

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Public Accounts Committee (Amendment)(No 2) Bill

Paper No: 223/10

Date: 16 September 2010

Report of: Attorney General

1.0 Purpose

To put the Public Accounts Committee (Amendment)(No 2) Bill 2010 before Executive Council for consideration.

2.0 Recommendation

If Executive Council agree that the amendment should be made, that the Public Accounts Committee (Amendment)(No 2) Bill 2010 be gazetted and be considered at the October meeting of the Assembly.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 Executive Council gave approval in February 2010 to the introduction into the Assembly, under a certificate of urgency, of the Public Accounts Committee (Amendment) Bill. The Bill dealt with two amendments to the Ordinance: giving the Public Accounts Committee a limited power to enter into contracts, and enabling it to sit in private unless it was taking evidence from a witness.

4.2 When the Bill was introduced at the February Assembly meeting, MLA Roger Edwards moved a Motion that the clauses relating to the second part of the Bill (sitting in private) should be deleted. After a debate, the Assembly voted in favour of the Motion by five votes to two. So the clauses were deleted. A copy of the debate is at Annex A.

4.3 On 12 July the chairman of the Public Accounts Committee wrote to Members asking them to reconsider. The letter is at Annex B to this paper.

4.4 Members have considered this request, and have agreed to the amendments being resubmitted to the Assembly.

4.5 This Bill, in very similar terms to the previous text, does that. The text is at Annex C.

4.6 There is no legal bar to this going to the Assembly again; whether the Bill should be reintroduced a matter of six months after the Assembly voted to remove them from the Bill is a matter of policy for Executive Council.

4.7 On the one hand, the requirement that currently exists for all meetings to be ordinarily held in public is difficult to justify; Executive Council was convinced by the arguments that were put forward in February for putting the original Bill before the Assembly, and even though the clauses were then removed from the Bill by the Assembly, the logical justification for making the change seems as strong now as it was then. The Treasury support the change being made.

4.8 On the other, it does seem very odd for the matter being placed before the Assembly again so soon after it was rejected by the Assembly. What justification could Members give for their change of mind? Moreover, the Public Accounts Committee has held very few meetings since it was established, and repeated tinkering with legislation is to be discouraged. The argument that it would be better to review matters after a longer period of time has passed, possibly as part of a wider review of the working of the Public Accounts Committee and the Ordinance, has some force.

5.0 Financial Implications

None

6.0 Legal Implications

None

7.0 Human Resources Implications

None

The Capital Expenditure to date of the ferry terminals and associated works to form and upgrade access roads linking to these is the terminal's permanent and temporary works £2,138,000 Roads – construction, upgrading and capping is £1,190,000.

The projected further cost of capital works is for the ferry terminals is £752,000 and that's for the construction of the permanent terminal at Port Howard.

Moving on to roads, which gives a figure of £1,218,000 and this is for the completion of capping to Newhaven this season and of the remainder of the road from Port Howard to Fox Bay to remove the need to place a 15-tonne weight restriction on those sections of road in the winter and to enable year-round freight container haulage from Stanley to Fox Bay via ferry terminals.

This makes a grand total of £5, 298,000 actual and projected expenditure.

The Honourable Jan Cheek

I thank the Honourable Gavin Short for his reply.

Clerk of the Assembly

ORDER OF THE DAY: BILLS

Public Accounts Committee (Amendment) Bill 2010. This Bill is being presented under a Certificate of Urgency and will require a first reading.

The Honourable Chief Executive

Mr Speaker I beg the first reading of the Bill and I will be asking my learned friend, the Attorney General to explain the details.

The Attorney General

Mr Speaker, Honourable Members, this Bill seeks to amend the Public Accounts Committee Ordinance which came into force on the 1st of February 2010 in response to representations made to the Government from the Members of the Public Accounts Committee.

The main purpose of the Bill is to make two changes to the arrangements of the Committee that were set out in the Ordinance. The first was to give the Committee a limited power to enter into contracts in its own name in order to carry out its functions. An example would be a contract with a person, for that person to act as a secretary to the Committee. The Ordinance contains no such power, it being envisaged that all such contracts would be entered into by the Government on behalf of the Committee.

