

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Members' Remuneration and Pension Arrangements

Paper No: 234/09

Date: 26 November 2009

Report of: Legislative Drafter

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for the publication and presentation of three Bills drafted to implement the recommendations of the Independent Panel on Members' Remuneration. These recommendations are set out in Appendix 1 for ease of reference.

2.0 Recommendations

Executive Council is asked to consider whether to approve the publication and presentation of the three Bills annexed to this report:

- (1) The Members' Remuneration Bill;
- (2) The Retirement Pensions (Amendment) Bill; and
- (3) The Falkland Islands Pensions Scheme (Amendment) Bill.

The draft Bills reflect the recommendations of the Independent Panel on Members' Remuneration and the decisions taken by Executive Council at its meeting on 17 September 2009 (paper 218/09).

Executive Council's attention is, however, drawn – in particular – to the issues raised in paragraphs 6.3, 6.9 and 6.10 (Legal Implications) and in section 7 (HR Implications).

Executive Council is also asked to consider whether further work needs to be undertaken to address these issues.

3.0 Summary of Financial Implications

No new implications

4.0 Background

4.1 Executive Council had previously agreed to the establishment of an Independent Panel to conduct a review of Members' remuneration and to consult with the public before making recommendations.

4.2 It was originally intended that this process would have been completed in time for the recent General Election. This would seem to be on the basis that there appears to be a convention that Members should not vote upon their own remuneration but only upon that of their successors following a General Election.

4.3 However, for a combination of reasons, the work of the Independent Panel was significantly delayed and its recommendations were only presented to Executive Council at its meeting on 17 September 2009, shortly before the recent General Election.

4.4 The report of the Independent Panel (which included a set of 10 recommendations) is Executive Council paper 218/09.

4.5 The recommendations of the Independent Panel are set out at Appendix 1 to this report.

4.6 Recommendation 7 (relating to childcare expenses) was not accepted by Executive Council but further work on expenses such as childcare and farm care was commissioned. The other recommendations were accepted and it was also decided that there should be improved oversight of expenses claims.

4.7 The relevant extracts from the minutes of the Executive Council are set out at Appendix 2 to this report.

4.8 Recommendations 2, 3 and 4 (relating to the amounts of annual and daily allowances, including the introduction of enhanced allowances for elected members of the Executive Council) were implemented on an interim basis by the Elected Councillors' Allowances (Amendment) Order 2009 (SR&O No 19 of 2009) which was made on 6 October 2009, published in the *Gazette* on 31 October 2009 and came into force on 6 November 2009.

4.9 The remaining recommendations that required legislation to implement them were Recommendations 5, 6 and 8 (relating to Members' pension arrangements and the reimbursement of expenses). The decision taken by Executive Council in relation to oversight also required legislation.

4.10 Not only did these require more extensive amendments to the Elected Councillors' Allowances Ordinance, the Retirement Pensions Ordinance (and its subsidiary legislation) and the Falkland Islands Pensions Scheme Ordinance (and its subsidiary legislation) but some of these changes could only be made by Ordinance rather than simply being achieved by means of subsidiary legislation.

4.11 The three Bills annexed to this report would implement Recommendations 5, 6 and 8 and the decision taken by Executive Council in relation to oversight.

4.12 The opportunity has also been taken to prepare a completely new Members' Remuneration Ordinance to replace the old Elected Councillors' Allowance Ordinance, consolidating the existing provisions (including the recent amendments made to implement Recommendations 2, 3 and 4).

4.13 The opportunity has also been taken to make a number of minor amendments to the Falkland Islands Pensions Scheme Ordinance and its subsidiary legislation to bring out-dated references to the Financial Secretary up to date by replacing them with references to the Director of Corporate Resources.

4.14 More detailed explanations of the three Bills appear in the Objects and Reasons sections that appear at the end of each Bill. However, a summary of the changes that would be made by the Bills appears in the Legal Implications section of this paper. That section also raises a number of issues in relation to which it is considered that Executive Council's attention should specifically be drawn.

4.15 The proposed changes would be backdated to 6 November 2009, the date on which Members took office following the General Election. This is in line with the recommendations of the Independent Panel, which were considered by Executive Council at its meeting on 17 September 2009.

4.16 Although it might seem that these changes would involve Members breaching the apparent convention that they should not decide upon their own remuneration, it should be borne in mind that the proposed changes reflect the recommendations of an Independent Panel and decisions taken by the previous Executive Council before the recent General Election.

4.17 Executive Council is, therefore, is asked to consider whether to to approve the three Bills for publication in the *Gazette* and presentation to the Legislative Assembly.

5.0 Financial Implications

5.1 There are no new financial implications as a result of the legislation, as the financial implications of the Independent Panel's recommendations had already been considered and agreed by Executive Council at its meeting on 17 September 2009.

5.2 They have also been incorporated into the budget submission for 2010/11 made by the Office of the Legislative Assembly.

5.3 For ease of reference, the changes represent in an increase of £60,000 in a full year in the budget for Members' allowances and expenses.

5.4 One element on which that figure was based was £4,800 in respect of Retirement Pension Contributions (RPCs) – that was indicated to be the maximum amount payable on the basis that some Members might be employed, in which case the employers' RPC might be payable by their employers.

5.5 Although it was initially proposed that Members' RPCs might only be paid by the Office of the Legislative Assembly as a last resort, it was subsequently decided that the Office of the Legislative Assembly should pay RPCs for all Members not already entitled to a pension.

5.6 Of the current Members, two are already entitled to a pension (and a third will become entitled to one within the next year), so RPCs would not have to be paid for them.

5.7 Moreover, two Members are FIG employees, meaning that, although contributions will have to be paid for them out of the Office of Legislative Assembly budget, contributions will not have to be paid for them out of the Education and Power Supply budgets. To that extent, therefore, there will be no net effect on the FIG budget as a whole.

5.8 Clearly, however, both the amount payable out of the Office of the Legislative Assembly budget and the net effect on the FIG budget as a whole would always depend upon the composition of the Assembly from time to time.

5.9 Another element on which the figure of £60,000 in a full year was based was £16,000 in respect of contributions to the Falkland Islands Pensions Scheme. Unlike the provision for RPCs, this was not specifically indicated as a maximum figure but was based on an assumption that FIPS contributions would be paid for all eight Members at a rate of 10% on total allowances of £160,000.

5.10 Clearly, however, the amount payable out of the Office of the Legislative Assembly budget would always depend on both how many Members opt into the pension arrangements and the amounts actually paid to those Members in allowances.

6.0 Legal Implications

6.1 This section does not contain a line by line analysis of the draft Bills and Executive Council is referred to the Objects and Reasons sections at the end of each Bill.

6.2 However, this section does contain a summary of the key changes that would be made if the draft Bills became law and also of issues to which it is considered that Executive Council's attention ought to be drawn.

Members' Remuneration Bill

6.3 *Clause 6* would introduce new oversight provisions in relation to the payment of claims made by Members. Whilst it might be argued that these provisions go beyond what was originally envisaged by Executive Council, it is considered that "checks and balances" are necessary to ensure the prudent use of public resources and to maintain public confidence in the system. This provision would also give force to the existing administrative practice of requiring Members to certify their claims.

6.4 *Clause 8* introduces a new provision for Members' allowances and expenses to be published. Although there has been no requirement in the past for amounts paid to Members to be published, it has been the practice to publish Members' allowances but not their expenses. It is now proposed to extend this to Members' expenses as well.

6.5 *Clause 10(2)* would repeal a provision of the Taxes Ordinance under which allowances paid to Members are not taxable. This is a consequential amendment reflecting a decision already partly implemented by the Elected Councillors' Allowances (Amendment) Order.

6.6 The new definitions of "partner" and "unmarried couple" in *paragraph 1* of the Schedule have been included in connection with the proposed extension of the entitlement for a Member to be accompanied by his or her spouse on one overseas trip in a four year period to cover partners as well as spouses. These definitions are the same as those used in the Immigration Ordinance for the purpose of determining eligibility for Permanent Residence Permits.

6.7 The new definition of "senior officer of the Falkland Islands Government" is included in order to remove any possible doubt in relation to the level at which certain Assembly duties must be authorised. As matters stand, the Elected Councillors' Allowances Ordinance uses various terms without defining those terms, which creates unnecessary dubiety.

