

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Public Accounts Committee Bill 2009

**Paper No:** 212/09

**Date:** 17 September 2009

**Report of:** Principal Crown Counsel

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### 1.0 Purpose

The purpose of this paper is to present Members with amended versions of the Public Accounts Committee Bill 2009, which Members may choose to use to propose amendments to the Bill as published in the Gazette on 7 September 2009, during consideration of the Bill by the Legislative Assembly on 18 September 2009.

### 2.0 Recommendations

Members are recommended to adopt Version 1 of the draft Bill for the purpose of proposing amendments to the Bill as published in the Gazette on 7 September 2009, during the consideration of the Bill by the Legislative Assembly on 18 September 2009.

### 3.0 Summary of Financial Implications

None

### 4.0 Background

4.1 During the meeting of Executive Council of 20 August 2009, Members considered the draft Public Accounts Committee Bill as presented under paper number 187/09. Members recommended that a number of amendments be made to the Bill before its publication. All of the amendments specifically minuted were made to the Bill before its publication in the Gazette on 7 September 2009 (the last date for publication of the Bill in order that it could be considered at the meeting of the Legislative Assembly on 18 September in accordance with the usual procedure set out in Standing Orders).

4.2 At their meeting of 20 August Members requested that there be a review of the bodies listed in the Schedule to the Bill. The review was unfortunately not concluded in time to allow the drafting of the proposed amendments before the deadline for publication of the Bill. The contract drafter was therefore instructed to produce an

amended draft Bill which Members might use to propose amendments to the published Bill during the consideration of the Bill by the Legislative Assembly.

4.3 This was the clearly stated preference of Members in favour of other options advised to them (such as reference of the Bill to Select Committee), which would have necessarily involved delay in the Bill being considered.

#### *Original function of the Schedule*

4.4 The Schedule as originally drafted had two intended functions:

(a) to list, for the avoidance of doubt, those statutory bodies which the Public Accounts Committee is *obliged* to examine and report on the accounts of in accordance with sections 80(1) and 81(5) of the Constitution; and

(b) to provide a mechanism by which the Public Accounts Committee could be *obliged* to consider and examine the accounts of any other body (ie any body could be added to the Schedule by order).

#### *Members instructions for a revised Schedule*

4.5 The review of the Schedule identified that Members would like the Schedule to be amended so as to *enable* the Public Accounts Committee to examine and report on a wider group of bodies than listed in the original Schedule. Notably, Members wished to add; (a) a company in which FIG or a statutory corporation has a shareholding; and (b) any other body in receipt of public funding.

#### *Drafting consequences*

4.6 Because Members would like the Schedule to be an enabling provision, ie which gives the Public Accounts Committee a discretion to examine and report on particular bodies, it is not possible for that same Schedule to contain any of the bodies which the Public Accounts Committee is already obliged to examine and report on the accounts of under sections 80(1) and 81(5) of the Constitution (eg FIG, statutory bodies).

4.7 Because of the differences between the existing draft and Members instructions, there appear to be two options for producing an amended draft Bill.

#### *Version 1*

4.8 The first option (Version 1; attached) is to abandon the first function of the Schedule as referred to at paragraph 4.3(a) above (ie abandoning the function to list, for the avoidance of doubt, the statutory bodies which the Public Accounts Committee is obliged to examine and report on the accounts of in accordance with section 81(5) of the Constitution). This function is legally unnecessary, and retaining it would lead to a Bill which is over complicated (see Version 2).

4.9 Instead, the Schedule in Version 1 of the Bill combines with a newly drafted section 11(b), which is written in discretionary terms. This means that the Public

Accounts Committee may choose to examine and report on the accounts of any body which falls into one of those generic groups of bodies listed in the Schedule.

### *Version 2*

4.10 The alternative to the recommended Version 1 of the Bill is the attached Version 2 of the Bill. This retains the paragraph 4.3(a) “for the avoidance of doubt” function of the Bill, but to enable the accommodation of Members’ instructions that the Public Accounts Committee also be empowered to examine and report on the accounts of any body from a number of generic groups, there must be two Schedules to the Bill.

4.11 The first Schedule lists the same bodies under section 11(1)(b) as provided in the Schedule as originally drafted (ie the “avoidance of doubt” statutory bodies which the Public Accounts Committee is obliged to examine and report on the accounts of). The second Schedule then lists the additional generic groups under a new section 11(1)(c), enabling the Public Accounts Committee, in its discretion to examine and report on any body within those generic groups.

### *Reasons for recommendation*

4.12 In summary, the reason for recommending Version 1 (the preference of both the contracted legislative drafter and Principal Crown Counsel) is that the draft reflects Members’ instructions but does so in the more simple and legally precise way of the two drafts.

## **5.0 Financial Implications**

None.

## **6.0 Legal Implications**

None other than those already detailed in the paper.

## **7.0 Human Resources Implications**

None.

**Public Accounts Committee Bill 2009**

(No:     of 2009)

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Clause

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# PUBLIC ACCOUNTS COMMITTEE BILL 2009

(No: of 2009)

(assented to: 20[ ]) )  
(commencement: )  
(published: 20[ ])

A BILL

for

AN ORDINANCE

To give the Public Accounts Committee established by section 81 of the Constitution additional functions, powers and duties; to provide for the Committee's procedures; and for related matters

BE IT ENACTED by the Legislature of the Falkland Islands —

## PART I INTRODUCTORY PROVISIONS

### 1. Title

This Ordinance is the Public Accounts Committee Ordinance 2009.

### 2. Commencement

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

### 3. Interpretation

In this Ordinance, unless the context otherwise requires —

“appointed member” means a member of the Public Accounts Committee who is appointed by the Governor, under section 81(1) of the Constitution;

“chairperson” means the member who is appointed by the Governor, under section 81(1) of the Constitution, as the chairman of the Committee;

“Committee” means the Public Accounts Committee established by section 81(1) of the Constitution;

“deputy chairperson” means the person who is appointed by the Committee, under section 4, to be its deputy chairperson;

“elected member” means a member of the Committee who is elected by the Legislative Assembly, under section 81(1) of the Constitution;

“Governor”, in sections 27(1) and 28, includes the Governor in his or her capacity as the Commissioner for South Georgia and the South Sandwich Islands;

“member” means a member of the Committee;

“registrable interest” means —

(a) in relation to an appointed member, an interest of which the member would be required under the Standing Orders of the Legislative Assembly to furnish particulars to the Clerk of the Legislative Assembly, if he or she were a member of the Assembly;

(b) in relation to an elected member, an interest of which he or she is required under those Standing Orders, as a member of the Assembly, to furnish particulars to the Clerk;

“secretary” means the secretary to the Committee appointed under section 9(1) by the Governor.

#### **4. Deputy chairperson**

(1) At its first meeting, and whenever there is subsequently a vacancy under this section, the Committee is to appoint one of its members to be its deputy chairperson.

(2) The deputy chairperson holds office until the expiry of the period for which he or she is appointed, or elected, as a member.

