

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Complaints Commissioners Bill: Draft for Public Consultation
Paper No: 14/10
Date: 28 January 2010
Report of: Attorney General

1.0 Purpose

- 1.1 To seek Executive Councils agreement that the attached Consultation document should be released to the public.

2.0 Recommendations

- 2.1 Executive Council is recommended to agree to that release.

3.0 Summary of Financial Implications

- 3.1 None

4.0 Background

- 4.1 Sections 95 and 96 of the Constitution are concerned with the Complaints Commissioner.
- 4.2 Following discussions with previous Members, policy instructions were sent to an external draftsman to draft a Bill to establish a Complaints Commissioner jurisdiction.
- 4.3 The Attorney Generals Chambers are happy that the Bill that he has drafted is now ready for public consultation.
- 4.4 The attached Consultation document has been drafted to provide the vehicle for that consultation. The Bill as at Annex 1 to that document, and a list of the questions posed is at Annex 2.

5.0 Financial Implications

None

6.0 Legal Implications

None

7.0 Human Resources Implications

None

The Complaints Commissioner Bill

Public Consultation on the draft Bill

Introduction

1. Sections 95 and 96 of the Falkland Islands Constitution make provision for the appointment of Complaints Commissioners to investigate complaints of maladministration against the government, and complaints about such other matters that may be prescribed by Ordinance.
2. The draft Bill (at Annex 1) sets out the proposed functions powers and jurisdiction of Complaint Commissioners and the purpose of this document is to seek public comment on the proposals.
3. Public comment should be sent to Gilbert House so that there are received by 1st March 2010.
4. Persons responding to this public consultation can comment on any matters they consider appropriate, but as an aid to the process, a number of questions are proposed in the remainder of this document, and are summarized at Annex 2.
5. Unlike the Public Account Committee which has been established under Section 81 of the Constitution, there is no requirement to implement the Complaints Commissioner jurisdiction. The Constitution leaves that issue to be determined by the Legislative Assembly.
6. So the first question which arises for respondents is :-

Q1: Do you agree that Sections 95 and 96 of the Constitution should be implemented and the Complaints Commissioner system established?

7. The remainder of this document looks at the provisions of the draft Bill, explains where necessary the policy that is being implemented, and poses questions relating to those issues.

The draft Bill

8. Clauses 1 and 2 are formal provisions.
9. Clause 3 is the interpretation section. The important provisions are sub-sections (2) and (3) which extend the Ordinance beyond maladministration to other conduct about which complaint can be made.
10. Maladministration is not itself defined in either the Constitution or the Bill. The phrase is taken from the UK Parliamentary Commissioner Act 1967 (which established the UK Parliamentary Ombudsman “the UK Ombudsman”) which

similarly does not define the phrase. The phrase therefore has its ordinary meaning, which depending on which dictionary is consulted means “dishonest or inefficient management or administration” “defective administration” or “administering incompetently or corruptly”.

11. What sub-sections (2) and (3) do is to extend the types of conduct which can be the subject of a complaint, so that it is not necessary to debate whether they fall within the concept of maladministration or not. So sub-section (2) provides that in addition to maladministration, the Ordinance applies to complaints “in respect of which a member of the public would reasonably feel a sense of injustice” and sub-section (3) gives examples of such conduct.

Q2: Do you agree that any conduct that falls within this test should be able to be subject of a complaint?

Q3: Are there any other types of conduct you believe should be mentioned in Sub-section (3)?

12. Clause 4 provides for a Complaints Commissioner to be designated as the Principal Complaints Commissioner (“PCC”). This is a change from the initial thinking, which was that individual appointments would be made for each complaint that was to be investigated, so that the experience/knowledge of the Commissioner appointed could be matched to the subject matter of each complaint. The advantage of designating a Commissioner as PCC is that it then enables that person to play a more proactive role in relation to the complaints system, and allows them to look across individual complaints to identify cross cutting issues that might need to be addressed. It also enables the Bill to provide for the PCC to make an annual report.

Q4: Do you agree with the appointment of a Principal Complaints Commissioner?

13. Clause 5 provides for the payment of allowances to Complaints Commissioners. Unlike the PAC, it is suggested that Commissioners should be entitled to a daily attendance allowance, and this may be particularly important in identifying and appointing the PCC, given the potentially heavy duties of the post holder.

Q5: Do you agree that the PCC should be entitled to a daily attendance allowance, or should Commissioners be restricted to reimbursement of their travelling and accommodation expenses (as is the case with members of the PAC)?

14. Clause 6 and 7 deal with staffing and funding, and are based on the provisions in Sections 9 and 10 of the PAC Ordinance 2009.
15. Clause 8 provides that in addition to functions set out in Section 95 of the Constitution, Commissioners are to investigate-

- (a) complaints of maladministration in bodies mentioned in Schedule (the Statutory Corporations);
- (b) the wider complaints mentioned in paragraph 10 and 11 above;
- (c) matters referred by the Governor (see Part VII of the Bill and paragraphs 42-43 of this document).

16. Of importance is sub-section (2) which enables the list of bodies set out in Schedule 1 to be amended by Order either-

- (1) to add any other public body, or a body that has been granted a franchise to provide a service of a public nature; or
- (2) by deleting a body

17. The power to add a body that has been granted a franchise to provide a service of a public nature would enable the PCC to continue to have jurisdiction over a complaint relating to public services even if the carrying out of those services has been transferred to the private sector.

Q6: Do you agree that there should be a power to make an Order applying the PCC jurisdiction to such bodies?

18. Clause 9 sets out the jurisdiction of Commissioners, and provides that the PCC is to investigate any complaint, unless the Governor appoints another Commissioner to do so (eg if the PCC has a personal interest – see clause 11 of the Bill)

19. A key provision is Clause 10 which sets out the matters over which Complaints Commissioners do not have jurisdiction; which include the matters set out in Schedule 2 to the Bill. The excluded matters include –

- (a) The conduct of the Governor when he or she is acting otherwise than under Section 66(1) of the Constitution. This means that the Governor is subject to the jurisdiction of a Complaints Commissioner when he or she is acting on the advice of Executive Council, but not otherwise. (A Complaint about the Governor which is outside a Complaint Commissioners jurisdiction may still be made to the Secretary of State under FCO procedures).
- (b) The conduct of a Member of the Legislative Assembly that does not relate either to an alleged breach of the Seven Principles of Public Life, or an alleged breach of the rules relating to personal interests. These 2 matters are within the jurisdiction of the Complaints Commissioners; other matters are not.
- (c) Matters of policy (these are matters for the Government and the Assembly)
- (d) Conduct occurring before the Ordinance commences. So a person will not be able to make a complaint under the Ordinance in relation to a historic dispute that arose before that date.

