

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Legislative Drafting – Priorities and Staffing
Paper No: 5/11
Date: 27 January 2010
Report of: Principal Crown Counsel/Attorney General

1.0 Purpose

The purpose of this paper is to:

- (a) update Members of ongoing legislative drafting requirements;
- (b) seek an indication from Members of their political priorities for legislative drafting for 2011;
- (c) seek approval of the extension of the post of Legislative Drafter for a further period of two years; and
- (d) advise generally in relation to legislative drafting capacity in the Attorney General's Chambers.

2.0 Recommendations

Honourable Members are recommended to:

- (a) approve the legislative drafting priorities detailed in paragraph 4.5 ; and
- (b) approve the continued establishment of the legislative drafting post for a further period of two years from August 2011.

3.0 Summary of Financial Implications

<u>Operating budget</u>	Current year	11/12	12/13	14/15
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[omitted]

4.0 Legislative Drafting Priorities

4.1 Executive Council papers 29/10 and 172/10 were considered by Executive Council in 2010 and drafting priorities agreed for the year.

4.2 Annex 1 to this paper lists all the legislation made in 2010.

4.3 Annex 2 summarises the legislation drafted in relation to the agreed political priorities for 2010.

4.4 Annex 3 details the ongoing legislative drafting backlog.

4.5 The following recommendations are made for legislative drafting priorities for 2011, informed by the past year's priorities and priorities previously advised by Members (including priorities indicated at the MLA/CMT Away Day of 27 October 2010).

(a) Economy stabilisation:

- (i) any finance legislation required in support of the budget;
- (ii) fisheries fees (vital area of economy which requires proper regulatory support but has not previously receive any priority);
- (iii) updating of fisheries products legislation to ensure EU compliance (some work has already been done in this area, but the project needs to be completed);
- (iv) any legislation required in support of the EDS as approved in due course;
- (v) amendments to FIDC Ordinance and any other legislation arising from RDS;
- (vi) any amending/new immigration legislation arising from recommendations of the Immigration Working Group as approved in due course (clear and robust immigration procedures must be an essential requirement of a stable economy);
- (vii) outstanding amendments to tax legislation;
- (ix) on the basis that there is any spare capacity as a result of any of the above matters not progressing as anticipated etc, the amendments required to the Finance and Audit Ordinance;

(b) Referendum on single constituency:

- (i) Bills required to enable the referendum to take place in November 2011;

(c) Good governance:

- (i) amending legislation arising out of recommendations of working group on Committees (access to information) as approved in due course;

(d) Abattoir /FIMCO:

- (i) second phase of updating of abattoir related legislation;

(e) Communications:

(i) amending telecommunications legislation arising from further work in connection with the telecoms policy review;

(f) Review of employment law/policy:

(i) amending employment legislation arising from the staged completion of employment policy review (first of which is the proposed minimum wage);

(g) Education:

(i) any legislation arising as a result of the strategic review of education.

(h) Minerals:

(i) amendment to Offshore Minerals legislation to update provisions relating to environmental impact statements.

(i) Roads/Tracks:

(i) progress of supporting regulations required to progress Road Traffic Bill (and any amendments required to the Bill);

(ii) compulsory purchase legislation (a first draft Bill has already been produced, but needs some modification);

(j) The following tasks, which are outstanding priorities from 2010:

(i) a review of other previously published Bills (eg Police and Criminal Evidence Bill) to establish what elements of the work already carried out can usefully be taken forward or whether the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate);

(ii) a review of other ongoing tasks for which policy instructions are already settled (eg Planning (Amendment) Bill and regulations), with a view to completion of those task unless the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate); and

(iii) a review of legislation which has been enacted but never brought into force (because of an absence of formulation of policy for supporting regulations; eg Data Protection Ordinance), and recommendations to be made to Executive Council either for the policy formulation work to be carried out, or the relevant Ordinance be repealed, to ensure that our statute book is not cluttered with inactive (and therefore misleading) law;

4.6 The above recommendations might be reflected by the following programme for consideration of primary legislation at Legislative Assembly (obviously subject to addition and change):

February	Immigration (Amendment) Bill Taxes (Amendment) Bill Telecommunications (Amendment) Bill
May	Finance Bill Committees (Access to Information)(Amendment) Bill Employment Protection (Minimum Wage) Bill Referendum (Single Constituency) Bill
July	Compulsory Purchase Bill Immigration (Amendment) [<i>or repeal and replacement</i>] Bill Falkland Islands Status (Amendment) Bill
October	Offshore Minerals (Amendment) Bill Education [<i>Repeal and Replacement</i>] Bill Telecommunications [<i>Repeal and replacement</i>] Bill
November	Employment Protection [<i>second phase</i>] (Amendment) Bill

5.0 Legislative Drafting Staffing

5.1 The establishment of a Legislative Drafter in the Attorney General's Chambers was approved by Executive Council for a period of two years in 2008. [omitted]

5.2 Approval is sought to extend the establishment of the post for a further period of two years.

5.3 Approval of funding for the post was given for the purpose of seeking to reduce the significant backlog of legislative drafting. The very substantial backlog was first set out in detail in paper 25/08, and has been updated in successive papers (now updated as Annex 3 to this paper).