6.8 *Paragraph 2(g)* differs slightly but importantly from the corresponding provision in the Elected Councillors' Allowances Order in order to make it clearer what guests are covered by the provision for hosting duties being treated as Assembly duties. In relation to 'unofficial' visitors, a vague reference to "very important persons" has been replaced by a provision for the Governor (by which is meant, in effect, the Governor acting on the advice of Executive Council unless the decision is too urgent or too trivial) to approve 'unofficial' visits for this purpose.

6.9 *Paragraph 6(2)* reflects an existing practice under which Members may only claim half the daily allowance for a half day's duties, notwithstanding the strict entitlement to a full daily allowance for any day on which duties are undertaken. This would still mean that half of the daily allowance could be claimed no matter how little time were to be spent on Assembly duties – the alternative would be to introduce an hourly rate for Members but this was not recommended by the Independent Panel (and it is not clear whether or to what extent it was even considered).

6.10 *Paragraph 7(1)* reflects existing practice in relation to the payment of daily allowances for travel on overseas business. Executive Council's attention is drawn to the fact that there is a potential anomaly in that a Member could – theoretically, at least – claim a full extra day's allowance if the air bridge arrived shortly after (rather than before) midnight.

6.11 *Paragraph 7(2)* provides for the Governor to approve overseas trips for the purpose of claiming daily allowances. (*Paragraph 10(2)* makes identical

provision for the purpose of claiming travel and accommodation expenses.) This is tighter than the corresponding provision in the Elected Councillors' Allowances Ordinance, under which either the Governor or the General Purposes Committee can give the necessary approval. However, it reflects the change under the new Constitution under which the Governor must now follow the advice of Executive Council (unless the decision is too urgent or too trivial).

6.12 *Paragraph 8* would extend the existing provisions in the Elected Councillors' Allowances Ordinance (under which no more than one daily allowance can be claimed for the same day and an allowance cannot be claimed when payment is received from another source - eg director's fees). As a matter of administrative practice, there are already provisions under which employees of FIG, FIDC and FLH can claim either paid leave or an allowance but not both. This is also reflected in the Management Code (paragraph 7.3 of Chapter 8).

6.13 *Paragraphs 9(4) to 9(6)* introduce new provisions in relation to accommodation expenses within the Falkland Islands. These have been adapted from the corresponding provisions in the Management Code, which have been used, as a matter of administrative practice, in the past.

6.14 *Paragraph 10(4)* would introduce a new requirement for bookings made via FIGO in London to be approved in advance by the Clerk of the Assembly. This is to avoid any difficulties arising from bookings being made via FIGO without reference to Gilbert House staff.

6.15 *Paragraph 10(5)* does not contain any specific limit on the amounts that might be claimed in respect of subsistence during overseas travel. There is currently no such limit and this has not been changed in the draft Bill on the basis of express instructions that there is such a range of possible circumstances that it is not feasible to set a prescriptive limit. However, as a safeguard, a new provision has been included (*paragraph 10(6)*) under which the Director of Corporate Resources could restrict the amount payable where an unreasonable amount is claimed.

6.16 *Paragraphs 10(9) and 10(10)* reflect a decision taken some time ago to restrict air travel in a premium class to circumstances in which it is necessary for the conduct of the overseas business for which the travel is being undertaken. *Paragraph 10(10)(b)* cross-refers to the approval of overseas business by the Governor and also prevents any possible abuse in which an additional meeting might be arranged simply for the purpose of claiming upgraded travel.

6.17 *Paragraph 11(5)* is a new provision clarifying that the subsistence allowance payable to Members who stay in the flat at Falkland House while in London on business is an alternative to claiming reimbursement for amounts spent on meals – for any one day, it would be possible to claim one or the other but not both. This reflects existing administrative practice.

6.18 *Paragraph 12* is wider than the corresponding provision in the Elected Councillors' Allowances Order in that a unmarried Member could be accompanied by his or her partner in the same way as a married Member can

already be accompanied by his or her spouse on one overseas trip in any four year period.

6.19 *Paragraph 13* is a new provision that would reflect the existing administrative practice of issuing a laptop computer on loan to Members for the purpose of carrying out their duties. As matters stand, the Elected Councillors' Allowances Ordinance provides for the rental of a fax machine but the use of fax transmissions is now largely superseded by e-mail.

6.20 *Paragraph 14* would reflect corresponding changes to communications technology in that it would provide for the reimbursement of one landline instead of two but provide instead for a contribution towards the cost of broadband and reimbursement for the monthly fee for a mobile telephone.

6.21 *Paragraph 15* is an entirely new provision that would allow (subject to strict safeguards) for reimbursement of expenses that are not otherwise covered in the draft Bill. This is meant to cover exceptional cases.

Retirement Pensions (Amendment) Bill

6.22 Many of the changes that would be made by this Bill are technical changes that would be consequential upon the main principle of the Bill.

6.23 Members will no longer be treated as employees or self-employed persons for the purposes of Retirement Pensions Contributions (RPCs). Members who are self-employed will no longer be required to pay RPCs in that capacity. Members who are employed will no longer be required to pay RPCs in that capacity either nor will their employers.

6.24 Instead, Members who are not already entitled to a pension will have contributions deducted from their allowances at the same rate as an employee (£11.50 per week until 31 December 2009 and £12.50 per week from 1 January 2010) and the other half of those Members' RPCs will come out of the Office of the Legislative Assembly budget.

6.25 The earnings limit will not apply to Members and these contributions will be payable regardless whether a Member's total income is £180 or more in a specific week. This is to allow for the potential peaks and troughs in the daily allowances payable to Members and to ensure equity between Members at all times.

6.26 It must be pointed out that none of this would make any difference at all to Members who are already entitled to a pension nor would it make any overall difference to Members who are employed or to the overall public budget in relation to Members employed in public service. It would, however, benefit Members who are self-employed and the employers of Members employed in the private sector to the extent of £650 per year (based on 2010 contribution rates). That said, it was a specific recommendation of the Independent Panel that the employer's contribution should be paid by the Government

Falkland Islands Pensions Scheme (Amendment) Bill

6.27 Likewise, many of the changes that would be made by this Bill are also technical changes that would be consequential upon the main principle of the Bill.

6.28 Under the Bill, Members would be able to join the Falkland Islands Pensions Scheme (FIPS) if they were not already FIPS members. The recommendation of the Independent Panel was that Members should be eligible to join, without specifying whether there should be any right to opt into or out of the pension arrangements that were made.

6.29 The Bill provides for Members have a choice as to whether or not to opt into the pension arrangements and to opt back out again. If a Member opts into the pension arrangements and then back out again, that Member would not be able to opt in again at a later date without the approval of the Governor. These provisions are intended to allow for the possibility that Members' circumstances might change without permitting them to opt in and out at will.

6.30 For current Members, there would be a period of three months after the Ordinance is published within which they could opt into the pension arrangements and back date that to 6 November 2009. There would be an equivalent three month period for Members who are elected to the Legislative Assembly in the future and, for them, this would run from the date on which they are elected.

6.31 Whether they were already FIPS members or joined as a consequence, those Members who are opted into the pension arrangements (but only those Members) would be required to pay 5% of their annual and daily allowances into FIPS and a corresponding 10% contribution would be made for them out of the Office of the Legislative Assembly. (For consistency with the bulk contribution made into FIPS on behalf of FIG employees, the effect of *clause 7* would be that the 10% contribution made on behalf of Members would be made by the Director of Corporate Resources rather than the Office of the Legislative Assembly.)

6.32 It should be pointed out that the effect of section 17(3) of the Falkland Islands Pensions Scheme Ordinance is that no contributions can be made by or on behalf of a FIPS member after his or her 70th birthday.

6.33 The effect of the consequential amendments is that contributions made by and on behalf of Members would be added to Members' individual accounts and accounted for in the same way as other contributions and that any complaints by Members are treated in the same way as complaints by other FIPS members.

6.34 *Clauses 12 and 22* are not strictly consequential amendments but it would be sensible to take the opportunity to update references to the Financial Secretary at the same time as other changes are being made.

Future changes to Members' remuneration etc

6.35 Something that emerged during the work of the Independent Panel and that emerged further during the process of drafting these Bills is that administrative practice has departed from the legislation in a number of significant respects over

a period of time. Many of these changes were unexceptionable from a purely pragmatic point of view and no impropriety is suggested.

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6.36 However, as a matter of principle, neither administrative practice nor decisions of the General Purposes Committee nor even those of the Executive Council itself are sufficient in themselves to provide a clear legal basis upon which payments can be made to Members. It is vital that practice is kept in line with the legislation and that, if practice is to change, legislative cover for that change is provided.

