterations to any existing law as may appear to him or her to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect or enabling effect to be given to the Constitution.

(4) This section is without prejudice to any powers conferred by the Constitution or by any other law on any person or authority to make provision for any matter, including the alteration of any existing law.

(5) For the purposes of this section “existing law” means any Ordinance, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as part of the law of the Falkland Islands immediately before the appointed day, but does not include any Act of Parliament of the United Kingdom or Order in Council or other instrument made under any such Act.

Existing offices and officers

6.—(1) Any office established by or under the former Constitution and existing immediately before the appointed day shall on and after that day, so far as consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in an office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office or the corresponding office established by the Constitution as if he or she had been appointed to hold or act in it in accordance with or under the Constitution; but any person who under the law in force immediately before the appointed day would have been required to vacate his or her office at the expiration of any period shall vacate that office at the expiration of that period.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath required to be made before assuming the functions of his or her office shall be deemed to have made any like oath so required by the Constitution or any other law.

(4) The person who immediately before the appointed day holds or is acting in the office of Financial Secretary shall, on and after that day, hold or act in the office of Director of Finance as if he or she had been appointed to hold or act in that office under the Constitution.

(a) S.I. 1985/444.
(b) S.I. 1997/864.
(c) S.I. 1997/2974.

Legislative Assembly

7.—(1) Any person who immediately before the appointed day is a member of the Legislative Council shall on that day become a member of the Legislative Assembly, shall be deemed to have complied with section 42 of the Constitution, and shall hold his or her seat in accordance with the Constitution.

(2) The Governor shall dissolve the Legislative Assembly not later than the expiration of four years from the date when the Legislative Council first met after the last general election before the appointed day.

Standing Orders

8. The Standing Orders of the Legislative Council as in force immediately before the appointed day shall, until it is otherwise provided under section 46 of the Constitution, be the Standing Orders of the Legislative Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Pending legal proceedings

9.—(1) Any proceedings pending immediately before the appointed day in the Supreme Court or the Court of Appeal established by the former Constitution may be continued on and after that day in the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

(2) Any judgment or order of the Supreme Court or the Court of Appeal established by the former Constitution given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a judgment or order of the Supreme Court or, as the case may be, the Court of Appeal established by the Constitution.

Management Code

10. Until a Management Code has been issued in accordance with section 85(3) of the Constitution, the management code in operation immediately before the appointed day shall continue in operation.

Power reserved to Her Majesty

11. There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Falkland Islands including, without prejudice to the generality of the foregoing, laws amending this Order or the Schedule.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

The Constitution of the Falklands Islands

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CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE
INDIVIDUAL

Fundamental rights and freedoms of the individual

1. Whereas—

- (a) all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;
- (b) the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;
- (c) every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—
 - (i) life, liberty, security of the person, the enjoyment of property and the protection of the law;
 - (ii) freedom of conscience, of expression (including freedom of the press), of movement and of peaceful assembly and association;
 - (iii) protection for his or her family, his or her personal privacy, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid individual rights and freedoms, and to related rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

2.—(1) No person shall be deprived intentionally of his or her life.

(2) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny,

or if he or she dies as the result of a lawful act of war.

Protection from inhuman treatment

3. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

Protection from slavery and forced labour

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (c) any labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection of right to personal liberty

5.—(1) Every person has the right to liberty and security of person.

(2) No person shall be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his or her unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for the Falkland Islands or some other country, in respect of a criminal offence of which that person has been convicted;
- (c) in execution of an order of a court punishing that person for contempt of that court or of another court;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on that person by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
- (e) for the purpose of bringing that person before a court in execution of the order of a court;
- (f) on reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;
- (g) in the case of a minor, under the order of a court or in order to bring that person before a court or with the consent of his or her parent or guardian, for his or her education or welfare;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;

- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into the Falkland Islands or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Falkland Islands or for the purpose of restricting that person while he or she is being conveyed through the Falkland Islands in the course of his or her extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of an order of a court requiring that person to remain within a specified area within the Falkland Islands or prohibiting him or her from being within such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or relating to such an order after it has been made, or to such an extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of the Falkland Islands in which, in consequence of any such order, his or her presence would otherwise be unlawful.

(3) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands, of the reason for his or her arrest or detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor, he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as the court may approve.

(5) Every person who is arrested shall be informed, as soon as reasonably practicable and in a language that he or she understands, of his or her rights under subsection (4); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and his or her whereabouts.

(6) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, shall be brought promptly before a court.

(7) If any person arrested or detained as mentioned in subsection (6)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or on reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(8) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

(9) For the purposes of subsection (2)(b), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission shall be regarded as a person who

has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

Provisions to secure protection of law

6.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, he or she shall have the right to a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved to be or has pleaded guilty;
- (b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter at any court hearing at which that person is required to be present if he or she cannot understand or speak English; and
- (g) shall, when charged on information or indictment in the Supreme Court, have the right to trial by jury or before a judge sitting alone, as he or she may choose.

(3) Except with his or her own consent, the trial of a person charged with a criminal offence shall not take place in his or her absence, unless—

- (a) that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed and the trial to proceed in his or her absence; or
- (b) the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.

(4) When a person is tried for any criminal offence, that person or any person authorised by him or her in that behalf shall, if he or she (the accused person) so requires and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(6) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal, or save where a court makes an order under an Ordinance permitting a person to be retried for an offence of which he or she has been acquitted where in all the circumstances a retrial is in the interests of justice.