(3) However, a person ceases to be deputy chairperson on vacating a seat on the Committee, or on resigning as deputy chairperson by notice in writing under his or her hand addressed to the chairperson.

(4) The Committee may reappoint a member to be its deputy chairperson.

(5) While the chairperson is unable to exercise or discharge a function, power or duty under the Constitution, or under this or any other Ordinance, the deputy chairperson may do so on his or her behalf.

#### **5. Disqualification for membership**

(1) A person who is elected under section 58(1) of the Constitution as a member of the Executive Council is disqualified for membership of the Committee.

(2) An elected member of the Committee who is elected under section 58(1) of the Constitution as a member of the Executive Council vacates his or her seat on the Committee.

(3) An elected member of the Committee who is elected under section 60(1) of the Constitution as a member of the Executive Council vacates his or her seat on the Committee on attending two consecutive meetings of the Executive Council.

#### **6. Period of appointment**

A person is ordinarily appointed or elected as a member for a period of four years.

## **7. Members' interests**

- (1) The secretary is to maintain a register of the registrable interests of the appointed members.
- (2) Before taking part in the proceedings of the Committee, an appointed member must complete and furnish to the secretary in writing, in the prescribed form or in such other form as the Governor may approve, the particulars of the member's registrable interests.
- (3) If there is a change in his or her particulars, an appointed member must as soon as reasonably practicable notify the secretary in writing of the details of the change.
- (4) On receiving particulars of an appointed member's registrable interests, or of any change in those particulars, the secretary is to —
  - (a) enter the particulars or the change in the register;
  - (b) deliver copies of the particulars or of the change to the Governor and to the chairperson; and
  - (c) publish the particulars or the change in the Gazette.
- (5) The register is to be available for public inspection at all reasonable times during office hours, at the office of the secretary.

## **8. Members' allowances**

- (1) A member is entitled to be reimbursed his or her actual and reasonable travelling and accommodation expenses for each day on which the member attends a meeting of the Committee.
- (2) However —
  - (a) if the Governor by notice published in the Gazette sets a maximum amount or rate of travelling expenses or accommodation expenses, the member is not entitled to be reimbursed a greater amount or at a higher rate; and
  - (b) in any event, a member is not entitled to be reimbursed under this section any travelling or accommodation expenses to which he or she is entitled under the Elected Councillors' Allowances Ordinance.

## **9. Staff**

- (1) The Governor may, with the agreement of the chairperson, appoint a public officer or some other person to be the secretary to the Committee.
- (2) The appointment as secretary of a person who is not a public officer shall be on such terms and conditions as the Governor and the chairperson agree.
- (3) The Governor may appoint other public officers as staff of the Committee.

(4) The secretary and other members of the staff are subject to the direction of the Committee, and are responsible to it through the chairperson.

### **10. Funds**

The Committee's funds consist of money appropriated for the purpose by the Legislative Assembly.

## **PART II FUNCTIONS OF THE PUBLIC ACCOUNTS COMMITTEE**

### **11. Additional functions**

(1) In addition to the function specified in section 81(5) of the Constitution, the Committee has the following functions —

(a) to advise the Governor on appropriate arrangements for the auditing of accounts under section 80(1) of the Constitution, the respective priorities of audits under that subsection and the effectiveness of those audits;

(b) in its discretion, to examine and report to the Legislative Assembly on the accounts of any body of a kind that is specified in the Schedule;

(c) to examine and report to the Assembly on all internal audit reports produced by the Internal Audit Department of the Government;

(d) to consider and report to the Assembly on the effectiveness of the regulation by the Government of bodies to whom the Assembly or the Government has granted franchises to provide services of a public nature; and

(e) to consider and report to the Governor on any other matter that the Governor may refer to the Committee.

(2) The functions of the Committee do not include —

(a) the consideration of matters of policy; or

(b) the examination of estimates of expenditure.

(3) In carrying out its functions —

(a) the Committee is to consider, in terms of economy, effectiveness and efficiency, the benefit derived from the expenditure of public money; and

(b) it may consider the adequacy of the Government's arrangements for the management of financial risk.

(4) The Governor may by Order amend the Schedule.

## **12. Consultation with the Legislative Assembly**

(1) Within six months after the commencement of this Ordinance, and within six months after the beginning of each subsequent year, the Committee is to submit to the Legislative Assembly in writing the Committee's intended programme for the year next following the one in which it is submitted.

(2) The submission must show how the Committee intends to apply its funds in carrying out the programme.

(3) In carrying out the programme for which a submission is made, the Committee is to consider any views expressed by the Legislative Assembly in respect of the programme.

## **13. Delivery of internal audit reports to Committee**

The Internal Audit Department of the Government is to deliver to the secretary a copy of each internal audit report within seven days after the report is produced.

## **14. Response to Committee's report**

(1) If the Committee, in reporting to the Legislative Assembly, recommends that the Government should or should not take a course of action, the Governor is to submit within six months a written response to the Assembly.

(2) The response is to state —

(a) whether the recommendation is accepted or rejected; and

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

(3) The response may include any other relevant comments or explanations.

## **PART III PROCEEDINGS OF THE PUBLIC ACCOUNTS COMMITTEE**

## **15. Convening of meetings**

(1) The first meeting of the Committee is to be held within three months after the commencement of this Ordinance, at a time and place within the Falkland Islands to be appointed by the chairperson.

(2) The Committee is to hold subsequent meetings within the Falkland Islands at least once every six months.

(3) The Committee's meetings, other than its first meeting, shall be held at such times and places as it may agree or as the chairperson may appoint.

(4) The secretary is to send to each member, at least three clear days before each meeting —

(a) notice in writing of the time and place of the meeting;

(b) copies of the agenda and of the reports, background papers and other documents to be considered at the meeting.

## **16. Meetings ordinarily to be open to public**

(1) The secretary is to give at least three clear days' public notice of —

(a) the time and place of each meeting of the Committee; and

(b) the fact that the documents mentioned in subsection (2) are available for public inspection at all reasonable times during office hours, at the office of the secretary.

(2) The secretary is to make available accordingly for public inspection, from the date of the notice, the reports, background papers and other documents that are to be considered at the meeting while, in the secretary's view, it is likely to be open to the public.

(3) The meetings of the Committee are to be open to the public, except as provided in section 21.

## **17. Quorum**

At a meeting of the Committee, the quorum is three members of whom —

(a) one is the chairperson or deputy chairperson;

(b) one is an appointed member; and

(c) one is an elected member.

## **18. Procedure**

(1) At a meeting of the Committee —

(a) the chairperson presides while present; and

(b) while the chairperson is not present, the deputy chairperson presides.

(2) A member who has a direct or indirect interest in any matter arising for consideration at a meeting of the Committee must disclose that interest to the Committee before taking part in its consideration of the matter.

(3) A member who is required by subsection (2) to disclose an interest must not take part in the Committee's consideration of the matter to which that interest relates without the prior leave of the person presiding.

