

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Public Accounts Committee (Amendment) Bill
Paper No: 31/10
Date: 25 February 2010
Report of: Legislative Drafter

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for the presentation of the Public Accounts Bill to the Legislative Assembly.

The Bill has been drafted in order to address issues in relation to the Public Accounts Committee Ordinance that had been raised by the members appointed to the Committee.

2.0 Recommendations

Executive Council is recommended to approve the presentation of the Public Accounts Committee (Amendment) Bill in the form of the draft annexed to this paper.

3.0 Summary of Financial Implications

No direct financial implications

4.0 Background

4.1 The Public Accounts Committee Ordinance (No. 11 of 2009) was passed by the previous Legislative Assembly at its meeting in September 2009. It came into force on 1 February 2010.

4.2 The chairman and two other members of the Committee have been appointed by HE the Governor and these appointments also came into force on 1 February 2010.

4.3 The members of the Committee have been undertaking preparatory work and, in the course of this exercise, two specific issues in relation to the Public Accounts Committee Ordinance emerged that needed to be considered.

4.4 The Public Accounts Committee (Amendment) Bill annexed in draft to this paper would amend the Public Accounts Committee Ordinance to deal with these issues.

4.5 A detailed explanation of the Bill appear in the Objects and Reasons section that appear at the end of it. However, a summary of the key changes that would be made by the Bills appears in the Legal Implications section of this paper.

4.6 The opportunity has also been taken to put forward to correct some minor errors in the Public Accounts Committee Ordinance. These relate to incorrect cross-references in the Ordinance.

4.7 These could have been dealt with by means of a Correction Order under the Interpretation and General Clauses Ordinance but it seems sensible to deal with these at the same time as the other amendments in a single Bill rather than having a separate Bill and Correction Order.

4.10 Executive Council is, therefore, recommended to approve the Public Accounts Committee (Amendment) Bill for presentation to the Legislative Assembly.

5.0 Financial Implications

5.1 There would be no direct financial implications.

5.2 Any contracts entered into under the amended Ordinance would have to come out of the Committee's funds which are voted to it by the Legislative Assembly. Initial funding for the Committee (£30,000) is already included in the budget for 2009-2010 and no change to this is proposed.

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 Bill became law and also of issues to which it is considered that Executive Council's attention ought to be drawn.

6.3 The first important change is that clauses 4 and 5 would give the Committee a limited power to enter into contracts, in its own name, in order to carry out its functions.

6.4 This would cover the power to appoint someone other than a public officer as the secretary and to invite a person to assist it in its work and participate in its proceedings in accordance with section 81(4) of the Constitution. The terms and conditions of such contracts would have to be agreed between the Governor and the chairperson of the Committee.

6.5 It would also cover other contracts for the purpose of carrying out its functions and, in relation to such contracts, the Governor and the chairperson could agree delegated authority as an alternative to agreeing the terms and conditions of each contract.

6.6 What the amendments would not do would be to enable the Committee to enter into a lease for land or accommodation – it would continue to be an FIG responsibility to provide this.

6.7 The other important change would be that clauses 6, 7 and 8 would clarify the extent to which the meetings of the Committee are to be open to the public.

6.8 Section 16 of the Ordinance requires all meetings of the Committee to be open to the public (subject only to limited exceptions) and this is considered to have gone further than was intended.

6.9 Under clauses 6, 7 and 8, meetings of the Committee at which it is hearing evidence would remain open (still subject to slightly amended exceptions) but other meetings would not routinely be open.

6.10 Clause 9 (which would correct the cross-referencing errors in the Ordinance) would be retrospective to 1 February 2010 but the substantive changes would only come into effect once the Amendment Ordinance is published in the *Gazette* (assuming that it is passed and assented to).