(7) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.

(8) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(10) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

(11) Except with the agreement of all the parties to them, all proceedings for the trial of any criminal charge or for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(12) Nothing in subsection (11) shall prevent the court or other authority from excluding from the proceedings persons other than the parties to them and their legal representatives to such an extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, internal security, public safety, public order or public morality.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (6), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, but any court so trying such member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

Protection of rights of prisoners to humane treatment

7. All persons deprived of their liberty have the right to be treated with humanity and with respect for the inherent dignity of the human person.

Protection of freedom of movement

8.—(1) A person shall not be deprived of his or her freedom of movement, that is to say—

- (a) the right to move freely throughout the Falkland Islands;
- (b) the right to reside in any part of the Falkland Islands; and
- (c) the right of a person who belongs to the Falkland Islands, or to whom a permanent right to remain has been granted, to enter, remain in and leave the Falklands Islands.

(2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence in the Falkland Islands or on the right to leave the Falkland Islands of persons generally or any class of persons that are reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Falkland Islands of any person or on any person's right to leave the Falkland Islands either in consequence of his or her having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court at a later date for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Falkland Islands;
- (c) for the imposition of restrictions on the freedom of movement of persons who do not belong to the Falkland Islands or who have not been granted a permanent right to remain; but—
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Falkland Islands, to move freely throughout the Falkland Islands and to reside anywhere within the Falkland Islands;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Falkland Islands; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Falkland Islands unless the requirements specified in subsection (4) are satisfied;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Falkland Islands;
- (e) for the imposition of restrictions on the movement or residence within the Falkland Islands or on the right to leave the Falkland Islands of any public officer that are reasonably required for the proper performance of his or her functions;
- (f) for the removal of a person from the Falkland Islands to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted;
- (g) for the imposition of restrictions on the right of any person to leave the Falkland Islands that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or
- (h) for the removal of a person suffering from a mental disorder from the Falkland Islands for treatment or detention in the United Kingdom or such other place as may be decided, where the removal is ordered by a court which is satisfied that the disorder cannot be effectively treated in the Falkland Islands and that removal is necessary in the interests of the person or to protect the public.

(4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) (that is to say, before a person who does not belong to the Falkland Islands or who has not been granted a permanent right to remain may be expelled from the Falkland Islands) are as follows—

- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, internal security, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and

- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person designated in that behalf by the competent authority.

Protection for private and family life and for privacy of home and other property

9.—(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence and, except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons;
- (b) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be;
- (c) to authorise, for the purpose of enforcing the judgment or order of a court in any proceedings, the search of any person or property by order of the court or the entry on any premises by such order; or
- (d) that is reasonably required for the purpose of preventing or detecting breaches of the criminal, customs or immigration law,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of right to marry and found a family

10.—(1) Every man and woman of marriageable age (as determined by or under any law) has the right to marry and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law makes provision that is reasonably required—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

Protection of freedom of conscience

11.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and either in public or in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(2) Except with his or her own consent (or, if he or she is under the age of sixteen years, the consent of his or her parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his or her own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of right to education

12.—(1) This section is without prejudice to section 11.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless the law otherwise provides, in a private school (that is to say a school or teaching facility other than one established by a public authority) and in such school to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression

13.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression.

(2) For the purposes of this section, a person's freedom of expression includes his or her freedom to hold opinions without interference, his or her freedom to receive information and ideas without interference, his or her freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and his or her freedom from interference with his or her correspondence or other means of communication.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Legislative Assembly and the courts, or regulating telecommunications, post, broadcasting or public shows; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association

14.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection from deprivation of property

15.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with the provisions of a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right to or over the property; and
- (c) provision is made by a law applicable to the taking of possession or acquisition—

- (i) for the prompt payment of adequate compensation; and
- (ii) securing to any person having an interest in or right to or over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed in respect of its remission) to any country of his or her choice outside the Falkland Islands.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law makes provision for the taking of possession or the acquisition of any property, interest or right—

- (a) for the purpose of controlling its use in accordance with the general interest;
- (b) as a consequence of a breach of the law;
- (c) to secure the payment of taxes or other like impositions; or
- (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons *inter se* in respect of property.

Protection from discrimination

16.—(1) Subject to subsections (4), (5) and (6), no law shall make any provision which is discriminatory either in itself or in its effect.

(2) Subject to subsections (6) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Subsection (1) shall not apply to any law so far as the law makes provision—

- (a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Falkland Islands of persons who do not belong to the Falkland Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or
- (b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any of the grounds of discrimination referred to in subsection (3)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.

Derogations from fundamental rights and freedoms under emergency powers

17. Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 3, 4, 6(2)(a), 6(5), 6(6), 6(7) and 6(8) to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Falkland Islands during that period.

Protection of persons detained under emergency laws

18.—(1) When a person is detained by virtue of any such law as is referred to in section 17 the following provisions shall apply, that is to say—

- (a) he or she shall, as soon as reasonably possible, and in any case not more than seven days after the commencement of his or her detention, be informed in a language that he or she understands, and in detail, of the grounds on which he or she is detained and furnished with a written statement, in a language that he or she understands, or if this is not reasonably practicable, in English specifying those grounds in detail;
- (b) not more than fourteen days after the commencement of his or her detention a notification shall be published in a public place (and thereafter as soon as possible in the Gazette) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (c) not more than one month after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable facilities to consult a legal representative of his or her own choice (or, if he or she is unable to retain a legal representative, such person as the tribunal may approve) who shall be permitted to make representations to the tribunal appointed for the review of his or her case;
- (e) at the hearing of his or her case by the tribunal appointed for its review he or she shall be permitted to appear in person or be represented by a legal representative of his or her own choice or, if he or she is unable to retain a legal representative, by such person as the tribunal may approve.