6.37 The additional safeguards provided for in the legislation and the express provision that would be introduced for 'out of the ordinary' expenses should ensure public confidence in the arrangements for Members' remuneration.

6.38 The Independent Panel's recommendation 10 (that future changes should be dealt with by another independent panel prior to a General Election) will need to be borne in mind for the future.

7.0 Human Resources Implications

7.1 It is very unlikely that the draft Bills should have any implications for staffing levels. Although there would be new rules to be applied and procedures to be followed, these would replace existing rules and procedures and should not require any additional staff to be recruited.

7.2 The reference in the paper to reimbursement for meals does not include specific reference to reimbursement for the purchase of alcoholic beverages. The Management Code contains an Alcohol and Drugs at Work policy (Appendix 4 of Chapter 3) and also imposes some restrictions on expenditure on alcohol and entertainment in Chapter 6 - Expenses (see paragraphs 6.3.1, 7 and Appendix 1). Although this does not apply to Members as such (and the expenditure limits in the Management Code are under review generally), it provides a useful comparison between the position of FIG employees and that of Members.

7.3 It will be possible for Members to claim payments for the normal working day under their contracts of employment and to claim expenses for any MLA work done on that day outside of their normal working hours.

Appendix 1

Recommendations of the Independent Panel on Members' Remuneration

1. The current general approach based on a fixed Annual Allowance plus variable Daily Allowance should be retained.
2. The basic Annual Allowance should be increased to £4,250.75 with effect from 6 November 2009 and subject to taxation.
3. The Daily Allowance should be increased to £126 per day with effect from 6 November 2009.
4. An enhanced Annual Allowance should be provided for Members of Executive Council of £6,239.05 with effect from 6 November 2009.
5. The employer's contribution to the state pension scheme should be provided by the Government (with effect from 6 November 2009).
6. Members of the Legislative Assembly should be eligible to join the Government's occupational pension scheme FIPS (with effect from 6 November 2009). This would be an employer's contribution of 10% on all income earned as an MLA with a 5% contribution from Members.
7. *An allowance should be made available for child-care costs necessarily incurred in attending a meeting as a Member of the Legislative Assembly based on a refund of receipted costs from a recognised Child Care facility.*

[Recommendation 7 was not approved by Executive Council.]

8. Relevant Ordinances and Regulations should be brought in to line with current practice particularly regarding overseas travel.
9. The principle of a Role Description for elected Members is commended and the one provided in Appendix One [to 218/09] accepted as a starting point for further discussion in the new Assembly.
10. Members' remuneration should in future be reviewed by an independent panel before a general election.

Appendix 2

Extracts from the minutes of the Executive Council meeting held on 17 September 2009

Executive Council agreed the recommendations in the paper, with one proviso (subject to legal advice about timing for implementation):

The proviso was that, on recommendation 6 that Members should be eligible to join the FIPS occupational pension scheme and that the employer's contribution should be 10% of all income earned as a Member of Legislative Assembly and the Member's contribution should be 5% of such income.

Members also discussed the issue of adjudication of claims submitted to the Clerk for approval and agreed that it could be difficult for the Clerk to challenge Members if there was a query on a claim. Members said that the guidelines for claiming should be more detailed. It was agreed that additional work should be done to provide detailed guidelines in relation to Members' expenses. In terms of process, the Chief Finance Officer should have oversight and final adjudication of claims.

ACTION: DoFin/AG/Clerk

Correction issued subsequently:

Executive Council did not agree recommendation 7 for an allowance for child care costs. However, further work is to be carried out in connection with potential allowances which could include child care and, for example, farm care costs.

GAZETTE DRAFT: 26.11.2009 (RMB)

Members' Remuneration Bill 2009

(No: of 2009)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Interpretation
4. Amounts payable to Members
5. Apportionment
6. Determination of claims
7. Taxation of amounts paid to Members
8. Publication of amounts paid to Members
9. Power to amend Schedule
10. Repeals

Schedule – Amounts payable to Members

- Part 1 – General provisions
- Part 2 – Annual allowances
- Part 3 – Daily allowances
- Part 4 – Travelling expenses
- Part 5 – Information and communications technology
- Part 6 – Other expenses

MEMBERS' REMUNERATION BILL 2009

(No: of 2009)

(assented to: 2009)
(commencement: 6 November 2009)
(published: 2009)

A BILL

for

AN ORDINANCE

To replace the Elected Councillors' Allowances Ordinance (Title 19.2) with new provision for the remuneration of Members of the Legislative Assembly and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Members' Remuneration Ordinance 2009.

2. Commencement

This Ordinance is deemed to have come into force on 6 November 2009.

3. Interpretation

In this Ordinance—

“Media Trust” means the Falkland Islands Media Trust, as established by section 3(1) of the Media Trust Ordinance (Title 59.1); and

“Member” means either—

(a) an elected member of the Legislative Assembly; or

(b) during the period between a dissolution of the Legislative Assembly and the next meeting of the Legislative Assembly after that dissolution, a person who was an elected member of the Legislative Assembly immediately before that dissolution took place.

4. Amounts payable to Members

The amounts specified in the Schedule are payable to Members in respect of their allowances and expenses.

5. Apportionment

Where—

(a) any amount is specified in the Schedule as being payable at an annual or monthly rate, but

(b) that amount is only payable in respect of a shorter period,

the amount payable is the relevant proportion of the amount specified in the Schedule.

6. Determination of claims

(1) When claiming any amount under this Ordinance, a Member must certify that the amount claimed is properly capable of being claimed in accordance with—

(a) the provisions of the Schedule; and

(b) any procedural guidelines issued by the Clerk of the Assembly with the approval of the Director of Corporate Resources.

(2) Before making any payment to a Member, the Clerk of the Assembly must determine whether the amount claimed is payable in accordance with—

(a) the provisions of the Schedule;

(b) any procedural guidelines issued by the Clerk of the Assembly with the approval of the Director of Corporate Resources; and

(c) any directions given to the Clerk of the Assembly by the Director of Corporate Resources.

(3) Any dispute between a Member and the Clerk of the Assembly in relation to the determination of a claim must be resolved by the Director of Corporate Resources.

7. Taxation of amounts paid to Members

Amounts paid to Members under this ordinance are taxable in accordance with the provisions of the Taxes Ordinance (Title 69.1), as if they had been earned on a self-employed basis.

8. Publication of amounts paid to and in respect of Members

(1) As soon as possible after the end of each calendar year, the Clerk of the Assembly must publish the following information—

(a) the amounts paid to each Member during that year in respect of—

(i) annual allowances payable under paragraph 3 of the Schedule;

(ii) daily allowances claimed under paragraph 6 of the Schedule; and

(iii) daily allowances claimed under paragraph 7 of the Schedule;

(b) the amounts deducted from the allowances payable to each Member during that year in accordance with—

(i) section 14 of the Retirement Pensions Ordinance; and

(ii) section 18B of the Falkland Islands Pensions Scheme Ordinance;

(c) the amounts paid in respect of each Member in accordance with section 11 of the Retirement Pensions Ordinance;

(d) the amounts contributed to the Falkland Islands Pensions Scheme in respect of each Member in accordance with section 18 of the Falkland Islands Pensions Scheme Ordinance;

(e) the amounts paid to each Member in respect of expenses claimed under Parts 4 to 6 of the Schedule; and

(f) a detailed breakdown of the amounts paid to each Member in respect of such expenses.

(2) The Clerk of Assembly must publish that information—

(a) in the *Gazette*;

(b) in any newspaper published by the Media Trust in accordance with section 5(1)(a) of the Media Trust Ordinance; and

(c) in such other manner (if any), as—

(i) the Clerk of the Assembly may consider appropriate; or

(ii) the Director of Corporate Resources may direct.

9. Power to amend Schedule

(1) The Governor may amend the Schedule by order.

(2) Before making an order under sub-section (1), the Governor must carry out such consultation of Members as he considers appropriate in all of the circumstances.

10. Repeals

(1) The Elected Councillors' Allowances Ordinance (Title 19.2) is repealed.

(2) Section 57(1)(m) of the Taxes Ordinance is repealed.