- (e) A complaint in respect of which the person has a right of appeal, or a remedy via legal proceedings, unless the Commissioner is satisfied that it is not reasonable to expect the person to have resorted to that right or remedy.

20. The matters set out in Schedule 2 are largely based on similar provisions relating to the UK Ombudsman. It will be noted that there is power to amend Part 2 of that Schedule by Order; the key provisions in Part 1 could therefore only be amended by Ordinance.

Q7: Do you agree with the matters over which the Complaint Commissioners do not have jurisdiction?

Q8: Do you believe that any other matters should be excluded?

21. Clause 11 places a duty to a Complaints Commissioner to inform the Governor if he has, or might be thought to have, a personal interest in a complaint. This would enable the Governor to appoint another Commissioner to investigate that complaint.

22. Part III of the Bill sets out matters relating to the making of a complaint. It contains important safeguards to ensure that only appropriate complaints fall to be investigated by a Complaints Commissioner.

23. Clause 12 taken with Clause 14 means that a complaint has to be made by the person aggrieved delivering the complaint to a Member of the Assembly (or if the complaint relates to a Member, the Speaker) or if the person has died or is unable to act, by someone acting on their behalf. The person who is aggrieved must be resident in the Falkland Islands to make the complaint.

24. Under Clause 13, if a body has an internal complaints procedure (such as FIG's Corporate Complaints Procedure) that internal complaints procedure must be used before a complaint can be made under the Ordinance. This is to ensure that the Complaints Commissioner jurisdiction is a matter of last resort - if a complaint can be resolved using an internal procedure without involving a Complaints Commissioner that must be in everyone's interest.

Q9: Do you agree that internal complaints procedures should be used before a complaint can be made under the Ordinance?

25. Under Clause 15 a time limit is imposed (3 months) within which a complaint has to be made. However, if special circumstances exist, this time limit need not apply. This would mean, for example, that if the internal complaints procedures have taken more than 3 months, the time limit could be disapplied.

Q10: Do you agree that there should be a time limit for complaints?

Q11: If you do, do you consider that 3 months is the right period to specify?

26. Clause 16 sets up a filter mechanism to make sure that only complaints that raise issues that should be investigated reach a Complaints Commissioner. (The UK Ombudsman cannot investigate a complaint unless it has been referred to the Ombudsman by an MP). It does so by providing that the Member of the Assembly who receives the complaint under Clause 14 (or the Speaker if the complaint relates to a Member) has a month to decide whether to refer the complaint to the PCC. If the Member (or Speaker) decides not to do so, or does not make a decision within that period, the complainant is able to forward the complaint to the Governor, who then decides whether or not it should be so referred.

Q12: Is the filter mechanism set out in Clause 16 appropriate, or do you believe that a complainant should have a right to go direct to the PCC?

27. Clause 17 provides that a complaint is to be investigated by the PCC, unless the Governor directs that another Commissioner should do so. This might be in the circumstances mentioned in paragraph 21 of this document.
28. Clause 18 requires the PCC or another Commissioner to consider a complaint that has been referred to him or her. In other words, the Commissioner has no discretion to decide not to consider it – the filter mechanism is that set out by Clause 16, and once a complaint has been referred, it has to be considered. But the Commissioner is not obliged to carry out a full investigation immediately, but can carry out preliminary inquiries, which might lead to other action eg mediation under clause 20.
29. Clause 19 makes it clear that an investigation is to be conducted privately – a clear difference from PAC hearings which are normally in public.
30. Clause 20 enables a Commissioner in the circumstances specified to refer a complaint that has been referred to him to mediation. Such mediation is voluntary, and no costs have to be paid by any of the parties. If such mediation does not resolve the complaint, the Complaint Commissioner continues to deal with it. Such mediation is not a feature in relation to the UK Ombudsman, but does exist in other Overseas Territories Complaints systems.

Q13: Do you agree that a Commissioner should be able to refer a complaint to mediation as provided for in Clause 20?

31. Clause 21 sets out the procedure relating to the investigation of a complaint. Essentially this is for the Commissioner to determine, subject to safeguards to ensure that persons and bodies against whom a complaint is made, or who may be criticised in the report into the investigation, are given opportunity to comment on the allegations.

32. Clause 22 enables the Commissioner to require information to be provided, or to require a person to appear before the Commissioners. This is done by Summons.
33. Clause 23 provides for evidence to be on oath or affirmation.
34. Clause 24 sets out what happens when a complaint is determined by the Commissioner. The Commissioner prepares a report which sets out the findings of fact, whether the aggrieved person has suffered injustice (and if so, the reasons for this finding), and the recommendations made for the prevention of a recurrence of the injustice, and it may also include a recommendation that a payment be made for any financial loss or inconvenience suffered by the person.
35. An important provision is Clause 24(3) which provides that a recommendation is just that; it does not bind the body to which the report relates. This mirrors the UK position in relation to the UK Ombudsman, but the impact of an Ombudsman/Commissioners recommendation, particularly for a financial payment, should not be underestimated, and in practice the body would have to have very good reason for not giving effect to it. But the Commissioner is not a Court, and should not be able to require recommendations to be implemented.

Q14: Do you agree that a recommendation made by a Commissioner should not bind the body to which the report relates?

36. Part V of the Bill sets out what happens after the Commissioner has prepared the report on a complaint under Clause 24.
37. The initial action is set out in Clause 25. The Commissioner submits the report to the Governor and to the body to which the complaint relates.
38. When the Governor gets the report, the Governor then considers under Clause 26, whether there is anything in the report that, if disclosed, might damage the public interest. If he considers that there is, he can direct the Commissioners to remove that material before it is disclosed more widely under Clause 27. The Commissioner has to comply with such a direction, but the report must indicate that material has been removed, and the places in the report where this has happened.
39. The report is then subject to that wider disclosure under Clause 27. All the listed persons receive copies of the report, which can also be published by the Commissioner. It should be noted that, as a further protection against the inappropriate use by the Governor of his powers under Clause 26, the Governor may be asked by the Member of the Assembly to whom the complaint was first made, to explain the general nature of the material that was removed, and the reasons for its removal.
40. The response to the report is dealt with by Clause 28. If the report contains recommendations that the body should take or not take certain actions (which

might include a payment for financial loss as set out earlier in this paper), a written response must be submitted to the Commissioners within 3 months.