(4) On any question arising for decision by the Committee —

- (a) a member has one vote;
  - (b) the question is to be decided by a simple majority of the votes; and
  - (c) if there is an equality of votes, the person presiding has a casting vote.
- (5) The secretary is to keep minutes of the Committee's meetings and of the decisions taken by it.
- (6) Subject to the other provisions of this Ordinance, the Committee may regulate its own procedure.

#### **PART IV HEARINGS**

##### **19. Summons to witness**

- (1) The Committee may exercise its powers under section 81(6) of the Constitution, to summon a person to appear before it and to provide information to it, by serving on the person a summons under this section.
- (2) A summons under this section is to be in writing in the prescribed form.
- (3) If a person on whom a summons is served under this section fails to appear before the Committee on the day and at the time and place specified in the summons; the chairperson may issue a warrant in the prescribed form, authorizing and directing a police officer to detain and bring the person before the Committee.
- (4) If, without reasonable excuse, a person on whom a summons is served under this section —
- (a) fails to appear before the Committee on the day and at the time and place specified in the summons; or
  - (b) fails to produce to the Committee on that day, and at that time and place, any document or publication that the summons requires the person to produce to the Committee,
- he or she is liable to a fine determined by the Committee in accordance with section 29.
- (5) Subsection (4) does not apply in respect of a document or publication in respect of which the Governor issues a certificate under section 28(1).

##### **20. Evidence**

- (1) A person giving evidence to the Committee, whether or not on oath or affirmation, has the same privileges and immunities as if he or she were giving evidence in proceedings in the Supreme Court.

(2) The Committee may, when exercising its powers under section 81(6) of the Constitution to require a person to answer questions and to provide information to it, require the person to give evidence on oath or affirmation.

(3) For the purposes of this section, any member or the secretary may administer an oath or take an affirmation.

(4) If, without reasonable excuse, a person who is required to give evidence to the Committee —

(a) if required by the Committee 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 a member of the Committee,

that person is liable to a fine determined by the Committee in accordance with section 29.

(5) Subsection (4) does not require a person to provide to the Committee information in respect of which the Governor issues a certificate under section 28(1).

## **21. Exclusion of public**

(1) The Committee is to exclude the public from its meetings when it is hearing or considering evidence of the following nature —

(a) evidence in respect of which the Governor has issued a certificate under section 28(2);

(b) evidence that relates to exempt information, as defined in section 2 of the Committees (Access to Information) Ordinance 2000; or

(c) evidence by a member of the Executive Council, where disclosure of the evidence would contravene the oath of secrecy to which section 64 of the Constitution refers.

(2) The Committee may exclude the public from its meetings when —

(a) it is hearing or considering evidence by a witness who has asked to give it in private; and

(b) the Committee is satisfied that the evidence is of a secret or confidential nature, and that it should be heard in private.

## **22. Recording of evidence**

The secretary is to record evidence that is given to the Committee.

## **23. Publication of evidence**

(1) The Committee is to publish evidence to which section 21 does not apply.

(2) Neither the Committee nor any member or other person may publish evidence to which section 21 applies without the consent of the Governor and of the Committee.

(3) Neither the Committee nor any member or other person may publish evidence to which section 21(2) refers without the consent of the witness concerned.

(4) A person who contravenes either of subsections (2) and (3) is liable to a fine determined by the Committee in accordance with section 29.

#### **24. False evidence**

If a person, in giving evidence to the Committee (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 the Committee in accordance with section 29.

#### **25. Witnesses' expenses**

(1) A person who appears before the Committee at its request, or is summoned to appear before the Committee, 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.

### **PART V OTHER PROVISIONS**

#### **26. Copies of Committee's reports**

(1) The secretary shall deliver to the Governor a copy of each report to which section 81(7) of the Constitution refers.

(2) The secretary shall deliver to the Clerk of the Legislative Assembly a copy of each report that the Committee makes to the Governor under section 11(1) of this Ordinance.

#### **27. Service on Governor's staff and British forces**

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

(2) If the Committee 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 Committee, 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.

## **28. Public interest certificates**

(1) The Governor may certify in writing for the purposes of this Ordinance that —

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

is not in the interests of national security, or is likely to adversely affect the Government's relations with the United Kingdom Government or any other government.

(2) The Governor may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is not in the interests of national security, or is likely to adversely affect the Government's relations with the United Kingdom Government or any other government.

(3) The powers under this section, so far as they relate to the production of a document by the Governor, or to the provision of any information by the Governor, are exercisable by the Governor acting on the instructions of a Secretary of State.

(4) Where subsection (3) does not apply, the powers under this section are exercisable by the Governor acting in his or her discretion.

## **29. Immunity**

No civil or criminal proceedings may be instituted against any member of the Committee for words spoken before the Committee, or written or published by the person as a member of the Committee, or by reason of any matter or thing brought by the person in the Committee by resolution, motion or otherwise.

## **30. Power of Committee to impose civil fines**

(1) If the Attorney General refers the matter to the Committee, it may impose a fine, not exceeding the prescribed maximum fine, on a person who is liable to a fine under any of sections 19(4), 20(4), 23(4) and 24.

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

## **31. Orders**

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

- (a) prescribing, for the purposes of section 7, the form of particulars of registrable interests;
- (b) prescribing, for the purposes of section 19(1), the form of a summons to appear before the Committee;
- (c) prescribing, for the purposes of section 19(2), the form of a warrant authorizing and directing a police officer to detain and bring a person before the Committee; and

(d) prescribing the maximum fine that the Committee may impose under section 29.

**32. Committees (Access to Information) Ordinance 2000 not to apply**

The Committees (Access to Information) Ordinance 2000 does not apply to the Committee.

**SCHEDULE**

(section 11)

**BODIES WHOSE ACCOUNTS THE PUBLIC ACCOUNTS COMMITTEE MAY EXAMINE**

1. A body that receives or deals with public money, other than a statutory body within the meaning of section 80(1) of the Constitution.
2. A body in which the Government is a shareholder, other than a statutory body within the meaning of section 80(1) of the Constitution.

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**OBJECTS AND REASONS**

The Public Accounts Committee is an independent body established by section 81 of the Constitution of the Falkland Islands.

It consists of five members. The chairperson and two members must be persons who are not elected members of the Legislative Assembly. The other two must be elected members of the Assembly. The former are to be appointed by the Governor, after consultation with the elected members of the Assembly. The latter are to be chosen by the elected members of the Assembly.

The Constitution charges the Public Accounts Committee with examining and reporting to the Legislative Assembly, keeping the Governor informed, on all public accounts and audit reports that must be laid before the Assembly.

It also provides (in section 81(5)) that the Public Accounts Committee shall have such other functions and operate under such procedures as may be prescribed in or under an Ordinance of the Assembly.

Section 81 itself (in subsections (4) and (6)) allows the Public Accounts Committee to invite persons to assist it in its work and take part in its proceedings, and empowers it to summon persons to appear before it, answer questions and provide information to the Committee.