The second is to clarify the extent to which meetings of the Committee should be open to the public. The Ordinance provides that all meetings of the Committee should ordinarily be open to the public. This Bill would amend that so that only hearings in which evidence is to be taken would be subject to that requirement. Valid arguments

exist to justify both the positions set out in the Ordinance and the changes which are proposed to be made by this Bill.

In relation to the power to enter into contracts, there is certainly no absolute requirement for the changes to be made. The system can operate perfectly well under the provisions of the Ordinance. But on the other hand, for the contracts to be entered into in the Committee's own name, emphasises the independence of the Committee from the Government.

It should be noted that the power to enter into contracts provided by this Bill protects the public purse by providing that such contracts can only be entered into by the Committee if the terms and conditions of any contract have been agreed in advance by the Governor advised by Executive Council.

In relation to public hearings there is, of course, some irony in one of the first steps of the Committee being to seek to restrict the right of the public to attend its meetings. But it has to be recognised that obvious difficulties would arise from a meeting of a Committee taking place in advance of a hearing at which evidence will be taken from a particular individual at which how the hearing will be conducted, what areas will be probed and what questions will be asked will be discussed by the Committee Members and all of that having to take place in public, thus giving the individual an enormous advantage when it comes to actually give their evidence.

Similarly, after the evidence has been taken and the Committee is considering its report on a particular investigation, it might well be counter-productive if the process of agreeing what should be in that report had to take place in public.

So what this Bill does is to provide that it should only be at meetings at which the Committee is to take evidence that it should be subject to the requirements that would be ordinarily held in public. That would enable the Committee to hold its other meetings in private should it decide to do so.

The position that only hearings where evidence is to be taken are open to the public is, as I understand it, is the position in relation to the UK Parliament Public Accounts Committee.

Mr Speaker, Honourable Members, the final change made by this Bill is to correct some cross-referencing errors in the Ordinance.

Mr Speaker, Honourable Members, I hope the explanation I have provided is helpful and I commend this Bill to the Assembly.

The Honourable Director of Corporate Resources

I second the Motion

Mr Speaker

The Motion is that the Bill be read a first time, is there any objection to the Motion? No objection, the Bill will be read a first time.

Clerk of the Assembly

Public Accounts Committee (Amendment) Bill 2010

The Honourable Chief Executive

Mr Speaker, I beg to move that the Bill be read a second time.

Mr Speaker

The Motion is that the Bill be read a second time, does any Honourable Member wish to speak to the Motion?

The Honourable Roger Edwards

Mr Speaker, Honourable members, in the terms of the present ordinance for the Public Accounts Committee there's already facilities for specific and confidential items to be held in private or in closed session. And as we are often criticised for not being open and above board, surely if anything should be open and above board, it should be the Public Accounts Committee. I therefore move that clauses 6, 7, and 8 of the amendment be deleted from this Bill.

Mr Speaker

We will take that motion when we are in Committee if you don't mind. Then we can do that amendment. Is there any other Honourable Member who wishes to speak to the Motion for the Second Reading? Is there any objection to the Motion? The Bill will be read a second time.

Clerk of the Assembly

Public Accounts Committee (Amendment) Bill 2010

Mr Speaker

The Assembly is now in Committee

Clerk of the Assembly

Clauses 1-9

Mr Speaker

The Motion is that clauses 1 – 9 stand part of the Bill. The Honourable Roger Edwards to move his Motion for amendment to the Bill.

The Honourable Roger Edwards

Yes as I moved earlier these items be deleted, we have for many years been criticised by members of the public that they do not have access to various committees and hearings and the like. And surely one that should always be held in public is a Public

Accounts Committee, which I welcome, by the way. I think it is a great step forward. However, at the outset, we mustn't be seen to be giving an opt-out clause for that Committee to hold meetings in private or in closed session. I am sure members of the public will be very critical of that and will come back and say surely there is something going on behind the scenes. And it is for that reason that I wish for clauses 6, 7, and 8 to be deleted I encourage debate among my fellow Members and if there are any queries on that perhaps the Attorney General can actually explain in more detail any points that come up but I would wish that those points be discussed.

