

FALKLAND ISLANDS

REPORT TO A SELECT COMMITTEE  
OF THE LEGISLATIVE COUNCIL  
ON A REVIEW OF THE CONSTITUTION

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Foreign & Commonwealth Office  
London SW1

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Hon Members of the Legislative Council  
of the Falkland Islands

In December 1994 I was appointed to assist a Committee of the House in their examination of the need to revise the present Constitution.

My terms of reference were "to enquire into what changes, if any, should be made to the Falkland Islands Constitution Order, 1985 and related matters; and to report accordingly to the Legislative Councillors of the Falkland Islands Government".

I visited the islands from 14 February to 16 March 1995; and now have the honour to submit my report.

I am  
your obedient servant

*A. G. Wallace*

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## CHAPTER 1

### THE CONDUCT OF THE REVIEW

- 1.1 Nearly two months prior to my arrival in the islands the public were invited either to submit their views on constitutional change in writing or to seek an appointment with me to give their views in person. In the event, six persons submitted views in writing and separate discussions were held with 22 members of the public. A further six attended a public meeting in Stanley and about the same number took part in a lively hour-long radio phone-in. Public interest in the review was not great - but this is not unusual and could be interpreted as indicating that most of the populace are not dissatisfied with the major provisions of the present constitution, a view borne out by those who did give evidence.
- 1.2 In addition to public participation, discussions were held with HE the Governor, seven of the eight elected members of the Legislative Council, the Chief Executive, the Financial Secretary, the Attorney General, the Government Secretary, the Clerk of Councils, the Registrar-General, the Senior Magistrate and the Chief of Police. Discussions were also held with representatives of Ministry of Defence contractors and NAAFI at Mount Pleasant Airfield.

1.3 Outside Stanley, in Camp, five days were spent visiting Port Howard, North Arm, Port Louis, Brookfield, Estancia, Goose Green and Darwin.

## CHAPTER 2

### SOME GENERAL CONSIDERATIONS AND RECOMMENDATIONS

2.1 In general, the Constitution of the Falkland Islands is similar to that of most other dependent territories in that it includes provision for a Governor appointed by The Queen, an Executive Council to advise the Governor on policy and the exercise of his functions and a largely elected Legislative Council with the advice and consent of which the Governor "may make laws for the peace, order and good government of the Falkland Islands." Together with St Helena, however, the Falkland Islands differ in one important respect, viz, there are no political parties or even groupings of politicians. Thus the first general question which should be considered is whether the present type of constitution is or is not best suited to the Falklands.

2.2 There were a few witnesses - but only a few - who gave evidence and suggested that a single Council (in effect an elected Legislative Council which also sits as an Executive Council) is most appropriate when political parties do not exist. This is the State Council system which existed, for example in the Turks & Caicos Islands in the 1960s, but which did not survive for long due to the emergence of political parties. The system's main drawback is that the

same body of councillors will, for example, debate a piece of legislation, in confidence, as Executive Council and subsequently debate the same piece in public as the Legislative Council. Not only do I find this slightly absurd but it is unlikely that there would be any debate at all on the second occasion, thus leaving the public less than well-informed. In fact, what seems to be required in the Falklands is that the public should be better informed of the deliberations of the Legislative Council.

2.3 It is also necessary to consider the Committee system in St Helena. (It also obtains in the Channel Islands but on a slightly different basis.) Under the system in St Helena, five Committees of the Legislative Council, chaired by elected members, oversee the work of government departments and have a wide range of statutory and administrative functions. Each Committee must include a majority of councillors; and the five Chairmen, together with three officials, form the Executive Council. That the system works well in St Helena is no doubt due to the smallness of the island (only 47 square miles) and its good communications, thus making it relatively easy for all councillors to play a full part in the work of government. It would not work so well in the Falklands (4,700 square miles) with widely varying standards of communications.



