

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Legislative Drafting - Priorities

**Paper No:** 29/10

**Date:** 25 February 2010

**Report of:** Principal Crown Counsel

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### 1.0 Purpose

The purpose of this paper is to advise Members of outstanding tasks and future drafting requirements for legislative drafting, and to make a number of recommendations as to priorities for the year 2010.

### 2.0 Recommendations

Members are invited to agree the detailed recommendations set out in paragraphs 4.16 and 4.17.

### 3.0 Summary of Financial Implications

No direct financial implications.

### 4.0 Background

#### *Summary of drafting capacity of the Attorney General's Chambers*

4.1 The Attorney General's Chambers were approved funding in the 08/09 budget for a full time legislative drafting post, to seek to address some of the long standing legislative drafting backlog (which had been worsened by repeated staffing shortages in Chambers between 2006 and 2008). Unfortunately, delays in the recruitment process meant that the full time legislative drafter did not take up the post until late August 2009.

4.2 Whilst Principal Crown Counsel's role does include legislative drafting as part of her work, that part time capacity was significantly reduced in 2009 because of additional tasks required of her, including carrying out the role of Principal Immigration Officer in an acting capacity for the latter four months of the year.

4.3 Following the arrival of the Legislative Drafter in August 2009, he necessarily required a period to familiarise himself with the law of the Falkland Islands and FIG's systems and processes, and can only now be said to be approaching full capacity.

4.4 For these reasons, the legislative drafting capacity within the Attorney General's Chambers in 2009 was significantly reduced for much of the year.

4.5 A list of the legislation produced in 2009 is attached at Annex 1 to the paper to show what was produced on the basis of that restricted capacity. Whilst much of the work was routine and/or straight forward, significant drafting work was successfully completed in connection with budgetary requirements (including the introduction and adjustment of means testing of family allowance), and immigration (including the introduction of a points system for the issue of permanent residence permits).

4.6 It is hoped that the significantly increased legislative drafting capacity for the AG's Chambers in 2010 will mean that a greater volume of legislation can be produced, especially in complex areas which have previously been set aside so as not to overwhelm a restricted capacity. However, it is worth noting that whilst increased volume is hoped for, the emphasis will firmly remain on quality; good legislation should be enduring (ie will stand the test of time without the need for frequent amendments/corrections).

#### *Overseas Territories Programme Funding (OTPF)*

4.7 In addition to FIG's resources aimed at reducing the backlog of legislative drafting, the Attorney General's Chambers were awarded £50,000 of funding from the FCO's Overseas Territories Programme for the 09/10 year. In accordance with priorities indicated in connection with the grant of those funds, they have been used to contract out the drafting of; the Public Accounts Committee Bill, the Complaints Commissioner Bill, and Mental Health Bill, and will also be utilised for the updating of legislation in support of the abattoir, as well as drafting work on the Statistics Bill.

4.8 Whilst the OTPF is being efficiently utilised to make significant progress in a number of areas, it should be noted that resources are still required of the Attorney General's Chambers in conjunction with that work; to provide detailed drafting instructions to the contract drafters, and to monitor and approve the drafting product.

#### *Previous legislative drafting priorities*

4.9 A legislative drafting paper was last considered by Executive Council in April 2009 (74/09). Members indicated at that time that generally they wished to see prioritisation of legislation in sectors which drove the Falkland Islands economy; fisheries, agriculture, and tourism. Particular priority was agreed for fisheries fees, statistics, immigration, legislation arising out of the constitution, and legislation required to satisfy EU requirements for fisheries and agriculture were a priority.

4.10 The one notable area which has not been addressed out of those identified among those particular priorities is fisheries fees.

#### *Outstanding drafting requirements*

4.11 Annex 2 to this paper details outstanding legislative drafting, by reference to directorate, in two categories;

“ongoing tasks”, which identifies work which has been started and in relation to which the Attorney General’s Chambers are in possession of policy instructions; and

“future requirements”, which identifies drafting work which is, or is likely to be, required in the future, but which requires further work by the directorate responsible, in terms of both obtaining policy approval and providing detailed drafting instructions, before the drafting work can begin.

4.12 The tasks are identified by reference to directorate to ensure that directors are able to take ownership of the legislation which they are responsible for; in terms of both policy and administration. It has been noted in the past that some departments have appeared to think of legislation as being something to do with someone else; rather than the tool which enables them and guides them in undertaking their work and which they are often responsible for administering.

4.13 The matters identified as work which is utilising OTPF are outside the scope of priority recommendations by this paper; effective use of OTPF funding within the FCO financial year requires the completion of ongoing work, but the items are included in the paper to give Members a full picture of all legislative drafting work.

*Priority recommendations for 2010*

4.14 This paper was produced following the publication of Members’ statement of priorities for their electoral term:

- Economy stabilisation (working towards a balanced budget)
- Housing
- Education/Training/Localisation of posts
- RDS/FIMCO
- Roads/Tracks
- Communications
- Review of employment law
- Health

4.15 The drafting capacity available will not enable the whole backlog to be cleared (or anything approaching it) in a year, so the priority to be given to legislative drafting work must be guided by Members’ policy ambitions generally.