The objects of the present Bill are to give the Public Accounts Committee additional functions and powers, and to provide for its procedures.

The Bill is arranged in the following way —

## **Part I – Introductory provisions**

*Clause 1* gives the name by which it may be cited.

*Clause 2* provides for the Bill to come into force on a day appointed by the Governor by a notice published in the Gazette

*Clause 3* defines words that are used in the Bill

*Clause 4* requires the members of the Committee, at their first meeting and whenever there is a subsequent vacancy, to appoint one of their number as deputy chairperson.

*Clause 5* disqualifies elected members (other than temporary members) of the Executive Council for membership of the Committee. It also provides that an elected member of the Committee vacates his or her seat on attending two consecutive meetings of the Executive Council as a temporary elected member of the Council. Given the Committee's functions of examining and reporting to the Legislative Assembly on the Government's management of public money, it is considered inappropriate that members of the Council should sit on the Committee.

*Clause 6* states that members of the Committee ordinarily hold office for four-year terms.

*Clause 7* provides for the secretary to the Committee to maintain a register of appointed members' interests.

Before taking part in the proceedings of the Committee, an appointed member must give the secretary written particulars of those interests that would be registrable under the Standing Orders of the Legislative Assembly if he or she were an elected member of the Assembly.

An appointed member of the Committee must also give the secretary the details of any subsequent changes.

The particulars will be published, and the register will be open for public inspection.

*Clause 8* entitles the members of the Committee to be reimbursed the actual and reasonable costs of travel and accommodation within the Falkland Islands when attending meetings. The Governor may by notice in the Gazette set maximum limits for reimbursement.

Members are not entitled under this clause to travelling and accommodation expenses for which they are entitled to reimbursement under the Elected Councillors' Allowances Ordinance.

*Clause 9* provides for the Governor, with the agreement of the chairperson, to appoint a public officer or some other person as the secretary to the Committee. It also provides for the Governor to appoint other public officers as staff of the Committee.

*Clause 10* provides that the funds of the Committee consist of money that the Legislative Assembly appropriates for the purpose.

## **Part II – Functions of the Public Accounts Committee**

*Clause 11* confers additional functions on the Committee. These are —

- (a) to advise the Governor on the arrangements and priorities for audits under section 80(1) of the Constitution, and the effectiveness of those audits;
- (b) in its discretion, to examine and report to the Legislative Assembly on the accounts of any body specified in the Schedule;
- (c) to examine and report to the Assembly on all internal audit reports produced by the Internal Audit Department of the Government;
- (d) to consider and report to the Assembly on the effectiveness of the Government’s regulation of bodies to whom public franchises have been granted; and
- (e) to consider and to report to the Governor on any other matter that the Governor refers to it.

The functions of the Committee will not include consideration of matters of policy or the examination of estimates of expenditure.

In carrying out its functions, it will consider the benefit to the public by way of “value for money”, by reference to economy, effectiveness and efficiency. It may also consider the adequacy of the Government’s arrangements for managing financial risk.

The Governor may by Order add to the Schedule a body that receives or deals with public money, or delete from the Schedule a body that is not a statutory body within the meaning of section 80(1) of the Constitution.

*Clause 12* requires the Committee to submit to the Legislative Assembly annually its intended programme for the following year. The submission must show how the Committee intends to apply the money that has been appropriated for its use by the Assembly.

If the Assembly expresses its views in respect of the programme to which the submission relates, the Committee is to consider those views in carrying out the programme.

*Clause 13* requires the Internal Audit Department to give copies of its internal audit reports to the secretary to the Committee.

*Clause 14* requires the Governor to submit to the Legislative Assembly within six months a written response to any recommendations by the Committee, when reporting to the Assembly, as to a course of action to be taken or not to be taken by the Government.

The response is to state whether or not the Government accepts the recommendations. If it accepts a recommendation to take a course of action, it is to say how it intends to do so.

In a response, the Government may include any other relevant comments and explanations.

### **Part III – Proceedings of the Public Accounts Committee**

*Clause 15* requires the Committee to hold its first meeting in the Falkland Islands, within three months after the Bill comes into force, and subsequently to meet within the Falkland Islands at least once every six months.

*Clause 16* requires the secretary to give public notice of each Committee meeting. The secretary is to make a copy of the agenda available for public inspection. In addition, the secretary must make available those reports, background papers and other documents that are to be considered at the meeting while, in the secretary's view, it is likely to be open to the public.

Meetings are to be open to the public except in the circumstances described in *clause 21* (below).

*Clause 17* provides that a quorum for a meeting is three persons, of whom one is the chairperson or deputy chairperson, one is an appointed member and one is an elected member.

*Clause 18* deals with the Committee's procedure.

At a meeting, a member must declare an interest in any matter under consideration before participating in it, and obtain the leave of the chairperson to participate. If it is necessary to decide a question by voting, each member will have one vote, the question will be decided by simple majority and the person presiding will (where necessary) have a casting vote. The secretary will keep minutes of meetings.

Subject to the provisions of the Bill, the Committee may regulate its own procedure.

### **Part IV – Hearings**

*Clause 19* enables the Committee to issue a formal summons, if it needs to do so, to compel a person to appear before the Committee and provide information.

If a person fails to appear in response to the summons, the Committee may issue a warrant, authorizing and directing any police officer to bring the person before the Committee.

A person who does not comply with a summons will be liable to a civil fine imposed by the Committee. However, it cannot compel the production of a document or publication in respect of which the Governor has issued a public interest certificate under *clause 28(1)* (below).

*Clause 20* gives a witness appearing before the Committee the same privileges and immunities as a witness has in the Supreme Court.

It also empowers the Committee to require a witness to testify under oath or affirmation.

A person who refuses to take an oath or make an affirmation when required to do so, or refuses without reasonable excuse to answer lawful and relevant questions, will be liable to a civil fine. However, the Committee cannot compel a witness to provide information respect of which the Governor has issued a public interest certificate under *clause 28(1)* (below).

*Clause 21* empowers the Committee to exclude the public from its meetings when it is hearing evidence of the following nature —

- (a) evidence in respect of which the Governor has issued a public interest certificate under *clause 28(2)*(below);
- (b) evidence relating to exempt information under the Committees (Access to Information) Ordinance 2000;
- (c) evidence from a member of the Executive Council that would be in breach of his or her constitutional oath; and
- (d) at the request of a witness, evidence of a secret or confidential nature.

*Clause 22* requires the secretary to record evidence taken by the Committee.

*Clause 23* requires the Committee to publish evidence taken in its proceedings, other than evidence to which *clause 21* applies.

Evidence under *clause 21* may only be published if both the Governor and the Committee consent. If it is evidence that a witness has asked to give in private, it must not be published in any event unless the witness also consents. A person who contravenes *clause 23* will be liable to a civil fine.

Under *clause 24*, a person who knowingly or recklessly give false evidence to the Committee will be liable to a civil fine.