2.4 More important however is the fact that there is no real wish, especially among Councillors themselves, to make any fundamental change to the present system of government in the Falklands. That it works as well as it does is testament to Councillors' determination to arrive at a consensus wherever possible. One method by which this is achieved is for the General Purposes Committee of the Legislative Council (comprising all elected members) to consider Executive Council papers the day prior to consideration by Executive Council. This is unusual, in my experience, but is unexceptional, especially as all Councillors have taken an oath of secrecy. Widespread consultation, in confidence, before a decision is reached in Executive Council, is to be commended. But what does concern me is the practice whereby the Standing Finance Committee of the Legislative Council, meeting the day after Executive Council, has been known to indicate, for example, that it could not agree to the provision of additional funds required to implement some Executive Council decision or another. That in my view is unconstitutional; the decision of the Governor-in-Council, particularly in policy matters, is not open to question. But what is open to the Legislative Council - to any Legislative Council - is to debate, in session and in public, any legislation or request for funds necessary to implement any decision of the Governor-in-Council; and, if it so decides, to refuse to approve any such measure. That is the prerogative of the Legislative Council - but it may only be



exercised, in public, by the full Council - not behind closed doors by the Standing Finance Committee. I recommend that the existing practice should cease.

2.5 Looking ahead to the future, if political parties were to emerge in the Falklands - and there is no sign at present that this is either likely or would be welcome - then the present Constitution, especially if amended as a result of this report, would require only minor though extensive amendments to provide for government by a political party and the introduction of a ministerial system. Since, however, there seems little likelihood of this occurring in the reasonably near future, it is desirable to consider whether some constitutional step forward cannot be taken now within the framework of the existing system of government. In this regard I recommend that constitutional certainty be given to what is largely the practice at present, viz, the association of individual members of the Legislative Council with responsibility for specific areas of the business of government. The only amendment of the Constitution which would be necessary would be the addition of a provision on the following lines:

"The Governor, acting in his discretion but after consultation with the members of the Legislative Council may assign to a member of the

Legislative Council responsibility for the conduct of any business in the Legislative Council"

This would enable the Governor to assign responsibility, for example for external affairs, police and the public service to the Chief Secretary; for finance and associated subjects to the Financial Secretary; and for all other subjects to the elected members.

- 2.6 It must be stressed that constitutional responsibility would only be for the conduct of business in the Legislative Council. Any other progress which may seem desirable, especially in the light of experience, can be achieved administratively. Thus I would hope that the elected member with responsibility for, say, education, would be gazetted as and known as the Member for Education; would automatically be Chairman of the Board of Education; would submit Executive Council papers on education in his name; would, if possible, have an office in the Education Department; and so on.

## CHAPTER 3

### THE GOVERNOR

- 3.1 In the formulation of policy and in the exercise of his powers, the Governor is required to consult with the Executive Council. The usual exceptions to this requirement are listed in section 61(2) of the Constitution. There is one unusual exception and that is that where defence or internal security (excluding the police) is concerned, the Governor is required to consult with and to act upon the advice of the Commander, British Forces.
- 3.2 In any case in which the Governor consults the Executive Council, he may act against the advice given to him by the Council if he thinks it right to do so. In that event, he must report the matter without delay to the Secretary of State with the reasons for his action. The effect of this provision is to confer a large measure of local autonomy and one which can be favourably compared with that enjoyed under what would generally be regarded as more advanced constitutions.
- 3.3 During my review I heard virtually no criticism of either these constitutional arrangements or of the manner in which they are implemented. I do not recommend any change.