Q15: Do you agree that the proposals made in Part V of the Bill are appropriate?

Q16: If not, what changes would you make?

41. Clauses 29 and 30 deal with a modification to the procedure set out in Part V where the report relates to a Member of the Legislative Assembly. In these circumstances, the Report goes to the Speaker of the House, and the persons specified in sub-section (2), and under Clause 30, the Report is then dealt with in accordance with the Standing Orders of the Assembly.
42. Part VII of the Bill relates to a power in the Governor to refer issues to a Complaints Commissioner. Clause 31 enables the Governor, acting either on the advice of Executive Council or in his or her discretion, to refer to a Complaints Commissioner not just a matter which may be the subject of a complaint (31(a) and (b)) but also any other matter that he thinks fit.
43. A Complaints Commissioner to whom such a reference is made, has to investigate and report to the Governor on the matter (Clause 32). Consequential provisions are set in Clauses 33 and 34.

Q17: Do you agree that the Governor should have the power given by Clause 31 to refer any matter to a Commissioner, or should the Bill be concerned only with Complaints made by aggrieved persons?

44. Part VIII of the Bill contains a number of miscellaneous provisions:-

- ◆ Clause 35 provides for the payment of witness expert
- ◆ Clause 36 provides for a duty of non-disclosure which applies to a Complaints Commissioner and members of staff of the Commissioners
- ◆ Clause 37 provides protection to the Complaint Commissioner, staff, and the Governor from the law of defamation in relation to publication for the purposes of the Ordinance
- ◆ Clause 38 provides for the PCC to provide an annual report to the Governor, which is to be laid before the Legislative Assembly.
- ◆ Clause 39 and 40 creates offences in relation to the Ordinance.
- ◆ Clause 41 provides for such offences to be punishable by a fine, the procedure being for the Attorney General to consider whether it is appropriate for this matter to be referred to a Complaints Commissioner, who then considers

whether to impose a fine or not. This procedure mirrors that in Section 30 of the PAC Ordinance.

- ◆ Clause 42 makes special provision for service in the staff of the Governor and Commander of British Forces. This mirrors Section 27 of the PAC Ordinance.
- ◆ Clause 43 provides for public interest immunity certificates to be issued by the Governor. This power is wider than the corresponding provisions of the PAC Ordinance, given the wider circumstances that might arise in relation to this Bill.
- ◆ Clause 44 provides for the making of Orders by the Governor for the 3 specified purposes.

Complaints Commissioners Bill 2010

(No: of 2010)

ARRANGEMENT OF PROVISIONS

Clause

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Schedule 1 – Bodies in respect of which complaints may be investigated

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COMPLAINTS COMMISSIONERS BILL 2010

(No: of 2010)

(assented to: 20[])
(commencement: in accordance with section 2)
(published: 20[])

A BILL

for

AN ORDINANCE

To prescribe the functions, powers and jurisdiction of Complaints Commissioners who are appointed by the Governor under section 95(1) of the Constitution to investigate complaints of maladministration in the government of the Falkland Islands or such other matters as are prescribed by Ordinance; to prescribe other matters that a Complaints Commissioner may be so appointed to investigate; to make administrative arrangements for those purposes; and for related matters

BE IT ENACTED by the Legislature of the Falkland Islands —

**PART I
INTRODUCTORY PROVISIONS**

1. Title

This Ordinance is the Complaints Commissioners Ordinance 2010.

2. Commencement

This Ordinance commences on a date to be fixed by the Governor by notice published in the Gazette.

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires —

“action” includes a failure to act;

“aggrieved person” means a member of the public who claims to have suffered injustice in consequence of —

(a) maladministration in the government of the Falkland Islands or in a body mentioned in Schedule 1; or

(b) conduct mentioned in subsection (2);

“Complaints Commissioner” and “Commissioner” mean a person whom the Governor appoints under section 95(1) of the Constitution as a Complaints Commissioner;

“conduct” means an act or an omission;

“Governor” in sections 42 and 43, includes the Governor in his or her capacity as the Commissioner for South Georgia and the South Sandwich Islands;

“Governor’s reference” means a reference of a matter by the Governor to a Complaints Commissioner under section 31;

“person” includes a body of persons, whether incorporated or unincorporated;

“Principal Complaints Commissioner” means the Commissioner whom the Governor designates under section 4 as the Principal Complaints Commissioner;

(2) In addition to complaints of maladministration, this Ordinance applies to complaints of conduct in respect of which a member of the public would reasonably feel a sense of injustice despite the fact that it does not constitute maladministration.

(3) The conduct mentioned in subsection (2) includes but is not limited to the following conduct, when it does not constitute maladministration —

- (a) discourtesy;
- (b) a failure to provide a service;
- (c) a failure to tell a person about a legal remedy (for example, a right of appeal);
- (d) a refusal to answer a question;
- (e) a refusal to rectify a mistake; or
- (f) unhelpfulness,

in respect of which a member of the public would reasonably feel a sense of injustice.

4. Designation of Principal Complaints Commissioner

(1) On appointing a Complaints Commissioner under section 95(1) of the Constitution the Governor, acting in his or her discretion, may for the purposes of this Ordinance designate the Commissioner as the Principal Complaints Commissioner.

(2) The Principal Complaints Commissioner has, in addition to his or her other functions as a Commissioner, the administrative functions to which this Ordinance refers.

5. Allowances

(1) A Complaints Commissioner is entitled to a daily attendance allowance, for each day on which the Commissioner is engaged in the performance of his or her functions, of such amount as the Governor sets by notice published in the Gazette.

(2) The Governor may set different daily attendance allowances for the Principal Complaints Commissioner and for other Commissioners.

(3) A Complaints Commissioner is entitled to be reimbursed his or her actual and reasonable travelling and accommodation expenses for each day on which the Commissioner is engaged in the performance of his or her functions.

(4) However, if the Governor by notice published in the Gazette sets a maximum amount or rate of travelling expenses or accommodation expenses, a Complaints Commissioner is not entitled to be reimbursed a greater amount or at a higher rate.

6. Staff

(1) The Governor may appoint a public officer or some other person to be the secretary to the Complaints Commissioners.

(2) The appointment as secretary of a person who is not a public officer shall be on such terms and conditions as the Governor determines.

(3) The Governor may appoint other public officers as staff of the Complaints Commissioners.

(4) The secretary and other members of the staff are subject to the administrative directions of and responsible to the Principal Complaints Commissioner.