4.16 It must be stressed that in many areas considerable work is still required from relevant directorates to formulate detailed policy recommendations before instructions to draft legislation can be provided to legislative drafters, and in the light of Members’ stated priorities, the following matters are recommended to be progressed as a matter of priority (in approximate order of listing):

(a) Economy stabilisation:

- (i) any finance legislation required in support of the budget;
- (ii) amendment to tax law arising from taxation review;

(iii) amendment to FIDC Ordinance arising from review of FIDC and EDS/RDS;

(iv) statistics bill (importantly this will require the private sector to provide information needed to properly assess the economy);

(v) fisheries fees (vital area of economy which requires proper regulatory support but has previously not received appropriate priority);

(vi) immigration amending legislation (clear and robust immigration procedures must be an essential requirement of a stable economy);

(b) Housing:

(i) amendments to Land (Non-Residents) Ordinance (policy issues regarding the purchase of land in Stanley and Camp are a critical to any housing strategy);

(c) Education/Training/Localisation of posts:

(i) Education Bill;

(ii) legislation concerning means testing (existing means testing is non-statutory, but depending on the policy direction taken, legislation might be made to support existing means testing, or to provide entitlement without means testing);

(d) RDS/FIMCO:

(i) updating of abattoir related legislation;

(ii) amendments to FIDC Ordinance arising from RDS (as above);

(e) Roads/Tracks;

(i) progress of Road Traffic Bill and supporting regulations (this could be progressed by breaking it down into more manageable chunks as a way to make quicker progress);

(ii) compulsory purchase legislation;

(iii) highways amending legislation;

(f) Communications:

(i) amended telecommunications legislation arising from completion of telecoms policy review;

(g) Review of employment law [policy];

(i) Employment Protection (Amendment) Bill arising from completion of employment policy review.

(h) Health;

(i) legislation providing for medical services levy (or similar);

(ii) Prohibition of Smoking in Public Places and Work Places Bill.

4.17 In addition to the above priorities which are specifically linked to Member's published priorities, it is recommended that priority is given to:

(a) outstanding immigration/FI status legislation required as a result of the new Constitution;

(b) a review of other previously published Bills (eg Police and Criminal Evidence Bill) to establish what elements of the work already carried out can usefully be taken forward or whether the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate);

(c) a review of other ongoing tasks for which policy instructions are already settled (eg Planning (Amendment) Bill and regulations), with a view to completion of those task unless the lapse of time/policy change requires those Bills to be scrapped (recommendations to that effect to be made to Executive Council where appropriate); and

(d) a review of legislation which has been enacted but never brought into force (because of an absence of formulation of policy for supporting regulations; eg Data Protection Ordinance), and recommendations to be made to Executive Council either for the policy formulation work to be carried out, or the relevant Ordinance be repealed, to ensure that our statute book is not cluttered with inactive (and therefore misleading) law;

## **5.0 Financial Implications**

No direct financial implications.

## **6.0 Legal Implications**

No additional legal implications beyond those already addressed in the paper.

## **7.0 Human Resources Implications**

None.

**Legislation Drafted in 2009**

***Primary Legislation***

Administration of Justice (Amendment) Ordinance  
\*Appropriation Ordinance  
Falkland Islands Pensions Scheme (Amendment) Ordinance  
Family Allowances (Amendment) Ordinance  
Family Allowance (Amendment)(No 2) Ordinance  
Finance Ordinance  
Immigration (Amendment) Ordinance  
Immigration (Amendment)(No 2) Ordinance  
Licensing (Amendment) Ordinance  
Livestock (Amendment) Ordinance  
Maritime Security and Safety Ordinance  
Members' Remuneration Ordinance  
\*\*Public Accounts Committee Ordinance  
Retirement Pensions (Amendment) Ordinance  
Stanley Town Public Services (Amendment) Ordinance  
\*Supplementary Appropriation (2009/10) Ordinance

***Secondary Legislation***

Air Navigation (Fees) Regulations  
\*Capital Equalisation Fund Order  
\*Coins Order  
Customs (Import Prohibitions)(Fees) Regulations  
Designation (West Falkland)(Various Buildings) Order  
Elected Councillors' Allowances (Amendment) Order  
Electoral (Disqualification for Election) Order  
Family Allowances (Amendment) Regulations  
Family Allowances (Penalty Notice) Regulations  
Immigration (Fees) Regulations  
Immigration (Permanent Residence Permits) Regulations  
Immigration (Suspension of Issue of Permanent Residence Permits) Order

Immigration (Suspension of Issue of Permanent Residence Permits)(No2) Order

Leading Lights Direction

Museum and National Trust (Amendment of Schedule) Order

Offshore Petroleum (Licensing)(Amendment) Regulations

Patricia Luxton Nature Reserve (Chartres) Order

Patricia Luxton Nature Reserve (Chartres) Order

Prison (Declaration) Order

Registration of Charities (Exemption) Order

Retirement Pensions (Contributions)(Exemptions) Order

Road Traffic (Approval of Devices for Breath Testing and Analysis) Order

Taxes and Duties (Defence Contractors' Employees Exemption) Order

\* indicates legislation in standard format usually produced by Treasury in first draft

