



FALKLAND ISLANDS
LEGISLATIVE COUNCIL

Report of
The Select Committee
on the
Constitution

To: THE PRESIDENT,
LEGISLATIVE COUNCIL,
FALKLAND ISLANDS.

Your Excellency,

We were appointed by Your Excellency on the 4th January 1974, on a Motion of the Council, to ascertain the views of the electorate on the subject of a change in the Constitution of the Colony and thereafter to make recommendations to Legislative Council on the form such changes should take.

We have been mindful of the advice given by Her Majesty's Principal Secretary of State in his Despatch dated 22nd October 1973 which also gave authority for the Select Committee to be appointed. In the event we found no conflict between that advice and the views of the electorate.

The Chairman, Mr. T. H. Layng, left the Colony while the Select Committee's work was still in progress. Mr. D. R. Morrison acted as Chairman until the appointment of Mr. A. J. P. Monk as Chief Secretary.

We have the honour to submit our Report.

A. J. P. MONK, (*Chairman*)

S. MILLER.

L. G. BLAKE.

A. B. MONK.

W. E. BOWLES.

REPORT OF THE SELECT COMMITTEE ON THE CONSTITUTION

PART I GENERAL

It is your Select Committee's understanding that the genesis of its appointment was the dilemma some Legislative Councillors found themselves in when confronted in the Legislature with Legislation proposals for which they had little liking but which had been remitted by an Executive Council in which they had participated.

2. More particularly the Committee's appointment stemmed from a Motion by the Nominated Member for West Falkland to the effect that Legislative Council should not include Nominated Members. The Motion clearly echoed public opinion.

3. If the very broad terms of reference given to the Select Committee were to have been examined completely the services of an expert and experienced Constitutional Commissioner would have been required, and your Select Committee in the main limited its investigations to proposals made to it.

4. Public meetings were arranged in Stanley and throughout Camp and written representations were invited. Altogether thirteen public meetings were held attended by 433 persons. Nineteen written representations were received and copies sent to each Committee member. Debates on the subject were also broadcast.

5. Your Select Committee is satisfied that it received a sufficient expression of public opinion to enable it to make recommendations in the ensuing parts of this Report.

PART II EXECUTIVE COUNCIL

6. Provided that the manner of electing members from Legislative Council on to Executive Council is modified, there emerged no strong need to alter Executive Council as it is now constituted and administered.

WE RECOMMEND ACCORDINGLY.

7. During our discussions on the Legislative Council it became clear that there were two apparently divergent views; one looking for a completely independent legislature, the other for a link between the legislature and Executive Council in order to retain continuity and to keep Legislative Councillors informed of what Government was doing.

8. These two views in the event proved not to be so opposed as might at first seem to be the case, and although the link between the two Councils was one of the reasons leading to the establishment of the Committee, this was only seen to be a problem if this link inhibited the legislature from providing checks on the executive.

9. Under the existing situation the link is achieved by the six unofficial members of the legislature electing on to Executive Council two members (one each from Stanley and Camp) chosen from the four elected councillors.

10. With a Legislative Council made up of eight members of whom two are nominated and four sit also on Executive Council as of right there is a feeling that the legislature is denied any real freedom of action. The simple replacement in Legislative Council of Nominated by Elected members will not in itself solve the problem as it could still be objected that a legislature of eight members which included two ex-officio members and two members who sit also on Executive Council (by election from Legislative Council) provides a means for four 'placemen' to force legislation through using the President's casting vote. Although this is by no means the general view the argument called for careful consideration.

11. It emerged that an acceptable way over this difficulty would be found if the Legislative Council members could rotate the election of their two members on to Executive Council; the two such members elected at the start of each session holding office on Executive Council respectively for 1 year and 18 months each and then, at the end of these periods and every year thereafter having to seek re-election.

WE RECOMMEND ACCORDINGLY.

PART III THE JUDICIARY

12. Little comment was made on this matter. It seems agreed that there should be an independent judiciary and that no change in the present Constitution is needed so far as the Judiciary is concerned.

WE RECOMMEND ACCORDINGLY.