## CHAPTER 4

### THE EXECUTIVE COUNCIL

- 4.1 The Executive Council, the primary function of which is to advise the Governor on the formulation of policy etc, consists of three of the elected members of the Legislative Council and two ex-officio members, viz, the Chief Executive and the Financial Secretary.
- 4.2 The three elected members are elected by the elected members of the Legislative Council for periods of 12 months; and their election must result in at least one member representing the Camp constituency and at least one representing the Stanley constituency.
- 4.3 In the absence of political parties, the arrangement whereby the two constituencies must each be represented on Executive Council seems to me to be eminently sensible. I am not so sure however about the arrangement whereby the elected members are elected for 12 months only (though admittedly they can be re-elected again and again). It seems to me that, for example, the conduct of lengthy and complex negotiations over oil exploration licences or the need to plan and implement long-term policies, would benefit from continuity. In fact, the length of time a member of Executive Council is elected for is immaterial, since he or

she may be removed at any time by a resolution of the Legislative Council (section 53(f) refers). I make no recommendation in this regard but I do suggest that at least consideration be given to amending section 52(1) to remove the reference to a period of 12 months. Elected members of Executive Council would thus serve for the life of the Legislative Council unless removed by a resolution of the Legislative Council.

4.4 As is customary, the Constitution is silent on the question of voting in the Executive Council. This may be because it is generally accepted that decisions in Council should be reached, if at all possible, by consensus. But if a vote should be necessary, then it is clear that all members, official and elected alike, have an equal vote. However, I am advised that in the Falklands there is now an established convention that, should a vote be necessary, only elected members vote. I have no doubt that such a convention is thoroughly well-intentioned - but I am concerned about its possible effect. At best, it means that decisions in Executive Council may be reached on the basis of the opinion of only two of its five members; at worst, it could lead to horse-trading of support, and to the view of a single member prevailing. That is not how the system is meant to work.

4.5 In another section of this report (para 5.5) I come to the conclusion that a larger Legislative Council would be justified. In view of this - and in view of the present situation as set out in the preceding paragraph - I recommend that there should be five elected members of Executive Council, of whom not less than two must represent the Camp constituency and not less than two represent the Stanley constituency. I also recommend that the present convention on voting should be abandoned; with five elected members there would be even less justification for it than at present.

4.6 On a minor but not unimportant matter, I understand that it is the practice, whenever an elected member of Executive Council is temporarily absent or incapacitated, for the elected members of the Legislative Council, without further ado, to elect a temporary replacement. I can appreciate the reasons for doing so but would draw attention to the provisions of section 54(1) of the Constitution which state that the elected members of the Legislative Council shall only elect a temporary member of Executive Council "if the Governor informs them that (it) is desirable". If the Executive Council is expanded to include five elected members, it may seldom be necessary to elect a temporary replacement. A quorum of an expanded Executive Council should be four members (in addition to the Governor or person presiding).

## CHAPTER 5

### THE LEGISLATIVE COUNCIL

5.1 In accordance with section 21 of the Constitution, the Legislative Council consists of eight elected members and two official members, viz, the Chief Executive and the Financial Secretary. Under section 22, the islands are divided into two constituencies, Camp and Stanley, each of which returns four elected members. The Electoral Ordinance, 1988, defines the Stanley constituency as those parts of the islands as lie within such distance as may be prescribed (and a distance of 3.5 miles has been prescribed) from the spire of Christ Church cathedral, Stanley. The remainder of the islands form the Camp constituency.

5.2 When it was decided to include in the 1985 Constitution the number of members to be returned by each constituency, the populations of Camp and Stanley were approximately equal. Since then, however, there has been a steady drift from Camp to Stanley. The 1991 census shows a population of 1,557 in Stanley and 493 in Camp; and at the last count there were 946 registered voters in Stanley and 345 in Camp. Statistically, the present distribution of seats can no longer be justified, although some recognition must be given to the fact that the population in Camp is widely scattered and communications are difficult, although improving.



5.3 The first change which I recommend in this area is to remove from the Constitution the present reference to the number of constituencies and to the number of members to be returned by each constituency; and to make the necessary provision in the Electoral Ordinance. This will enable adjustments to be made in the future, as and when necessary, without the need to amend the Constitution. Thus section 22(1) would be amended on the following lines:

"The Falkland Islands shall be divided into such number of constituencies as may be prescribed by Ordinance. Each constituency shall return such number of elected members - and shall elect them in such a manner - as shall be prescribed by Ordinance."