\*\* indicates legislation drafted by external contract drafters with the benefit of OTPF

**LEGISLATIVE DRAFTING – FEBRUARY 2010**

Contents listed by reference to Corporate Management Team member with responsibility:

- A Attorney General**
- B Chief Executive**
- C Director of Community Safety**
- D Director of Corporate Resources**
- E Director of Health and Education**
- F Director of Natural Resources**
- G Director of Minerals**
- H Director of Procurement and Efficiency**
- I Director of Public Services**

\* indicates legislation drafted, or about to be drafted by an external contract drafter with the benefit of OTPF

**A Attorney General**

- 1. Legal Services*
- 2. Registry*
- 3. Regulation*

*1a. Legal Services – Ongoing tasks (policy instructions largely settled)*

- i. Agricultural Loans Regulations*

Regulations are required to give effect to forms currently in use concerning the registration of agricultural loans. A first draft of the regulations has been produced.

- ii. Complaints Commissioner Bill 2010 \**

A draft Bill has been put out to consultation; drafting may be required to implement changes to the Bill arising from the consultation process.

- iii. Criminal Appeals Bill 2006*

The Bill was remitted to the Select Committee, which met on 23 January 2007. Outstanding queries are to be addressed by the Attorney General's Chambers. There will also be some orders required to support the Ordinance on its coming into force.

iv. *Criminal Justice (International Cooperation) Ordinance (Enforcement of Overseas Forfeiture Orders) Order 2006*

Executive Council approval exists for this to be made in an amended form to reflect changes to the law made by the Proceeds of Crimes Ordinance 2006. The Proceeds of Crimes Ordinance 2006 has been made, but awaits commencement by notice. The relevant amendments are still required to be made to this order

v. *Criminal Justice (International Cooperation) (Amendment) Bill*

It is necessary to amend the existing Ordinance to meet the obligations of the Falkland Islands under international Conventions. A draft bill was begun by the former Attorney General and remains on file.

vi. *Family Law Bill 2006*

The Bill was remitted to the Select Committee, which met in early 2006. Twenty one points were raised by the Committee for further legal advice, including the re-drafting of the Explanatory Memorandum. The former Attorney General appears to have re-drafted the Explanatory Memorandum, but it is not immediately apparent how many of the remaining points still need to be addressed.

Consequential issues: commencement of the Bill should be synchronised with a Children and Adoption Bill (see Health and Social Services).

vii. *Proceeds of Crime Ordinance 2006*

Ordinance made in October 2006. Not yet in force. Consequential issues - See Criminal Justice (International Cooperation) Ordinance (Enforcement of Overseas Forfeiture Orders) Order 2006 referred to above.

viii. *Stanley Common (Amendment) Bill and Regulations*

The Stanley Common Ordinance requires amendment to reflect the adjustment of boundaries recently approved by Executive Council. Consequential issues – amendment is required to Stanley Airport (Regulations) Ordinance which is affected by the boundary change (see Director of Procurement and Efficiency, below).

Approval of regulations under the Stanley Common Ordinance concerning a number of matters was given by Executive Council in 2004, but some new issues arising (eg fishery hatchery) may require new policy approvals.

***1b. Legal Services – Future requirements (policy instructions outstanding)***

i. *Alcohol in Public Places Bill*

The Bill was submitted to Executive Council in December 2005, and was deferred for consultation with Youth Working Group (now the Children and Young Persons Strategy Group). The Group does not appear to have progressed the matter.

ii. *Charitable Trust Bill*

A Bill is required to regularise the position concerning charitable funds held by FIG officers in the course of their employment.

iii. *Civil Contingencies (Emergency Powers) Regulations*

Specimen regulations under the Civil Contingencies (Emergency Powers) Ordinance 2006, to cover all likely eventualities, have been requested by the Governor.

iv. *Court of Appeal (Amendment) Bill*

An amending Bill is required to increase the number of Court of Appeal Judges in order to widen their areas of expertise, to include public law.

v. *Crimes (Penalties) Order*

Several years ago an order was made under the Criminals Justice Ordinance increasing some criminal penalties. It is necessary to complete the review of criminal penalties.

vi. *Domicile Bill*

It has been recently identified that the dissapplication of the Domicile and Matrimonial Proceedings Act 1971 means that the domicile of married women is determined in the unsatisfactory and discriminatory position as set out in the common law which preceded the UK Act. This has effected at least one individual's status under the Constitution, and the position needs to be corrected.

vii. *Landlord and Tenant Bill*

The law of the Falkland Islands as to the obligations of landlord and tenant in relation to dwellings and business tenancies is pretty much non-existent. The formulation of policy is required for an appropriate Bill.

viii. *Land (Non-residents)(Amendment) Bill*

Executive Council has approved amendment of the Ordinance to make supplementary provision regarding the conditions which may be attached to a licence to hold land. A first draft of the Bill has been produced, but has been held back pending the report of the Task and Finish group on the subject.