5.4 The Legislative Drafter has been in post for a little over a year, and in that time, together with the OTP funding for contract drafting provided by the FCO in 2009/10, considerable numbers of matters have been progressed, most notably some lengthy and complex primary legislation dealing with: Complaints Commissioner, Public Accounts Committee, Livestock and Meat Products, Smoking Prohibition, Medical Services Tax, Mental Health, Statistics, Maritime Security and Safety, and Members' Remuneration.

5.5 The value of the Legislative Drafting post can be most readily demonstrated by the fact that all the legislation which was publicly announced in the Governor's address to the nation in May was completed as scheduled in 2010.

5.6 Particular care has been taken to ensure that the Legislative Drafter's time is almost exclusively spent on drafting, and that the resource is not diverted to the provision of other general legal advice.

5.7 Whilst other staff do carry out legislative drafting (and Principal Crown Counsel does have particular experience of legislative drafting), the reality of workloads within the Attorney General's Chambers mean that the proportion of drafting done by officers other than the Legislative Drafter is small (the Finance Bill, small amending bills and subsidiary legislation). An examination of work/time records for the AG's Chambers kept over the last two years show that the lawyers routinely work 50 hour weeks, and frequently longer, indicating that there is no spare capacity.

5.8 Therefore, whilst this paper can report fundamental and significant progress in tackling the backlog, the reality is that there is still a huge volume of work to be done. It should be noted that the priorities recommended in paragraph 4.5 are anticipated to readily occupy all the legislative drafting resource available in the Attorney General's Chambers with a full time legislative drafter, yet the list does not include other areas of arguably high priority, such as prisons legislation, and updating areas of criminal law, practice and procedure which are now woefully out of date.

5.9 If the decision were taken not to provide funding for the legislative drafting post for a further period, the reality is that, unless instructed to cease provision of other existing services by the Attorney General's Chambers, there would be minimal capacity available for legislative drafting, and most, if not all, of the key priorities listed in paragraph 4.5 would not be progressed for the foreseeable future.

5.10 An alternative to providing funding for the legislative drafting post would be to provide some funding for contract drafters to be engaged outside the Attorney General's Chambers. However, it should be noted that this is not a particularly efficient or effective way of legislative drafting being carried out (not least because of the lack of familiarity of external drafters with Falkland Islands law), and does not completely remove the need for resources in the Attorney Generals' Chambers. External drafters still have to be properly instructed, and the resulting legislation carefully examined. This option is therefore not recommended.

6.0 Financial Implications

<u>Operating budget</u>	Current year	11/12	12/13	14/15
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[omitted]

7.0 Legal Implications

No additional legal implications beyond those already addressed in the paper.

8.0 Human Resources Implications

The paper recommends the continued temporary establishment of the legislative drafting post for a further period of two years.

Legislation Made in 2010

Primary Legislation

- *Appropriation Ordinance
- **Complaints Commissioners Ordinance
- Falkland Islands Status (Amendment) Ordinance
- Family Allowance (Amendment) Ordinance
- Finance Ordinance
- Immigration (Amendment) Ordinance
- Livestock and Meat Products Ordinance
- Medical Services Tax Ordinance
- **Mental Health Ordinance
- Public Accounts Committee (Amendment) Ordinance
- Public Accounts Committee (Amendment)(No 2) Ordinance
- Public Health (Amendment) Ordinance
- Smoking (Prohibition) Ordinance
- *Supplementary Appropriation (2010/11) Ordinance
- **Statistics Ordinance
- ** (part only) Telecommunications (Amendment) Ordinance

Secondary Legislation

- Banking Regulations (Amendment) Order 2010
- *Capital Equalisation Fund Order 2010
- *Coins Order 2010
- Complaints Commissioners (Form of Summons) Order 2010
- Complaints Commissioners (Maximum Fine) Order 2010
- Correction (Various) Order 2010
- *Currency Notes Order 2010
- Fishery Products (Hygiene) Designation Order 2010
- Immigration (Visa Exemption for Holders of Taiwanese Passports) Order 2010
- **Livestock and Meat Products (Identification and Movement of Cattle) Regulations 2010

**Livestock and Meat Products (Identification and Movement of Pigs) Regulations 2010

**Livestock and Meat Products (Identification and Movement of Sheep) Regulations 2010

Mental Health (Approved Practitioners) Order 2010

Public Accounts Committee Ordinance (Correction) Order 2010

Public Accounts Committee Ordinance (Correction)(No 2) Order 2010

Public Accounts Committee (Form of Summons and Warrant) Order 2010

Public Accounts Committee (Maximum Fine) Order 2010

Public Accounts Committee (Registrable Interests) Order 2010

** Public Health (Ships) Regulations 2010

Public Health (Variation of Fines) Order 2010

Road Traffic (Motorcycling Events at Fairy Cove) Order 2010

Smoking (Signs) Regulations 2010

Smoking (Amounts of Fixed Penalties) Order 2010

Stanley (Various Roads) One Way Order 2010

Statistics Ordinance 2010 (Correction) Order 2010

Taxes and Duties (Defence Contractors' Employees Exemption) Order 2010

*Taxes and Duties (Defence Contractors' Employees Exemption)(No 2) Order 2010

*Taxes and Duties (Defence Contractors' Employees Exemption)(No 3) Order 2010

*Taxes and Duties (Defence Contractors' Employees Exemption)(No 4) Order 2010

United Kingdom Forces (Jurisdiction of Colonial Courts; Civilian Component) Order 2010