The Honourable Jan Cheek

Mr Speaker, Honourable Members, I am supporting my colleague the Honourable Roger Edwards in this because I think it needs to be openly debated. We've no wish to strangle the Public Accounts Committee at birth but on the other hand we do need to understand very clearly any reasons for holding sessions in private. I look forward to hearing from the two Members who sit on that Committee and to hearing the opinions of others.

The Honourable William Luxton

Mr Speaker I wonder if the Attorney General could assist in this matter. The Honourable Roger Edwards said there are already provisions in the Bill for the Committee to sit in private in some cases. So if that already exists what's to be gained by introducing these new sections which would allow them to sit in secret? Is there already a provision in the Bill for that?

The Attorney General

There is limited provision in the Ordinance for that. Section 21 of the Public Accounts Committee Ordinance deals with exclusions of the Public and it deals with some circumstances in which the Committee has to exclude the public when it is actually hearing evidence and considering evidence which is what's relevant to the current amendments and they are things like if it relates to exempt information as defined in the Committees Access to Information Ordinance or evidence by a Member of Executive Council where disclosure would contravene the Oath of Secrecy to which the member has sworn. And the Committee has the discretion to exclude the public so it's up to the Committee to do so.

In the following circumstances where the Committee is hearing or considering evidence by a witness who has asked to give it in private and the Committee is satisfied that the evidence is of a secret or of a confidential nature and that it should be heard in private.

So they are the only circumstances currently in which the committee can meet in private. None of those would be applicable to the sort of circumstances which the Committee has raised with Government, which are the preparatory stages to a hearing and the consideration of a report after the hearing where what is at issue is not the nature of the evidence that is taken but the decision-making process of the Public Accounts Committee itself.

So that's the issue which is raised by the current amendments and the Honourable Member's amendment.

The Honourable Sharon Halford

Mr Speaker, Honourable Members, I guess as a Member of the Public Accounts Committee I must declare an interest.

I think the Attorney General has put our case quite well actually as to why we asked for these amendments. I am pleased to see that the Honourable Jan Cheek doesn't want to strangle us at birth. I thought some of the Government Departments did. But never mind. We seem to be a thorn in the side in some areas. But I do think it's important that we are able to have some meetings which are not in the public domain and certainly from all the discussions we had today it would not be our intention to be away from the public eye very much because we are all aware that it as much as possible does need to be in the public domain. But I, Mr Speaker, would actually like to see these left in.

The Honourable Emma Edwards

I am declaring my interest also in the Public Accounts Committee. I would also like to support that these particular clauses remain within this particular Bill.

The Honourable Gavin Short

Mr Speaker I think I would like to join with my colleagues across the table and say that maybe we should keep this as open as we can. I can certainly see the difficulties raised for these changes but I would favour actually removing these and keeping as close as possible to the original.

May I also ask a question if it is the time or place to do so? Could I have clarification on the contract side that the Committee may enter into a contract, I believe, with the say-so of the Governor with consultation with Executive Council? That's obviously going to have financial implications. Will they only be able to enter into contract where funds exist or could we find a contract being entered into that perhaps Members of Standing Finance Committee have no knowledge of until after the deed is done? If that is the case, then who would be liable?

The Attorney General

I thank the Honourable Member for that question. I think there are two separate issues there. The first is the budgetary issue and we envisage that the funds for the Public Accounts Committee should be dealt with in the budget process in the normal way so that it will be agreed and approved ultimately by Legislative Assembly as part of the budget process. As to how they actually spend their money, that is fundamentally a matter for the Public Accounts Committee. But if they are entering into these sort of agreements that have legal effect then the provision in this amendment Bill is to require the Governor to agree and ascent to the terms of the contracts that are being entered into precisely to ensure that they are appropriate given the budgetary constraints that the Committee has to operate under. So that if the Governor advised by Executive Council was satisfied that, for example, a particular

contract would result in the budget being exceeded that would be a good reason for the Governor to refuse to consent to that contract being entered into. So that's how we control it – through the actual entering into a particular contract through Executive Council and through a Treasury input into that.