7. Funds

The funds for the performance of the Complaints Commissioners' functions consist of money appropriated for the purpose by the Legislative Assembly.

PART II FUNCTIONS AND JURISDICTION OF THE COMMISSIONERS

8. Additional functions of Commissioners

(1) In addition to the function conferred on Complaints Commissioners by section 95(1) of the Constitution (the investigation of complaints of maladministration in the government of the Falkland Islands), Commissioners are to investigate —

- (a) complaints of maladministration in bodies mentioned in Schedule 1;
- (b) other complaints to which this Ordinance applies, in respect of the government of the Falkland Islands or of those other bodies; and
- (c) matters that the Governor refers to Commissioners under Part VII.

(2) The Governor may by Order amend Schedule 1 —

- (a) by adding a public body, or a body that has been granted a franchise to provide a service of a public nature; or
- (b) by deleting a body.

9. Jurisdiction of Commissioners

(1) The Principal Complaints Commissioner has jurisdiction to investigate any complaint, other than a complaint or class of complaint in respect of which the Governor appoints another Complaints Commissioner.

(2) A Complaints Commissioner (other than the Principal Complaints Commissioner) has jurisdiction to investigate a complaint or class of complaint in respect of which the Governor appoints the Commissioner.

(3) Any Complaints Commissioner has jurisdiction to investigate a matter that the Governor refers to the Commissioner under section 29.

10. Limits of jurisdiction

(1) A Complaints Commissioner does not have jurisdiction to inquire into or question any of the following matters —

- (a) the conduct of the Governor when he or she is acting otherwise than under section 66(1) of the Constitution;
- (b) conduct of a Member of the Legislative Assembly that does not relate either to standards that the Standing Orders of the Assembly require its Members to observe as holders of public office or to a matter in which the Member has a personal interest;
- (c) a matter of policy;
- (d) the merits of a decision taken without maladministration by a person or body, in the exercise of a discretion vested in that person or body.
- (e) a matter that is mentioned in Schedule 2; or
- (f) conduct occurring before this Ordinance commences.

(2) The Governor may by Order amend Part 2 of Schedule 2.

(3) A Complaints Commissioner is not to investigate a complaint in respect of which an aggrieved person has or had —

- (a) a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
- (b) a remedy by way of proceedings in a court of law,

unless the Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the aggrieved person to resort or have resorted to to that right or remedy.

11. Personal interest

- (1) If any Complaints Commissioner has a personal interest in a complaint or matter that is forwarded or referred to the Commissioner, or considers that he or she may have or may reasonably be perceived as having such an interest, the Commissioner is to inform the Governor forthwith.
- (2) The Commissioner may also recuse himself or herself from considering the complaint.

PART III MAKING A COMPLAINT

12. Who may complain

- (1) A complaint may be made only by or on behalf of a person who is aggrieved.
- (2) A complaint may be made only if the aggrieved person is resident in the Falkland Islands (or, if dead, was resident in the Falkland Islands at the time of death).

13. Internal remedies

- (1) If an internal procedure is available, an aggrieved person or the person acting on his or her behalf must take reasonable steps to obtain a remedy under the procedure before making a complaint under this Ordinance.
- (2) An internal procedure is available for the purposes of this section if —
 - (a) the body concerned has an internal complaints procedure for such complaints;
 - (b) it has taken reasonable steps to make the availability of the procedure known to the public; and
 - (c) the complainant has access to that procedure.
- (3) In subsection (2), “the body concerned” means a body against which the complaint is made, or against one of whose members, officers or employees the complaint is made.

14. How a complaint is made

- (1) A complaint must be in writing.
- (2) If a complainant who is an individual must make it personally.

(3) However, if an aggrieved individual has died or is unable to act, the complaint may be made on his or her behalf by a personal representative or family member; or by any other suitable individual.

(4) A complaint by a person who is not an individual must be made by its authorized representative.

(5) A complaint is made —

(a) by delivering it to any Member of the Legislative Assembly, if it does not relate to a Member; or

(b) by delivering it to the Speaker of the Assembly, if it does relate to a Member.

15. Time limit for complaint

(1) A complaint is not to be entertained unless it is made within three months after the day on which the aggrieved person first has notice of the matters alleged in it.

(2) However, subsection (1) does not apply in any of the following circumstances —

(a) if, in the case of a complaint that does not relate to a Member of the Legislative Assembly, the Member to whom it is delivered considers that there are special circumstances that make it proper that the complaint should be entertained;

(b) if, in the case of a complaint that does relate to a Member of the Legislative Assembly, the Speaker considers that there are such circumstances; and

(c) if, in the case of a complaint that is sent or forwarded to the Governor under section 16, he or she considers that there are such circumstances.

16. Forwarding the complaint

(1) Where a Member of the Legislative Assembly or the Speaker receives a complaint under this Ordinance, he or she is to decide whether or not to forward it to the Principal Complaints Commissioner.

(2) The secretary is to send forthwith to the Governor a copy of each complaint that a Member of the Legislative Assembly forwards to the Principal Complaints Commissioner.

(3) The Clerk of the Legislative Assembly is to send forthwith to the Governor a copy of each complaint that the Speaker forwards to the Principal Complaints Commissioner.

(4) If a complaint that is delivered to a Member of the Legislative Assembly or to the Speaker is not forwarded to the Principal Complaints Commissioner within one month, and the complainant is not told within that time that it has been forwarded, the complainant may forward it to the Governor.

(5) On receiving a complaint under subsection (4) the Governor, acting in his or her discretion, is to decide whether or not to forward it to a Complaints Commissioner.

PART IV INVESTIGATING A COMPLAINT

17. Who is to investigate a complaint

(1) Unless the Governor gives a direction under subsection (2), a complaint is to be investigated by the Principal Complaints Commissioner.

(2) The Governor may in writing direct the Principal Complaints Commissioner that a complaint is to be investigated by another Commissioner specified in the direction.

(3) Where the Governor gives a direction under subsection (2), the secretary shall refer the complaint to that other Complaints Commissioner.

18. Commissioner to consider complaint

(1) The Complaints Commissioner who is to investigate a complaint must proceed to consider it.

(2) For the purpose of deciding whether to conduct an investigation, the Commissioner may conduct such preliminary inquiries as he or she considers appropriate.

19. Investigation to be conducted privately

The investigation of a complaint is to be conducted privately.

20. Mediation

(1) A Complaints Commissioner may appoint a mediator, and refer a complaint to that person for mediation, if the Commissioner considers —

(a) that the complaint does not involve maladministration or other conduct to which this Ordinance applies; or

(b) that it only involves maladministration, or such other conduct, that is of a minor nature.