5.4 It is necessary however that the Constitution lay down the total number of elected members of the Legislative Council (in addition to the two official members). During the review evidence was given to the effect that the present number should be increased. It was observed that government activity has increased considerably since 1985; and that, with the best will in the world, it is not always easy for Camp councillors to play as full a part as they would like in day-to-day administration. Much of the work of government is overseen by boards or committees, of which there are some 40 in number; half are chaired by councillors and most of

the remainder include councillors as members. On the average councillors attend some 40 committee meetings a year. This is in addition to quarterly meetings of the Legislative Council, monthly meetings of Executive Council and similar meetings of the General Purposes Committee and Standing Finance Committee of the Legislative Council. Despite this considerable burden, however, there is no real support for a move towards full-time councillors. I recommend that there should be an increase from eight to 11 elected councillors. I fully appreciate that there may be those who will argue that it cannot be necessary to have as many as 11 councillors to attend to the affairs of a population of only 2,050 (excluding the garrison and associated contractors) - but there are special considerations which apply in the Falklands and as much government is necessary whether the population is 2,000 or 10,000. In addition, a Council of 11 elected members would mean that after electing five of their number to Executive Council, there would still be a majority not on Executive Council. This is as it should be.

5.6 Assuming the foregoing recommendations are accepted, it will be for the Legislative Council to decide how the 11 seats should be divided between constituencies. Before considering this matter, however, it is necessary to record that quite a few witnesses gave evidence in favour of a single, island-wide constituency. Apart from the fact that there could well be some 30 or so candidates' names on the ballot paper, the

main objection to a single constituency is that there could be no guarantee that the result of the ballot would be an equitable distribution of councillors as between Stanley and Camp. It is of course possible to have a mix of systems, for example, four Camp seats, four Stanley seats and three island-wide seats. But if this were to result in say seven Camp councillors, it would mean that Stanley would be grossly under-represented on the basis of population and that the conduct of the day-to-day business of government would be far from easy.

5.7 Though it will be for the Legislative Council to decide this matter of constituencies, I would like to recommend that there should be four Camp seats and seven Stanley seats in order to ensure that Camp is adequately but not over-represented and that Stanley, with a majority of the population, has a clear majority of seats and a sufficient number of councillors to play their part in the day-to-day work of government.

I am also attracted by a suggestion made to me that Camp should be divided into two Constituencies, West Falklands and East Falklands (outside Stanley), with two seats each and that Stanley be divided into three or four constituencies. This would not only reduce the number of candidates' names on a ballot paper, but would help an

elector to identify more closely with his representative(s).  
But the decision is for the councillors.

5.8 Lastly, section 23 of the Constitution requires that a candidate for election to the Legislative Council must be registered as a voter in the constituency in which he is seeking election. This is unusual and, in my view, unnecessarily divisive. I recommend that it is abolished.

5.9 A quorum of the new Legislative Council should be seven (including the person presiding if a member of the Council).

## PRESIDING IN THE LEGISLATIVE COUNCIL

5.10 Under section 33 of the Constitution, the Governor presides at each sitting of the Legislative Council; in the Governor's absence he may, in his discretion, appoint a member of Council to preside; and if no such person is appointed, the elected members may appoint a member of Council to preside. The Governor has neither an original nor a casting vote; and an elected member who is presiding has a casting vote only.

5.11 In all other dependent territories the last 30 years or so has seen the replacement of Governors as presiding officers by elected Speakers, elected from within or without membership of the Council. It is suggested that the time may now be appropriate for the last territory, the Falklands, to follow suit and for Councillors, if they so wish, to be able to elect their own Speaker.

5.12 The recommended amendment to the Constitution would be to the effect that until such time as the elected members of Council elect a Speaker, the Governor should continue to preside. A Speaker, if and when elected, may be an elected member of the Council (who is not a member of the Executive Council) or a person who is not a member of the Legislative Council. In either event, he should be elected for the life of the Council and be removable by a vote of two-thirds of

the elected members. The same provisions should apply to the Deputy Speaker except that he must be an elected member of the Council. The voting rights of the Speaker and Deputy Speaker should be set out in Legislative Council Standing Rules and Orders.