PART IV LEGISLATIVE COUNCIL

13. In accordance with the limitations accepted on its terms of reference, referred to in paragraph 3, the Committee confined itself in the main to an examination of the matters listed below on which it received evidence. It also looked at two matters (remuneration and postal voting) which emerged during its deliberations.

1. One or two Councils.
2. Nominated Members.
3. Elected Members: The number and
distribution of seats.
4. Method of Election.
5. Residence Qualifications for Candidates.
6. Residence Qualifications for Electors.
7. Residence Qualifications for Returning Electors.
8. Civil Servants.
9. Age Qualification for Candidates.
10. Age Qualification for Electors.
11. Deposits.
12. Official Members.

SINGLE COUNCIL INCORPORATING EXECUTIVE AND LEGISLATIVE COUNCILS

14. There was a majority in favour of retaining two Councils.

WE RECOMMEND ACCORDINGLY.

NOMINATED MEMBERS

15. There was a clear majority in favour of abolishing nominated Members.

WE RECOMMEND ACCORDINGLY.

ELECTED MEMBERS: NUMBER AND DISTRIBUTION OF SEATS

16. The present 'Unofficial' strength of Legislative Council is two Nominated Independent and four Elected Members. With the President and the two ex-officio Members this makes a total of nine.

17. At meetings in Camp three propositions for a re-constituted Council were put forward as follows —

- | | | |
|------|---|-----------|
| i. | Stanley | 3 Members |
| | East Camp | 1 Member |
| | West Camp | 1 Member |
| | Camp as a whole | 1 Member |
| | <i>Supported by 6 settlements and 114 persons</i> | |
| ii. | Stanley | 4 Members |
| | East Camp | 1 Member |
| | West Camp | 1 Member |
| | Camp as a whole | 1 Member |
| | <i>Supported by 3 settlements and 58 persons</i> | |
| iii. | Stanley | 2 Members |
| | East Camp | 2 Members |
| | West Camp | 2 Members |
| | <i>Supported by 3 settlements and 81 persons</i> | |

18. No firm recommendation on the number and division of seats was made at the meeting in Stanley but four Stanley residents wrote to the Committee with separate proposals as follows —

- | | | |
|------|--|-----------|
| i. | Stanley | 3 Members |
| | East Camp | 2 Members |
| | West Camp | 1 Member |
| ii. | Civil Service | 2 Members |
| | Labour and Industry | 2 Members |
| | Ex-officio | 2 Members |
| iii. | Ex-Officio | 2 Members |
| | Labour, Stanley | 2 Members |
| | Labour, Camp | 2 Members |
| | Industry/Managers | 2 Members |
| | Civil Service | 1 Member |
| | Independent | 1 Member |
| iv. | <i>Either a single constituency for the Colony, or</i> | |
| | Stanley | 5 Members |
| | East Camp | 3 Members |
| | West Camp | 2 Members |

19. Two Camp residents made written proposals for the number and division of seats as follows —

- | | | |
|-----|--|-----------|
| i. | Stanley | 3 Members |
| | East Camp | 2 Members |
| | West Camp | 1 Member |
| ii. | An equal number (unspecified) of Members from Stanley and Camp | |

20. There seemed to be neither any strong desire to depart from the principle of parity representation between Stanley and Camp nor support for proportional representation (Stanley 55% of the population, East 25% and West 20%). It was thought quite important to retain the local representative principle.

21. Although there was some feeling that a larger Legislative Council may give people greater voice this view was not widely held.

22. The views of the public would seem to be met by six elected members - three each from the Camp and Stanley.

WE RECOMMEND ACCORDINGLY.

METHOD OF ELECTION

23. Under the present Constitution one elected member is returned for each of the two Camp electoral areas but in Stanley two candidates are elected at one election for the one area. We examined whether the latter was a good method and whether it should continue, especially if the total number of seats to be filled by election is increased to six (three in Stanley and three in Camp).

24. The election of more than one candidate for one constituency at a single election may take several forms. We considered what we thought to be the two most likely methods.