* indicates legislation in standard format usually produced by Treasury in first draft

** indicates legislation drafted by external contract drafters with the benefit of OTPF

Update on Legislative Drafting Priorities for 2010

1. Members are updated on the priorities identified in paragraph 4.16 of the paper 29/10 as follows:

(a) Economy stabilisation:

(i) any finance legislation required in support of the budget;

- *Finance Ordinance passed*
- *Taxes Amendment Bill published*

(ii) amendment to tax law arising from taxation review;

- *Medical Services Tax Ordinance passed*

(iii) amendment to FIDC Ordinance arising from review of FIDC and EDS/RDS;

- *the reviews are still ongoing so no instructions have been received*

(iv) Statistics Bill (importantly this will require the private sector to provide information needed to properly assess the economy);

- *Statistics Ordinance passed*

(v) fisheries fees (vital area of economy which requires proper regulatory support but has not previously receive any priority);

- *no progress to date*

(vi) immigration amending legislation (clear and robust immigration procedures must be an essential requirement of a stable economy);

- *Immigration Amendment Bill drafted and under consideration by PIO*

(b) Housing:

(i) amendments to Land (Non-Residents) Ordinance (policy issues regarding the purchase of land in Stanley and Camp are critical to any housing strategy);

- *some amendments still outstanding, but key policy decisions do not require legislative change*

(c) Education/Training/Localisation of posts:

(i) Education Bill;

- *no instructions received*

(ii) legislation concerning means testing;

- *Members decided not to proceed with any means testing that would require the implementation of new legislation*

(d) RDS/FIMCO:

(i) updating of abattoir related legislation;

- *Livestock and Meat Products Ordinance and subsidiary legislation has been passed as the first phase of updating. Further instructions are required from the Agriculture Department to progress the second phase of updating.*

(ii) amendments to FIDC Ordinance arising from RDS (as above);

- *the reviews are still ongoing so no instructions have been received*

(e) Roads/Tracks;

(i) progress of Road Traffic Bill and supporting regulations (this could be progressed by breaking it down into more manageable chunks as a way to make quicker progress);

- *policy priorities to be recommended by RFIP*

(ii) compulsory purchase legislation;

- *a Land Acquisition Bill has been drafted with the assistance of OTPF although it requires some revision*

(iii) highways amending legislation;

- *no instructions have been received*

(f) Communications:

(i) amended telecommunications legislation arising from completion of telecoms policy review;

- *Telecommunications (Amendment) Ordinance passed and further Bill has been drafted and is under consultation with C&W*

(g) Review of employment law/policy:

(i) Employment Protection (Amendment) Bill arising from completion of employment policy review;

- *the review is ongoing so no instructions have been received*

(h) Health:

(i) legislation providing for medical services levy (or similar);

- *Medical Services Tax Ordinance passed*

(ii) Prohibition of Smoking in Public Places and Work Places Bill;

- *Smoking (Prohibition) Ordinance passed and to be brought into force shortly with subsidiary legislation which has already been drafted and approved*

2 Members are updated on the priorities identified in paragraph 4.17 of paper 29/10 as follows:

(a) outstanding immigration/FI status legislation required as a result of the new Constitution;

- *Falkland Islands (Status) Amendment Ordinance passed. Further instructions are awaited from the PIO in relation to the other outstanding matters.*

(b) a review of other previously published Bills (eg Police and Criminal Evidence Bill) to establish what elements of the work already carried out can usefully be taken forward or whether the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate);

- *no progress to date*

(c) a review of other ongoing tasks for which policy instructions are already settled (eg Planning (Amendment) Bill and regulations), with a view to completion of those task unless the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate); and

- *no progress to date*

(d) a review of legislation which has been enacted but never brought into force (because of an absence of formulation of policy for supporting regulations; eg Data Protection Ordinance), and recommendations to be made to Executive Council either for the policy formulation work to be carried out, or the relevant Ordinance be repealed, to ensure that our statute book is not cluttered with inactive (and therefore misleading) law;

- *no progress to date*

OUTSTANDING AND ONGOING LEGISLATIVE DRAFTING 2011

Contents listed by reference to Corporate Management Team member with responsibility:

- A Attorney General**
- B Chief Executive**
- C Director of Community Safety**
- D Financial Secretary**
- E Director of Health and Education**
- F Director of Natural Resources**
- G Director of Minerals**
- H Director of Procurement and Efficiency**
- I Director of Public Works**

A Attorney General

- 1. Legal Services*
- 2. Registry*
- 3. Regulation*

1a. Legal Services – Ongoing tasks (policy instructions largely settled)

i. Agricultural Loans Regulations

Regulations are required to give effect to forms currently in use concerning the registration of agricultural loans. A first draft of the regulations has been produced.