## THE FRANCHISE

5.13 Apart from the usual disqualifications, a person is qualified to be registered as an elector provided, on the qualifying date for registration, he is:

- a) a Commonwealth citizen
- b) 18 years of age or over; and
- c) has been resident in the islands during the qualifying period

Under the Electoral Ordinance, 1988, the qualifying date is the 15 May preceding the publication of the register of electors; and the qualifying period is 12 months (in the case of a person born in the Falklands) and five years (in the case of a person not born in the Falklands) immediately preceding the qualifying date (sections 27 of the Constitution and 4 and 5 of the Electoral Ordinance refer).

5.14 Thus, a Commonwealth citizen, age 18 years or over, resident in the Falklands for at least five years, unless disqualified (which is unlikely) is automatically entitled to be registered as a voter (and, incidentally, to stand as a candidate for election to the Legislative Council). There are now some 450 expatriate workers at Mount Pleasant Airfield, mostly Commonwealth citizens from the United Kingdom or St Helena. It is thought that some 20 per cent -



or nearly 100 persons - have already completed five years residence or may soon do so; and it is understood that 27 have already registered as voters. More may do so in the next year or two; and, of course, if oil exploration goes ahead, there will be a further influx of workers from overseas, many of whom may be Commonwealth citizens.

5.15 They were not many but all who gave evidence during the review were unanimously of the opinion that steps must be taken to avoid any risk of the votes of Falkland Islanders being swamped by the votes of persons from outside the islands. I entirely agree. Similar action has already been found necessary in other dependent territories, in most of which the right of a Commonwealth citizen to be registered as an elector has been abolished (but replaced by the discretionary grant of "belongership" which carries with it a right to vote and is described in para 5.18 below).

5.16 Although there does not seem to be any imminent risk of Falkland Island voters being swamped at the polls, it would seem prudent to take action now rather than later. There are, of course, a number of ways in which the necessary control could be exercised; for example, the existing right of Commonwealth citizens could simply be abolished; the qualifying period of residence could be extended from five years to, say, 15 years; or immigration control could be resorted to to prevent persons from completing the

qualifying period (though this is perhaps arguable). Any of these methods, however, is in my view open to a major objection, viz, that the future of the Falkland Islands could well depend, to a large extent, on a controlled increase in settled immigrant population. That will not be achieved either effectively or harmoniously if newcomers are to be permanently treated as second-class citizens and denied the right to vote.

5.17 The problem is that, on the one hand, there may be persons who are only in the islands for the period of a contract of employment (or a series of contracts) and who will then leave, either of their own volition or when their employment ends. They may well be resident in the islands for five years or more - but there is, I suggest, little or no obligation to give them the right to vote, especially as some may have retained that right in their country of origin. On the other hand, there may be persons who clearly intend to make their home in the islands - they may start a business, invest in one, buy property and generally become integrated into the community. After a specified period of years of residence such persons should, I suggest, be eligible to be granted most of the privileges of a born Falkland Islander, including the right to vote.

5.18 The solution to this problem - and it is by no means a perfect one - that has been arrived at in the Caribbean dependent territories and Bermuda is to provide, in the Immigration Ordinance, for the grant of "belongership" (or as it is more elegantly known in Bermuda, "Bermudian status"). A grant of status would not be automatic but would be entirely at the discretion of the Governor-in-Council and would depend on such requirements as may be specified by Ordinance being fulfilled. Once granted, status would confer specified rights and obligations of the born Falkland Islander. It may only be withdrawn in the event of prolonged absence from the islands.