Members have also indicated a desire to review a number of wider policies which underpin the legislation; such review/s, if they take place, may result in the need for further legislative change.

ix. *Licensing Bill*

A review of the Licensing Ordinance was begun in 2004, including some consultation with the public. The Courts Administrator has been asked to take forward development of policy in conjunction with the licensing justices.

x. *Powers in Criminal Courts (Sentencing) Bill*

A handwritten draft was begun by the former Attorney General and remains on file. This Bill is thought to be necessary to address existing inadequacies in sentencing powers of the courts and to reflect developments in the law of sentencing in England and Wales. The current Attorney General has begun a consultation process with the former Senior Magistrate in order to re-start work on the subject, but no significant progress was made.

The Children and Young Person Strategy Group action plan indicates that legislation dealing with young offenders, in particular those receiving custodial sentences, also be reviewed. Some of the existing provisions are thought to be in breach of international treaty requirements.

**2 *Registry - Future requirements (policy instructions outstanding)***

i. *Land (Registration of Title) Bill*

The present system of transfer of title of land is flawed in a number of ways. The former Attorney General recommended that a system of land registration similar to that in use in some other Overseas Territories could be introduced once the mapping exercise being undertaken by Public Services in Camp is complete (and ongoing mapping facilities are available). DPS indicated that there are insufficient resources in his department to complete that project in the foreseeable future.

ii. *Land Charges (Amendment) Bill 2006*

Remitted to the Select Committee in early 2006 together with the Family Law Bill 2006. The two bills are associated.

iii. *Patents (Amendment) Bill*

It is uneconomic and unnecessary for patents to be registered in the Falkland Islands. A Bill giving effect to patents having effect in UK is likely required.

**3. *Regulation - Future requirements (policy instructions outstanding)***

i. *Aerodrome approval/regulation*

The Director of Civil Aviation advises that legislation is required in due course to introduce a new system of regulation/approval of camp airstrips (some policy instructions have been provided).

ii. *Broadcasting (Amendment) Bill*

The existing Ordinance, which is largely aimed at preventing the sale and importation of unauthorised decoders, is defective, and requires substantial revision.

iii. *Telecommunications (Amendment) Bill*

Amending/new legislation will likely be required to reflect any changes to the regulatory regime following policy decisions to be made following the Doyle report. Timing of any changes will depend on the nature and timing of those policy decisions.

**B Chief Executive**

***1. Environmental Planning***

***2. Executive Management***

***3. Falkland Islands Development Corporation***

***4. Policy***

***1a. Environmental Planning - Ongoing tasks (policy instructions largely settled)***

i. *Planning (Amendment) Bill and regulations*

An amending Bill is required to implement policies already approved by Executive Council concerning simplification of the planning appeals process.

A first draft of supporting regulations has been produced in relation to delegation of powers, which have been similarly already approved.

***1b. Environmental Planning - Future requirements (policy instructions outstanding)***

i. *Building (Amendment) Regulations*

Amending regulations are required to remedy a number of matters, including concerns regarding steps, first floor feature windows and flues.

ii. *Conservation of Wildlife and Nature (Amendment) Bill*

The EPO advises that amendment to the law may be required as a result of a report in relation to zebra trout. In addition, Crown Counsel has advised in relation to apparent flaws in the provisions of the Ordinance dealing with the protection of wild animals; the matters could be dealt with together.

iii. *Environmental Impact Regulations*

These are required under the Planning Ordinance 1992, as amended. The EPO has noted that the commitment made in relation to environmental impact assessments in the Environment Charter requires these regulations to be made.

iv. *Planning (Amendment) Bill*

The existing provisions concerning historic buildings are defective, and proposals for amendment are required for consideration by the Planning and Building Committee.

The EPO is also likely to pursue proposals to introduce legislation to support a conservation area within Stanley.

**2. *Executive Management - Future requirements (policy instructions outstanding)***

i. *Committees (Access to Information)(Amendment) Bill*

The former Government Secretary reported that a number of problems exist in relation to the administration of the system, which require resolution and then to be reflected in amended legislation.

**3a. *Falkland Islands Development Corporation - Ongoing tasks (policy instructions largely settled)***

i. *Falkland Islands Development Corporation (Amendment) Bill*

Amendments to the Ordinance, approved by the Development Board, are required to be drafted and submitted to Executive Council for approval in connection with the change of the Fishing Vessel Owners' Association to the Falkland Islands Fishing Companies Association.

**3b *Falkland Islands Development Corporation - Future requirements (policy instructions outstanding)***

i. *Falkland Islands Development Corporation (Amendment) Bill*

The Manager FIDC advises that the FIG review of FIDC is likely to result in more substantive changes required to the FIDC Ordinance in order to make the corporation more fit for purpose structurally and organisationally in the context of the emerging economic development strategy and rural development strategy.