(2) On any review by a tribunal of the case of a detained person in pursuance of this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.

Enforcement of protective provisions

19.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and

- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (4),

and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled; but the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) (a) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the foregoing provisions of this Chapter has been contravened in relation to any person, it may order or, as the case may be, declare that the court which made the reference to it under subsection (4) (“the referring court”) has the power to order (within such limits as the Supreme Court may declare) the award to that person of such damages as the Supreme Court or, as the case may be, the referring court considers just and appropriate.

- (b) An award of damages may not be made in pursuance of this subsection in respect of the enactment of any law by the Legislature or the making, under such a law, of any subordinate legislation, but such an award may be made in respect of anything done by any person acting by virtue of any such law or subordinate legislation or in the performance of the functions of any public office or any public authority.

- (c) This subsection is without prejudice to section 5(8).

(4) If in any proceedings in any court (other than the Supreme Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(5) Where any question is referred to the Supreme Court in pursuance of subsection (4), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(6) (a) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Chapter, every court shall take into account any—

- (i) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (ii) opinion of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
- (iii) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
- (iv) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
- (v) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

- (b) In this subsection, references to the Convention are references to it as it has effect for the time being, except that—

- (i) the references in subparagraphs (ii) and (iii) of paragraph (a) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;

- (ii) the reference in subparagraph (iv) of paragraph (a) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and
- (iii) the references in paragraph (a) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).
- (c) In this subsection “the Convention” means the European Convention on Human Rights; “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and “a superior court in the United Kingdom” means any of the following—
 - (i) the High Court or the Court of Appeal in England;
 - (ii) the High Court of Justiciary or the Court of Session in Scotland;
 - (iii) the High Court or the Court of Appeal in Northern Ireland;
 - (iv) the House of Lords; and
 - (v) the Judicial Committee of the Privy Council.

(7) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(8) The Legislature may by law confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(9) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Supreme Court under subsection (4),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

Proceedings which might affect freedom of conscience

20. If a court’s determination of any question arising under this Chapter might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of conscience as defined and protected by section 11, it must have particular regard to the importance of that right.

Proceedings which might affect freedom of expression

21.—(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the right to freedom of expression as defined and protected by section 13.

(2) If the person against whom the application for the relief is made (“the respondent”) is neither present nor represented, no such relief shall be granted unless the court is satisfied—

- (a) that the applicant has taken all available steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief shall be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court shall have particular regard to the importance of the right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
 - (i) the material has become, or is about to become, available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published; and
- (b) any relevant privacy code.

Interpretation

22.—(1) In this Chapter, unless the contrary intention appears—

“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in the Falkland Islands, including Her Majesty in Council but excepting a court constituted by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force of the Falkland Islands;
- (c) the prison service of the Falkland Islands;

“legal representative” means a person entitled to be in or to enter the Falkland Islands and to practise there before a court;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline; and

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law.

(2) In relation to any person who is a member of a disciplined force raised under a law enacted, or having effect as if enacted, by the Legislature, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Chapter other than sections 2, 3 and 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Falkland Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(4) In this Chapter “period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) the provisions of Part II of the Emergency Powers Order in Council 1939(a), or emergency regulations made under any Ordinance, are in operation in the Falkland Islands.

(5) For the purposes of this Chapter, a person shall be regarded as belonging to the Falkland Islands if he or she has Falkland Islands status and a person has such status if that person is—

- (a) a person who immediately before the commencement of this Constitution had Falkland Islands status—

(a) See S.I. 1952/2031 (1952 I. p.620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

- (i) by virtue of section 17(5)(a), (b), (c), (d)(i) or (f) of the former Constitution; or
 - (ii) by virtue of section 17(5)(e) of the former Constitution—
 - (aa) as a spouse, and the person is not living apart from his wife or her husband under a decree of a competent court or a deed of separation; or
 - (bb) as a widow or widower, and the person has not remarried; or
 - (b) a person who was born in the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person's birth; or
 - (c) a person who was born outside the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person's birth; or
 - (d) a citizen who was born in or outside the Falkland Islands whose father or mother at the time of the person's birth had Falkland Islands status and was permanently resident in the Falkland Islands; or
 - (e) a citizen who was born outside the Falkland Islands whose father or mother was born in the Falkland Islands and had Falkland Islands status at the time of the person's birth; or
 - (f) a person who has been granted Falkland Islands status under an Ordinance providing for the grant of that status to persons who have been ordinarily resident in the Falkland Islands for a period of at least seven years, or such period not exceeding seven years as the Ordinance may prescribe, and has not, in accordance with that Ordinance, lost or been deprived of such status.
- (6) A person who has Falkland Islands status by virtue of subsection (5)(c) shall be regarded for the purposes of subsection (5)(e) as having been born in the Falkland Islands.
- (7) Without prejudice to the right of any person to apply for the grant of Falkland Islands status, the following shall have a right by virtue of this Constitution to apply for such status under an Ordinance referred to in subsection (5)(f)—
- (a) a British overseas territories citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands;
 - (b) a spouse, widow or widower of a person who has Falkland Islands status; and
 - (c) a person under the age of eighteen years who is the child, stepchild, or child adopted in a manner recognised by law of a person who has Falkland Islands status;

and if an applicant referred to in this subsection is not granted Falkland Islands status, he or she shall, subject to section 9(2), be granted a permanent right to remain in the Falkland Islands.