5.19 That this is not regarded as a perfect solution is due to the fact that it inevitably gives rise to allegations of favouritism or even corruption. For this reason, I recommend that there should be a Board of Immigration charged with responsibility for making recommendations to the Governor-in-Council as to whether status should be granted to an applicant who fulfils the specified requirements. The Board should be required to operate within an annual quota, varied as necessary, and to observe a points system in assessing an application.

5.20 If these recommendations are generally acceptable, it will be necessary to amend section 27 of the Constitution to provide that on the qualifying date an elector must be:

- a) 18 years of age or over; and
- b) resident in the Falkland Islands during the qualifying period

and must fall within one of the following categories:

- c) was born in the Falkland Islands; or
- d) was born outside the Falkland Islands of a father or mother who was born in the Falkland Islands; or
- e) was registered as a voter on or before ...; or
- f) under the law in force in the Falkland Islands has the status of a Falkland Islander.

Paragraph e) above will preserve the right of an existing Commonwealth citizen who was registered as a voter before the cut-off date. That date should be as soon as possible after publication of this report (though there may be legal difficulties in specifying a date earlier than the actual amendment of the Constitution).

5.21 It is usual in other dependent territories for persons with status to be denied the right to be elected a member of the Legislative Council. I believe, however, that such a ban should not apply in the Falkland Islands where the need, as I see it, is to build up, by the judicious use of immigration controls, a stable population and not one where some enjoy a privilege denied to others. There is also the point that if he does not wish to do so, an elector need not vote for a candidate who is not a born Falkland Islander.

5.22 I recommend therefore that section 23 of the Constitution dealing with qualifications for membership of the Legislative Council should be amended on the following lines:

"Subject to the provisions of section 24 of this Constitution, any person who is of the age of 21 or over, is registered to vote and is not prohibited by any law from so voting shall be qualified to be elected as a member of the Legislative Council."

This would also give effect to the recommendation in paragraph 5.8 above that candidates should no longer be required to be registered as a voter in the same constituency as the one in which they seek election.

## CHAPTER 6

### THE PUBLIC SERVICE

6.1 Under the provisions of section 76 of the Constitution, the power to make, confirm and terminate appointments to any public office and to exercise disciplinary control over public officers is vested in the Governor, acting in his discretion "or after consultation with such persons or authority as may be prescribed by Ordinance ...". This latter phrase is clearly intended to cater for the possibility of local legislation being passed - at some time or other - to establish a Public Service Commission which, at this stage in the constitutional development of the Falkland Islands, would be advisory only. No such ordinance has been passed, no doubt because a need for it has not arisen, at least as yet.

6.2 The present position is that there are two appointment boards (the Appointments Board and the Senior Appointments Board) established under General Orders to consider and advise the Governor upon applications for appointment, promotion and transfer within the public service. I understand that it is customary to invite one or more persons from the private sector to sit on the Senior

Appointments Board, a practice which I wholeheartedly endorse. Elected members of the Legislative Council may not sit on either board.

Disciplinary cases are handled in the usual manner, viz, a serious offence which might merit dismissal is investigated by a committee and a less serious offence by an investigating officer. In each case a report and recommendation is made to the Governor. As in the case of appointments etc, he is not bound to accept any recommendations made to him. There is specific provision for a right of petition in these matters to the Secretary of State and, further, to The Queen.

6.3 While I do not recommend any change in these arrangements (especially as the present Constitution specifically envisages a Public Service Commission Ordinance being passed at any time if thought desirable) I consider that there would be advantage in making it clear that the Governor may delegate, for example, to Heads of Departments, some of his powers particularly in relation to junior staff. While I am advised that a general authority to delegate exists under section 50(2) of the Constitution, I consider it would be helpful (as has been found in other constitutions) to include, under section 76, a specific enabling provision on the following lines:



"The Governor, acting in his discretion, may by regulations delegate, to such extent and subject to such conditions as may be specified in the regulations, the powers vested in him by section 76 of this Constitution to such public officers as may be so specified."

If disciplinary powers are delegated, there must be a right of appeal to the Governor. If the power to transfer officers between departments is delegated, it should be delegated to the Chief Executive.