(2) The Complaints Commissioner is not to participate in the mediation.

(3) Participation by any person as a party in the mediation is voluntary, and no costs are payable by any of the parties.

(4) The mediator may terminate the mediation at any time.

(5) Where mediation does not resolve a complaint —

(a) the complaint is to be treated as if the Complaints Commissioner had not referred it to a mediator; and

(b) evidence of the referral to mediation or of anything admitted or said in the mediation is inadmissible in any subsequent investigation of the complaint and in any legal proceedings relating to the complaint.

21. Procedure

(1) Before investigating a complaint, a Complaints Commissioner is to inform the principal officer of the department or other body concerned of the Commissioner's intention to conduct the investigation, and is to afford —

- (a) the principal officer; and
- (b) each person against whom the complaint is made,

an opportunity to comment on any allegations contained in the complaint.

(2) Subject to the other provisions of this Ordinance, a Complaints Commissioner may determine his or her own procedure in conducting an investigation into a complaint.

(3) In particular —

- (a) a Complaints Commissioner need not hold a hearing;
- (b) the Commissioner may obtain information from such persons and in such manner, as he or she thinks fit;
- (c) the Commissioner may make such inquiries as he or she thinks fit; and
- (d) the Commissioner may determine whether or not a person may be represented, by a legal adviser or by another person, in the investigation,

but this subsection does not limit subsection (2).

(4) If at any time during the course of an investigation, it appears to a Complaints Commissioner that there may be sufficient grounds to make a report or recommendation that may criticize or adversely affect a department or other body or person, the Commissioner is to give the department, body or person an opportunity to be heard.

22. Summons to witness

(1) A Complaints Commissioner may summon a person to appear before the Commissioner and to provide information to the Commissioner, by serving on the person a summons.

(2) A summons is to be in writing in the prescribed form.

23. Evidence

(1) A Complaints Commissioner who has requested or summoned a person to appear before the Commissioner may require the person to give evidence on oath or affirmation.

(2) The Complaints Commissioner or the secretary may administer the oath or take the affirmation.

24. Determining the complaint

(1) On completing the investigation of a complaint, a Complaints Commissioner is to prepare a report setting out —

- (a) the Commissioner's findings of fact;
- (b) his or her opinion as to whether the aggrieved person has suffered injustice in consequence of maladministration or of other conduct to which this Ordinance applies; and
- (c) the Commissioner's reasons for that opinion.

(2) If the aggrieved person has in the opinion of the Complaints Commissioner suffered injustice —

- (a) the report is to set out the Commissioner's recommendations for the prevention of a recurrence of the injustice; and
- (b) it may include a recommendation that a payment be made for any financial loss or inconvenience that the aggrieved person has suffered because of the injustice.

(3) A recommendation in a report does not bind the body to which the report relates or any other person.

PART V REPORTING TO GOVERNOR ON A COMPLAINT

25. Report to Governor

(1) On completing a report under section 24 (other than one that relates to a Member of the Legislative Assembly), a Complaints Commissioner is to submit the report to the Governor.

(2) The Complaints Commissioner is also to send a copy of the report to the principal officer of the department or other body to which the complaint relates.

26. Consideration of report to Governor

(1) On receiving a report under section 25(1) from a Complaints Commissioner, the Governor in consultation with the principal officer concerned is to consider whether it contains anything that, if disclosed, may damage the public interest.

(2) If the Governor considers that the report does contain material that, if disclosed, would damage the public interest, the Governor acting in his or her discretion may direct the

Complaints Commissioner to remove that material from the report before it is disclosed under section 27.

(3) The Governor is to inform the Complaints Commissioner of the outcome of the consideration under this section of the report, and the Commissioner is to comply with any direction given under this section.

(4) In complying with a direction, the Complaints Commissioner is to indicate on the face of the report —

- (a) the fact that material has been removed on the direction of the Governor; and
- (b) the places in the report from which it has been removed.

27. Disclosure of report made to Governor

(1) On being informed under section 26(3) of the outcome of the consideration of the report under that section, and complying with any direction given under the section, the Complaints Commissioner is to send copies of the report to the following persons —

- (a) the complainant;
- (b) the Governor;
- (c) the Member of the Legislative Assembly to whom the complaint was first made;
- (d) the Chief Executive Officer;
- (e) the principal officer of the department or other body concerned;
- (f) each person against whom the complaint was made; and
- (g) each person who is criticized in the report, or may be adversely affected by it.

(2) If so requested by the Member of the Legislative Assembly, the Governor is to explain to the Member the general nature of any material that has been removed and the reasons for its removal.

(3) The Complaints Commissioner may publish the report.

28. Response to report to Governor

(1) If a report to the Governor under section 25(1) contains recommendations that a body to which the report relates should or should not take a course of action, a written response must be submitted to the Complaints Commissioner by whom the report was made within three months after the report is received by the body.

(2) The response is to be made —

(a) by the Governor, if the body is a department; or

(b) by the body itself, in any other case.

(3) The response is to state —

(a) which recommendations are accepted;

(b) which recommendations are not accepted; and

(c) if a recommendation to take a course of action is accepted, how it is intended to take that course of action.

PART VI REPORTING TO SPEAKER ON A COMPLAINT

29. Report to Speaker

(1) On completing a report under section 24 that relates to a Member of the Legislative Assembly), a Complaints Commissioner is to submit the report to the Speaker.

(2) The Complaints Commissioner is also to send copies of the report to —

(a) the complainant;

(b) the Governor;

(c) the Member of the Legislative Assembly to whom the complaint relates; and

(d) the Clerk of the Legislative Assembly.

30. Consideration of report made to Speaker

A report that is received under section 29(1) by the Speaker is to be dealt with in accordance with the Standing Orders of the Legislative Assembly.

PART VII REFERENCES BY THE GOVERNOR

31. Governor may refer matter to Commissioner

The Governor, acting in his or her discretion or on the advice of the Executive Council, may refer to a Complaints Commissioner —

(a) any question of maladministration in the government of the Falkland Islands or in a body mentioned in Schedule 1;

(b) any conduct mentioned in section 3(2); or

- (c) any other matter that the Governor, so acting, thinks fit to refer to a Commissioner

32. Commissioner to investigate and report to Governor

A Complaints Commissioner to whom the Governor refers a matter under section 31 is to investigate and report to the Governor on the matter.

