OCTOBER 2023 V2.0

POLICY DEVELOPMENT AND LAW REFORM

IN THE FALKLAND ISLANDS

HANDBOOK

CONTENTS

1. Introduction

1.1 Purpose of this handbook

This handbook has been prepared to provide support and guidance to all Falkland Island Government officials involved in developing policy and – where needed – delivering that policy through law reform (new or amended legislation).

1.2 What is policy?

A policy is a decision or course of action (or inaction) adopted or proposed by government to use its resources, and take actions, to meet some objective, and typically to solve a problem or a set of interrelated issues. Policy development is the process of understanding the problem(s) to be addressed and deciding what **interventions** should be taken to address them, and by whom. This can take many forms including financial or other incentives, self-regulation (eg. through voluntary standards or codes of practice), operational or administrative changes (eg. improving service delivery), or better information or education. It may involve better understanding or enforcement of the existing law, or it may involve law reform - the creation or amendment of written legislation.

Sections **2** and **3** are a summary guide to key considerations in policy development in the Falkland Islands. Sections **4** to **6** look in detail at the process of law reform and how to turn policy into legislation.

1.3 Key contacts

Throughout the policy development process, it will be necessary to work with different parts of government, and there are teams that will be able to provide support at key stages of any project. Capacity is often limited across all parts of government, so it's a good idea to talk to these teams early on and factor in their availability when developing your project plan and timeline. It is also important to think about where your project may overlap with or impact on the work done by other Directorates, and to also involve them at an early stage.

1.3.1 Policy Unit

The Policy unit has a broad remit to provide policy advice across FIG, and to address strategic, cross-cutting issues. While you will be responsible for leading your project and developing the substantive policy, drawing on your particular area of expertise and field of knowledge, the Policy Unit may be able to offer advice on the process, or on specific elements or queries. This handbook has been produced in conjunction with the Policy Unit to help to guide and support colleagues through this process.

1.3.2 Law and Regulation

The legal team can help throughout the policy development process, and will be a key part of any project resulting in law reform. However, it is important to note that you are responsible for being familiar with the relevant law for your subject area. It is not possible for the legal team to be subject experts in all areas relating to the government, so they will require you to carry out the initial review of the relevant law and legal issues. The legal team will help review your proposals and address any particular legal issues or questions you may have.
If your project involves law reform, the legislative drafting team will take on the drafting work after the policy development process is complete.

1.3.3 Programme Management

For large scale projects, support may be available to help with the development, coordination and implementation of a project plan. For projects that cannot be given project management resource from this team, Programme Management may be able to help you to run your own projects more effectively, for example by providing training and access to project management tools.

1.3.4 Communications and Media Office

The Communications and Media Office can assist at different stages of a policy project, particularly when it may be important to work with the public. This includes launching a consultation, updating the community on how a project is progressing, and informing people of the end result, including any actions they may be required to take. The Communications and Media Office's Trigger Template, which assists with communications planning for any project, can be found **on the Intranet.**

1.4 How to use this handbook

Not all parts of this handbook will be relevant for every policy or every law reform. It is simply a guide to prompt you to think about various matters to ensure that the policy development process runs smoothly and your interventions, particularly law reform, can be designed as efficiently and effectively as possible.

The handbook is presented in sections, and you should feel free to move back and forth through the document as best suits you. At the end of this introductory section, there are some **flowcharts** to help you find the sections that will be most helpful to you in different situations. The toolkit has two main sections, **Policy** (sections 2-3) and **Law Reform** (sections 4-6). There are also flowcharts for each of these broad topics to help you find the most relevant sections contained within them.

1.5 Appreciation

Before we get into the good stuff, the Falkland Islands Government Law and Regulation Directorate and Policy Unit thank the many people who have contributed to this toolkit by providing guidance, feedback and suggestions during its development.

Thank you, in particular, to the Pacific Islands Legal Officers Network (PILON) for letting us use their toolkit as a basis for developing this material for the Falkland Islands.