6.4 There is a further quite unrelated matter which involves the public service and that is the special arrangements which exist (under sections 24(1)(c) and 24(4) of the Constitution and section 53 of the Electoral Ordinance, 1988) regarding the election of public officers to the Legislative Council. In most other dependent territory constitutions no public officer is qualified to be so elected and the only reason for relaxing this rule is if there is a dearth of other candidates. Happily this is not the position in the Falklands and there is therefore a case for applying the usual prohibition. If however it is desired to continue with the present arrangements, it needs to be made clear that any public officer who wishes to stand as a candidate must temporarily relinquish his public duties (for example by

taking vacation leave or leave without pay) during the period of his candidature, and, of course, resign if elected.

## CHAPTER 7

### MISCELLANEOUS MATTERS

7.1 There are a number of other minor amendments to the Constitution etc which require to be considered. In the main these are in line with recent amendments to other dependent territory constitutions.

7.2 The recommended amendments are as follows:

- a) Definition of belonging to the Falkland Islands (section 17(5)). In paragraph (e) the wife or widow of a person belonging to the islands is also regarded as belonging to the islands - but not the husband or widower. Although "belonging" in this context is solely for the purposes of Chapter 1 of the Constitution (on fundamental rights and freedoms) this is clearly discriminatory and requires amendment to include the husband or widower (provided, as at present, the parties are not living apart under a decree or deed of separation).

I have also considered whether paragraph (d) of section 17(5) should be deleted. This paragraph states that a Commonwealth citizen domiciled and

ordinarily resident in the islands for not less than seven years is regarded as belonging to the islands. This, however, is also only for the purposes of Chapter 1 of the Constitution and, since domicile as well as residence is a requirement, I consider that it would be only reasonable to retain it.

b) Register of Interests. It is now fairly common for dependent territory constitutions to include a provision, in line with practice in the House of Commons, requiring all members of the Legislative Council (and public officers if so prescribed) to declare such of their interests as may be required by law.

I doubt, however, if such a constitutional provision is necessary in the Falkland Islands since the Legislative Council Standing Rules and Orders already contain a comprehensive definition of members' interests and a requirement that the clerk should maintain a register of interests (SR&O 18 refers). Under SR&O 12(2) the register is open to the public. However, SR&O 18(3) merely states that members may record their interests in the register; this clearly should be amended to make it

compulsory to do so. In this connection, it should only be necessary to declare the existence of an interest; it is not necessary to declare its extent or value.

As far as public officers are concerned, they are required to declare their interests under General Orders 301(4) and 302. Any failure to do so may be regarded as a disciplinary offence.

- c) On the same subject of members' interests, it is common in other constitutions for there to be a provision disqualifying a person from being elected to the Legislative Council if he:

"is a party to, or a partner in a firm or a director or a manager of a company which is a party to, any contract with the Government of the Islands and has not, within the period of one month immediately preceding the date of election, published in the Gazette a notice setting out the nature of such contract and his interest, or the interest of such firm or company therein."

Such a provision is not in the present Constitution of the Falkland Islands and I recommend that it should be included. It is only right that the electorate should be specifically informed of such an interest.

- d) In several sections of the Constitution (sections 24(1)(d) and (f), 26(1) and 27(2)(b)) there are references to disqualification of members or electors as a result of a decision by a court "in any part of the Commonwealth". Thus a person adjudged bankrupt or sentenced to more than 12 months imprisonment in, say, Montreal, would be disqualified whereas a person in similar circumstances in Miami would not be. This is clearly inequitable and the reference to any part of the Commonwealth should be deleted.
- e) It is becoming common in other constitutions to impose a five year disqualification from membership of the Legislative Council on a person sentenced to at least 12 months imprisonment, the period of disqualification to commence as from the date of completion of the sentence. I recommend that consideration be given to including a similar provision in the Falkland Islands Constitution.

f) There also seems to be a need to amend sections 3(1), 6(1) and 6(3) of the Constitution, dealing with human rights, so as to make it possible to require a patient who, though not of unsound mind, is unable to give consent to treatment, to undergo treatment either within the Falkland Islands or overseas. It is likely that this is a problem which may affect other dependent territories and will require to be examined as such by Legal Advisers in the Foreign and Commonwealth Office. This should not be allowed to delay finalising the other amendments to the Falkland Islands Constitution which may be approved as a result of this report.