**SCHEDULE
AMOUNTS PAYABLE TO MEMBERS**

(section 4)

Part 1 – General provisions

1. Interpretation

In this Schedule—

“Assembly duties” means one or more of the activities listed in paragraph 2;

“Management Code” has the same meaning as in section 85 of the Constitution;

“partner” means one of a married couple, one of an unmarried couple, or one of a civil partnership, who is living with the other party in the relationship;

“senior officer of the Falkland Islands Government” means any of the following officers—

- (a) the Chief Executive appointed in accordance with section 83 of the Constitution;
- (b) any officer—
 - (i) for whose appointment the prior approval of the Governor was required in accordance with section 84(3) of the Constitution; and
 - (ii) who holds office as a Director within the Falkland Islands Government;
- (c) any of the officers appointed by the Governor in accordance with section 84(4) of the Constitution; and

“unmarried couple” means two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or of a civil partnership, the relationship having existed for at least three years.

2. Assembly duties

The following activities are Assembly duties for the purposes of this Schedule—

- (a) attending any meeting of—
 - (i) the Executive Council;
 - (ii) the Legislative Assembly;
 - (iii) any of the following committees of the Legislative Assembly—
 - (aa) the Standing Finance Committee;

- (bb) a Committee of the Whole House;
 - (cc) any Select Committee;
 - (iv) the committee known as the General Purposes Committee;
- (b) attending any briefing of Members by the Governor or the Chief Executive (or both, as the case may be);
- (c) attending any meeting of a committee to which the Member has been appointed in that capacity by the Governor on the advice of the Executive Council or in accordance with the provisions of any Ordinance;
- (d) attending any meeting of—
- (i) the board of the Falkland Islands Development Corporation; or
 - (ii) any committee or sub-committee created by that board and consisting in whole or in part of members of that board;
- (e) attending—
- (i) any meeting of—
 - (aa) a board of directors of a company to which the Member has been appointed by virtue of any shareholding of the Falkland Islands Government in that company or in any other company connected with it; or
 - (bb) any committee or sub-committee of such a board of directors; or
 - (ii) any other meeting related to the business of the company which the elected member reasonably attends in his capacity as a director of such a company;
- (f) attending any meeting to which the Member is invited or attends in that capacity and which has been organised by or on behalf of—
- (i) a senior officer of the Falkland Islands Government; or
 - (ii) the Office of the Legislative Assembly;
- (g) carrying out any other duties (other than attending any meeting, meal or function) in connection with the hosting of—
- (i) official visitors to the Falkland Islands who are official guests of any of the following—

- (aa) the Governor;
 - (bb) any senior officer of the Falkland Islands Government;
 - (cc) the Falkland Islands Branch of the Commonwealth Parliamentary Association;
or
 - (dd) the Commander British Forces or any other senior officer of the British Forces;
or
- (ii) other visitors to the Falkland Islands in relation to whom the Governor approves the carrying out of hosting duties as Assembly duties (and such approval may be given retrospectively);
- (h) carrying out any work in relation to the Member's portfolio responsibilities within the Legislative Assembly; and
- (i) travelling in connection with any other Assembly duties, provided that such travel is reasonably undertaken.

Part 2 – Annual allowances

3. Annual allowances

Annual allowances are payable to Members at the following rates—

- (a) in the case of each Member who is not also serving as an elected member of the Executive Council, £4,250.75; and
- (b) in the case of each Member who is also serving as an elected member of the Executive Council, £6,239.05.

Part 3 – Daily allowances

4. Daily allowances

Daily allowances are payable to Members in accordance with the remaining provisions of this Part.

5. Amount of daily allowance

The amount of the daily allowance is £126.

6. Claiming daily allowances for Assembly duties

(1) A Member may claim the full amount of the daily allowance for each day on which the Member spends four hours or more on Assembly duties.

(2) A Member may claim 50% of the daily allowance for each day on which the Member carries out Assembly duties but spends less than four hours on those duties.

(3) A Member may not claim more than 60 times the daily allowance in any calendar year for the total amount of time spent on the Assembly duties listed in sub-paragraphs 2(f), (g) and (h).

7. Claiming daily allowances for overseas business

(1) Subject to the remaining provisions of this paragraph, a Member may claim the full amount of the daily allowance for each day on which the Member—

(a) travels to or from the Falkland Islands on overseas business reasonably undertaken in the Member's capacity as such; or

(b) stays outside the Falkland Islands on such business.

(2) In order for this paragraph to apply to a trip on which such business is undertaken, both that trip and the business must be approved by the Governor.

(3) A Member may, by arrangement with the Clerk of the Assembly, claim an advance in respect of any daily allowances to be claimed under this paragraph.

8. No "double payment"

(1) For any one day, a Member may claim a daily allowance under either paragraph 6 or paragraph 7 but not both.

(2) No Member may claim any daily allowance in respect of activities for which the Member receives payment from any other source.

(3) For the purposes of sub-paragraph (2), a Member is to be treated as receiving payment from another source in respect of Assembly duties undertaken during time for which the Member is paid as an employee or office holder of—

(a) any of the following—

(i) the Falkland Islands Government;

(ii) the Falkland Islands Development Corporation;

(iii) Falklands Landholdings Limited; or

(b) any company or body owned or controlled by any of them.

Part 4 – Travelling expenses

9. Travel within the Falkland Islands

(1) A Member is entitled to claim reimbursement of any sums reasonably and actually spent on travel within the Falkland Islands, provided that such travel is undertaken wholly and exclusively in connection with Assembly duties.

(2) Where a Member's own car is used for such travel, the Member is entitled to claim an allowance of 40 pence per mile in lieu of reimbursement.

(3) Where a Member's own aircraft is used for such travel, the amount that may be claimed by the Member for that is limited to the cost that would have been incurred had the Member instead flown as a fare-paying passenger with the Falkland Islands Government Air Service.

(4) A Member is entitled to claim reimbursement of any sums reasonably and actually spent on accommodation within the Falkland Islands, provided that such accommodation is required wholly and exclusively for the purpose of carrying out Assembly duties.

(5) The amount payable under sub-paragraph (4) may not exceed £55 per night, unless approval for a higher amount is given by the Director of Corporate Resources.

(6) Where a Member stays as a guest of a resident of the Falkland Islands, the Member is entitled to claim an allowance of £20 per night for payment to the Member's host in lieu of reimbursement.

10. Overseas travel

(1) This paragraph applies to expenditure reasonably and actually incurred by or for a Member in connection with overseas business reasonably undertaken in the Member's capacity as such.

(2) In order for this paragraph to apply to a trip on which such business is undertaken, both that trip and the business must be approved by the Governor.

(3) Other than in exceptional circumstances, the Member's travel (including flights and car hire) and accommodation (including pre-booked meals at such accommodation) must be—

(a) booked for the Member through the Office of the Legislative Assembly or the Falkland Islands Government Office in London;

(b) paid for by either or both of them on the Member's behalf.

(4) Other than in exceptional circumstances, before any travel or accommodation is booked through the Falkland Islands Government Office in London, it must first have been approved by the Clerk of the Assembly.

(5) A Member is entitled to claim reimbursement for expenses reasonably and actually incurred on—

(a) meals (other than any pre-booked at the accommodation);

(b) local travel at the destination, including train, bus and taxi fares;

(c) laundry; and

(d) travel and accommodation, where exceptional circumstances exist and it is not possible for this to be booked and paid for by either the Clerk of the Assembly or the Falkland Islands Government Office in London in accordance with sub-paragraph (3).

(6) The Director of Corporate Resources may restrict the amount paid in respect of any claim under sub-paragraph (5) where the amount claimed is more than is reasonable in all of the circumstances.

(7) Hotel accommodation booked by or for Members is to be of the same standard normally allowable in accordance with the Management Code for a senior officer of the Falkland Islands Government.

(8) Subject to sub-paragraph (9), air travel undertaken by Members in accordance with this paragraph must be in economy class or equivalent.

(9) A Member may only travel by air in a premium class (such as Premium Economy, Club, Business, Executive or similar)—

(a) on those legs (if any) of the journey for which the scheduled flying time exceeds eight hours; and

(b) it is not possible for the Member to arrive at the destination more than 24 hours before the start of the first business approved by the Governor that the Member is due to undertake after arriving.

11. Overseas travel: accommodation in London

(1) A Member travelling to or via London on an overseas trip to which paragraph 10 applies may, instead of staying in hotel accommodation, stay in the flat at Falkland House in London, provided that it is available for the stay.

(2) Such a stay must be arranged in advance through the Office of the Legislative Assembly.

(3) No charge will be made to the Member for such a stay and the Member may be accompanied without charge by—

(a) the Member's partner; and

(b) any child or children aged 12 years or over of which the Member or the Member's partner are the parent or guardian.