25. According to the first method each elector casts one vote for one candidate only and the candidates who receive the most votes are elected. This has the merit of giving a fairly accurate representation of sectional interests. On the other hand, those who voted for the leading candidate can object that the other successful candidates are not the ones they would have elected. Proponents of both views can adduce strong arguments in their favour.

26. According to the second method each elector marks his ballot paper with his order of preference up to the number of candidates to be elected. It is vulnerable to the criticism that it excludes from second place a candidate who received a large number of votes for first choice (but not enough to gain him election in that place) but is overtaken for second place by a candidate placed by the majority in second place. It may be argued with some validity that this form of election is only truly democratic if the ballot paper sets out every combination of the candidates offering - a clearly impossible and unacceptable arrangement.

27. For this reason and also because of the general requirement for electoral areas to have their own representatives we inquired into a proposition that the Colony should be divided into separate constituencies.

28. Neither Camp nor Stanley divide easily into three discrete constituencies. A solution which seems to command a fair degree of support is to divide the Colony into two *electoral divisions* ('Camp' and 'Stanley') and subdivide each division into East and West *electoral areas*. One member would then be elected by each of the four *electoral areas* and one by each of the two *electoral divisions*. These six elected members with the president and the two ex-officio members would give a total of nine members.

WE RECOMMEND ACCORDINGLY.

29. The divisions and areas could conveniently be described as —

ELECTORAL DIVISIONS

- (1) CAMP - being the whole of the Camp other than the area of Stanley as defined in the first Schedule to the Stanley Rates Ordinance 1973.
- (2) STANLEY - being that area defined in the Stanley Rates Ordinance 1973.

ELECTORAL AREAS

- (i) WEST FALKLAND - being that area known as West Falkland.
- (ii) EAST FALKLAND - being that area of the East Falkland remaining after the exision of Stanley.
- (iii) WEST STANLEY.
- (iv) EAST STANLEY.

WE RECOMMEND ACCORDINGLY.

30. Such a system presents problems for candidates if they have to choose between standing for an area or a division and may in the event fail in both, in the area for lack of sufficient votes, and in the division by

default. Because this method creates a dilemma for potential candidates and may deter them from standing, and because too it could result in the 'most-preferred' candidate failing by choosing badly, it did not appeal to the Committee in its simple form.

31. A solution would be found if elections for areas and divisions were held on separate days and candidates who failed in the first election (for the area) stood again (subject to the qualification in paragraph 34) in the second one (for the division).

WE RECOMMEND ACCORDINGLY.

32. We think it preferable to hold area elections before those for the divisions.

WE RECOMMEND ACCORDINGLY.

33. Candidates should be allowed to specify on their nomination papers whether they wish to stand for the *division* only. To avoid the possibility of any disesteem attaching to 'failed' *area* candidates, all such candidates would automatically be candidates also for the *division* election unless they were either successful in the area election or barred in accordance with paragraph 34.

WE RECOMMEND ACCORDINGLY.

34. Complications could arise if a candidate, at both elections, failed to obtain sufficient votes to secure his deposit. It would therefore be inappropriate for a candidate who lost his deposit in the area election to go forward to the division election.

WE RECOMMEND ACCORDINGLY.

RESIDENTIAL QUALIFICATIONS FOR CANDIDATES

35. At present a candidate must have resided in the Colony for the 12 months immediately preceding the day when dissolution of Legislative Council or the vacancy is notified. Most people thought this not long enough although there was a wide variation of proposals, summarised in the following Table —

Years Residence to qualify	No. of Persons in favour	At Number of Settlements
7	180	Stanley
5	200+	Stanley (alternative proposal) and 2 Settlements
4	12	1 Settlement
3	77	3 Settlements
2	40+	2 Settlements
1	70+	4 Settlements *

* *One of these Settlements recommended that this should not apply to people not born in the Falkland Islands.*

36. Some extension of the period seems desirable and a compromise is to settle on three years' continuous residence.

WE RECOMMEND ACCORDINGLY.