(8) For the purposes of subsection (5), “citizen” means a person who is a British citizen, a British overseas territories citizen or a British Overseas citizen; or who was, at the material time, a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British subject.

CHAPTER II

THE GOVERNOR

The Governor

23.—(1) There shall be a Governor of the Falkland Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such powers and duties as are conferred on him or her by or under this Constitution or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him or her and, subject to this Constitution and any other law, the Governor shall do or execute all things that belong to his or her office according to such

instructions, if any, as Her Majesty may, through a Secretary of State, from time to time see fit to give him or her; but the question whether the Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

(3) A person appointed to the office of Governor shall, before entering upon the functions of that office, make the oath of allegiance and the oath of office.

(4) Where the Governor is directed by this Constitution to exercise any function in accordance with the advice of or after consultation with any person or authority, the question whether he or she has so exercised that function shall not be enquired into in any court of law.

Acting Governor

24.—(1) During any period when the office of Governor is vacant or the holder of it is absent from the Falkland Islands or is for any reason unable to perform the functions of that office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, the person designated shall make the oaths directed by section 23(3) to be made by the Governor.

(3) The person designated shall not continue to act in the office of Governor after the Governor has notified that person that he or she is about to assume or resume the functions of that office.

Defence and internal security

25. The Governor shall consult with the Commander British Forces before exercising any function which appears to the Governor to relate to defence or internal security (with the exception of the police) and shall act in accordance with the advice which the Commander British Forces then tenders to him or her; and the Governor shall likewise act in accordance with the advice of the Commander British Forces on any matter on which the Commander British Forces considers it necessary in the interests of defence or internal security (with the exception of the police) to give advice to the Governor.

CHAPTER III

THE LEGISLATURE

Establishment and composition of the Legislative Assembly

26.—(1) There shall be a Legislative Assembly for the Falkland Islands.

(2) The Legislative Assembly shall consist of eight elected members and two *ex officio* members, namely the Chief Executive and the Director of Finance, and the Speaker.

(3) The *ex officio* members shall not have the right to vote in the Legislative Assembly.

Constituencies

27.—(1) The Falkland Islands shall be divided into two constituencies, Camp and Stanley. Camp shall return three elected members to the Legislative Assembly and Stanley five elected members and the members shall be elected in such a manner as shall be prescribed by Ordinance.

(2) For the purposes of this section the boundaries of the Stanley constituency shall be such as shall be prescribed by the Ordinance which shall make provision for elections to the Legislative Assembly and "Camp" shall be the remainder of the Falkland Islands.

(3) Subsections (1) and (2) may be amended by Ordinance; but no Bill for any such Ordinance shall be enacted unless it has been supported in a referendum by at least two-thirds of those voting who are registered as electors in each constituency.

(4) In any referendum held under subsection (3), any person registered as an elector pursuant to section 32 at the time of the referendum shall be entitled to vote.

Qualifications for election

28. Subject to section 29, any person who has attained the age of eighteen years and who is registered as an elector pursuant to section 32 is qualified to be elected as a member of the Legislative Assembly in respect of either constituency.

Disqualifications for election

29.—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;
- (b) is a member of the regular armed forces of Her Majesty;
- (c) holds, or is acting in, a public office except as may be specified (either individually or by reference to a class of office or otherwise) by Ordinance;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
- (f) at the date of election, is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (g) is disqualified for membership of the Legislative Assembly by any law relating to offences connected with elections; or
- (h) is disqualified for election by any law by reason of his or her holding, or acting in, any office the functions of which involve—
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any register of electors.

(2) The reference in subsection (1)(b) to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.

(3) For the purposes of subsection (1)(f)—

- (a) where a person is serving two or more terms of imprisonment that are required to be served consecutively he or she shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(4) If it is so prescribed by Ordinance—

- (a) a person may stand as a candidate for election even though he or she holds or is acting in a public office which has not been specified, in the manner prescribed in subsection (1)(c), if he or she undertakes to relinquish or, as the case may be, to cease to act in that office if he or she is elected as a member of the Legislative Assembly; and
- (b) any office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(5) Any Ordinance made in pursuance of subsection (1)(c) or subsection (4)(a) may contain incidental and consequential provisions, including provision that a member who has given such an undertaking as is referred to in subsection (4)(a) shall be incapable of taking his or her seat in the Legislative Assembly until he or she has fulfilled that undertaking and shall vacate his or her seat if he or she has not fulfilled it within such time as is specified by such Ordinance; and for the avoidance of doubt it is hereby declared that, where provision is made in pursuance of subsection (4)(b) in respect of any office, provision may also be made in pursuance of subsection (1)(c) or subsection (4)(a) in respect of that office.