ii. Criminal Appeals Bill 2006

The Bill was remitted to the Select Committee in 2007 but expired on the dissolution of the Legislative Assembly. Outstanding queries were to be addressed by the Attorney General's Chambers. There would be some orders required to support the Ordinance on its coming into force.

iii. Criminal Justice (International Cooperation) Ordinance (Enforcement of Overseas Forfeiture Orders) Order 2006

Executive Council approval exists for this to be made in an amended form to reflect changes to the law made by the Proceeds of Crimes Ordinance 2006. The Proceeds of Crimes Ordinance 2006 has been made, but awaits commencement by notice. The relevant amendments are still required to be made to this order

iv. *Criminal Justice (International Cooperation) (Amendment) Bill*

It is necessary to amend the existing Ordinance to meet the obligations of the Falkland Islands under international Conventions. A draft bill was begun by the former Attorney General and remains on file.

v. *Family Law Bill 2006*

The Bill was remitted to the Select Committee, which met in early 2006. Twenty one points were raised by the Committee for further legal advice, including the re-drafting of the Explanatory Memorandum. The former Attorney General appears to have re-drafted the Explanatory Memorandum, but it is not immediately apparent how many of the remaining points still need to be addressed. The Bill expired on dissolution of the Legislative Assembly.

Consequential issues: commencement of the Bill should be synchronised with a Children and Adoption Bill (see Health and Social Services).

vi. *Land (Non-residents)(Amendment) Bill*

Executive Council previously approved amendment of the Ordinance to make supplementary provision regarding the conditions which may be attached to a licence to hold land. A first draft of the Bill has been produced, but was held back pending the report of the Task and Finish group on the subject. The policy decisions arising from that group don't require legislative change, so progress could be made with the outstanding amendments fairly easily.

vii. *Proceeds of Crime Ordinance 2006*

Ordinance made in October 2006. Not yet in force. Consequential issues - See Criminal Justice (International Cooperation) Ordinance (Enforcement of Overseas Forfeiture Orders) Order 2006 referred to above.

viii. *Stanley Common (Amendment) Bill and Regulations*

The Stanley Common Ordinance requires amendment to reflect the adjustment of boundaries previously approved by Executive Council. Consequential issues – amendment is required to Stanley Airport (Regulations) Ordinance which is affected by the boundary change (see Director of Procurement and Efficiency, below).

Approval of regulations under the Stanley Common Ordinance concerning a number of matters was given by Executive Council in 2004, but has not been progressed.

1b. *Legal Services – Future requirements (policy instructions outstanding)*

i. *Alcohol in Public Places Bill*

The Bill was submitted to Executive Council in December 2005, and was deferred for consultation with Youth Working Group (now the Children and Young Persons Strategy Group). The Group has not met under the current Legislative Assembly.

ii. *Bribery Bill*

A new Bribery Act was made in UK in 2010. Whilst earlier Bribery Acts apply to the law of the Falkland Islands, the new Act is not automatically applied (because of a cut-off of automatic updating of legislation). Government House has drawn attention to the potential need to apply the Act for good governance reasons.

iii. *Charitable Trust Bill*

A Bill is required to regularise the position concerning charitable funds held by FIG officers in the course of their employment.

iv. *Civil Contingencies (Emergency Powers) Regulations*

Specimen regulations under the Civil Contingencies (Emergency Powers) Ordinance 2006, to cover all likely eventualities, were requested by the former Governor.

v. *Court of Appeal (Amendment) Bill*

An amending Bill is required to increase the number of Court of Appeal Judges in order to widen their areas of expertise, to include public law. The Bill would also deal with amendment required as a result of the new Constitution.

vi. *Crimes (Penalties) Order*

Several years ago an order was made under the Criminals Justice Ordinance increasing some criminal penalties. It is necessary to complete the review of criminal penalties.

vii. *Domicile Bill*

It has been identified that the disapplication of the Domicile and Matrimonial Proceedings Act 1971 means that the domicile of married women is determined in the unsatisfactory and discriminatory position as set out in the common law which preceded the UK Act.

viii. *Landlord and Tenant Bill*

The law of the Falkland Islands as to the obligations of landlord and tenant in relation to dwellings and business tenancies is pretty much non-existent. The formulation of policy is required for an appropriate Bill.

ix. *Licensing Bill*

A review of the Licensing Ordinance was begun in 2004, including some consultation with the public. The Courts Administrator has since been asked to take forward development of policy in conjunction with the licensing justices, although it is not believed any progress has been made.

x. *Powers in Criminal Courts (Sentencing) Bill*

A handwritten draft was begun by the former Attorney General and remains on file. This Bill is thought to be necessary to address existing inadequacies in sentencing powers of the courts and to reflect developments in the law of sentencing in England and Wales. The current Attorney General began a consultation process with the former Senior Magistrate in order to re-start work on the subject, but no significant progress was made.

The Children and Young Person Strategy Group action plan indicates that legislation dealing with young offenders, in particular those receiving custodial sentences, should also be reviewed. Some of the existing provisions are thought to be in breach of international treaty requirements.

xi. *Referendum Bills on the Single Constituency*

Bills will need to be drafted to provide for the referendum on the single constituency and to provide for the subject matter of the referendum. A bill amending the Electoral Ordinance might also be required (and to reflect the new Constitution).