**4a. *Policy - Ongoing tasks (policy instructions largely settled)***

i. *Statistics Bill \**

Drafting instructions have been received from the Policy section, together with a draft Bill produced by FIG's consultant. Detailed supporting regulations will also be required.

**4b. *Policy – Future requirements (policy instructions outstanding)***

i. *Census Bill*

The administration of the census may, in due course, be transferred from the Registry to the Policy section (this may be combined with the Statistics Bill if policy approval permits).

ii. *Data Protection Regulations*

The Data Protection Ordinance was made in 1995, but has never been brought into force because formulation of policy for supporting regulations has never been progressed.

iii *Employment of Women, Young Persons and Children (Amendment) Bill*

Amendments made to this Ordinance in 2006 have resulted in the provisions now being flawed; this needs to be corrected following policy clarification.

iv. *Employment Protection (Amendment) Bill*

A Bill will likely be required as a result of the employment review currently being carried out by Head of Policy.

v. *Statistics Regulations*

Detailed regulations to support the Statistics Bill will be required before the Ordinance could be brought into force.

**C Director of Community Safety**

**1. *Customs and Immigration (including registration of ships)***

**2. *Defence Force***

**3. *Fire and Rescue***

**4. *Police (including prisons)***

**1a. *Customs and Immigration - Ongoing tasks (policy instructions largely settled)***

i. *Immigration (Amendment) Bill and Regulations*

Urgent amendment is required to the law to strengthen the ability to refuse persons whose entry into the Islands may not be conducive to the public good.

In addition, a criminal records policy has been approved by Executive Council which requires implementation through an amending Bill and regulations, and consequential amendment to the Falkland Islands Status Ordinance and subsidiary legislation under the Criminal Justice Ordinance, concerning the rehabilitation of offenders.

vi. *Falkland Islands Status (Amendment) Bill*

Amendments to the Falkland Islands Status Ordinance are required in consequence of the new Constitutional provisions; in connection with a permanent right to remain, and in connection with an apparent anomaly caused by the Constitution in connection with the status held by some persons.

Amendment to the Ordinance is required in relation to the criminal record checks policy.

***1b. Customs and Immigration – Future requirements (policy instructions outstanding)***

i. *Cruise Ships (Amendment) Bill*

The Ordinance requires amendment because it doesn't entirely reflect policy in relation to the passenger levy.

ii. *Customs (Amendment) Bill*

A number of errors in the 2004 Customs Bill need to be corrected, and some liquor definitions need wholesale revision.

iii. *Customs Regulations*

There is a general lack of procedural regulations needed to support the current Customs Ordinance.

Regulations providing for travellers' and ships' crews allowances are specifically required to implement the current, discretionary, system of allowances.

iv. *Dangerous Goods (Amendment) Bill*

The Ordinance is significantly flawed and requires repeal or revision (the separation of responsibilities for administering and enforcing the law also require consideration following the deletion of the Government Secretary post).

v. *Embarkation Tax (Amendment) Regulations*

Amendments are required to the regulations to permit embarkation tax to be included on a traveller's ticket.

vi. *Immigration (Amendment) Bill*

A number of inadequacies and flaws in the Immigration Ordinance generally and gaps in policy also indicate that a review of the existing laws and policies may result in significant need for amendment in future.

vii. *Immigration Regulations*

The regulations under the Immigration Ordinance are already outdated (most continuing in force from the Ordinance which preceded the Immigration Ordinance 1999), and in need of replacement. Significant gaps in policy and regulation generally also indicate a need for detailed regulations to support the immigration regime.

viii. *Merchant Shipping (Registration of Ships)(Amendment) Regulations*

Amendment is required to the regulations in relation to merchant vessels of 500 grt +.

**2. *Falkland Islands Defence Force – Future requirements (policy instructions required)***

i. *Falkland Islands Defence Force (Amendment) Bill*

The MOD Armed Forces Act team visited the Islands in 2009, when the new Armed Forces Act came into force. It is apparent that the FIDF Ordinance will need to be amended in due course to replace the disciplinary provisions of the old armed forces acts.

**3. *Fire and Rescue - Future requirements (policy instructions outstanding)***

i. *Fire prevention legislation*

Legislation providing fire officers a right of entry to deal with fire/fire prevention has been particularly requested by the Governor as a matter of priority. Legislation, for example of the type requiring all businesses and Government buildings to have fire alarms fitted, is also required.

**4a. *Police - Ongoing tasks (policy instructions largely settled)***

i. *Firearms (Amendment) Bill*

Revision of the Firearms Ordinance is required to reflect the amendments to firearms policy approved by Executive Council.

ii. *Police (Amendment) Bill*

The Police Committee has requested amendments to the Ordinance to provide more detail and flexibility in relation to arrangements for membership of the Committee.

iii. *Police and Criminal Evidence Bill 2006*

The Bill was remitted to the Select Committee, which met on 23 January 2007. Outstanding queries remain to be addressed by the Attorney General's Chambers. Although very significant to the Police, this Bill also falls under the remit of the Attorney General's Chambers in terms of their role as "Ministry of Justice".