(4) A Member may claim a subsistence allowance of £25 for each day of such a stay.

(5) If a Member claims a subsistence allowance for a day, the Member may not claim reimbursement under paragraph 10(5)(a) for any meals on the same day.

12. Overseas travel by Member's partner

(1) Subject to the remaining provisions of this paragraph, each Member may be accompanied by the Member's partner at the expense of the Legislative Assembly on one overseas trip to which paragraph 10 applies during any four year period.

(2) For such a trip, paragraph 10 applies (with such variations as are necessary) to expenditure reasonably and actually incurred by or the Member's partner as well as to that incurred by or for the Member.

(3) If a Member is elected to the Legislative Assembly at a by-election that takes place more than two years after the first meeting of the Legislative Assembly to which the Member was elected, this paragraph does not apply to that Member until the next General Election to the Legislative Assembly.

Part 5 – Information and communications technology

13. Laptop computers

(1) Each Member is entitled to be provided with a laptop computer on loan for the purpose of carrying out Assembly duties.

(2) A laptop provided in accordance with sub-paragraph (1) remains the property of the Falkland Islands Government and must be returned by the Member at the end of the Member's tenure in office.

14. Telephone and internet expenses

(1) A Member may claim the following allowances in respect of telephone and internet expenses—

(a) the cost of line rental for a telephone line at the Member's home address;

(b) one-third of the cost of all local calls made from that line;

(c) the full cost of any overseas calls made from that line that the Member certifies were made in connection with either—

(i) Assembly duties; or

(ii) overseas business to which paragraph 10 applies;

(d) either—

(i) £33 per month towards the cost of broadband internet service; or

(ii) if lower, the amount actually incurred in respect of the monthly fee for such service;
and

(e) either—

(i) £25 per month towards the cost of mobile telephone service; or

(ii) if lower, the amount actually incurred in respect of the monthly fee for such service on a contract basis.

Part 6 – Other expenses

15. Other expenses

(1) Subject to the remaining provisions of this paragraph, a Member may claim reimbursement of any other expenses wholly and necessarily incurred in the course of that Member's Assembly duties.

(2) Where it is reasonable to do so, a Member may claim a payment in lieu of reimbursement.

(3) In order for any payment to be made to a Member under this paragraph (either by way of or in lieu of reimbursement), it must be approved by the Director of Corporate Resources on the basis of a recommendation by the Clerk of the Assembly.

(4) If it is reasonably possible for the Member to do so, the Member must seek approval before incurring the expense.

(5) No household or personal expenses may be claimed under this paragraph.

(6) Any asset acquired using a payment made under this paragraph is the property of the Falkland Islands Government.

OBJECTS AND REASONS

This Bill would replace the Elected Councillors' Allowances Ordinance (Title 19.2) (referred to in this note as "the existing Ordinance") in order to update the provisions relating to the allowances and expenses payable to the elected members of the Legislative Assembly (who are referred to, throughout the Bill, as "Members"). For the purposes of the Bill, Members are treated as if they continue in office during a dissolution of the Legislative Assembly.

Under *clause 2*, the changes to be made would be backdated to 6 November 2009, the date on which the new Members took office following the General Election.

Clause 4 and the *Schedule* provide for the amounts that are to be payable, as to which see below.

Clause 5 provides that amounts payable at an annual or monthly rate would be apportioned if only payable for a shorter period. This would replace a similar provision in the existing Ordinance.

Clause 6 provides for the procedure to be followed when claims are made and determined. Members would be obliged to certify that the amounts claimed can properly be claimed. In addition to the provisions of the *Schedule*, the Clerk of the Assembly would be entitled to issue procedural guidelines for claims but these would have to be approved by the Director of Corporate Resources. The Director of Corporate Resources would also be entitled to give directions to the Clerk of the Assembly regarding the payment of claims. This would be a new provision with no equivalent in the existing Ordinance but reflects current administrative practice.

Clauses 7 and 10 provide for the taxation of amounts paid to Members. Members would be taxed on their allowances and expenses on a self-employed basis. This means that Members will be taxed on their allowances and any "profit" element in their expenses. The effect of the Elected Councillors' Allowances (Amendment) Order 2009 (S.R. & O. No. 19 of 2009) was the annual allowance, which was the only allowance not already taxed, became taxable but *clause 10(2)* would make a necessary, consequential amendment to the Taxes Ordinance (Title 69.1).

Clause 8 provides that details of the amounts paid to or in respect of Members in relation to allowances, pension contributions and expenses would have to be published each year by the Clerk of the Assembly. As a minimum, publication would have to take place in the *Gazette* and the *Penguin News* (or any successor to that newspaper). This is a new provision with no equivalent in the existing Ordinance but it partly reflects (but also extends) current administrative practice, under which Members' allowances are published but not their expenses. Pension contributions are a new element of Members' remuneration and are included in the requirement for publication.

Clause 9 provides that the Governor may amend the *Schedule* by order but must consult Members before doing so. This would replace a similar provision in the existing Ordinance.

The *Schedule* provides for the amounts of the allowances and expenses that would be payable to Members. There would be a number of changes from the corresponding Schedule to the existing Ordinance but these largely reflect current administrative practice, based on decisions taken previously.

There would be no further change to the rates of annual and daily allowances payable to Members:

- The annual allowance payable to Members who are not also serving on the Executive Council would still be £4,250.75. (*Paragraph 3(a)* provides for this.)
- Enhanced annual allowances of £6,239.05 would still be payable to the Members who serve on the Executive Council. (*Paragraph 3(b)* provides for this.)
- The daily allowances payable to Members would still be £126 per day spent on Assembly duties or on overseas business, which are defined in *paragraph 2* and correspond to “qualifying attendance” in the existing Ordinance. (*Paragraph 5* provides for the rate of the allowance and *paragraphs 6 and 7* provide for the circumstances in which daily allowances may be claimed.)

There would be a change from the existing Ordinance in that *paragraph 6* would prevent Members claiming a full daily allowance when they spend less than half a day on Assembly duties. However, this reflects current administrative practice.

Paragraph 8 provides that there is to be no “double payment” for Assembly duties and this would be extended from the corresponding provision in the existing Ordinance to cover public service employees carrying out Assembly duties during paid time. In the case of employees of the Falkland Islands Government, this reflects provisions already contained in the Management Code.

Paragraph 9 provides for local travelling expenses and this corresponds to the provisions in the existing Ordinance. It also provides for accommodation expenses within the Falkland Islands and this would be a new provision but one reflecting current administrative practice.

Paragraphs 10 and 11 provide for travel and accommodation expenses on overseas trips. Subject to two exceptions, these provisions correspond to the provisions in the existing Ordinance:

- Members would no longer be allowed to travel by air in a premium class cabin on overseas business as of right, but only in certain situations where it is considered justifiable for them to do so.
- Overseas trips could no longer be approved by the General Purposes Committee but only by the Governor. However, this would reflect the change in the Constitution under which the Governor must now normally act on the advice of the Executive Council.

Paragraph 12 provides for Members' partners to accompany them on one overseas trip in a four year period. This would extend the entitlement given by the corresponding provision in the existing Ordinance to unmarried partners and not just spouses.

Paragraph 13 provides for Members to be provided with laptop computers on loan. This would be a new provision but reflects current administrative practice.

Paragraph 14 provides for reimbursement of Members' telephone and internet expenses. These have been updated from the corresponding provisions in the existing Ordinance to reflect the change in communications from faxes to e-mails and the introduction of mobile telephone services. These changes would reflect current administrative practice.

Paragraph 15 provides for the reimbursement of expenses that are wholly and necessarily incurred in the course of Assembly duties but are not covered elsewhere in the Schedule or for payments to be made in lieu of such reimbursement. This would be a new provision with no equivalent in the existing Ordinance.