Vacation of seats

30.—(1) The seat of an elected member of the Legislative Assembly shall become vacant—

- (a) at the next dissolution of the Legislative Assembly after his or her election;
- (b) if he or she resigns it by writing under his or her hand addressed to the Governor;
- (c) if he or she is absent from the meetings of the Legislative Assembly in such circumstances and for such period as may be prescribed by the Standing Orders of the Assembly;
- (d) if he or she ceases to have Falkland Islands status;
- (e) if any circumstances arise that, if he or she were not a member of the Legislative Assembly, would cause him or her to be disqualified for election to the Assembly by virtue of paragraph (a), (b), (c), (d), (e), (g) or (h) of section 29(1); or
- (f) in the circumstances specified in section 31.

(2) In this section, “Falkland Islands status” has the meaning defined in section 22(5).

Vacation of seat on sentence

31.—(1) Subject to the provisions of this section, if a member of the Legislative Assembly is sentenced by a court in any country to imprisonment (by whatever name called) for a term of at least twelve months, he or she shall forthwith cease to perform his or her functions as a member of the Assembly and his or her seat shall become vacant at the expiration of a period of thirty days thereafter; but the Governor may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his or her conviction and sentence.

(2) If at any time before the member vacates his or her seat he or she is granted a free pardon or his or her conviction is set aside or his or her sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, the seat of that member in the Legislative Assembly shall not become vacant under subsection (1), and that member may again perform his or her functions as a member of the Assembly.

(3) For the purposes of this section—

- (a) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively he or she shall be regarded as serving a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment as an alternative to or in default of the payment of a fine.

Qualifications of electors

32.—(1) Subject to subsection (2), a person shall be qualified to be registered as an elector for the purpose of the election of members of the Legislative Assembly if he or she has attained the age of eighteen years and either—

- (a) he or she is a citizen and has Falkland Islands status; or
- (b) his or her name appeared on the register of electors for a constituency in force on the date of commencement of this Constitution,

and, in either case, he or she was resident in the Falkland Islands on the qualifying date in relation to which his or her entitlement to be registered as an elector falls to be considered and had on that qualifying date been so resident for the qualifying period.

(2) No person shall be qualified to be registered as an elector under this section who on the qualifying date—

- (a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
- (b) is serving a sentence of imprisonment (by whatever name called) for a term of at least twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court;
- (c) is disqualified by or under any law from being registered as an elector by reason of having been convicted of an offence relating to elections;
- (d) is a member of the regular armed forces of Her Majesty, unless he or she possesses Falkland Islands status; or
- (e) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State.

(3) Section 29(3) shall apply for the purposes of subsection (2)(b) as it applies for the purposes of section 29(1)(f).

(4) The reference in subsection (2)(d) to a member of the regular armed forces of Her Majesty shall not include a reference to a member of the Falkland Islands Defence Force.

(5) In this section—

- (a) “citizen” means a British citizen, a British overseas territories citizen or a British Overseas citizen;
- (b) “Falkland Islands status” has the meaning defined in section 22(5);
- (c) “qualifying date” and “qualifying period” means such date or period as may be prescribed by or under any Ordinance as the date or period with reference to which the qualifications of persons for registration as electors for elections of members of the Legislative Assembly are to be ascertained; and a different qualifying period may be prescribed in respect of persons not born in the Falkland Islands;
- (d) “resident” has such meaning as may be prescribed by or under any Ordinance.

General elections and filling vacant seats

33.—(1) A general election shall be held at such time after every dissolution of the Legislative Assembly as the Governor shall appoint by proclamation published in the Gazette; but the date so appointed shall not be more than 70 days after the date of dissolution.

(2) Whenever an elected member of the Legislative Assembly vacates his or her seat for any reason other than a dissolution of the Assembly, an election shall be held to fill the vacancy, on such date as the Governor shall appoint by proclamation published in the Gazette, within 70 days of the occurrence of the vacancy unless the Assembly is sooner dissolved or under section 34(2) will be dissolved within 126 days of the occurrence of the vacancy.

Dissolution

34.—(1) The Governor may dissolve the Legislative Assembly by proclamation published in the Gazette.

(2) The Governor shall dissolve the Legislative Assembly at the expiration of four years from the date when the Assembly first meets after any general election, unless it has been sooner dissolved.

Recalling dissolved Legislative Assembly in case of emergency

35. If, between a dissolution of the Legislative Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor, it is necessary for the Assembly to be recalled, the Governor may summon the Assembly that has been dissolved, and that Assembly shall thereupon be deemed (except for the purposes of section 33(1)) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

Determination of questions as to membership

36.—(1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as a member of the Legislative Assembly; or
- (b) any member of the Legislative Assembly has vacated his or her seat or is required, under section 31, to cease to perform his or her functions as such.

(2) An application to the Supreme Court for the determination of—

- (a) any question under subsection (1)(a) may be made by any person entitled to vote in the election to which the application relates, or by any person who was a candidate at the election, or by the Attorney General;
- (b) any question under subsection (1)(b) may be made by any person registered as an elector in the constituency for which the member concerned was elected, or by any elected member of the Legislative Assembly, or by the Attorney General,

and if any application under this subsection is made by a person other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

(3) Provision may be made by Ordinance with respect to—

- (a) the circumstances and manner in which, and the imposition of conditions on which, any application may be made to the Supreme Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(4) No appeal shall lie from any determination by the Supreme Court in proceedings under this section.

(5) In the exercise of his or her functions under this section the Attorney General shall not be subject to the direction or control of any other person or authority.

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.

(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, 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^(a) 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 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.

(a) 1978 c.30.

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—

- (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.

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.

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.