2 *Registry - Future requirements (policy instructions outstanding)*

i. *Land (Registration of Title) Bill*

The present system of transfer of title of land is flawed in a number of ways. The former Attorney General recommended that a system of land registration similar to that in use in some other Overseas Territories could be introduced once the mapping exercise being undertaken by the Design Section in Camp is complete (and ongoing mapping facilities are available). DPW indicated that there are insufficient resources in his department to complete that project in the foreseeable future.

ii. *Land Charges (Amendment) Bill 2006*

Remitted to the Select Committee in early 2006 together with the Family Law Bill 2006. The Bill expired on dissolution of the Legislative Assembly. The two bills are associated.

iii. *Patents (Amendment) Bill*

It is uneconomic and unnecessary for patents to be registered in the Falkland Islands. A Bill giving effect to patents having effect in UK is likely required.

3. Regulation - Future requirements (policy instructions outstanding)

i. Aerodrome approval/regulation

The Director of Civil Aviation advises that legislation is required in due course to introduce a new system of regulation/approval of camp airstrips (some policy instructions have been provided and preliminary work carried out).

ii. Broadcasting (Amendment) Bill

The existing Ordinance, which is largely aimed at preventing the sale and importation of unauthorised decoders, is defective, and requires substantial revision.

iii. Telecommunications (Amendment) Bill

Amending/new legislation may be required to reflect any further changes to the regulatory regime required following policy decisions to be made following the Doyle report (and inadequacies in the existing legislation addressed). Timing of any changes will depend on the nature and timing of those policy decisions.

B Chief Executive

1. Environmental Planning

2. Executive Management

3. Falkland Islands Development Corporation

4. Policy

1a. Environmental Planning - Ongoing tasks (policy instructions largely settled)

i. Planning (Amendment) Bill and regulations

An amending Bill is required to implement policies already approved by Executive Council concerning simplification of the planning appeals process.

A first draft of supporting regulations has been produced in relation to delegation of powers, which have been similarly already approved.

1b. Environmental Planning - Future requirements (policy instructions outstanding)

i. Building (Amendment) Regulations

Amending regulations are required to remedy a number of matters, including concerns regarding steps, first floor feature windows and flues.

ii. *Conservation of Wildlife and Nature (Amendment) Bill*

The EPO advises that amendment to the law may be required as a result of a report in relation to zebra trout. In addition, Crown Counsel has advised in relation to apparent flaws in the provisions of the Ordinance dealing with the protection of wild animals; the matters could be dealt with together.

iii. *Environmental Impact Regulations*

These are required under the Planning Ordinance 1992, as amended. The EPO has noted that the commitment made in relation to environmental impact assessments in the Environment Charter requires these regulations to be made.

iv. *National Nature Reserve – Sea Lion Island*

Proposals are well developed for the designation of Sea Lion Island as a National Nature Reserve. Supporting regulations would need to be drafted for this to occur

v. *Planning (Amendment) Bill*

The existing provisions concerning historic buildings are defective, and proposals for amendment are required for consideration by the Planning and Building Committee.

The EPO may pursue proposals to introduce legislation to support a conservation area within Stanley.

2. ***Executive Management - Future requirements (policy instructions outstanding)***

i. *Committees (Access to Information)(Amendment) Bill*

A working group is reviewing the policy on access to information and is likely to report to Executive Council with proposals for change in February 2011.

3a. ***Falkland Islands Development Corporation - Ongoing tasks (policy instructions largely settled)***

i. *Falkland Islands Development Corporation (Amendment) Bill*

Amendments to the Ordinance, approved by the Development Board, are required to be drafted and submitted to Executive Council for approval in connection with the change of the Fishing Vessel Owners' Association to the Falkland Islands Fishing Companies Association.

3b Falkland Islands Development Corporation - Future requirements (policy instructions outstanding)

i. Falkland Islands Development Corporation (Amendment) Bill

The Manager FIDC advised that the FIG review of FIDC is likely to result in more substantive changes required to the FIDC Ordinance in order to make the corporation more fit for purpose structurally and organisationally in the context of the emerging economic development strategy and rural development strategy.

4. Policy – Future requirements (policy instructions outstanding)

i. Data Protection Regulations

The Data Protection Ordinance was made in 1995, but has never been brought into force because formulation of policy for supporting regulations has never been progressed.

ii. Employment of Women, Young Persons and Children (Amendment) Bill

Amendments made to this Ordinance in 2006 have resulted in the provisions now being flawed; this needs to be corrected following policy clarification.

iii. Employment Protection (Amendment) Bill

Bills will be required as a result of the employment review currently being carried out by Head of Policy (which is to be introduced in stages).

C Director of Community Safety

1. Customs and Immigration (including registration of ships)

2. Defence Force

3. Fire and Rescue

4. Police (including prisons)

1a. Customs and Immigration - Ongoing tasks (policy instructions largely settled)

i. Immigration (Amendment) Bill

Urgent amendment is required to the law to strengthen the ability to refuse persons whose entry into the Islands may not be conducive to the public good. Legislation is also specifically needed to close a gap in relation to refusing entry reference special educational needs. A Bill to this effect has been drafted and is under consideration by the PIO (for consideration at this month's meeting).