7.0 Human Resources Implications

None

EXCO DRAFT: 9.2.2010 for 26.2.2010 (RMB - LD)

Public Accounts Committee (Amendment) Bill 2010

(No: of 2010)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of the Public Accounts Committee Ordinance
4. Section 9 amended
5. New sections 9A and 9B
6. Section 16 repealed
7. New Section 18A
8. Exclusion of public
9. Correction in various sections

PUBLIC ACCOUNTS COMMITTEE (AMENDMENT) BILL 2010

(No: of 2010)

(assented to: 2010)

(commencement: in accordance with section 2)

(published: 2010)

A BILL

for

AN ORDINANCE

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

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Public Accounts Committee (Amendment) Ordinance 2010

2. Commencement

- (1) Section 9 of this Ordinance is deemed to have come into force on 1 February 2010.
- (2) The remainder of this Ordinance comes into effect on publication in the *Gazette*.

3. Amendment of the Public Accounts Committee Ordinance

This Ordinance amends the Public Accounts Committee Ordinance.

4. Section 9 amended

- (1) This section amends section 9.

- (2) The heading is repealed and the following substituted —

“9. Secretary and staff”

- (3) Sub-section (2) is repealed and the following substituted —

“(2) If the Governor appoints a person other than a public officer to be the secretary —

- (a) the Committee may enter, in its own name, into a contract of employment or for services with that person, but
- (b) the terms and conditions on which that person is employed or engaged must be agreed between the Governor and the chairperson.”

5. New sections 9A and 9B

The following new sections are inserted after section 9 —

“9A. Assistance

If the Committee invites a person to assist it in its work and participate in its proceedings in accordance with section 81(4) of the Constitution —

- (a) it may enter, in its own name, into a contract for services with that person, but
- (b) the terms and conditions of that contract must have been agreed beforehand between the Governor and the chairperson.

9B. Other contracts

The Committee may enter into other contracts, in its own name, for the purpose of carrying out its functions but only if either —

(a) the terms and conditions of the contract have been agreed beforehand between the Governor and the chairperson; or

(b) the contract is within the scope of authority that has been agreed between the Governor and the chairperson.”

6. Section 16 repealed

Section 16 is repealed.

7. New section 18A

The following new section is inserted above section 19 —

“18A. Hearings ordinarily to be open to public

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

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

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

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

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

8. Exclusion of public

Section 21 is amended by omitting “or considering” in both places where it appears.

9. Correction in various sections

Each of the following provisions is corrected by omitting “29” and substituting “30” —

Section 19(4)

Section 20(4)

Section 23(4)

Section 24

Section 31

OBJECTS AND REASONS

This Bill would amend the Public Accounts Committee Ordinance (No. 11 of 2009) to reflect issues that have been identified by the members who have been appointed to the Committee.

Clauses 4 and 5 are intended to give the Committee a limited power to enter into contracts, in its own name, in order to carry out its functions. Neither section 81 of the Constitution (which establishes the Committee) nor the Ordinance give it any power to enter into contracts.

The amendment to section 9 (which would be made by *clause 4*) and the new sections 9A and 9B (which would be inserted by *clause 5*) would give the Committee a limited power to enter into contracts, in its own name. That power would be limited by requiring either that the terms and conditions are agreed between the Governor and the Committee's chairperson or (in relation to certain contracts) by the scope of authority agreed between the Governor and the chairperson.

Clauses 6, 7 and 8 are intended to clarify the extent to which the Committee's proceedings are to be open to the public.

Under section 16 of the Ordinance, all meetings of the Committee would have been open to the public, subject only to limited exceptions under section 21. It is considered that this went further than was intended.

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

Clause 6 would repeal section 16, which contains the existing provision that meetings of the Committee are to be open to the public.

This would be replaced, under *clause 7*, with a new section 18A providing that (subject to section 21, as amended):

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

Clause 8 would make a consequential amendment to section 21.

Clause 9 corrects a cross-referencing error that was made in various sections of the Ordinance.

Unlike the other provisions of this Bill (which would not come into force until this Ordinance is published in the *Gazette*, if passed), *clause 9* would be retrospective to 1 February 2010, the date on which the Public Accounts Committee Ordinance was brought into force.