*Clause 25* entitles persons who are requested or summoned to appear before the Committee to be reimbursed their actual and reasonable travel and accommodation costs within the Falkland Islands. The Governor may, by notice in the Gazette, set maximum limits for reimbursement.

## **Part V – Other provisions**

*Clause 26* provides for the secretary to deliver to the Governor copies of the Committee’s reports to the Legislative Assembly and, conversely, to deliver to the Clerk of the Legislative Assembly copies of the Committee’s reports to the Governor under *clause 11(1)*.

*Clause 27* provides for the manner in which the Committee may request or summon a member of the Governor's staff (whether as Governor of the Falkland Islands or as the Commissioner for South Georgia and the South Sandwich Islands) or service personnel or civilian staff of the Crown's armed forces to appear before the Committee.

*Clause 28* provides that the Governor may certify that —

- (a) the production of a specified document or publication to the Committee; or
- (b) the provision of specified information to the Committee; or
- (c) the public disclosure of specified evidence,

is not in the interests of national security, or is likely to affect adversely the Government's relations with the United Kingdom Government or another government.

Where the exercise of the power relates to the production of a document or provision of information by the Governor (whether as Governor or as the Commissioner for South Georgia and the South Sandwich Islands), it is exercisable on the instructions of a Secretary for State. In all other cases, it is exercisable by the Governor acting (as Governor or Commissioner) in his or her discretion.

*Clause 29* provides that no civil or criminal proceedings may be instituted against any member of the Committee for anything spoken, written or published, or brought in the Committee, by the member.

*Clause 30* empowers the Committee, on the reference of the Attorney General, to impose civil fines to enforce its process, not exceeding the maximum amount prescribed by Order by the Governor.

*Clause 31* empowers the Governor, by Order, to prescribe forms and to set the maximum amount of a civil fine that the Committee may impose.

*Clause 32* states that the Committees (Access to Information) Ordinance 2000 does not apply to the Committee.

The *Schedule* specifies bodies whose accounts the Committee may in its discretion examine. These are bodies that receive or deal with public funds, or in which the Government is a shareholder. However, the Schedule does not include statutory bodies that the Committee already has a duty to examine under section 81(5) of the Constitution.

**Public Accounts Committee Bill 2009**

(No:     of 2009)

ARRANGEMENT OF PROVISIONS

Clause

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# PUBLIC ACCOUNTS COMMITTEE BILL 2009

(No: of 2009)

(assented to: 20[ ]) )  
(commencement: )  
(published: 20[ ])

A BILL

for

AN ORDINANCE

To give the Public Accounts Committee established by section 81 of the Constitution additional functions, powers and duties; to provide for the Committee's procedures; and for related matters

BE IT ENACTED by the Legislature of the Falkland Islands —

## PART I INTRODUCTORY PROVISIONS

### 1. Title

This Ordinance is the Public Accounts Committee Ordinance 2009.

### 2. Commencement

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

### 3. Interpretation

In this Ordinance, unless the context otherwise requires —

“appointed member” means a member of the Public Accounts Committee who is appointed by the Governor, under section 81(1) of the Constitution;

“chairperson” means the member who is appointed by the Governor, under section 81(1) of the Constitution, as the chairman of the Committee;

“Committee” means the Public Accounts Committee established by section 81(1) of the Constitution;

“deputy chairperson” means the person who is appointed by the Committee, under section 4, to be its deputy chairperson;

“elected member” means a member of the Committee who is elected by the Legislative Assembly, under section 81(1) of the Constitution;

“Governor”, in sections 27(1) and 28, includes the Governor in his or her capacity as the Commissioner for South Georgia and the South Sandwich Islands;

“member” means a member of the Committee;

“registrable interest” means —

(a) in relation to an appointed member, an interest of which the member would be required under the Standing Orders of the Legislative Assembly to furnish particulars to the Clerk of the Legislative Assembly, if he or she were a member of the Assembly;

(b) in relation to an elected member, an interest of which he or she is required under those Standing Orders, as a member of the Assembly, to furnish particulars to the Clerk;

“secretary” means the secretary to the Committee appointed under section 9(1) by the Governor.

#### **4. Deputy chairperson**

(1) At its first meeting, and whenever there is subsequently a vacancy under this section, the Committee is to appoint one of its members to be its deputy chairperson.

(2) The deputy chairperson holds office until the expiry of the period for which he or she is appointed, or elected, as a member.

(3) However, a person ceases to be deputy chairperson on vacating a seat on the Committee, or on resigning as deputy chairperson by notice in writing under his or her hand addressed to the chairperson.

(4) The Committee may reappoint a member to be its deputy chairperson.

(5) While the chairperson is unable to exercise or discharge a function, power or duty under the Constitution, or under this or any other Ordinance, the deputy chairperson may do so on his or her behalf.

#### **5. Disqualification for membership**

(1) A person who is elected under section 58(1) of the Constitution as a member of the Executive Council is disqualified for membership of the Committee.

(2) An elected member of the Committee who is elected under section 58(1) of the Constitution as a member of the Executive Council vacates his or her seat on the Committee.

(3) An elected member of the Committee who is elected under section 60(1) of the Constitution as a member of the Executive Council vacates his or her seat on the Committee on attending two consecutive meetings of the Executive Council.

#### **6. Period of appointment**

A person is ordinarily appointed or elected as a member for a period of four years.

## **7. Members' interests**

- (1) The secretary is to maintain a register of the registrable interests of the appointed members.
- (2) Before taking part in the proceedings of the Committee, an appointed member must complete and furnish to the secretary in writing, in the prescribed form or in such other form as the Governor may approve, the particulars of the member's registrable interests.
- (3) If there is a change in his or her particulars, an appointed member must as soon as reasonably practicable notify the secretary in writing of the details of the change.
- (4) On receiving particulars of an appointed member's registrable interests, or of any change in those particulars, the secretary is to —
  - (a) enter the particulars or the change in the register;
  - (b) deliver copies of the particulars or of the change to the Governor and to the chairperson; and
  - (c) publish the particulars or the change in the Gazette.
- (5) The register is to be available for public inspection at all reasonable times during office hours, at the office of the secretary.

## **8. Members' allowances**

- (1) A member is entitled to be reimbursed his or her actual and reasonable travelling and accommodation expenses for each day on which the member attends a meeting of the Committee.
- (2) However —
  - (a) if the Governor by notice published in the Gazette sets a maximum amount or rate of travelling expenses or accommodation expenses, the member is not entitled to be reimbursed a greater amount or at a higher rate; and
  - (b) in any event, a member is not entitled to be reimbursed under this section any travelling or accommodation expenses to which he or she is entitled under the Elected Councillors' Allowances Ordinance.

## **9. Staff**

- (1) The Governor may, with the agreement of the chairperson, appoint a public officer or some other person to be the secretary to the Committee.
- (2) The appointment as secretary of a person who is not a public officer shall be on such terms and conditions as the Governor and the chairperson agree.
- (3) The Governor may appoint other public officers as staff of the Committee.