Ib. Customs and Immigration – Future requirements (policy instructions outstanding)

i. Cruise Ships (Amendment) Bill

The Ordinance requires amendment because it doesn't entirely reflect policy in relation to the passenger levy.

ii. Customs (Amendment) Bill

A number of errors in the 2004 Customs Bill need to be corrected, and some liquor definitions need wholesale revision.

iii. Customs Regulations

There is a general lack of procedural regulations needed to support the current Customs Ordinance.

Regulations providing for travellers' and ships' crews allowances are specifically required to implement the current, discretionary, system of allowances.

iv. Dangerous Goods (Amendment) Bill

The Ordinance is significantly flawed and requires repeal or revision.

v. Embarkation Tax (Amendment) Regulations

Amendments are required to the regulations to permit embarkation tax to be included on a traveller's ticket.

vi. Immigration (Amendment) Bill

A number of inadequacies and flaws in the Immigration Ordinance generally and gaps in policy also indicate that a review of the existing laws and policies may result in significant need for amendment in future; a review of key immigration policy and procedure is currently being carried out by the Immigration Working Group.

vii. Immigration Regulations

The regulations under the Immigration Ordinance are already outdated (most continuing in force from the Ordinance which preceded the Immigration Ordinance 1999), and in need of replacement. Significant gaps in policy and regulation generally also indicate a need for detailed regulations to support the immigration regime.

viii. Merchant Shipping (Registration of Ships)(Amendment) Regulations

Amendment is required to the regulations in relation to merchant vessels of 500 grt +.

2. *Falkland Islands Defence Force – Future requirements (policy instructions required)*

i. *Falkland Islands Defence Force (Amendment) Bill*

The MOD Armed Forces Act team visited the Islands in 2009, when the new Armed Forces Act came into force. It is apparent that the FIDF Ordinance will need to be amended in due course to replace the disciplinary provisions of the old armed forces acts.

3. *Fire and Rescue - Future requirements (policy instructions outstanding)*

i. *Fire prevention legislation*

Legislation providing fire officers a right of entry to deal with fire/fire prevention has been particularly requested by the Governor as a matter of priority. Legislation, for example of the type requiring all businesses and Government buildings to have fire alarms fitted, is also required.

4a. *Police - Ongoing tasks (policy instructions largely settled)*

i. *Firearms (Amendment) Bill*

Revision of the Firearms Ordinance is required to reflect the amendments to firearms policy approved by Executive Council.

ii. *Police (Amendment) Bill*

The Police Committee has requested amendments to the Ordinance to provide more detail and flexibility in relation to arrangements for membership of the Committee.

iii. *Police and Criminal Evidence Bill 2006*

The Bill was remitted to the Select Committee in 2007. Outstanding queries were to be addressed by the Attorney General's Chambers, but the Bill expired on dissolution of the Legislative Assembly. Although very significant to the Police, this Bill also falls under the remit of the Attorney General's Chambers in terms of their role as "Ministry of Justice".

Of particular significance is the need to improve powers to impose conditions on police bail, for example to assist in the protection of victims of domestic violence/children; an amendment to the law also strongly supported by Health and Social Services.

Consequential issues; detailed police codes of practice must be drafted before relevant parts of the Bill could be brought into force.

iv. *Road Traffic Bill*

The Chief Police Officer has been tasked to produce a detailed timetable for the work required to enable commencement of the Bill with a view to submission of the Bill to the Legislative Assembly with a staged plan for commencement in place. Consequential issues; detailed regulations are required to support the Bill before much of it can be brought into force (this will require considerable work in both determining policy and then legislative drafting).

4b *Police and Prisons - Future requirements (policy instructions outstanding)*

i. *Police Bill*

The inadequacies of the Police Ordinance 2000 have been highlighted on numerous occasions; in particular regarding unclear provisions concerning the disciplinary process. The role of the Police Committee also requires review.

ii. *Prisons Bill and regulations*

The Officer in Charge of the Prison and the Attorney General's Chambers regard the Prisons Ordinance 1966 and regulations made under it as outdated, inadequate, and in serious need of replacement, being in breach of various international convention requirements. Substantial work is required, including formulation of policy and instructions. It is understood that the Prisons Adviser may assist in the process by the production of model standing orders which could underpin the legislation.

iii. *Road Traffic Regulations*

Detailed regulations are required before much of the provisions of the Road Traffic Bill could be brought into force.

D Financial Secretary

1. *Finance and Audit*

2. *Taxation*

1a. *Finance and Audit - Ongoing tasks (policy instructions largely settled)*

i. *Annual Appropriation and Finance Legislation*

There continues to be an annual requirement for appropriation and finance legislation to be drafted at short notice following ExCo approval of budget policy.