The Honourable Gavin Short

I just wish to thank the Attorney General for his reply. Its clarified things very nicely for me.

The Honourable Glenn Ross

Mr Speaker, Honourable Members, it's not a question but a comment. I am possibly the only member of the Legislative Assembly that isn't that delighted by the arrival of the Public Accounts Committee. My concern stems from the funding of it. I think in its first year it will consume £31,000 and it will be money after the fact. After the disaster has already happened and I think we need to keep a very close eye on our future expenditure on this Committee.

Mr Speaker

The Motion before the House is that Clauses 6, 7, and 8 are deleted from the Bill. Those in favour of the Motion say Aye, Those against the amendment say Nay.

Please could we have a division on this.

Those in agreement:

The Honourable Jan Cheek
The Honourable Roger Edwards
The Honourable William Luxton
The Honourable Glenn Ross
The Honourable Gavin Short

Those not in agreement:

The Honourable Emma Edwards
The Honourable Sharon Halford

The amendment is carried.

The Honourable Chief Executive

Accordingly Mr Speaker, I beg to move that clauses 1 to 5 and 9 stand part of the Bill.

Mr Speaker

The Motion is that clauses 1 to 5 and 9 stand part of the Bill, is there any objection? No objection, clauses 1 to 5 and 9 stand part of the Bill.

Clerk of the Assembly

There is no schedule.

Mr Speaker

The Assembly resumes.

The Honourable Chief Executive

Mr Speaker I beg to move that the Bill be read a third time and passed.

Mr Speaker

The Motion is that the Bill be read a third time and passed, is there any objection to that Motion. There is no objection the Bill will be read a third time and passed.

Clerk of the Assembly

Public Accounts Committee (Amendment) Bill 2010

The Motion for Adjournment.

The Honourable Chief Executive

Mr Speaker, I move that this House stands adjourned *Sine Die*.

Mr Speaker

Honourable Members the Motion is that the House stands adjourned *Sine Die*.

The Honourable Roger Edwards

Mr Speaker, Honourable members, in continuing the theme of trying to start the Motion for Adjournment on happy news rather than sad news or criticism, I would like to bring to the attention of people the actual generosity of the Falkland Islanders and indeed those servicemen and women serving here in the Falklands to the amount of money they actually raise for charitable purposes. I think you only have to get as far as page 3 of Penguin News this morning and you realise that within a week we've raised several thousand pounds with a garden party at Government House, farm visits to Port Louis and the like, walking the MPA Road and it is just staggering the amount of money and the generosity of the people here in the Falkland Islands. I am not aware currently of what the Haiti Appeal stands at but I think it shows that island people recognise the needs of island people can raise money but that was very specific. But overall I do congratulate the honesty, the generosity of the people of the Falklands in raising such huge sums of money for charitable causes around the world.

Last week we saw Penguin News with very large blue and white flags across the front page with yellow suns and the like. It just brings home to people that however clever you think you might be using your computer and sending messages left right and centre you must always be very, very careful because somebody next door is a darn

GPC



Public Accounts Committee

Shackleton House PO Box 420 Stanley Falkland Islands FIQQ1ZZ
Tel +500 22905 Email: pac@cwimail.fk

12 July 2010

Honourable Members of Legislative Assembly
Gilbert House
Stanley

Dear Assembly Members

PAC – conduct of business

The Committee have asked that I raise with you the situation regarding the extent to which meetings of the Committee should be open to the Public.

I would like to make it clear that in no way are we seeking to diminish the transparency properly required of the Committee's business, it is an indispensable prerequisite for public trust.

However the legislation as it currently stands requires that all meetings of the members of the Committee must be held in public. (except those dealing with a number of matters which are specified). We are concerned here with what may be called 'administrative' meetings.