GAZETTE DRAFT: 26.11.2009 (RMB)

Retirement Pensions (Amendment) Bill 2009

(No: of 2009)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – GENERAL PROVISIONS

1. Title
2. Commencement

PART 2 – AMENDMENT OF THE RETIREMENT PENSIONS ORDINANCE

3. Amendment of the Retirement Pensions Ordinance
4. Interpretation
5. Compulsory contributions
6. Contributions by employers
7. Payment and collection of contributions

PART 3 – AMENDMENT OF THE RETIREMENT PENSIONS (GENERAL PROVISIONS) REGULATIONS

8. Amendment of the Retirement Pensions (General Provisions) Regulations
9. Interpretation
10. New regulation 5A inserted

PART 4 – AMENDMENT OF THE RETIREMENT PENSIONS (PRESCRIBED RATES) REGULATIONS

11. Amendment of the Retirement Pensions (Prescribed Rates) Regulations
12. Rates of contributions
13. The earnings limit

RETIREMENT PENSIONS (AMENDMENT) BILL 2009

(No: of 2009)

(assented to: 2009)
(commencement: 6 November 2009)
(published: 2009)

A BILL

for

AN ORDINANCE

To amend the Retirement Pensions Ordinance (No. 20 of 1996) and subsidiary legislation made under that Ordinance to provide for retirement pension contributions to be made by and on behalf of Members of the Legislative Assembly not already in receipt of a retirement pension and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 GENERAL PROVISIONS

1. Title

This Ordinance is the Retirement Pensions (Amendment) Ordinance 2009.

2. Commencement

This Ordinance is deemed to have come into force on 6 November 2009.

PART 2 AMENDMENT OF THE RETIREMENT PENSIONS ORDINANCE

3. Amendment of the Retirement Pensions Ordinance

This Part amends the Retirement Pensions Ordinance (No. 20 of 1996).

4. Interpretation

(1) This section amends section 2.

(2) In section 2(2)—

(a) the definition of “employee” is repealed and the following definition substituted—

““employee”—

(a) means any person over the age of 17 years and gainfully occupied in the Falkland Islands under a contract of service or as an office-holder; but

(b) for the avoidance of doubt, does not include an MLA”;

(b) the following definition is inserted after the definition of “employer”—

““MLA” means either—

(a) an elected member of the Legislative Assembly, or

(b) during the period between a dissolution of the Legislative Assembly and the next meeting of the Legislative Assembly after that dissolution, a person who was an elected member of the Legislative Assembly immediately before that dissolution took place;” and

(c) the following definition is inserted after the definition of “regulation”—

““relevant MLA” means an MLA other than one who is entitled to a pension under section 4;”.

(3) The following sub-section is inserted after section 2(3)—

“(3A) While a person is an MLA, that person will not be taken for the purposes of this Ordinance to be either an employee or a self-employed person during that period (whether or not they are an employee or self-employed person).”

5. Compulsory contributions

Section 10 is amended by inserting the following paragraph after section 10(3)(c)—

“(d) every relevant MLA;”.

6. Contributions by employers

Section 11 is amended by inserting the following sub-section after section 11(1)—

“(1A) The Office of the Legislative Assembly must pay contributions at the prescribed rate for each relevant MLA.”

7. Payment and collection of contributions

(1) This section amends section 14.

(2) The following sub-sections are inserted after section 14(1)—

“(1A) The contributions payable by relevant MLAs under section 10 are payable in the first instance by the Office of the Legislative Assembly on behalf of the relevant MLAs.

(1B) For the purposes of this Ordinance, the contributions paid by the Office of the Legislative Assembly on behalf of each relevant MLA under subsection (1A) are to be treated as contributions paid by that relevant MLA.”

(3) The following sub-section is inserted after section 14(2)—

“(2A) The Office of the Legislative Assembly must deduct from the allowances payable to each relevant MLA the amount of any contributions paid by the Office of the Legislative Assembly under this section on behalf of that relevant MLA.”

PART 3
AMENDMENT OF THE RETIREMENT PENSIONS (GENERAL PROVISIONS)
REGULATIONS

8. Amendment of the Retirement Pensions (General Provisions) Regulations

This Part amends the Retirement Pensions (General Provisions) Regulations (S.R. & O. No. 38 of 1996).

9. Interpretation

Regulation 2(3) is amended by inserting “(other than a relevant MLA)” after “person” in the first place where it appears.

10. New regulation 5A inserted

The following regulation is inserted after regulation 5—

“5A. Office of the Legislative Assembly: monthly and annual returns and payment of contributions

(1) The Office of the Legislative Assembly must for each calendar month—

(a) make a monthly return to the Board, in such form as the Board may require; and

(b) remit to the Board together with the monthly return an amount equal to the sum of all contributions due by and on behalf of the relevant MLAs in respect of the weeks beginning in the month to which the return refers.

(2) The monthly return required to be made by the Office of the Legislative Assembly must—

(a) be submitted to the Board before the 14th day of the month following the month to which the return refers, and

(b) contain particulars of—

(i) contributions due to be made by the Office of the Legislative Assembly under section 11 in respects of the weeks beginning in the month to which the return refers; and

- (ii) deductions made in accordance with section 14 from allowances payable to the relevant MLAs.
- (3) The Office of the Legislative Assembly must also make an annual return to the Board before the 1st of April in the following pension year.
- (4) The annual return required to be made by the Office of the Legislative Assembly must—
 - (a) be in such form as the Board may require; and
 - (b) contain such information relating to the relevant MLAs as the Board may require.”

PART 4
AMENDMENT OF THE RETIREMENT PENSIONS (PRESCRIBED RATES)
REGULATIONS

11. Amendment of the Retirement Pensions (Prescribed Rates) Regulations

This Part amends the Retirement Pensions (Prescribed Rates) Regulations (S.R. & O. No. 39 of 1996).

12. Rates of contributions

(1) This section amends regulation 5.

(2) Regulation 5(1) is amended by adding “; and” and also by adding the following subparagraph—

“(c) for a relevant MLA under section 10(3)(d) is—

- (i) £11.50 until 31 December 2009; and
- (ii) £12.50 from 1 January 2010.”

(3) The following paragraph is added after regulation 5(2)—

“(2A) For the purposes of the Pensions Ordinance, the weekly rate of contributions by the Office of the Legislative Assembly under section 10(1A) is—

- (a) £11.50 until 31 December 2009; and
- (b) £12.50 from 1 January 2010.”

13. The earnings limit

Regulation 6 is amended by inserting the words “(other than a relevant MLA)” after “person”.

OBJECTS AND REASONS

This Bill would amend the Retirement Pensions Ordinance (No. 20 of 1996) and two sets of regulations made under that Ordinance. This would be done in order to implement the recommendation of an Independent Panel on Members' Remuneration that the employer's contributions for elected members of the Legislative Assembly should be paid for by the Falkland Islands Government.

Under *clause 2*, the changes to be made would be backdated to 6 November 2009, the date on which the new Members of the Legislative Assembly took office following the General Election. This is in line with the recommendation of the Independent Panel.

Part 2 of the Bill deals with the Retirement Pensions Ordinance.

Clause 4 would amend the interpretation provisions in that Ordinance. The provisions relating to Members of the Legislative Assembly would only apply to those who are not already entitled to a pension (referred to throughout the Retirement Pensions legislation as "relevant MLAs") but that they will continue to be treated as such during a dissolution. It also provides that relevant MLAs are not to be treated as employees or self-employed persons for the purposes of the Retirement Pensions legislation.

Under *clause 5*, relevant MLAs would have to pay contributions equivalent to those paid by employees and, under *clause 6*, the Office of the Legislative Assembly would have to pay contributions equivalent to those paid by employers.

Clause 7 provides for the employee-equivalent contributions to be deducted from allowances payable to Members of the Legislative Assembly.

Part 3 of the Bill deals with the Retirement Pensions (General Provisions) Regulations (S.R. & O. No. 38 of 1996).

Clause 9 provides for a consequential amendment that would be necessary to ensure that relevant MLAs would not be treated as retired for the purposes of the Retirement Pensions legislation.

Clause 10 provides for monthly and annual returns to be made by the Office of the Legislative Assembly. These provisions are adapted from the corresponding provisions for employers.

Part 4 of the Bill deals with the Retirement Pensions (Prescribed Rates) Regulations (S.R. & O. No. 39 of 1996).

Clause 12 provides for the rates of the contributions payable by relevant MLAs and payable for them by the Office of the Legislative Assembly. These rates would be the same as the rates of the equivalent contributions payable by employees and employers respectively and allow for the increase due to take effect on 1 January 2010 under the Finance Ordinance 2009 (No. 2 of 2009).

Under *clause 13*, the earnings limit would not apply to relevant MLAs and contributions would have to be paid by them and on their behalf irrespective of how much they have earned in allowances in a particular week.