1b. Finance and Audit – Future requirements (policy instructions outstanding)

i. Currency Notes Rules

It has been apparent for some time that these rules require amendment, certainly since the Currency Ordinance was introduced in 1987, but the matter has never been referred for policy decision as has not been considered to be of any urgency.

ii. Falkland Islands Pensions Scheme (Amendment) Bill

Amendment is required to the 1997 Ordinance to give statutory effect to the introduction of a new form of protection for FIG employee members of the scheme in respect of service up to 31 December 2006. Additional “tidying up” amendments continue to be identified by the FIPS Board, which could be addressed at the same time.

iii. Finance and Audit (Amendment) Bill

Amendments to the Constitution require amendments to the Ordinance in connection with the duties, powers and appointment of the Principal Auditor, and in connection with setting up a Public Accounts Committee. Further, the former Financial Secretary advised that the opportunity of amendment of the Ordinance should be taken to provide more explicit provisions for resource accounting and audit functions.

iv. Public Funds Bill

Amendment of the Public Funds Ordinance is required in relation to the provisions concerning payments out of the Capital Equalisation Fund, as existing provisions are considered unnecessarily cumbersome (requiring Secretary of State approval).

v. Retirement Pensions (Amendment) Bill

Legislative change is potentially required on the decisions made in connection with the report on the pensions scheme received from the Government Actuary’s Department.

2. Taxation – Future requirements

i. Taxes (Amendment) Bill and Regulations

A Taxes (Amendment) Bill to be considered by the Legislative Assembly in February is just the first of a number of outstanding amendments required to the existing tax legislation (some of which have already received policy approval).

ii. Tax Appeals Tribunal Bill

The failure to recruit sufficient interest to the Tax Appeals Tribunal means that a legislative change is likely required to transfer the functions of the Tribunal to the Senior Magistrate/Justices of the Peace.

E Director of Health and Education

1. Education

2. Health and Social Services

1. Education – Future requirements (policy instructions outstanding)

i. Education (Amendment) Bill

The Education Ordinance was enacted in 1989 and was to some extent modelled on the Education Act of 1944 of England. It is now extremely dated and so are the Education Regulations made under it. A strategic review of Education is due to report in June 2011, and should incorporate recommendations to replace/update the existing legislative administrative framework for education.

2. Health and Social Services - Future requirements (policy instructions outstanding)

i. Children (Amendment) Bill

Amendment of the Ordinance and similar legislation is required, in accordance with the action plan of the Children and Young Persons Strategy Group in order to:

- (i) impose on FIG statutory obligations to investigate matters of significant harm to children and children in need;
- (ii) provide statutory regulation of foster care; and
- (iii) provide statutory regulation of child care.

There are other issues which FIG is already alive to in relation to the Children Ordinance which indicate that amending/additional provisions of the Ordinance are required, eg financial responsibility of parents of children in care. An ongoing review of the child protection procedures by the Safeguarding Committee may also result in the need for change. Therefore a general revision of the Ordinance is therefore required, which will deal with some complex issues.

ii. Children and Adoption Bill

The English Adoption Act 1976 applies as part of the law of the Falkland Islands, and amendments made to the English Act have been automatically applied to the Act as it applies in the Falkland Islands. However, some of those amendments are not suitable, and will need to be dissapplied and substituted with provisions suitable to the Falkland Islands.

Consequential issues – Drafting of the Bill should be synchronised with progress on the Family Law Bill (see above, under Attorney General’s Chambers).

iii. *Criminal Justice (Amendment) Bill*

The Multi-Agency Public Protection Group plans to put forward proposals for the amendment of the Criminal Justice Ordinance to enable sex offenders to remain on licence following release from prison.

iv. *Medicines Regulations*

The Medicines Ordinance was made in June 2006, but is not yet in force. Many provisions of the Ordinance require subsidiary legislation before they can be brought into force, involving a considerable amount of policy formulation and consultation (see Veterinary Services, below).

v. *Public Health Bill*

The existing Public Health Ordinance is woefully out of date and ineffective. A policy paper is required in the first instance recommending replacement provisions.

F Director of Natural Resources

1. Agriculture

2. Fisheries

3. Marine and Port Services

4. Veterinary Services

1a. Agriculture - Ongoing tasks (policy instructions largely settled)

i. Importation of motor vehicles etc Proclamation

Outstanding legislation is required on the importation of second hand motor vehicles and agricultural machinery to comply with biosecurity recommendations.

1b. Agriculture - Future requirements (policy instructions outstanding)

i. Abattoir/Animal Health legislation

The first phase of enabling legislation in connection with the abattoir meeting EU requirements has been passed, but now substantially more detailed work is required to complete the process of updating legislation to be EU compliant.

ii. Dairy Produce (Amendment) Bill

The Dairy Produce Ordinance 1938 requires amendment. This could, perhaps be included in a new Public Health Bill (see Health and Social Services, above).

iii. *Plant Disease Regulation (Amendment) Bill/Regulations*

The Biosecurity Officer has identified amendments needed to this legislation to enable better regulation of the importation of seeds.

2a. *Fisheries - Ongoing tasks (policy instructions largely settled)*

i. *Fisheries (Fees) Regulations*

Regulations prescribing fisheries fees are required.

ii. *Fishery Products (Amendment) Bill*

The Ordinance was made in October 2006, but is not yet in force (and is to be brought into force with Marine Farming Ordinance 2006).