CHAPTER VI

FINANCE

Consolidated Fund

74. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

Withdrawals

75.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure that is charged on the Fund by this Constitution or by any other law; or
- (b) where the issue of those moneys has been authorised by an appropriation Ordinance or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 77.

(2) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in such manner as may be prescribed by Ordinance.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents or the investment of any such moneys in such securities as may be prescribed by Ordinance or in which a trustee would be entitled to invest shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure

76.—(1) The Director of Finance shall cause to be prepared and laid before the Legislative Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of the Falkland Islands for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged on the Consolidated Fund by this Constitution or any other law) shall be included in a Bill, to be known as an appropriation Bill, introduced in the Legislative Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

(3) If in any financial year it is found—

- (a) that the amount appropriated by the appropriation Ordinance for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation Ordinance; or
- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation Ordinance or for a purpose for which no amount has been appropriated by the appropriation Ordinance,

the Director of Finance shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Legislative Assembly, and the heads of expenditure shall be included in a supplementary appropriation Bill to provide for the appropriation of those sums which shall be introduced in the Legislative Assembly before the end of the financial year or, if that is not possible, within thirty days thereafter.

Expenditure in advance of appropriation

77. If the appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Director of Finance may, to such extent and subject to such conditions as may be prescribed by Ordinance, authorise the withdrawal of moneys from the Consolidated Fund or the Capital Equalisation Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation Ordinance, whichever is the earlier.

Contingencies Fund

78.—(1) There shall be such provision as may be prescribed by Ordinance for the establishment of a Contingencies Fund and for authorising the Director of Finance, if he or she is satisfied that

there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Legislative Assembly and an appropriation Bill shall be introduced in the Assembly as soon as possible for the purpose of replacing the amount so advanced.

Public debt

79.—(1) All debt charges for which the Falkland Islands are liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, Capital Equalisation Fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the Falkland Islands or the Consolidated Fund and the service and redemption of debt thereby created.

Audit

80.—(1) The Governor, acting in his or her discretion, shall make appropriate arrangements for the audit of the public accounts of the Falkland Islands and of all courts of law and all authorities and offices of the Government and of statutory bodies; and any person or authority conducting such an audit shall have access to all books, records, reports and other documents relating to those accounts.

(2) All reports of audits conducted pursuant to subsection (1) shall be submitted to the Governor who shall cause them to be published and laid before the Legislative Assembly and the Public Accounts Committee.

(3) Any person or authority conducting an audit pursuant to subsection (1) shall not be subject to the direction or control of any other person or authority.

Public Accounts Committee

81.—(1) There shall be a Public Accounts Committee which shall consist of—

- (a) a chairman and two other members appointed by the Governor, acting after consultation with the elected members of the Legislative Assembly, from among persons who are not members of the Assembly; and
- (b) two elected members of the Assembly, who shall be elected by the Assembly by a majority of the elected members of the Assembly;

but the Director of Finance and the Chairman and the Deputy Chairman of the Standing Finance Committee of the Assembly shall be disqualified for membership of the Public Accounts Committee.

(2) A person may be appointed or elected under subsection (1) for any period not exceeding four years.

(3) A member of the Public Accounts Committee shall vacate his or her seat on the Committee—

- (a) at the expiration of the period for which he or she was appointed or elected;
- (b) if he or she resigns by writing under his or her hand addressed to the Governor;
- (c) in the case of an appointed member, if he or she is removed by the Governor, acting after consultation with the elected members of the Legislative Assembly, or if he or she is appointed to the office of Director of Finance; or
- (d) in the case of an elected member, if he or she ceases to be a member of the Legislative Assembly, is removed by resolution of the Assembly or becomes the Chairman or the Deputy Chairman of the Standing Finance Committee of the Assembly.

(4) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

(5) The Public Accounts Committee shall examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly, and shall have such other functions, and shall operate under such procedures, as may be prescribed by or under an Ordinance.

(6) The Public Accounts Committee shall have power—

(a) to summon any person to appear before it; and

(b) subject to the provisions of any law, to require any person so summoned to answer questions and to provide information to the Committee.

(7) The Public Accounts Committee shall report on its activities to the Legislative Assembly, keeping the Governor closely informed, as often as it may consider necessary but at least annually, and the Committee shall publish all such reports without delay.

(8) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the chairman of the Committee, considers that a member of the Committee has a conflict of interests, the Governor, acting after consultation with the elected members of the Legislative Assembly, may appoint another person temporarily to replace that member of the Committee for the purpose of dealing with the business in question; and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(9) In the exercise of its functions, the Public Accounts Committee shall not be subject to the direction or control of any other person or authority.

CHAPTER VII

THE PUBLIC SERVICE

Power to constitute offices

82. The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for the Falkland Islands.

Chief Executive

83.—(1) There shall be a Chief Executive whose office shall be a public office and who shall be appointed by the Governor, acting in agreement with the Executive Council.

(2) Under the authority of the Governor, the Chief Executive shall be the head of the public service, and in exercising that responsibility the Chief Executive shall comply with any directions given to him or her by the Governor, acting in his or her discretion.

Power to make appointments

84.—(1) Subject to subsections (2), (3) and (4), power to make appointments to any public office is vested in the Governor; but the Chief Executive shall exercise that power, and may delegate the exercise of that power to other public officers.

(2) The Governor may give directions regarding the exercise of the powers referred to in subsection (1) by the Chief Executive or by other public officers, and the Chief Executive and any other public officer shall comply with any such directions.