Of particular significance is the need to improve powers to impose conditions on police bail, for example to assist in the protection of victims of domestic violence/children; an amendment to the law also strongly supported by Health and Social Services.

Consequential issues; detailed police codes of practice must be drafted before relevant parts of the Bill could be brought into force.

iv. *Road Traffic Bill*

The Chief Police Officer has been tasked to produce a detailed timetable for the work required to enable commencement of the Bill with a view to submission of the Bill to the Legislative Assembly with a staged plan for commencement in place. Consequential issues; detailed regulations are required to support the Bill before much of it can be brought into force.

**4b *Police and Prisons - Future requirements (policy instructions outstanding)***

i. *Police Bill*

The inadequacies of the Police Ordinance 2000 have been highlighted on numerous occasions; in particular regarding unclear provisions concerning the disciplinary process. The role of the Police Committee also requires review.

ii. *Prisons Bill and regulations*

The Officer in Charge of the Prison and the Attorney General's Chambers regard the Prisons Ordinance 1966 and regulations made under it as outdated, inadequate, and in serious need of replacement, being in breach of various international convention requirements. Some drafting has been done by David Lang (regulations), but substantial work is still required, including formulation of policy and instructions. It

is understood that the Prisons Adviser may produce model legislation for all Overseas Territories, which would potentially be very useful in making progress.

iii. *Road Traffic Regulations*

Detailed regulations are required before much of the provisions of the Road Traffic Bill could be brought into force.

**D Director of Corporate Resources**

***1. Finance and Audit***

***2. Taxation***

***1a. Finance and Audit - Ongoing tasks (policy instructions largely settled)***

i. *Annual Appropriation and Finance Legislation*

There continues to be an annual requirement for appropriation and finance legislation to be drafted at short notice following ExCo approval of budget policy. As the budget process becomes more challenging, the drafting burden increases, with the Finance Bill 2009 proving the most detailed Finance Bill in many years.

***1b. Finance and Audit – Future requirements (policy instructions outstanding)***

i. *Currency Notes Rules*

It has been apparent for some time that these rules require amendment, certainly since the Currency Ordinance was introduced in 1987, but the matter has never been referred for policy decision as has not been considered to be of any urgency.

ii. *Falkland Islands Pensions Scheme (Amendment) Bill*

Amendment is required to the 1997 Ordinance to give statutory effect to the introduction of a new form of protection for FIG employee members of the scheme in respect of service up to 31 December 2006. Additional “tidying up” amendments continue to be identified by the FIPS Board, which could be addressed at the same time.

iii. *Finance and Audit (Amendment) Bill*

Amendments to the Constitution require amendments to the Ordinance in connection with the duties, powers and appointment of the Principal Auditor, and in connection with setting up a Public Accounts Committee. Further, the former Financial Secretary advised that the opportunity of amendment of the Ordinance should be taken to provide more explicit provisions for resource accounting and audit functions.

iv. *Public Funds Bill*

Amendment of the Public Funds Ordinance is currently under consideration in relation to the provisions concerning payments out of the Capital Equalisation Fund, as existing provisions are considered unnecessarily cumbersome (requiring Secretary of State approval).

v. *Retirement Pensions (Amendment) Bill*

Legislative change is potentially required on the decisions made in connection with the report on the pensions scheme received from the Government Actuary's Department. The options are currently subject to consultation following Executive Council's consideration of the report in March 2009.

**2. *Taxation – Future requirements (policy instructions outstanding)***

i. *Taxes (Amendment) Bill and Regulations*

The Head of Policy advises that the current review of tax and fiscal policy is likely to lead to legislative changes in the tax regime.

The Tax Office also advise that there are outstanding issues which may not be within HoP's tax review, but which need to be addressed; a separate report to Executive Council will be submitted in the near future.

The Taxation Officer also notes that legislative change may be required in future if the UK policy of reducing/replacing Extra Statutory Concessions (ESC's) with legislative provision is followed; the tax office currently administers 13 ESC's.

A review of FIG's debt collection procedure has identified an apparent gap in permitting FIG to offset tax refunds against debts to FIG, and instructions may be given to draft legislation in this area in due course.

ii. *Taxes and Duties (Special Exemptions)(Amendment) Bill*

A policy paper was approved by Executive Council in January which requires amendments to existing legislation concerning tax exemptions for defence contractors' employees.

**E Director of Health and Education**

***1. Education***

***2. Health and Social Services***

***1. Education – Future requirements (policy instructions outstanding)***

i. *Education (Amendment) Bill*

The Education Ordinance was enacted in 1989 and was to some extent modelled on the Education Act of 1944 of England. It is now extremely dated and so are the Education Regulations made under it. A review of the existing Ordinance by the Education Department was scheduled for 2009/10, with legislative drafting services required in 2010/11, but the Acting Director advised that the timetable has slipped, meaning that the preliminary work is unlikely be completed by the end of the 09/10 year.