(4) The secretary and other members of the staff are subject to the direction of the Committee, and are responsible to it through the chairperson.

### **10. Funds**

The Committee's funds consist of money appropriated for the purpose by the Legislative Assembly.

## **PART II FUNCTIONS OF THE PUBLIC ACCOUNTS COMMITTEE**

### **11. Additional functions**

(1) In addition to the function specified in section 81(5) of the Constitution, the Committee has the following functions —

(a) to advise the Governor on appropriate arrangements for the auditing of accounts under section 80(1) of the Constitution, the respective priorities of audits under that subsection and the effectiveness of those audits;

(b) to examine and report to the Legislative Assembly on the accounts of all bodies that are for the time being specified in Schedule 1, whether or not they are statutory bodies within the meaning of section 80(1) of the Constitution;

(c) in its discretion, to examine and report to the Legislative Assembly on the accounts of any body of a kind that is specified in Schedule 2;

(d) to examine and report to the Assembly on all internal audit reports produced by the Internal Audit Department of the Government;

(e) to consider and report to the Assembly on the effectiveness of the regulation by the Government of bodies to whom the Assembly or the Government has granted franchises to provide services of a public nature; and

(f) to consider and report to the Governor on any other matter that the Governor may refer to the Committee.

(2) The functions of the Committee do not include —

(a) the consideration of matters of policy; or

(b) the examination of estimates of expenditure.

(3) In carrying out its functions —

(a) the Committee is to consider, in terms of economy, effectiveness and efficiency, the benefit derived from the expenditure of public money; and

(b) it may consider the adequacy of the Government's arrangements for the management of financial risk.

(4) The Governor may by Order amend Schedule 1 or Schedule 2.

## **12. Consultation with the Legislative Assembly**

(1) Within six months after the commencement of this Ordinance, and within six months after the beginning of each subsequent year, the Committee is to submit to the Legislative Assembly in writing the Committee's intended programme for the year next following the one in which it is submitted.

(2) The submission must show how the Committee intends to apply its funds in carrying out the programme.

(3) In carrying out the programme for which a submission is made, the Committee is to consider any views expressed by the Legislative Assembly in respect of the programme.

## **13. Delivery of internal audit reports to Committee**

The Internal Audit Department of the Government is to deliver to the secretary a copy of each internal audit report within seven days after the report is produced.

## **14. Response to Committee's report**

(1) If the Committee, in reporting to the Legislative Assembly, recommends that the Government should or should not take a course of action, the Governor is to submit within six months a written response to the Assembly.

(2) The response is to state —

(a) whether the recommendation is accepted or rejected; and

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

(3) The response may include any other relevant comments or explanations.

# **PART III PROCEEDINGS OF THE PUBLIC ACCOUNTS COMMITTEE**

## **15. Convening of meetings**

(1) The first meeting of the Committee is to be held within three months after the commencement of this Ordinance, at a time and place within the Falkland Islands to be appointed by the chairperson.

(2) The Committee is to hold subsequent meetings within the Falkland Islands at least once every six months.

(3) The Committee's meetings, other than its first meeting, shall be held at such times and places as it may agree or as the chairperson may appoint.

(4) The secretary is to send to each member, at least three clear days before each meeting —

(a) notice in writing of the time and place of the meeting;

(b) copies of the agenda and of the reports, background papers and other documents to be considered at the meeting.

#### **16. Meetings ordinarily to be open to public**

(1) The secretary is to give at least three clear days' public notice of —

(a) the time and place of each meeting of the Committee; and

(b) the fact that the documents mentioned in subsection (2) are available for public inspection at all reasonable times during office hours, at the office of the secretary.

(2) The secretary is to make available accordingly for public inspection, from the date of the notice, the reports, background papers and other documents that are to be considered at the meeting while, in the secretary's view, it is likely to be open to the public.

(3) The meetings of the Committee are to be open to the public, except as provided in section 21.

#### **17. Quorum**

At a meeting of the Committee, the quorum is three members of whom —

(a) one is the chairperson or deputy chairperson;

(b) one is an appointed member; and

(c) one is an elected member.

#### **18. Procedure**

(1) At a meeting of the Committee —

(a) the chairperson presides while present; and

(b) while the chairperson is not present, the deputy chairperson presides.

(2) A member who has a direct or indirect interest in any matter arising for consideration at a meeting of the Committee must disclose that interest to the Committee before taking part in its consideration of the matter.

- (3) A member who is required by subsection (2) to disclose an interest must not take part in the Committee's consideration of the matter to which that interest relates without the prior leave of the person presiding.
- (4) On any question arising for decision by the Committee —
  - (a) a member has one vote;
  - (b) the question is to be decided by a simple majority of the votes; and
  - (c) if there is an equality of votes, the person presiding has a casting vote.
- (5) The secretary is to keep minutes of the Committee's meetings and of the decisions taken by it.
- (6) Subject to the other provisions of this Ordinance, the Committee may regulate its own procedure.

#### **PART IV HEARINGS**

##### **19. Summons to witness**

- (1) The Committee may exercise its powers under section 81(6) of the Constitution, to summon a person to appear before it and to provide information to it, by serving on the person a summons under this section.
- (2) A summons under this section is to be in writing in the prescribed form.
- (3) If a person on whom a summons is served under this section fails to appear before the Committee on the day and at the time and place specified in the summons; the chairperson may issue a warrant in the prescribed form, authorizing and directing a police officer to detain and bring the person before the Committee.
- (4) If, without reasonable excuse, a person on whom a summons is served under this section —
  - (a) fails to appear before the Committee on the day and at the time and place specified in the summons; or
  - (b) fails to produce to the Committee on that day, and at that time and place, any document or publication that the summons requires the person to produce to the Committee,he or she is liable to a fine determined by the Committee in accordance with section 29.
- (5) Subsection (4) does not apply in respect of a document or publication in respect of which the Governor issues a certificate under section 28(1).

## **20. Evidence**

(1) A person giving evidence to the Committee, whether or not on oath or affirmation, has the same privileges and immunities as if he or she were giving evidence in proceedings in the Supreme Court.

(2) The Committee may, when exercising its powers under section 81(6) of the Constitution to require a person to answer questions and to provide information to it, require the person to give evidence on oath or affirmation.

(3) For the purposes of this section, any member or the secretary may administer an oath or take an affirmation.

(4) If, without reasonable excuse, a person who is required to give evidence to the Committee —

(a) if required by the Committee 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 a member of the Committee,

that person is liable to a fine determined by the Committee in accordance with section 29.

(5) Subsection (4) does not require a person to provide to the Committee information in respect of which the Governor issues a certificate under section 28(1).

## **21. Exclusion of public**

(1) The Committee is to exclude the public from its meetings when it is hearing or considering evidence of the following nature —

(a) evidence in respect of which the Governor has issued a certificate under section 28(2);

(b) evidence that relates to exempt information, as defined in section 2 of the Committees (Access to Information) Ordinance 2000; or

(c) evidence by a member of the Executive Council, where disclosure of the evidence would contravene the oath of secrecy to which section 64 of the Constitution refers.