33. Commissioner's powers on Governor's reference

For the purposes of investigating and reporting on a Governor's reference —

- (a) a Complaints Commissioner may conduct the investigation privately, and shall do so if the Governor directs; and
- (b) the Commissioner and the secretary have the same powers as they have under subsections (2) and (3) of section 21, section 22 and section 23.

34. Persons who must be told of investigation

(1) If at any time during the course of an investigation of a Governor's reference, it appears to the Complaints Commissioner who is conducting the investigation that there may be sufficient grounds to make a report or recommendation that may criticize or adversely affect a department or other body or person, the Commissioner is to give the department, body or person an opportunity to be heard.

(2) If a person is criticized in or may be adversely affected by a report by a Complaints Commissioner on a Governor's reference, the Commissioner is to give a copy of the report to the person.

PART VIII OTHER PROVISIONS

35. Witnesses' expenses

(1) A person whom a Complaints Commissioner requests or summons to appear before the Commissioner is entitled to be reimbursed his or her actual and reasonable travelling and accommodation expenses of doing so.

(2) However, if the Governor by notice published in the Gazette sets a maximum amount or rate of travelling expenses or accommodation expenses, the person is not entitled to be reimbursed a greater amount or at a higher rate.

36. Duty of non-disclosure

(1) Information obtained by a Complaints Commissioner or any member of the staff of the Commissioners in the course of or for the purposes of an investigation under this Ordinance, is not to be disclosed except for the purposes of —

- (a) the investigation and of any report to be made under this Ordinance in respect of the investigation; or

- (b) any proceedings under this Ordinance.

(2) A Complaints Commissioner or member of the staff of the Commissioners cannot be called to give evidence in any proceedings (other than under this Ordinance) of matters coming to his or her knowledge in the course of an investigation under this Ordinance.

37. Privilege

For the purposes of the law of defamation, publication in any of the following circumstances is absolutely privileged —

- (a) the publication by a Complaints Commissioner of a report under this Ordinance, or of any other matter by the Commissioner in making a report under this Ordinance;
- (b) the publication for the purposes of this Ordinance of any matter by the Governor, a Member of the Legislative Assembly or the Speaker in communicating with a Commissioner or any member of the staff of the Commissioners; and
- (c) the publication for the purposes of this Ordinance of any matter by a Commissioner, or by any member of the staff of the Commissioners, in communicating with the Governor, a Member of the Legislative Assembly or the Speaker.

38. Annual report to Assembly

(1) The Principal Complaints Commissioner shall provide to the Governor, before 31st March in each year, a report on the performance by the Complaints Commissioners of their functions in the preceding year.

(2) The Governor shall lay the report before the Legislative Assembly within 3 months after receiving it.

39. Offences

(1) If a person, in giving evidence to a Complaints Commissioner (whether or not on oath) knowingly or recklessly makes a statement that is false in a material particular, he or she is liable to a fine determined by a Commissioner in accordance with section 41.

(2) If a person —

- (a) without lawful excuse obstructs a Complaints Commissioner in the performance of his or her functions under this Ordinance; or
- (b) without lawful excuse obstructs any member of the staff of the Commissioners in the performance of his or her functions under this Ordinance,

he or she is liable to a fine determined by a Commissioner in accordance with section 41.

(3) If, without reasonable excuse, a person on whom a summons is served under this Ordinance —

(a) fails to appear before the Complaints Commissioner concerned, on the day and at the time and place specified in the summons; or

(b) fails to produce to the Commissioner on that day, and at that time and place, any document or publication that the summons requires the person to produce to the Commissioner,

the person is liable to a fine determined by a Commissioner in accordance with section 41.

(4) If a person, without reasonable excuse —

(a) on being required by a Complaints Commissioner to take an oath, refuses to do so or to make an affirmation instead of taking an oath; or

(b) refuses to answer any lawful and relevant question that is put by the Commissioner,

the person is liable to a fine determined by a Commissioner in accordance with section 39.

(5) This section does not require a person —

(a) to produce to a Complaints Commissioner any document or publication in respect of which a certificate is issued under section 43;

(b) to produce to a Commissioner any document or publication of the Executive Council.

40. Contempt

If a person without lawful excuse commits any act, or makes any omission, in relation to an investigation under this Act that, if that investigation were a proceeding in the Supreme Court, would constitute contempt of court, that person commits an offence and is liable to a fine determined by a Complaints Commissioner in accordance with section 41.

41. Power of Complaints Commissioner to impose civil fine

(1) If the Attorney General refers the matter to a Complaints Commissioner, the Commissioner may impose a fine, not exceeding the prescribed maximum fine, on a person who is liable to a fine under either of sections 39 and 40.

(2) The fine is recoverable by civil action in the Supreme Court at the suit of the Attorney General.

42. Service on Governor's staff and British forces

(1) If a Complaints Commissioner wishes to request or summon a member of the Governor's staff to attend before the Commissioner, the request or summons is to be delivered to the office of the Governor.

(2) If a Complaints Commissioner wishes to request or summon a member of Her Majesty's forces or of the civilian component of any of those forces to attend before the Commissioner, the request or summons is to be delivered to the headquarters of the Commander British Forces.

(3) A summons to which either of subsections (1) and (2) refers is served on the person to whom it is addressed when it is delivered in accordance with that subsection.

43. Public interest certificates

(1) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that —

- (a) the production of a specified document or publication to a Complaints Commissioner;
or
- (b) the provision of any specified information to a Commissioner,

is not in the public interest.

(2) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is not in the public interest.

44. Orders

The Governor may make Orders for any of the following purposes —

- (a) prescribing the form of a summons to appear before a Complaints Commissioner;
- (b) prescribing procedures to be followed in the investigation of complaints; and
- (c) prescribing the maximum fine that a Commissioner may impose under section 41.

SCHEDULE 1

(section 8)

BODIES IN RESPECT OF WHICH COMPLAINTS MAY BE INVESTIGATED

1. Falkland Islands Development Corporation
2. Falklands Landholdings Corporation
3. Falkland Islands Meat Company Limited
4. Falkland Islands Tourist Board
5. Falkland Islands Museum and National Trust
6. Media Trust.

SCHEDULE 2

(section 10)

MATTERS IN WHICH COMPLAINTS COMMISSIONERS DO NOT HAVE JURISDICTION

PART 1

1. Any complaint in respect of which the Governor, acting in his or her discretion, certifies that it is not in the public interest that a Complaints Commissioner should investigate the matter.
2. The grant by the Crown of honours, awards or privileges.
3. The proceedings and deliberations of the Legislative Assembly.
4. The content of legislation.
5. The proceedings and deliberations of the Executive Council.
6. The conduct of a member of the judiciary.
7. The conduct of the Attorney General in respect of his or her powers under section 72 of the Constitution.
8. The conduct by any person or authority of an audit pursuant to section 80(1) of the Constitution.