**2a. *Health and Social Services - Ongoing tasks (policy instructions largely settled)***

i. *International Health Regulations*

The World Health Organisation adopted the new International Health Regulations in 2005. HMG is committed to implementation of the regulations in the Overseas Territories. Provisions in relation to ships sanitation certificates are required, and the CMO has provided some information on which to base a draft, subject to confirmation of certain detail as to the practicalities of implementation.

ii. *Mental Health Bill \**

The Bill is currently being worked on by an external contract draftsman, and should be ready for submission to the Legislative Assembly in the near future. Some supporting regulations need to be drafted in connection with the Bill, but the policy work required to be able to instruct the drafting of regulations is well under way.

iii. *Prohibition of Smoking in Public Places and Work Places Bill*

Work on a Bill was resumed by the new Legislative drafter following his appointment in August. Other priorities, such as legislation to support Members' new remuneration arrangements, and oil industry and abattoir related legislation mean that progress was halted in November.

**2b. *Health and Social Services - Future requirements (policy instructions outstanding)***

i. *Children (Amendment) Bill*

Amendment of the Ordinance and similar legislation is required, in accordance with the action plan of the Children and Young Persons Strategy Group in order to:

- (i) impose on FIG statutory obligations to investigate matters of significant harm to children and children in need;
- (ii) provide statutory regulation of foster care; and
- (iii) provide statutory regulation of child care.

There are other issues which FIG is already alive to in relation to the Children Ordinance which indicate that amending/additional provisions of the Ordinance are required, eg financial responsibility of parents of children in care. An ongoing review of the child protection procedures by the Safeguarding Committee may also result in the need for change. Therefore a general revision of the Ordinance is therefore required, which will deal with some complex issues.

ii. *Children and Adoption Bill*

The English Adoption Act 1976 applies as part of the law of the Falkland Islands, and amendments made to the English Act have been automatically applied to the Act as it applies in the Falkland Islands. However, some of those amendments are not suitable, and will need to be dissapplied and substituted with provisions suitable to the Falkland Islands.

Consequential issues – Drafting of the Bill should be synchronised with progress on the Family Law Bill (see above, under Attorney General’s Chambers).

iii. *Criminal Justice (Amendment) Bill*

The Multi-Agency Public Protection Group plans to put forward proposals for the amendment of the Criminal Justice Ordinance to enable sex offenders to remain on licence following release from prison.

iv. *Medicines Regulations*

The Medicines Ordinance was made in June 2006, but is not yet in force. Many provisions of the Ordinance require subsidiary legislation before they can be brought into force, involving a considerable amount of policy formulation and consultation (see Veterinary Services, below).

v. *Public Health Bill*

The existing Public Health Ordinance is woefully out of date and ineffective. A policy paper is required in the first instance recommending replacement provisions.

The former Attorney General has suggested that appropriate provisions to replace the outdated Dairy Produce Ordinance could be included in a Public Health Bill (see Agriculture, below).

## **F Director of Natural Resources**

***1. Agriculture***

***2. Fisheries***

***3. Marine and Port Services***

***4. Veterinary Services***

**1a. Agriculture - Ongoing tasks (policy instructions largely settled)**

i. *Abattoir related legislation \**

Amending legislation is required to comply with updated EU requirements to allow the continued export of meat to the EU. This includes updating animal welfare legislation. Some new legislation is also required, for example, concerning water quality at the Abattoir. The former Senior Veterinary Officer produced a comprehensive review document of the developments required and the Legislative Drafter is working on detailed instructions for an external contract drafter as a matter of urgency.

ii. *Animal Health (Livestock Movement and Identification)(Amendment) Order \**

This is required following a change of animal identification practice for the abattoir. A substantial draft has been completed but requires modification. The requirement is tied to the abattoir related legislation above.

iii. *Importation of motor vehicles etc Proclamation*

Outstanding legislation is required on the importation of second hand motor vehicles and agricultural machinery to comply with biosecurity recommendations.

**1b. Agriculture - Future requirements (policy instructions outstanding)**

i. *Dairy Produce (Amendment) Bill*

The Dairy Produce Ordinance 1938 requires amendment. This could, perhaps be included in a new Public Health Bill (see Health and Social Services, above).

ii. *Plant Disease Regulation (Amendment) Bill/Regulations*

The Biosecurity Officer has identified amendments needed to this legislation to enable better regulation of the importation of seeds.

**2a. Fisheries - Ongoing tasks (policy instructions largely settled)**

i. *Fisheries (Fees) Regulations*

Regulations prescribing fisheries fees are required.

ii. *Fishery Products (Amendment) Bill*

The Ordinance was made in October 2006, but is not yet in force (and is to be brought into force with Marine Farming Ordinance 2006). Inaccurate references to EU legislation require amendment before the Ordinance can be brought into force.