(2) The Committee may exclude the public from its meetings when —

(a) it is hearing or considering evidence by a witness who has asked to give it in private; and

(b) the Committee is satisfied that the evidence is of a secret or confidential nature, and that it should be heard in private.

## **22. Recording of evidence**

The secretary is to record evidence that is given to the Committee.

## **23. Publication of evidence**

(1) The Committee is to publish evidence to which section 21 does not apply.

(2) Neither the Committee nor any member or other person may publish evidence to which section 21 applies without the consent of the Governor and of the Committee.

(3) Neither the Committee nor any member or other person may publish evidence to which section 21(2) refers without the consent of the witness concerned.

(4) A person who contravenes either of subsections (2) and (3) is liable to a fine determined by the Committee in accordance with section 29.

## **24. False evidence**

If a person, in giving evidence to the Committee (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 the Committee in accordance with section 29.

## **25. Witnesses' expenses**

(1) A person who appears before the Committee at its request, or is summoned to appear before the Committee, 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.

## **PART V OTHER PROVISIONS**

## **26. Copies of Committee's reports**

(1) The secretary shall deliver to the Governor a copy of each report to which section 81(7) of the Constitution refers.

(2) The secretary shall deliver to the Clerk of the Legislative Assembly a copy of each report that the Committee makes to the Governor under section 11(1) of this Ordinance.

## **27. Service on Governor's staff and British forces**

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

(2) If the Committee 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 Committee, 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.

## **28. Public interest certificates**

(1) The Governor may certify in writing for the purposes of this Ordinance that —

(a) the production of a specified document or publication to the Committee; or

(b) the provision of any specified information to the Committee,

is not in the interests of national security, or is likely to adversely affect the Government's relations with the United Kingdom Government or any other government.

(2) The Governor may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is not in the interests of national security, or is likely to adversely affect the Government's relations with the United Kingdom Government or any other government.

(3) The powers under this section, so far as they relate to the production of a document by the Governor, or to the provision of any information by the Governor, are exercisable by the Governor acting on the instructions of a Secretary of State.

(4) Where subsection (3) does not apply, the powers under this section are exercisable by the Governor acting in his or her discretion.

## **29. Immunity**

No civil or criminal proceedings may be instituted against any member of the Committee for words spoken before the Committee, or written or published by the person as a member of the Committee, or by reason of any matter or thing brought by the person in the Committee by resolution, motion or otherwise.

## **30. Power of Committee to impose civil fines**

(1) If the Attorney General refers the matter to the Committee, it may impose a fine, not exceeding the prescribed maximum fine, on a person who is liable to a fine under any of sections 19(4), 20(4), 23(4) and 24.

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

## **31. Orders**

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

- (a) prescribing, for the purposes of section 7, the form of particulars of registrable interests;
- (b) prescribing, for the purposes of section 19(1), the form of a summons to appear before the Committee;
- (c) prescribing, for the purposes of section 19(2), the form of a warrant authorizing and directing a police officer to detain and bring a person before the Committee; and
- (d) prescribing the maximum fine that the Committee may impose under section 29.

**32. Committees (Access to Information) Ordinance 2000 not to apply**

The Committees (Access to Information) Ordinance 2000 does not apply to the Committee.

**SCHEDULE 1**

(section 11(1)(b))

**BODIES WHOSE ACCOUNTS THE PUBLIC ACCOUNTS COMMITTEE IS TO EXAMINE**

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 11(1)(c))

**BODIES WHOSE ACCOUNTS THE PUBLIC ACCOUNTS COMMITTEE MAY EXAMINE**

1. A body that receives or deals with public money, other than a statutory body within the meaning of section 80(1) of the Constitution.
2. A body in which the Government is a shareholder, other than a statutory body within the meaning of section 80(1) of the Constitution.

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**OBJECTS AND REASONS**

The Public Accounts Committee is an independent body established by section 81 of the Constitution of the Falkland Islands.

It consists of five members. The chairperson and two members must be persons who are not elected members of the Legislative Assembly. The other two must be elected members of the Assembly. The former are to be appointed by the Governor, after consultation with the elected members of the Assembly. The latter are to be chosen by the elected members of the Assembly.

The Constitution charges the Public Accounts Committee with examining and reporting to the Legislative Assembly, keeping the Governor informed, on all public accounts and audit reports that must be laid before the Assembly.

It also provides (in section 81(5)) that the Public Accounts Committee shall have such other functions and operate under such procedures as may be prescribed in or under an Ordinance of the Assembly.

Section 81 itself (in subsections (4) and (6)) allows the Public Accounts Committee to invite persons to assist it in its work and take part in its proceedings, and empowers it to summon persons to appear before it, answer questions and provide information to the Committee.

The objects of the present Bill are to give the Public Accounts Committee additional functions and powers, and to provide for its procedures.

The Bill is arranged in the following way —

### **Part I – Introductory provisions**

*Clause 1* gives the name by which it may be cited.

*Clause 2* provides for the Bill to come into force on a day appointed by the Governor by a notice published in the Gazette

*Clause 3* defines words that are used in the Bill

*Clause 4* requires the members of the Committee, at their first meeting and whenever there is a subsequent vacancy, to appoint one of their number as deputy chairperson.

*Clause 5* disqualifies elected members (other than temporary members) of the Executive Council for membership of the Committee. It also provides that an elected member of the Committee vacates his or her seat on attending two consecutive meetings of the Executive Council as a temporary elected member of the Council. Given the Committee's functions of examining and reporting to the Legislative Assembly on the Government's management of public money, it is considered inappropriate that members of the Council should sit on the Committee.

*Clause 6* states that members of the Committee ordinarily hold office for four-year terms.

*Clause 7* provides for the secretary to the Committee to maintain a register of appointed members' interests.

Before taking part in the proceedings of the Committee, an appointed member must give the secretary written particulars of those interests that would be registrable under the Standing Orders of the Legislative Assembly if he or she were an elected member of the Assembly.

An appointed member of the Committee must also give the secretary the details of any subsequent changes.

The particulars will be published, and the register will be open for public inspection.

*Clause 8* entitles the members of the Committee to be reimbursed the actual and reasonable costs of travel and accommodation within the Falkland Islands when attending meetings. The Governor may by notice in the Gazette set maximum limits for reimbursement.

Members are not entitled under this clause to travelling and accommodation expenses for which they are entitled to reimbursement under the Elected Councillors' Allowances Ordinance.

*Clause 9* provides for the Governor, with the agreement of the chairperson, to appoint a public officer or some other person as the secretary to the Committee. It also provides for the Governor to appoint other public officers as staff of the Committee.

*Clause 10* provides that the funds of the Committee consist of money that the Legislative Assembly appropriates for the purpose.