PART 2

9. The conduct of any person (other than a member of the judiciary) while acting in a judicial capacity.
10. The commencement or conduct of civil or criminal proceedings before any court of law or civil or military tribunal.
11. The exercise of any function under section 71(1) of the Constitution.
12. The investigation of crime.
13. Action relating to extradition or to fugitive offenders.
14. The conduct of a police officer (other than the Chief of Police).
15. The defence and the security of the Falkland Islands.
16. The conduct of the Commander British Forces or of any other member of Her Majesty's forces.
17. The conduct of any member of the civilian component of Her Majesty's forces in the course of his or her employment.
18. Passports.

19. The conduct of an employee of the Foreign and Commonwealth Office who is a member of the Governor's staff.

20. Any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension, or dismissal or terms of service of an employee of the Government or of any body mentioned in Schedule 1.

21. Any contractual or commercial transaction.

OBJECTS AND REASONS

Under Chapter IX of the Constitution, the Governor may appoint Complaints Commissioners to investigate complaints of maladministration in government, and other matters that may be prescribed by Ordinance.

A Commissioner must be someone other than a Member of the Legislative Assembly or a public officer.

The functions and jurisdiction of a Commissioner are to be prescribed by Ordinance. In carrying out an investigation, he or she is not to be subject to the direction or control of anyone else.

Accordingly, the purposes of this Bill are to set out other matters that Commissioners are to investigate, and their functions and jurisdiction. It also provides for administrative and procedural arrangements in respect of investigations.

The Bill is arranged in the following way —

Part I — Introductory provisions

Clause 1 gives its name.

Clause 2 provides that it will come into force on a day to be fixed by the Governor by a notice published in the Gazette

Clause 3 defines words that are used in the Bill.

Clause 4 enables the Governor, when appointing a Commissioner, to designate him or her to be for the purposes of the Ordinance the Principal Complaints Commissioner

The person designated as the Principal Complaints Commissioner will have the administrative responsibilities to which the Bill refers.

Clause 5 provides for the payment of daily attendance allowances for the Principal Complaints Commissioner, and daily attendance allowances for other Commissioners. They will be set by the Governor, by notice in the Gazette.

The clause also provides for the payment of Commissioners' actual and reasonable expenses in performing their functions.

Clause 6 provides for the appointment of a secretary to the Complaints Commissioners and of other staff.

Under *clause 7*, the funds for the discharge of the Complaints Commissioners' functions are those that the Legislative Assembly decides to appropriate.

Part II — Functions and jurisdiction of the Commissioners

Clause 8 gives the Complaints Commissioners additional functions to that, already set out in the Constitution, of investigating complaints of maladministration in government.

There will be three other categories –

- (a) complaints of maladministration in public bodies mentioned in Schedule 1;
- (b) conduct (for example discourtesy, or a refusal to provide a service) that would cause a member of the public to reasonably feel a sense of injustice, even though it may not amount to maladministration; and
- (c) matters that the Governor refers to Commissioners under Part VII (which may but will not necessarily relate to complaints).

The Governor may amend Schedule 1 by Order.

Clause 9 provides that the Principal Complaints Commissioner has jurisdiction in respect of any complaint unless the Governor refers it to another Commissioner.

Other Complaints Commissioner have jurisdiction in respect of complaints that the Governor does refer to them.

Every Commissioner has jurisdiction in respect of a matter that the Governor refers to that Commissioner under Part VII.

Clause 10 excludes matters from the jurisdiction of Complaints Commissioners.

The Bill will not apply to conduct occurring before it comes into force.

The exceptions include the conduct of the Governor when acting otherwise than under section 66(1) of the Constitution; the conduct of a Member of the Legislative Assembly (except in respect of standards of conduct imposed by its Standing Orders, and matters of personal interest); the content of legislation; the proceeding of the Executive Council; the conduct of members of the Judiciary; policy; and the exercise of a lawful discretion (where it does not amount to maladministration).

They also include matters (not mentioned above) that are set out in Schedule 2. The Governor may by Order amend Part 2 of Schedule 2.

Clause 11 requires a Commissioner to inform the Governor, if the Commissioner has or may be perceived as having a personal interest in a matter. The Commissioner is also entitled to decline to investigate the matter.

Part III — Making a complaint

Clause 12 provides that a complaint may be made only by or on behalf of an aggrieved person who lives in the Falkland Islands or was resident here when he or she died.

Clause 13 provides that if a body to which a complaint relates has an accessible internal complaints procedure, a complainant must take reasonable steps to obtain a remedy under it before using the complaints procedure in this Bill.

Clause 14 provides that a complaint under the Bill must be in writing.

If the complainant is an individual, it must be made in person. However, if he or she is dead or cannot act, it may be made by a representative.

A complaint that does not relate to a Member of the Legislative Assembly is to be made by delivering it to any Member.

Complaints in respect of Members are to be delivered to the Speaker.

Clause 15 provides that a complaint must be made within three months after the aggrieved person first has notice of the matters to which it relates. However, it also provides for extensions of time in special circumstances.

Clause 16:

On receiving a complaint, the Member or the Speaker is to decide whether to forward it to the Principal Complaints Commissioner. If he or she does so, a copy is to be sent to the Governor.

If the complainant is not told within one month that it has been forwarded to the Principal Complaints Commissioner, the complainant may forward it directly to the Governor. In that event, the Governor is to decide whether or not to refer it to a Complaints Commissioner.

Part IV — Investigating a complaint

Clause 17 provides that complaints are to be investigated by the Principal Complaints Commissioner unless, in a particular case, the Governor directs that a matter is to be investigated by another Commissioner.

Clause 18 requires a Commissioner who is to investigate a complaint to proceed to do so. For that purpose, the Commissioner may make preliminary inquiries as he or she sees fit.

Clause 19 provides that investigations are to be conducted privately.

Clause 20 allows a Commissioner to refer a complaint to a mediator.

Participation is voluntary, and no costs will be payable by any party. If the complaint is not resolved, it is to be treated as if it had not been referred to mediation.

