

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Review of Employment Law – Terms of Reference  
**Paper No:** 202/09  
**Date:** 17 September 2009  
**Report of:** Head of Policy

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### 1.0 Purpose

The purpose of this paper is to supply terms of reference for the review of Employment Law issues suggested in ExCo paper 112/08.

As suggested in the paper 112/08, the head of policy is to lead this piece of work and it shall include an analysis of possible cost implications for both FIG and the private sector.

### 2.0 Recommendation

That Honourable Members review and approve the terms of reference, proposed timelines and ‘consultative group’ membership for this piece of work attached as Annex 1.

### 3.0 Summary of Financial Implications

There are no direct financial implications from this paper.

### 4.0 Background

**4.1** The then Attorney General carried out a review of employment law in 2000 (Executive Council paper 192/2000), which made 22 recommendations. Some were acted upon, some not, but generally the process ran into the sand.

**4.2** In May 2008 it was agreed the current Attorney General would put forward a paper covering objectives, priorities and the proposed way forward to reignite the process, which was still deemed necessary by both Legislative Assembly and the Attorney General despite the 2000 review.

**4.3** The resultant paper was submitted to GMT in early June 2008 and detailed 12 key areas to look at in any review. On each of these 12 items a statement of UK practice, existing FI practice, existing FIG practice, possible changes and the view taken in 2000 were listed.

**4.4** However, due to the discussion in GMT around this paper, it was decided that it was not appropriate for the Attorney General to lead on this issue; it was also agreed that for any recommendations to be acted upon they would require some analysis of the financial implications (both public and private). Due to these two reasons and also the need for more international comparisons to be done it was decided that the newly appointed Head of Policy should lead on this work. This decision resulted in ExCo paper number 112/08 summarising these issues and recommending that the review be delayed until the HOP was in post, with a proposed completion date of January 2009.

**4.5** On arrival in the Islands in July 2008 the Head of Policy agreed with the Chief Executive that the review of employment was of a low priority compared to other ongoing work. This is why the stated January 2009 reporting date was missed.

**4.6** However, with other work nearing its completion this review is now being formally commenced. The attached Annex 1 details the proposed objectives, methodology and timelines for this piece of work.

## **5.0 Financial Implications**

There are no direct financial implications from this paper.

## **6.0 Legal Implications**

There are no direct legal implications from this paper.

## **7.0 Human Resources Implications**

There are no direct HR implications from this paper.

## **Annex 1: Review of Falkland Islands Employment Law**

### **Terms of Reference**

#### **1.0 Objective**

The overall objective of this policy review is to fully assess the existing employment practices and legislation within the Falkland Islands and advise Legislative Assembly on the need for (and details of) updated employment laws. This shall be achieved through a mix of benchmarking international norms as well as consulting with key local stakeholders in formulating a suitable set of employment laws for the Islands.

#### **2.0 Output**

The deliverable shall be policy papers of not more than 10-15 pages for consideration by Executive Council. The paper shall summarise the existing situation and advice on any changes that are required. It shall also detail the potential public and private cost of each respective change or set of changes, as well as the work required in drafting any new legislation.

#### **3.0 Terms of Reference**

For the purpose of this review and owing to the wide range of topics under review, GMT suggested key areas of employment legislation be prioritised and linked to milestones in the following sequence: -

- Priority 1: Transferability of pension and other benefits in case of privatisation and/or employer insolvency/bankruptcy
- Priority 2: Discrimination legislation (age, sex, disabilities)
- Priority 3: Health & work safety law (incl. worker's compensation)
- Priority 4: Employment protection ordinance (covering redundancy rules/severance etc)
- Priority 4: Leave and working hours (covering flexi-time, maternity and paternity leave, sick leave etc)
- Priority 4: Unfair dismissal and arbitration (and conflict resolution) rules
- Priority 4: Role of trade union and union-free provisions
- Lowest Priority: General pay conditions (including the feasibility of introducing a base or minimum wage as well as equal pay)

#### **4.0 Methodology**

- a) Review and understand the existing legal framework that impacts employment.
- b) Compare FIG (Management Code) and current private sector employment norms and conditions.
- c) Perform a comparative review of employment laws in the UK, US, Channel Islands and other OCTs to establish and understand the international norm.
- d) Detail with the AG's assistance what laws would need to be amended to update employment law.
- e) Review the practicability of extending the employment law to employees of MPA/MOD-external contractors operating in the islands (in consultation with CBF).
- f) Quantify the enforcement and compliance costs on FIG and the private sector of more robust employment laws.
- g) Detail the economic benefits and/or dislocation (e.g., unemployment)

## 5.0 Consultative Group Membership

Whilst the Policy Unit shall be collecting and collating the work for this review, to ensure that all important issues are covered and any recommendations are feasible, a broader knowledgeable group is required to give their input. It is suggested that the group has the following members:

- ◇ Head of Policy (Chair)
- ◇ Representative of FIG HR Department
- ◇ Attorney General
- ◇ FI General Workers Union Representative
- ◇ Chamber of Commerce Representative
- ◇ Rural Business Association Representative

*Role of Group:* To meet every two months. The membership shall be updated and presented to by the Policy Unit on the work done to date and general conclusions that are being drawn. They shall provide input and advice on key matters, as well as directing research, but it shall be the Chair's ultimate responsibility for presenting recommendations to Executive Council.

Whilst the above group shall provide core input, consultation shall not be limited to only them. Further external meetings planned initially are:

- Legislative Assembly
- FIFCA
- FITB
- Cable & Wireless plc & SCB (to understand listed companies minimum requirements)
- MOD/MPA contractors

## 6.0 Timing

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|----------------------------|--|
| <i>September 2009</i>      | Review begins  |
| <i>October 2009</i>        | First consultative group meeting to confirm key work   |
| <i>Oct 2009 – Dec 2010</i> | Work performed as per methodology and core group meetings every two months.  |
| <i>June 2010</i>           | Final report on Priority 1 (TUPE) to Executive Council advising changes  |
| <i>December 2010</i>       | Final report on Priorities 2 & 3 (discrimination legislation & occupational health/safety) to Executive Council advising changes         |
| <i>March 2011</i>          | Final report on Priority 4 (employment protection, unfair dismissal, trade union and minimum wage) to Executive Council advising changes |