## **Part II – Functions of the Public Accounts Committee**

*Clause 11* confers additional functions on the Committee. These are —

- (a) to advise the Governor on the arrangements and priorities for audits under section 80(1) of the Constitution, and the effectiveness of those audits;
- (b) to examine and report to the Legislative Assembly on the accounts of all of the bodies specified in Schedule 1 (whether or not they are statutory bodies that the Committee must report on under section 81(5) of the Constitution);
- (c) in its discretion, to examine and report to the Legislative Assembly on the accounts of any other body that receives or deals with public funds or in which the Government is a shareholder, except a statutory body on which the Committee must report under section 81(5) of the Constitution (see Schedule 2).
- (d) to examine and report to the Assembly on all internal audit reports produced by the Internal Audit Department of the Government;
- (e) to consider and report to the Assembly on the effectiveness of the Government's regulation of bodies to whom public franchises have been granted; and

(f) to consider and to report to the Governor on any other matter that the Governor refers to it.

The functions of the Committee will not include consideration of matters of policy or the examination of estimates of expenditure.

In carrying out its functions, it will consider the benefit to the public by way of “value for money”, by reference to economy, effectiveness and efficiency. It may also consider the adequacy of the Government’s arrangements for managing financial risk.

The Governor may by Order amend Schedule 1 or Schedule 2.

*Clause 12* requires the Committee to submit to the Legislative Assembly annually its intended programme for the following year. The submission must show how the Committee intends to apply the money that has been appropriated for its use by the Assembly.

If the Assembly expresses its views in respect of the programme to which the submission relates, the Committee is to consider those views in carrying out the programme.

*Clause 13* requires the Internal Audit Department to give copies of its internal audit reports to the secretary to the Committee.

*Clause 14* requires the Governor to submit to the Legislative Assembly within six months a written response to any recommendations by the Committee, when reporting to the Assembly, as to a course of action to be taken or not to be taken by the Government.

The response is to state whether or not the Government accepts the recommendations. If it accepts a recommendation to take a course of action, it is to say how it intends to do so.

In a response, the Government may include any other relevant comments and explanations.

### **Part III – Proceedings of the Public Accounts Committee**

*Clause 15* requires the Committee to hold its first meeting in the Falkland Islands, within three months after the Bill comes into force, and subsequently to meet within the Falkland Islands at least once every six months.

*Clause 16* requires the secretary to give public notice of each Committee meeting. The secretary is to make a copy of the agenda available for public inspection. In addition, the secretary must make available those reports, background papers and other documents that are to be considered at the meeting while, in the secretary’s view, it is likely to be open to the public.

Meetings are to be open to the public except in the circumstances described in *clause 21* (below).

*Clause 17* provides that a quorum for a meeting is three persons, of whom one is the chairperson or deputy chairperson, one is an appointed member and one is an elected member.

*Clause 18* deals with the Committee's procedure.

At a meeting, a member must declare an interest in any matter under consideration before participating in it, and obtain the leave of the chairperson to participate. If it is necessary to decide a question by voting, each member will have one vote, the question will be decided by simple majority and the person presiding will (where necessary) have a casting vote. The secretary will keep minutes of meetings.

Subject to the provisions of the Bill, the Committee may regulate its own procedure.

#### **Part IV – Hearings**

*Clause 19* enables the Committee to issue a formal summons, if it needs to do so, to compel a person to appear before the Committee and provide information.

If a person fails to appear in response to the summons, the Committee may issue a warrant, authorizing and directing any police officer to bring the person before the Committee.

A person who does not comply with a summons will be liable to a civil fine imposed by the Committee. However, it cannot compel the production of a document or publication in respect of which the Governor has issued a public interest certificate under *clause 28(1)* (below).

*Clause 20* gives a witness appearing before the Committee the same privileges and immunities as a witness has in the Supreme Court.

It also empowers the Committee to require a witness to testify under oath or affirmation.

A person who refuses to take an oath or make an affirmation when required to do so, or refuses without reasonable excuse to answer lawful and relevant questions, will be liable to a civil fine. However, the Committee cannot compel a witness to provide information in respect of which the Governor has issued a public interest certificate under *clause 28(1)* (below).

*Clause 21* empowers the Committee to exclude the public from its meetings when it is hearing evidence of the following nature —

- (a) evidence in respect of which the Governor has issued a public interest certificate under *clause 28(2)*(below);
- (b) evidence relating to exempt information under the Committees (Access to Information) Ordinance 2000;
- (c) evidence from a member of the Executive Council that would be in breach of his or her constitutional oath; and
- (d) at the request of a witness, evidence of a secret or confidential nature.

*Clause 22* requires the secretary to record evidence taken by the Committee.

*Clause 23* requires the Committee to publish evidence taken in its proceedings, other than evidence to which *clause 21* applies.

Evidence under *clause 21* may only be published if both the Governor and the Committee consent. If it is evidence that a witness has asked to give in private, it must not be published in any event unless the witness also consents. A person who contravenes *clause 23* will be liable to a civil fine.

Under *clause 24*, a person who knowingly or recklessly give false evidence to the Committee will be liable to a civil fine.

*Clause 25* entitles persons who are requested or summoned to appear before the Committee to be reimbursed their actual and reasonable travel and accommodation costs within the Falkland Islands. The Governor may, by notice in the Gazette, set maximum limits for reimbursement.

## **Part V – Other provisions**

*Clause 26* provides for the secretary to deliver to the Governor copies of the Committee's reports to the Legislative Assembly and, conversely, to deliver to the Clerk of the Legislative Assembly copies of the Committee's reports to the Governor under *clause 11(1)*.

*Clause 27* provides for the manner in which the Committee may request or summon a member of the Governor's staff (whether as Governor of the Falkland Islands or as the Commissioner for South Georgia and the South Sandwich Islands) or service personnel or civilian staff of the Crown's armed forces to appear before the Committee.

*Clause 28* provides that the Governor may certify that —

- (a) the production of a specified document or publication to the Committee; or
- (b) the provision of specified information to the Committee; or
- (c) the public disclosure of specified evidence,

is not in the interests of national security, or is likely to affect adversely the Government's relations with the United Kingdom Government or another government.

Where the exercise of the power relates to the production of a document or provision of information by the Governor (whether as Governor or as the Commissioner for South Georgia and the South Sandwich Islands), it is exercisable on the instructions of a Secretary for State. In all other cases, it is exercisable by the Governor acting (as Governor or Commissioner) in his or her discretion.

*Clause 29* provides that no civil or criminal proceedings may be instituted against any member of the Committee for anything spoken, written or published, or brought in the Committee, by the member.

*Clause 30* empowers the Committee, on the reference of the Attorney General, to impose civil fines to enforce its process, not exceeding the maximum amount prescribed by Order by the Governor.

*Clause 31* empowers the Governor, by Order, to prescribe forms and to set the maximum amount of a civil fine that the Committee may impose.

*Clause 32* states that the Committees (Access to Information) Ordinance 2000 does not apply to the Committee.

*Schedule 1* specifies bodies whose accounts the Committee must examine and report on.

*Schedule 2* specifies the kinds of bodies whose accounts the Committee may in its discretion examine and report on.