Clause 21 relates to the procedure to be followed in an investigation. The principal officer of the body concerned, any person against whom the complaint is made and other persons who may be adversely affected must be given an opportunity to be heard. Subject to this and the other provisions of the Bill, a Commissioner may determine his or her own procedure and need not hold a hearing or take evidence on oath or affirmation. Commissioners will also have a discretion whether to allow parties to be represented.

Clause 22 provides for the summoning of witnesses.

Clause 23 provides for the taking of evidence on oath or affirmation.

Clause 24 provides that on completing an investigation, a Commissioner is to determine the complaint and prepare a report. This must set out his or her findings of fact, conclusions and reasons.

If the Commissioner finds that there has been injustice, the report must also set out his or her recommendations for the prevention of any recurrence of that injustice. These may include a recommendation for compensation.

A Complaints Commissioner's report will not be legally binding on any body or person.

Part V — Reporting to Governor on a complaint

This Part applies only to complaints that are not made against Members of the Legislative Assembly.

Clause 25 provides that in the first instance a Commissioner is to submit his or her report to the Governor, and send a copy to the principal officer of the body concerned.

Clause 26 provides that on receiving the report, the Governor is to consider in consultation with the principal officer whether it contains anything that, if disclosed, may damage the public interest.

If the Governor so directs, the Commissioner must remove from the report any material that in the opinion of the Governor may damage the public interest. However, in doing so, the

Commissioner must also show on the face of the report the places from which it has been removed.

Clause 27 provides that the Commissioner is then to send copies of the report (as edited, where required under clause 26) to the complainant, the Governor, the Member of the Legislative Assembly to whom the complaint was made, the Chief Executive Officer of the Falkland Islands Government, the body and persons to whom the complaint relates and to anyone else adversely affected by it.

The Commissioner may also decide to publish the report.

The Member is entitled to obtain from the Governor an explanation as to the general nature of the material removed and the reasons for its removal.

Although a Complaints Commissioner's report is not binding, *clause 28* requires the body to whom it relates to submit to the Commissioner within three months a written response to any recommendations in the report. This must say which recommendations are and are not accepted, and how it is intended to take any course of action that is recommended in the report.

Part VI — Reporting to Speaker on a complaint

This Part applies only to complaints against Members of the Legislative Assembly.

Clause 29 provides that on completing a report relating to a complaint against a Member of the Legislative Assembly, a Commissioner is to submit it to the Speaker, and send copies to the complainant, the Governor, the Member and the Clerk of the Assembly.

Clause 30 provides for the Complaints Commissioner's report to the Speaker to be dealt with in accordance with the Standing Orders of the Legislative Assembly.

Part VII — References by the Governor

This Part applies only to matters that the Governor himself (acting in his own discretion or on the advice of the Executive Council) decides to refer to a Complaints Commissioner.

The reference may relate to a complaint of maladministration in government or a public body, or to other conduct that could be the subject of a complaint by a private individual. However, the Governor's power of referral under this Part is not limited to those matters.

Clause 31 provides for the Governor to make such a referral.

Clause 32 provides that the Commissioner is to investigate the matter and report to the Governor.

Clause 33 provides that the Commissioner may do so privately (and shall, if the Governor so directs). It also gives the Commissioner the procedural powers that he or she would have under Part IV if investigating a complaint.

Clause 34 provides that in conducting an investigation, the Commissioner must give persons who may be adversely affected the opportunity to be heard, and a copy of the report to the Governor.

Part VIII — Other provisions

Clause 35 provides for witness expenses.

Clause 36 provides that information obtained in an investigation may only be disclosed for the purposes of a report or proceedings under the Bill.

Clause 37 confers absolute privilege on the Commissioners, their staff, the Governor, a Member of the Assembly and the Speaker in proceedings under the Bill.

Clause 38 requires the Principal Complaints Commissioner to provide an annual report to the Governor, who will lay it before the Legislative Assembly.

Clause 39 (which is to be read with clause 41) provides for civil offences in respect of false statements, the obstruction of Commissioners and their staff, failure to comply with witness summonses and refusals to give evidence.

Clause 40 (which is also to be read with clause 41) provides that conduct before a Complaints Commissioner that, in proceedings in the Supreme Court would amount to contempt, will be a civil offence.

Clause 41 provides that on the reference of the Attorney General, a Commissioner may fine a person who commits an offence under the Bill. The fine may not exceed a maximum amount to be prescribed by the Governor, by Order. It will be recoverable as a civil debt.

Clause 42 provides for service of requests and summonses by a Commissioner on members of the Governor's staff and the armed forces.

Under *clause 43*, the Governor may certify that in a particular instance the production of a document, the provision of information or the public disclosure of evidence would not be in the public interest.

Clause 44 enables the Governor to make Orders prescribing forms, procedure and the maximum permissible civil fine under the Bill.

Schedule 1 lists public bodies (other than the Falkland Islands Government) in respects of which complaints may be investigated.

Schedule 2 sets out matters in respect of which Complaints Commissioners do not have jurisdiction to investigate complaints.

Summary of questions for Consultation

Q1: Do you agree that Sections 95 and 96 of the Constitution should be implemented and the Complaints Commissioner system established?

Q2: Do you agree that any conduct that falls within this test should be able to be subject of a complaint?

Q3: Are there any other types of conduct you believe should be mentioned in Sub-section (3)?

Q4: Do you agree with the appointment of a Principal Complaints Commissioner?

Q5: Do you agree that the PCC should be entitled to a daily attendance allowance, or should Commissioners be restricted to reimbursement of their travelling and accommodation expenses (as is the case with members of the PAC)?

Q6: Do you agree that there should be a power to make an Order applying the PCC jurisdiction to such bodies?

Q7: Do you agree with the matters over which the Complaint Commissioners do not have jurisdiction?

Q8: Do you believe that any other matters should be excluded?

Q9: Do you agree that internal complaints procedures should be used before a complaint can be made under the Ordinance?

Q10: Do you agree that there should be a time limit for complaints?

Q11: If you do, do you consider that 3 months is the right period to specify?

Q12: Is the filter mechanism set out in Clause 16 appropriate, or do you believe that a complainant should have a right to go direct to the PCC?

Q13: Do you agree that a Commissioner should be able to refer a complaint to mediation as provided for in Clause 20?

Q14: Do you agree that a recommendation made by a Commissioner should not bind the body to which the report relates?

Q15: Do you agree that the proposals made in Part V of the Bill are appropriate?

Q16: If not, what changes would you make?

Q17: Do you agree that the Governor should have the power given by Clause 31 to refer any matter to a Commissioner, or should the Bill be concerned only with Complaints made by aggrieved persons?