RESIDENTIAL QUALIFICATIONS FOR ELECTORS

37. The present qualification is twelve months' continuous residence ending on the day prior to the day on which the vacancy or dissolution is notified.

38. At Stanley a majority opinion favoured a longer period but this view was not held in Camp. On balance it seems that it may not be necessary to disturb the present arrangement except to recognise that there is a strong proclivity towards requiring persons who were not born in the Falkland Islands to qualify by three years' continuous residence.

WE RECOMMEND ACCORDINGLY.

RESIDENTIAL QUALIFICATIONS FOR RETURNING VOTERS

39. This topic was referred to at Camp meetings. At four settlements no qualifying period was considered necessary. Many persons at these meetings thought that returning Islanders should have to comply with a twelve-months qualifying period following more than five years consecutive absence and this opinion seems to be commonly held.

WE RECOMMEND ACCORDINGLY.

40. The Committee was made aware of a clear distinction in the mind of the public between a native-born Falkland Islander and a person who, not being born in the Falkland Islands, had acquired a right to vote by reason of residence. For these non-native-born persons it was considered that a right to vote could only be re-established by three years' continuous residence following a period of five years' continuous absence.

WITH ONE EXCEPTION WE RECOMMEND ACCORDINGLY.

CIVIL SERVANTS

41. At present persons who hold office of emolument under the Crown may elect Councillors but may not be elected.

42. In Stanley there was a slight majority in favour of civil servants being allowed to stand. In Camp opinion was divided, being mainly *for* in the West and totally *against* in the East.

43. Having regard to the practical problems involved and the invidious position of civil servants the arguments against preserving an independent civil service do not seem to be so overwhelmingly strong as to require any change in the present arrangement.

WE RECOMMEND ACCORDINGLY.

AGE QUALIFICATION FOR CANDIDATES

44. There is strong opposition to imposing any upper age limit.

WE RECOMMEND ACCORDINGLY.

45. The present minimum age is 21 years and there was a common consensus - with a few exceptions mainly in West Falkland - that this should remain.

WE RECOMMEND ACCORDINGLY.

AGE QUALIFICATION FOR ELECTORS

46. At present an Elector must be 21 years of age but there was overwhelming support for the proposal to lower this to 18 years.

WE RECOMMEND ACCORDINGLY.

47. The Committee understand that the age of majority in the Colony is 21 years. It may well be that this should be looked at with a view to lowering it to 18 years in conformity with the age for Electors.

DEPOSITS

48. There was unanimity that the deposit required of candidates should remain at £25. There was fair support for the proposition that the proportion of votes cast required to secure return of the deposit should be reduced from one-eighth to one-tenth.

WE RECOMMEND ACCORDINGLY.

OFFICIAL MEMBERS

49. Most Camp meetings recommended that officials should remain as members but have no vote. The record of the Stanley meeting does not refer to this matter. The Committee saw merit in a system which would enable Council's decisions to be made entirely by elected members but, taking account of all considerations, thought that that stage had not yet been reached.

50. However, Government could take steps to prepare for this development at a future date and the Committee saw merit in allocating portfolios, or responsibility for special subjects, to elected Councillors so that they could play a full part in preparing and presenting to Council legislation in their allocated fields.

WE RECOMMEND ACCORDINGLY.

REMUNERATION OF COUNCILLORS

51. This matter was not much discussed in public but there appeared to the Committee to be support for a need to remunerate Councillors at a level such that they would not be out-of-pocket. This should take the form of a daily allowance plus a reasonable reimbursement for board and lodging in cases where Councillors stay with relatives or friends.

WE RECOMMEND ACCORDINGLY.

POSTAL VOTING

52. Greater use of the postal services could be made to allow persons to vote who otherwise might for one reason or another (e.g. because they were at sea, sick, or in transit) be prevented. The postal vote could, too, be used as the normal method of voting in remote areas, especially islands, to cut down the amount of travelling done by the Returning Officer. Safeguards would have to be incorporated in this system to prevent double-voting. The authentication of postal vote applications by a Justice of the Peace may be an acceptable solution to this problem.

WE RECOMMEND ACCORDINGLY.

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