GAZETTE DRAFT: 26.11.2009 (RMB)

Falkland Islands Pensions Scheme (Amendment) Bill 2009

(No: of 2009)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – GENERAL PROVISIONS

1. Title
2. Commencement

**PART 2 – AMENDMENT OF THE FALKLAND ISLANDS PENSION SCHEME
ORDINANCE**

3. Amendment of the Falkland Islands Pensions Scheme Ordinance
4. Interpretation
5. General purpose of Ordinance
6. Membership of the Scheme
7. New section 17A inserted
8. Section 18 amended
9. New section 18B inserted
10. Contributions to the Scheme by other persons
11. Annual notifications to members of value of individual accounts
12. Refund of contributions in certain cases
13. References to Financial Secretary amended

**PART 3 – AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME
(SCHEME ACCOUNTS) REGULATIONS**

14. Amendment of the Falkland Islands Pensions Scheme (Scheme Accounts) Regulations

15. Requirement to keep Schedule of Payments and other books and records

**PART 4 – AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME
(GENERAL PROVISIONS) REGULATIONS**

16. Amendment of the Falkland Islands Pensions Scheme (General Provisions) Regulations
17. New regulation 9A inserted
18. Employers' returns, and payment of employers' and employees' contributions
19. Registers of members and employers

**PART 5 – AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME
(COMPLAINTS PROCEDURES) REGULATIONS**

20. Amendment of the Falkland Islands Pensions Scheme (Complaints Procedures) Regulations
21. Complaints
22. Persons who can make complaints
23. Complaints: procedure

Schedule: Amendment of references to Financial Secretary: list of provisions

FALKLAND ISLANDS PENSIONS SCHEME (AMENDMENT) BILL 2009

(No: of 2009)

(assented to: 2009)
(commencement: 6 November 2009)
(published: 2009)

A BILL

for

AN ORDINANCE

To amend the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997) and subsidiary legislation made under that Ordinance to provide for contributions to be made to the Falkland Islands Pensions Scheme by and on behalf of Members of the Legislative Assembly.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 GENERAL PROVISIONS

1. Title

This Ordinance is the Falkland Islands Pensions Scheme (Amendment) Ordinance 2009.

2. Commencement

This Ordinance is deemed to have come into force on 6 November 2009.

PART 2 AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME ORDINANCE

3. Amendment of the Falkland Islands Pensions Scheme Ordinance

This Part amends the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997).

4. Interpretation

(1) This section amends section 2.

(2) Section 2(1) is amended by—

(a) inserting the following definition after the definition of “additional voluntary contributions”—

““annual and daily allowances” means the allowances payable to MLAs under Parts 2 and 3 of the Schedule to the Members’ Remuneration Ordinance (No. of 2009);”;

(b) inserting the following definition after the definition of “member’s individual account”—

““MLA” means either—

(a) an elected member of the Legislative Assembly; or

(b) during the period between a dissolution of the Legislative Assembly and the next meeting of the Legislative Assembly after that dissolution, a person who was an elected member of the Legislative Assembly immediately before that dissolution took place;” and

(c) inserting the following definitions after the definition of “the Old Scheme Fund”—

(i) “opted-in MLA” means an MLA in respect of whom an opting-in election is in effect;” and

(ii) “opting-in election” means an election made by an MLA in accordance with section 17A(1);”.

(3) The following sub-section is inserted after section 2(2)—

“(2A) For the avoidance of doubt—

(a) an MLA is not (in that capacity) employed in government service; and

(b) any reference to an employee or a self-employed person does not include a reference to an MLA (in that capacity).”

(4) Section 2(4) is repealed and the following sub-section substituted—

“(4) In this Ordinance, any reference to employment is—

(a) a reference to—

(i) employment as an employee;

(ii) employment as a self-employed person; or

(iii) holding office as an MLA (which is to be treated as if it were employment for the purposes of this Ordinance); or

(b) where the context permits, a reference to employment in one or more of those capacities.”

5. General purpose of Ordinance

Section 4 is amended by repealing “employees and self-employed persons” and substituting “employees, self-employed persons and MLAs”.

6. Membership of the Scheme

(1) This section amends section 17.

(2) Section 17(2) is amended by inserting the following provision after paragraph (b)—

“(ba) any MLA;

(3) The following sub-section is inserted after section 17(3)—

“(3A) A contribution may not be made in respect of any MLA (in that capacity) in respect of either of the following periods—

(i) any period before 6 November 2009

(ii) any period during which the MLA is not an opted-in MLA.”

7. New section 17A inserted

The following section is inserted after section 18A—

“17A. Opting-in elections

(1) An MLA may become an opted-in MLA at any time by—

(a) making an election to do so in writing;

(b) sending that election to the Board; and

(c) providing a copy of the election to the Office of the Legislative Assembly.

(2) An MLA may specify in an opting-in election that it is to take effect from one of the following dates—

(a) the date on which the opting-in election is made; or

(b) the date on which the MLA was elected to the Legislative Assembly, but only if the opting-in election is made within 3 months of the date on which the MLA was elected to the Legislative Assembly; or

(c) 6 November 2009, but only if—

(i) the MLA making the opting-in election was an MLA on that date; and

(ii) the opting-in election is made within 3 months of the date on which this Ordinance is published in the *Gazette*.

- (3) An MLA may cease to be an opted-in MLA at any time by—
- (a) revoking the MLA’s opting-in election in writing;
 - (b) sending that revocation to the Board; and
 - (c) providing a copy of the revocation to the Office of the Legislative Assembly.
- (4) A revocation made under sub-section (3) takes effect from the date on which it is made.

(5) An MLA who has revoked an opting-in election under sub-section (3) may only make a further opting-in election with the consent of the Governor.”

Comment [L1]: Because of the provision for opting-in again with the consent of the Governor, I do not think we need to provide Members with a new opportunity each time they are re-elected.

However, I have rephrased the provision to allow for Members who have gaps in their service (for whatever reason) as Members to opt in again if they are re-elected.

8. Section 18 amended

- (1) This section amends section 18.
- (2) The heading above section 18 is omitted and the following heading substituted—
“18. Contributions to the Scheme by the Director of Corporate Resources”.
- (3) Section 18(1) is amended by inserting “or an opted-in MLA” after “section 17(2)(b),”.
- (3) Section 18(2) is amended by inserting “employed in government service” after “person”.
- (4) The following sub-section is inserted after section 18(2)—

“(2A) The contribution made by the Director of Corporate Resources in respect of each opted-in MLA must be paid at the end of each month at the rate of 10% of the amount received by the opted-in MLA in respect of annual and daily allowances for that month.”

9. New section 18B inserted

The following section is inserted after section 18A—

“18B. Contributions by opted-in MLAs

- (1) A contribution must be made by each opted-in MLA at a rate of 5% of the amount received by the opted-in MLA in respect of annual and daily allowances for each month.
- (2) The contributions payable by each opted-in MLA must be—
 - (a) deducted by the Office of the Legislative Assembly from the allowances payable to the opted-in MLA; and
 - (b) accounted for by the Office of the Legislative Assembly to the Board.

(3) Contributions made under this section are to be treated as if they were employees' contributions."

10. Contributions to the Scheme by other persons

Section 21(1) is amended by inserting "(ba)," after "(a),".

11. Annual notifications to members of value of individual accounts

Section 25(1) is amended by inserting the following paragraph after paragraph (b)—

"(ba) if the member is or has been an opted-in MLA, the aggregate amount of any contributions made in respect of the member under section 18B;"

12. Refund of contributions in certain cases

Section 26(1)(a) is amended—

(a) by inserting "(ba)," after "(a),"; and

(b) by repealing "employee" in the second place where it is used and substituting "that member".

13. References to Financial Secretary amended

The provisions listed in the Schedule are amended by omitting "Financial Secretary" in each place where it appears and substituting "Director of Corporate Resources".

PART 3

AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME (SCHEME ACCOUNTS) REGULATIONS

14. Amendment of the Falkland Islands Pensions Scheme (Scheme Accounts) Regulations

This Part amends the Falkland Islands Pensions Scheme (Scheme Accounts) Regulations (S.R. & O. No. 1 of 1999).

15. Requirement to keep Schedule of Payments and other books and records

Regulation 3(1) is amended by adding "; and" and also by adding the following sub-paragraph—

"(e) contributions made in respect of opted-in MLAs under sections 18 and 18B."

PART 4

AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME (GENERAL PROVISIONS) REGULATIONS

16. Amendment of the Falkland Islands Pensions Scheme (General Provisions) Regulations

This Part amends the Falkland Islands Pensions Scheme (General Provisions) Regulations (S.R. & O. No. 2 of 1999, as amended).