(3) Subject to subsection (4), the prior approval of the Governor shall be required for appointments to such public offices of or above the level of Head of Department or equivalent as the Governor may specify by directions.

(4) Power to make appointments to the offices of Attorney General, Chief of Police and Officer Commanding the Falkland Islands Defence Force is vested in, and shall be exercised by, the Governor.

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

(6) This section shall not apply to the office of Chief Executive.

Discipline and removal of public officers

85.—(1) Disciplinary control of public officers, and the removal from office of any public officer, shall be in accordance with the Management Code for the time being in operation.

(2) The Governor shall be informed of any disciplinary or other management action that is likely to lead to removal from public office, demotion or significant financial penalty, or that is likely to have any adverse consequence as regards the payment of any gratuity or pension to a public officer; and a final decision resulting from any such action may be appealed to the Governor by a public officer who is the subject of the decision.

(3) In this section “Management Code” means a code for the management of the public service issued by the Governor with the approval of a Secretary of State and with the agreement of the Executive Council; and any amendment of the Management Code that affects the discipline or removal of public officers shall require the prior approval of a Secretary of State.

(4) This section shall not apply to—

- (a) any office in the police force except that of Chief of Police; or
- (b) any office in the Falkland Islands Defence Force except that of Officer Commanding that Force.

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 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(a) 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.

(a) 1833 c.41.

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.

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.

CHAPTER IX

COMPLAINTS COMMISSIONER

Complaints Commissioner

95.—(1) The Governor, acting in his or her discretion, may from time to time appoint a Complaints Commissioner to investigate, in accordance with any Ordinance enacted pursuant to section 96(1), any complaint of maladministration in the government of the Falkland Islands or such other matters as may be prescribed by Ordinance.

(2) No person shall be qualified for appointment as a Complaints Commissioner if he or she is a member of the Legislative Assembly or a public officer.

(3) A Complaints Commissioner shall vacate office—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of the Legislative Assembly or is appointed to hold or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

Functions of Complaints Commissioner

96.—(1) A Complaints Commissioner shall have such functions, powers and jurisdiction as may be prescribed by Ordinance.

(2) In the investigation of any complaint or other matter, a Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

CHAPTER X

MISCELLANEOUS

The Public Seal

97. The Governor shall cause to be kept and used a public seal for the Falkland Islands which shall be used for sealing all things that should pass the seal.

Reappointments and concurrent appointments

98.—(1) Where any person has vacated any office established by this Constitution he or she may, if qualified, again be appointed or elected to that office in accordance with this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, even though some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred on the holder of that office, the person last appointed shall be deemed to be the sole holder of that office.

Resignations

99.—(1) Any person who is appointed or elected to any office established by or pursuant to this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it or when the resignation is expressed to take effect, whichever is the later.

Interpretation

100.—(1) In this Constitution, unless the context otherwise requires—

“Commander British Forces” means the Officer for the time being commanding Her Majesty’s Forces in the Falkland Islands;

“financial year” means any period of twelve months beginning on 1 July in any year or such other date as may be prescribed by Ordinance;

“the Gazette” means the Falkland Islands Government Gazette;

“the Government” means the Government of the Falkland Islands;

“the Governor”, in relation to any power conferred on the Governor, means the Governor acting in accordance with the advice of the Executive Council when the Governor has consulted the Council, except where this Constitution specifies that the Governor—

(a) acts on instructions given by or through a Secretary of State; or

(b) acts in his or her discretion or judgement; or

(c) acts after consultation with, or in accordance with the advice of, any person or authority other than the Executive Council; or

(d) may act against the advice of the Executive Council in accordance with section 67;

“law” means any law in force in the Falkland Islands or any part of them, including any instrument having the force of law and any unwritten rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“the Legislature” means the Governor acting with the advice and consent of the Legislative Assembly and includes the Governor acting in exercise of the powers conferred on him or her by section 55;

“mineral” means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;

“oath” includes affirmation;

“oath of allegiance” means the oath of allegiance set out in Annex B to this Constitution;

“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Annex B to this Constitution;

“oath of secrecy” means the oath of secrecy set out in Annex B to this Constitution;

“public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office:

“the public service” means, subject to subsections (2) and (3), the service of the Crown in a civil capacity in respect of the government of the Falkland Islands, and includes the Police Force and the Falkland Islands Defence Force;

“sitting” means, in relation to the Legislative Assembly, the period during which the Assembly is sitting continuously without adjournment and includes any period during which it is in committee.

(2) In this Constitution, unless the context otherwise requires, references to an office in the public service shall not be construed as including references to the office of—

- (a) an elected member of the Legislative Assembly;
- (b) a member of the Advisory Committee on the Prerogative of Mercy;
- (c) a judge or acting judge of the Supreme Court or of the Court of Appeal, or Senior Magistrate;
- (d) a member of the Public Accounts Committee;
- (e) a Complaints Commissioner;
- (f) save in so far as may be provided by Ordinance, a member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he or she is in receipt of a pension or other like allowance in respect of his or her former tenure of office.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his or her office shall be construed as including, to the extent of his or her authority, a reference to any person for the time being authorised to exercise the functions of that office.

(5) Except in the case where this Constitution provides for the holder of any office to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his or her consent, be nominated for election to any such office or be appointed to or to act in any such office or otherwise be selected for it.