The following regulations have been drafted under the Ordinance and published for consultation but not further progressed: Fishery Products (Hygiene) Regulations 2006, Fish Health Regulations 2006, and Water Quality (Shellfish) Regulations 2006 Regulations regarding the Environmental Impact Assessment of Fish Farming in Marine Waters are still to be drafted under this Ordinance.

iii. *Marine Farming Ordinance*

Made in October 2006. Not yet in force. To be brought into force with the Fishery Products Ordinance 2006.

**2b. *Fisheries – Future requirements (policy instructions outstanding)***

i. *Fisheries (Economic Efficiency) Regulations*

DNR advises that regulations may be required in order to apply the economic efficiency test (to compel data reporting in a standard format etc).

**3. *Marine and Port Services - Future requirements (policy instructions outstanding)***

i. *Harbours Bill*

The Harbours Ordinance is woefully out of date and merits revision/replacement.

ii. *Maritime Security Bill*

The Maritime Security and Safety Ordinance recently made only addressed the most immediate needs in relation to maritime security provisions, Executive Council were advised that a further Bill to address outstanding issues would likely be required.

iii. *Merchant Shipping (Adoption of Legislation) Amendment Order*

The order would make legislative provision for the classing of the new cross-Sound ferry in accordance with EU passenger class regulations rather than the UK Department of Transport passenger ship classes.

iv. *Merchant Shipping Bill*

Consideration needs to be given to replacing the remaining provisions of the Merchant Shipping Act 1894 which remain in force, but which are, in a number of cases, outdated and defective, and replacing them with provisions of the Merchant Shipping Act 1995.

v. *Port Authority Bill*

If and when it is decided to establish a port authority, a Bill will be required. A Harbour (Amendment) Bill and FIPASS (Amendment) Bill would be required in conjunction with a Port Authority Bill.

vi. *Prevention of Oil Pollution (Amendment) Bill*

The provisions of the Prevention of Oil Pollution Act 1971 as apply in the Islands are outdated, having been replaced by provisions of the Merchant Shipping Act 1995 in UK, but not updated here. The Chief Executive's review of the Ocean 8 incident highlighted the need to update our legislation in this area.

**4. *Veterinary Services – Future requirements (policy instructions required)***

i. *Medicines (Veterinary) Regulations*

There is a requirement for regulation to be made under the Medicines Ordinance 2006 in relation to the importation of veterinary drugs, before the Medicines Ordinance is brought into force (see also Health and Medical Services, above).

**G Director of Minerals**

***1a. Minerals - Ongoing tasks (policy instructions largely settled)***

i. *Mining Regulations*

Regulations setting out licence model clauses are required to enable licensing to occur for the extraction of calcified seaweed under the Mining Ordinance. A first draft has been produced.

***1b. Minerals - Future requirements (policy instructions outstanding)***

i. *Mining Regulations*

Regulations under the Mining Ordinance are also required to allow for the award of prospecting and exploration licences.

ii. *Offshore Minerals (Amendment) Bill*

The Director advises that amendments will be required to the Offshore Minerals Ordinance in relation to environmental terms and conditions.

## **H Director of Procurement and Efficiency**

### ***1. Leisure Centre***

#### ***2. Post Office***

#### ***3. Stanley Airport***

##### ***1. Leisure Centre – Future requirements (policy instructions outstanding)***

###### ***i. Privatisation Bill***

If proposals to privatise the Leisure Centre (and other Government services) are developed and approved, supporting legislation may be required.

###### ***ii. Transfer of Undertaking Protection Regulations***

“TUPE” regulations may also be required (under the Employment Protection Ordinance) in connection with proposals for the privatisation of Government services.

##### ***2. Post Office – Future requirements (policy instructions outstanding)***

###### ***i. Family Allowance Bill***

The Family Allowance Ordinance is outdated and in need of wholesale revision/replacement.

###### ***ii. Radio Bill/Regulations***

The use of radio frequencies in the Falkland Islands is unregulated, and legislation will be required to support any regulatory regime put in place in due course.

###### ***iii. Television/radio Media Charge Bill***

Legislation may be required if it is determined to introduce a charge for television/radio services.

##### ***3a. Stanley Airport – Ongoing task (policy instructions largely settled)***

###### ***i. Stanley Airport (Regulations)(Amendment) Bill***

An amendment is needed to reflect a boundary change to Stanley Common (see under Attorney General, regulation, above).

##### ***3b. Stanley Airport – Future requirements (policy instructions outstanding)***

###### ***i. Stanley Airport/Government Air Service Bill***

A Bill may be required to support a proposal to merge Stanley Airport and FIGAS if such a proposal is developed and approved.

## **I Director of Public Services**

### ***1. Highways***

#### ***1. Highways – Future requirements (policy instructions outstanding)***

##### ***i. Compulsory Purchase Bill***

Legislation is needed to provide FIG with powers of compulsory purchase, in particular in connection with highways, which are in accordance with the requirements of the Constitution.

##### ***ii. Highways Bill***

The English legislation, with certain exceptions, applies. In many ways the legislation is unsuitable to the point of being unworkable. Amendment is therefore required following formulation of policy.