The following regulations have been drafted under the Ordinance and published for consultation but not further progressed because they were found not to properly reflect EU requirements: Fishery Products (Hygiene) Regulations 2006, Fish Health Regulations 2006, and Water Quality (Shellfish) Regulations 2006.

The Fishery Products (Hygiene) Regulations have now been re-drafted with OTPF assistance, but a little more work is required to progress the whole package.

Regulations regarding the Environmental Impact Assessment of Fish Farming in Marine Waters are still to be drafted under this Ordinance.

iii. *Marine Farming Ordinance*

Made in October 2006. Not yet in force. To be brought into force with the Fishery Products Ordinance 2006.

2b. *Fisheries – Future requirements (policy instructions outstanding)*

i. *Fisheries (Economic Efficiency) Regulations*

DNR advises that regulations may be required in order to apply the economic efficiency test (to compel data reporting in a standard format etc).

3. *Marine and Port Services - Future requirements (policy instructions outstanding)*

i. *Harbours Bill*

The Harbours Ordinance is woefully out of date and merits revision/replacement.

ii. *Maritime Security Bill*

The Maritime Security and Safety Ordinance recently made only addressed the most immediate needs in relation to maritime security provisions, Executive Council were advised that a further Bill to address outstanding issues would likely be required.

iii. *Merchant Shipping (Adoption of Legislation) Amendment Order*

The order would make legislative provision for the classing of the new cross-Sound ferry in accordance with EU passenger class regulations rather than the UK Department of Transport passenger ship classes.

iv. *Merchant Shipping Bill*

Consideration needs to be given to replacing the remaining provisions of the Merchant Shipping Act 1894 which remain in force, but which are, in a number of cases, outdated and defective, and replacing them with provisions of the Merchant Shipping Act 1995.

v. *Port Authority Bill*

If and when it is decided to establish a port authority, a Bill will be required. A Harbour (Amendment) Bill and FIPASS (Amendment) Bill would be required in conjunction with a Port Authority Bill.

vi. *Prevention of Oil Pollution (Amendment) Bill*

The provisions of the Prevention of Oil Pollution Act 1971 as apply in the Islands are outdated, having been replaced by provisions of the Merchant Shipping Act 1995 in UK, but not updated here. The Chief Executive's review of the Ocean 8 incident highlighted the need to update our legislation in this area.

4. *Veterinary Services – Future requirements (policy instructions required)*

i. *Medicines (Veterinary) Regulations*

There is a requirement for regulation to be made under the Medicines Ordinance 2006 in relation to the importation of veterinary drugs, before the Medicines Ordinance is brought into force (see also Health and Medical Services, above).

G Director of Minerals

1a. Minerals - Ongoing tasks (policy instructions largely settled)

i. Mining Regulations

Regulations setting out licence model clauses are required to enable licensing to occur for the extraction of calcified seaweed under the Mining Ordinance. A first draft has been produced.

1b. Minerals - Future requirements (policy instructions outstanding)

i. Mining Regulations

Regulations under the Mining Ordinance are also required to allow for the award of prospecting and exploration licences.

ii. Offshore Minerals (Amendment) Bill

The Director advises that amendments may be required to the Offshore Minerals Ordinance in relation to environmental terms and conditions.

H Director of Procurement and Efficiency

1. Leisure Centre

2. Post Office

3. Stanley Airport

1. Leisure Centre – Future requirements (policy instructions outstanding)

i. Privatisation Bill

If proposals to privatise the Leisure Centre (and other Government services) are developed and approved, supporting legislation may be required.

ii. Transfer of Undertaking Protection Regulations

“TUPE” regulations may also be required (under the Employment Protection Ordinance) in connection with proposals for the privatisation of Government services.

2. Post Office – Future requirements (policy instructions outstanding)

i. Family Allowance Bill

The Family Allowance Ordinance is outdated and in need of wholesale revision/replacement.

ii. *Radio Bill/Regulations*

The use of radio frequencies in the Falkland Islands is unregulated, and legislation will be required to support any regulatory regime put in place in due course.

iii. *Television/radio Media Charge Bill*

Legislation may be required if it is determined to introduce a charge for television/radio services.

3a. *Stanley Airport – Ongoing task (policy instructions largely settled)*

i. *Stanley Airport (Regulations)(Amendment) Bill*

An amendment is needed to reflect a boundary change to Stanley Common (see under Attorney General, regulation, above).

3b. *Stanley Airport – Future requirements (policy instructions outstanding)*

i. *Stanley Airport/Government Air Service Bill*

A Bill may be required to support a proposal to merge Stanley Airport and FIGAS if such a proposal is developed and approved.

I Director of Public Works

1. Highways

1. *Highways – Future requirements (policy instructions outstanding)*

i. *Compulsory Purchase Bill*

Legislation is needed to provide FIG with powers of compulsory purchase, in particular in connection with highways, which are in accordance with the requirements of the Constitution. A draft Bill has been produced with OTPF assistance, but needs some revision.

ii. *Highways Bill*

The English legislation, with certain exceptions, applies. In many ways the legislation is unsuitable to the point of being unworkable. Amendment is therefore required following formulation of policy.