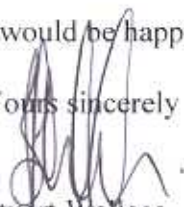
The business of the Committee requires considerable preparation, there are normal office administrative and financial matters to deal with, not all can be dealt with by the Chair person alone, it is often required that members jointly consider matters. Planning for inquiries and briefings requires considerable discussion to ensure that they use time efficiently and are as effective as possible. Drafting of reports and preparation of questions for witnesses involve a great deal of prior consideration. It is not difficult to see that the effectiveness of any inquiry is reduced if there is prior knowledge of the specific questions which may be asked and all consideration of final reports is required to be conducted in public. There are also occasions when information is received that simple common sense indicates would at least initially be best considered at a 'private' meeting of members.

No other Public Accounts Committee that I have researched works under this disadvantage.

It has been said that the PAC members can 'get around' this requirement with a little ingenuity, no doubt this is true, but doing so places members, who after all are people volunteering for this public service, in a difficult and uncomfortable position. No one is at ease in such a situation. This could be avoided with an appropriate change in the legislation, perhaps permitting the Chairman some discretion in the matter.

I would be happy to meet with you to discuss this matter if it would be helpful.

Yours sincerely



Stuart Wallace
Chairman

DRAFT: 18.8.2010 (RMB)

Public Accounts Committee (Amendment)(No 2) Bill 2010

(No: of 2010)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of the Public Accounts Committee Ordinance
4. Section 16 repealed
5. New section 18A
6. Section 21 amended – Exclusion of public
7. Section 31 amended – Orders

PUBLIC ACCOUNTS COMMITTEE (AMENDMENT)(NO 2) BILL 2010

(No: of 2010)

(assented to: 2010)
(commencement: on publication)
(published: 2010)

A BILL

for

AN ORDINANCE

To amend the Public Accounts Committee Ordinance (No 11 of 2009).

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Public Accounts Committee (Amendment)(No 2) Ordinance 2010.

2. Commencement

This Ordinance comes into effect on publication in the *Gazette*.

3. Amendment of the Public Accounts Committee Ordinance

This Ordinance amends the Public Accounts Committee Ordinance.

4. Section 16 repealed

Section 16 is repealed.

5. New section 18A

The following new section is inserted above section 19 —

“18A. Hearings ordinarily to be open to public

(1) Meetings at which the Committee is hearing evidence are to be open to the public, except as provided in section 21.

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

(a) the time and place of each meeting that is to be open to the public; and

(b) the fact that the documents mentioned in subsection (3) are available for public inspection at all reasonable times during office hours, at the office of the secretary.

(3) The secretary must, from the date of the notice, make available for public inspection the statements, 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.”

6. Section 21 amended – Exclusion of public

In section 21, the words “or considering” are repealed in both places where they appear.

7. Section 31 amended – Orders

- (1) This section amends section 31.
- (2) In paragraph (b), “19(1)” is repealed and “19(2)” substituted.
- (3) In paragraph (c), “19(2)” is repealed and “19(3)” substituted.

OBJECTS AND REASONS

This Bill would amend the Public Accounts Committee Ordinance (No 11 of 2009) to reflect issues that have arisen since the Committee began its work and to correct two minor cross-referencing errors.

Currently, section 16 of the Ordinance provides that all of the Committee’s meetings are open to the public, subject only to limited exceptions under section 21.

It is proposed that meetings of the Committee at which it is hearing evidence should remain open, still subject to slightly amended exceptions in section 21. On the other hand, it is proposed that other meetings (at which it might, for example, be considering administrative matters or how a particular investigation or particular hearing should be conducted or drafting its reports) should not routinely be open.

Clause 4 would repeal section 16, which contains the existing provision that meetings of the Committee are to be open to the public.

This would be replaced, under *clause 5*, with a new section 18A providing that (subject to section 21, as amended):

- (a) meetings at which evidence is to be heard are to be open to the public; and
- (b) documents (to include statements) are to be made available to the public if they are to be considered while a meeting is likely to be open to the public.

Clause 6 would make a consequential amendment to section 21.

Clause 7 would correct two minor cross-referencing errors in section 31.