17. New regulation 9A inserted

The following regulation is inserted after regulation 9—

“9A. Particulars to be provided by the Office of the Legislative Assembly

(1) The Office of the Legislative Assembly must provide the Board with the full name, date of birth, sex and address of each opted-in MLA.

(2) The Office of the Legislative Assembly must comply with paragraph (1) in relation to each opted-in MLA not later than 30 days after the date on which the first normal contribution to that opted-in MLA is payable to the Scheme.

(3) The Office of the Legislative Assembly must notify the Board of any change of address of an opted-in MLA of which it becomes aware.”

18. Employers’ returns, and payment of employers’ and employees’ contributions

Regulation 12 is amended by adding the following paragraph—

“(7) The Office of the Legislative Assembly must comply with this regulation in relation to contributions made by and on behalf of opted-in MLAs as if it were the opted-in MLAs’ employer.”

19. Registers of members and employers

(1) This section amends regulation 13.

(2) Regulation 13(1) is amended by—

(a) inserting the following sub-paragraph after sub-paragraph (c)—

“(ca) in the case of the case of a member who is (or has been) an opted-in MLA, a full history of contributions made by or on behalf of the member under sections 18 and 18B;”

(b) inserting the following sub-paragraph after sub-paragraph (d)—

“(da) in the case of a member who is (or has been) an MLA, a full history of any opting-in elections and revocations of such elections made by the MLA;”

(3) The following paragraph is inserted after regulation 13(2)—

“(2A) The Board must include the Office of the Legislative Assembly in the register of employers as if it were the employer of all members who are (or have been) opted-in MLAs.”

(4) The following paragraph is added—

“(8) Paragraphs (4) and (6) apply to the Office of the Legislative Assembly as if it were the employer of members who are (or have been) opted-in MLAs.”

PART 5
AMENDMENT OF THE FALKLAND ISLANDS PENSIONS SCHEME (COMPLAINTS PROCEDURES) REGULATIONS

20. Amendment of the Falkland Islands Pensions Scheme (Complaints Procedures) Regulations

This Part amends the Falkland Islands Pensions Scheme (Complaints Procedures) Regulations (S.R. & O. No. 16 of 2004).

21. Complaints

Regulation 4(3) is amended by omitting “Financial Secretary” in each place where it appears and substituting “Director of Corporate Resources”.

22. Persons who can make complaints

Regulation 5 is amended by inserting the following paragraph after paragraph (d)—

“(da) the Office of the Legislative Assembly;”.

23. Complaints: procedure

Regulation 7(2) is amended by inserting “or the Office of the Legislative Assembly” after “employer” in the each place where it appears.

SCHEDULE
AMENDMENT OF REFERENCES TO FINANCIAL SECRETARY: LIST OF
PROVISIONS

(section 13)

Section 5(1)
Sections 18(1), (2) and (3)
Section 24(4)
Section 27(3)
Sections 33(2), (2A) and (2C)
Section 33A(4), (7), (10), (11) and (12)
Section 43
Paragraph 2(2) of Schedule 1
Paragraphs 7(1) and (2) of Schedule 1
Paragraphs 3(1) and (2) of Schedule 3
Paragraph 4(1) of Schedule 3
Paragraph 5(2) of Schedule 3
Paragraphs 5A(3B), (3C), (3D) and (3F) of Schedule 3
Paragraphs 6(3) and (6) of Schedule 3
Paragraphs 2(1), (2), (3) and (4) of Schedule 4
Paragraph 3(1) of Schedule 4
Paragraph 2(3) of Schedule 5
Paragraphs 4(1), (3), (4) and (5) of Schedule 5
Paragraph 9(2) of Schedule 5

OBJECTS AND REASONS

This Bill would amend the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997) and three sets of regulations made under that Ordinance. This would be done in order to implement the recommendation of an Independent Panel on Members' Remuneration that the elected members of the Legislative Assembly should be entitled to join the Falkland Islands Pensions Scheme with an "employer's" contribution of 10% of income earned as a Member of the Legislative Assembly being made on their behalf and a 5% contribution from the Members themselves.

Because "member" is already used in the Falkland Islands Pensions Scheme legislation to refer to members of the Scheme, "MLA" is used as the defined term for elected members of the Legislative Assembly.

The Bill would also update references to the Financial Secretary in the Falkland Islands Pensions Scheme legislation to become references to the Director of Corporate Resources.

Under *clause 2*, the changes to be made would be backdated to 6 November 2009, the date on which the new Members of the Legislative Assembly took office following the General Election. This is in line with the recommendation of the Independent Panel.

Part 2 of the Bill deals with the Falkland Islands Pensions Scheme Ordinance.

Clause 4 would amend the interpretation provisions in that Ordinance. It would define the term "MLAs" and provide for Members of the Legislative Assembly to continue to be treated as such during a dissolution. It would define "annual and daily allowances" for the purpose of calculating the contributions to be made. It would provide for employment as an MLA to be treated separately from employment as an employee or as a self-employed person. It would also define the terms "opted-in MLA" and "opting-in election" to provide for the mechanism by which MLAs choose whether or not to join the Falkland Islands Pensions Scheme in respect of their membership of the Legislative Assembly.

Clause 5 would extend the purpose of the Falkland Islands Pensions Scheme Ordinance to include the payment of pensions and other benefits to members of the Scheme who are (or have been) MLAs as well as those who are or have been employees or self-employed persons.

Clause 6 provides for contributions to the Scheme to be made in respect of MLAs but only (in that capacity) as from 6 November 2009 and while they are opted-in MLAs.

Clause 7 provides for MLAs to opt into the pensions arrangements by making an opting-in election and also provides that MLAs would be able to back-date opting-in elections for a short time after becoming MLAs or after the Ordinance comes into effect. It also provides for MLAs to be able to opt back out of the arrangements again. However, if an MLA opts in and then opts back out, the MLA can only opt in again at a later date with the consent of the Governor.

Although MLAs are not to be treated as being employed in government service, *clause 8* provides for the bulk employer's contribution made by the Director of Corporate Resources on behalf of those employed in government service to be extended to include opted-in MLAs as well. The "employer's" contribution made on behalf of opted-in MLAs is to be 10% of the opted-in MLAs' annual and daily allowances under the proposed Members' Remuneration Ordinance.

Clause 9 provides for opted-in MLAs to contribute 5% of their allowances into the Scheme and for these contributions to be deducted from their allowances at source and treated as if they were employees' contributions.

Clause 10 would make a consequential amendment that the provisions of section 21 (which deal with voluntary contributions) would not apply to MLAs.

Clause 11 provides for contributions made by opted-in MLAs to be included in the annual statements provided to members of the Scheme.

Clause 12 provides for contributions to be refunded to MLAs in certain limited circumstances where they leave the Scheme after less than 2 years.

Clause 13 (read in conjunction with the *Schedule*) updates references to the Financial Secretary to become references to the Director of Corporate Resources.

Part 3 of the Bill deals with the Falkland Islands Pensions Scheme (Scheme Accounts) Regulations (S.R. & O. No. 1 of 1999).

Clause 15 provides for contributions made by and on behalf of opted-in MLAs to be recorded in the Scheme accounts.

Part 4 of the Bill deals with the Falkland Islands Pensions Scheme (General Provisions) Regulations (S.R. & O. No. 2 of 1999).

Clause 17 provides for information relating to opted-in MLAs to be provided by the Office of the Legislative Assembly to the Pensions Board established by section 5 of the Falkland Islands Pensions Scheme Ordinance. These provisions are adapted from those that apply to employers.

Clause 18 provides for provisions relating to monthly and annual returns and the payment of contributions to apply to the Office of the Legislative Assembly in the same as they apply to employers.

Clause 19 provides for contributions made by and on behalf of opted-in MLAs to be included in the contribution records maintained by the Pensions Board as part of the register of members of the Scheme and for MLAs' history of opting into and out of the Scheme to be recorded in the register of members as well. It also provides for the Office of the Legislative Assembly to be included in the register of employers. Finally, it provides for the Board to be able to require the

Office of Legislative Assembly to provide information specified in a notice and for the Board to provide the Office of the Legislative Assembly with information on request.

Part 5 of the Bill deals with the Falkland Islands Pensions Scheme (Complaints Procedure) Regulations (S.R. & O. No. 16 of 2004).

Clause 21 updates a reference to the Financial Secretary to become a reference to the Director of Corporate Resources.

Clause 22 provides for complaints to be made by or against the Office of the Legislative Assembly.

Clause 23 provides for the Office of the Legislative Assembly to be provided with a copy of any complaint that involves it.