## CHAPTER 8

### TIMING

- 8.1 The present Legislative Council must be dissolved no later than 18 October 1997 and a general election held not more than 70 days thereafter. Assuming the Legislative Council runs its full term - or nearly so - then there should be more than sufficient time available to have any amendments to the Constitution and local legislation in place before the next general election.
- 8.2 I suggest for consideration that the following timetable may be appropriate:
- i) May 1995. Publication of this report for public information and comment.
  - ii) September/October 1995. In the light of public comment on the report, councillors decide what amendments to the Constitution to recommend to the Secretary of State.
  - iii) Early 1996. Final decisions reached on amendments. Drafting of amending Order-in-Council put in hand.
  - iv) Late 1996. Amending Order-in-Council made and laid before Parliament.
  - v) Early 1997. Legislative Council passes necessary consequential local legislation.

## CHAPTER 9

### ACKNOWLEDGEMENTS

- 9.1 I am most grateful to His Excellency the Governor and Mrs Tatham for much kindness and hospitality; and to all in the Falkland Islands who made me welcome and who gave me the benefit of their views on constitutional change. I was particularly touched by the warmth and friendliness with which I was greeted wherever I went in Camp.
- 9.2 I must also express my appreciation for all the help given me by my secretary, Miss Jenny Luxton, who not only made the advance arrangements for my visit but who also greatly assisted in the conduct of the review itself.

## SUMMARY OF RECOMMENDATIONS

	<u>Paragraphs</u>
1 The report should be published	8.2
2 The basic system of government should remain unchanged	2.1 - 2.4
3 The review of Executive Council decisions by the Standing Finance Committee should cease	2.4
4 A modified Membership system should be introduced	2.5 - 2.6
5 The powers of the Governor should remain unchanged	3.1 - 3.3
6 Consideration should be given to electing Executive Council members for a four year term	4.3
7 The number of elected members of Executive Council should be increased	4.5
8 The convention on voting in Executive Council should be abandoned	4.5
9 A quorum of the new Executive Council should be four members	4.5
10 Temporary members of Executive Council should be elected only when requested by the Governor	4.6
11 Constituencies should be provided for in the Electoral Ordinance	5.3
12 The number of elected members of the Legislative Council should be increased	5.5
13 There should be four Camp councillors and seven Stanley councillors	5.7
14 The provision whereby a candidate must be a voter in the same constituency should be deleted	5.8
15 A quorum of the new Legislative Council should be seven members	5.9
16 Provision should be made for an elected Speaker	5.12
17 The right of a Commonwealth citizen to be registered as a voter should be abolished and replaced by the grant of status	5.18 - 5.22

- 18 Provision should be made whereby the Governor's powers in relation to the public service may be delegated 6.3
- 19 A public officer who stands as a candidate for election must temporarily relinquish his duties (and resign if elected) 6.4
- 20 A husband or widower of a Falkland Islander should be included in the definition of belonging to the islands 7.2(a)
- 21 It should be compulsory for councillors to register their interests under Legislative Council Standing Rules and Orders 7.2(b)
- 22 Candidates for election should declare any interest in a government contract 7.2(c)
- 23 The several references to decisions of a court "in any part of the Commonwealth" should be replaced by references to "any court" 7.2(d)
- 24 Following imprisonment for at least 12 months, there should be a five year disqualification from membership of the Legislative Council 7.2(e)
- 25 Compulsory powers in relation to certain patients requiring medical treatment should be reviewed 7.2(f)