(6) References in this Constitution to the power to remove a public officer from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.

(7) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his or her office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(8) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder of that office is himself or herself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was able to exercise those functions.

(9) Subject to sections 25, 66 and 67, where the Governor is directed by this Constitution to exercise any power or function after consultation with any person or authority, he or she shall not be obliged to exercise that power or function in accordance with the advice of that person or authority.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Without prejudice to section 14 of the Interpretation Act 1978(a), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(a) 1978 c.30.

ANNEX A TO THE CONSTITUTION

RULES FOR THE ENACTMENT OF LAWS

1. Matters having no proper relation to each other shall not be provided for by the same law; no law shall contain anything foreign to what the title of the law imparts; and no provision having indefinite duration shall be included in any law expressed to have limited duration.

2. All laws shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed a short indication of its contents.

3. All laws shall be numbered consecutively in a separate series for each year commencing in each year with the number one so that—

- (a) a law assented to by the Governor is included in the series for the year in which it is passed or deemed to have been passed by the Legislative Assembly; and its position in such series is determined by reference to the day on which the Governor gave his or her assent to it;
- (b) a law assented to by Her Majesty through a Secretary of State is included in the series for the year in which the Governor signified such assent by proclamation in the Gazette; and its position in such series is determined by reference to the day on which assent was so signified.

4. Copies of all laws shall be printed and each law shall bear the following—

- (a) in the case of a law assented to by the Governor, particulars of the date on which he or she gave such assent;
- (b) in the case of a law assented to by Her Majesty through a Secretary of State, particulars of the day on which the Governor signified such assent to it by proclamation in the Gazette;
- (c) particulars of the day on which the law was published in the Gazette; and
- (d) particulars of the day on which the law came into operation or, if that day shall not have been determined, a reference to the provision in the law or otherwise whereby it may be determined.

5. The Governor shall not, without having previously obtained instructions through a Secretary of State, assent to any Bill within any of the following classes, unless such Bill contains a clause suspending its operation until the signification of Her Majesty's pleasure on the Bill, that is to say—

- (a) any Bill whereby any grant of land or money, or other donation or gratuity may be made to the Governor;
- (b) any Bill affecting the currency of the Falkland Islands or relating to the issue of banknotes;
- (c) any Bill establishing any banking association or altering the constitution, rights or duties of any such association;
- (d) any Bill the provisions of which shall appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty;
- (e) any Bill affecting the discipline or control of Her Majesty's Forces by land, sea or air;
- (f) any Bill of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights of property of Her subjects not residing in the Falkland Islands, or the trade, transport or communications of any territory under Her Majesty's sovereignty may be prejudiced;
- (g) any Bill whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;

- (h) any Bill which makes provision for the holder of any public office to stand for election to the Legislative Assembly;
- (i) any Bill vesting in the Crown ownership of any minerals;
- (j) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Assembly or of its members; or
- (k) any Bill containing provisions which have been disallowed;

but the Governor may, without such instructions as aforesaid and although the Bill contains no such clause as aforesaid, assent to any such Bill (except a Bill the provisions of which appear to the Governor to be inconsistent with obligations imposed on the United Kingdom by treaty) if the Governor shall have satisfied himself or herself that an urgent necessity exists requiring that the Bill be brought into immediate operation; but in any such case the Governor shall forthwith transmit a copy of the law to a Secretary of State together with his or her reasons for assenting to it.

6.—(1) Every Bill (not being a Government measure) intended to affect or benefit some particular person, association or corporate body, shall contain a clause saving the rights of Her Majesty, Her Heirs and Successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from or under them.

(2) No such Bill shall be introduced in the Legislative Assembly until due notice has been given by not less than three successive publications of the Bill in the Gazette; and the Governor shall not assent to the Bill in Her Majesty's name unless it has been so published; and a certificate under the hand of the Governor signifying that such publication has been made shall be transmitted to Her Majesty through a Secretary of State with the Bill.

7. When any law has been enacted, the Governor shall at the earliest convenient opportunity transmit through a Secretary of State, for the signification of Her Majesty's pleasure, a transcript in duplicate of the law duly authenticated under the public seal and by his or her own signature, together with an explanation of the reasons and occasion for the enactment of the law.

ANNEX B TO THE CONSTITUTION
OATHS AND AFFIRMATIONS

1. Oath (or affirmation) of allegiance

I,, do swear (or solemnly affirm) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God. (To be omitted in affirmation)

2. Oath (or affirmation) for due execution of office

I,....., do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of the Falkland Islands, and will uphold the Constitution and other laws in force in the Falkland Islands, in the office of (here insert description of the office). So help me God. (To be omitted in affirmation).

3. Oath (or affirmation) of Secrecy

I,.....,do swear (or solemnly affirm) that I will be a true and faithful Councillor and that I will not, except in the course of my duties as a Councillor or with the authority of the Governor, reveal the business or proceedings of the Executive Council at any meeting of the Council or the nature or contents of any document or any other matter communicated to me in my capacity as a Councillor or for the purposes of any such meeting. So help me God. (To be omitted in affirmation).

4. Judicial Oath (or affirmation)

I,....., do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (here insert description of the office) and will do right to all manner of people according to the Constitution and other laws in force in the Falkland Islands, without fear or favour, affection or ill will. So help me God. (To be omitted in affirmation).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order 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, the public service, the administration of justice, and a Complaints Commissioner.

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

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