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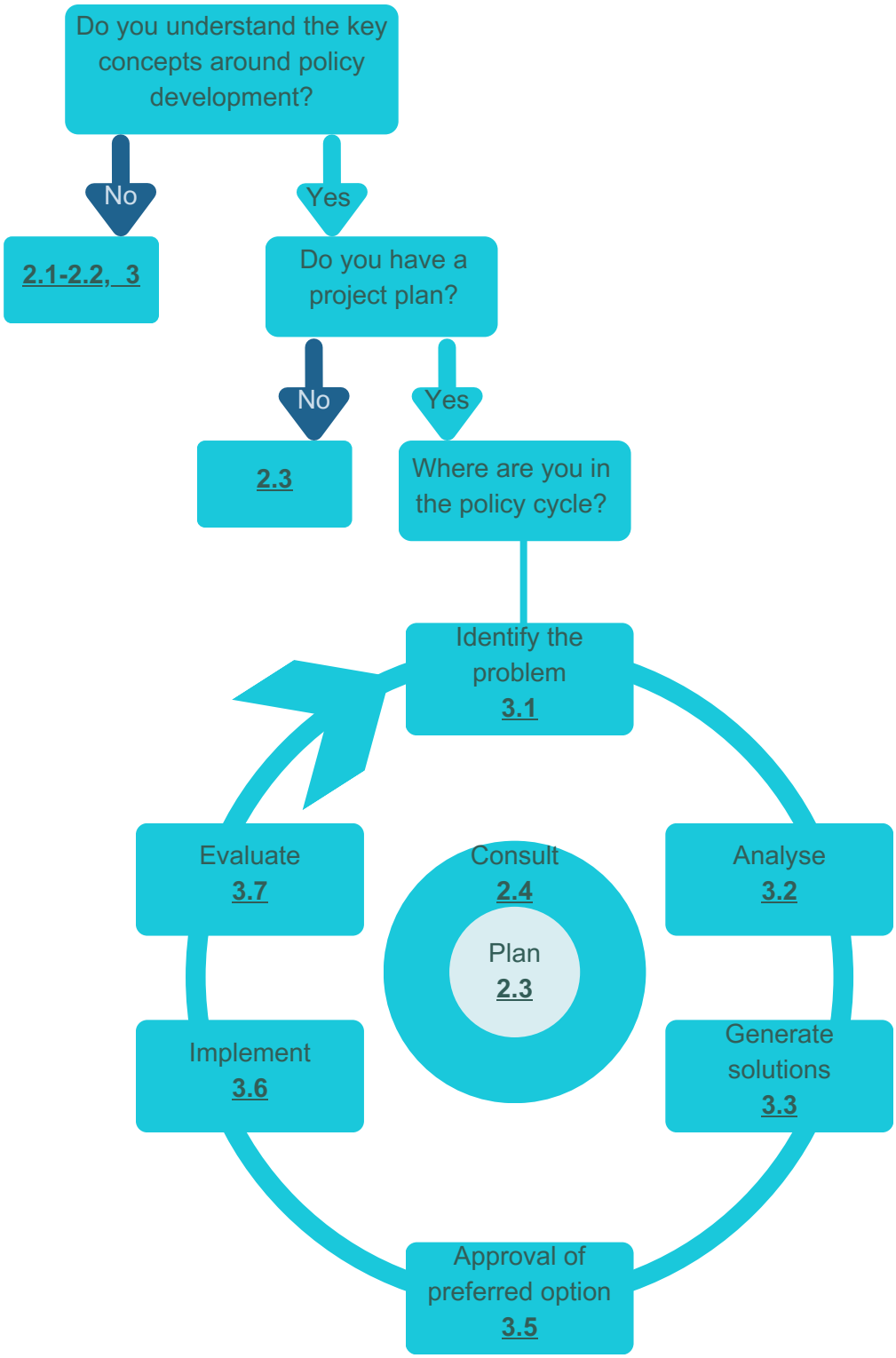
2. Policy

How to use this section:



2.1 What is policy?

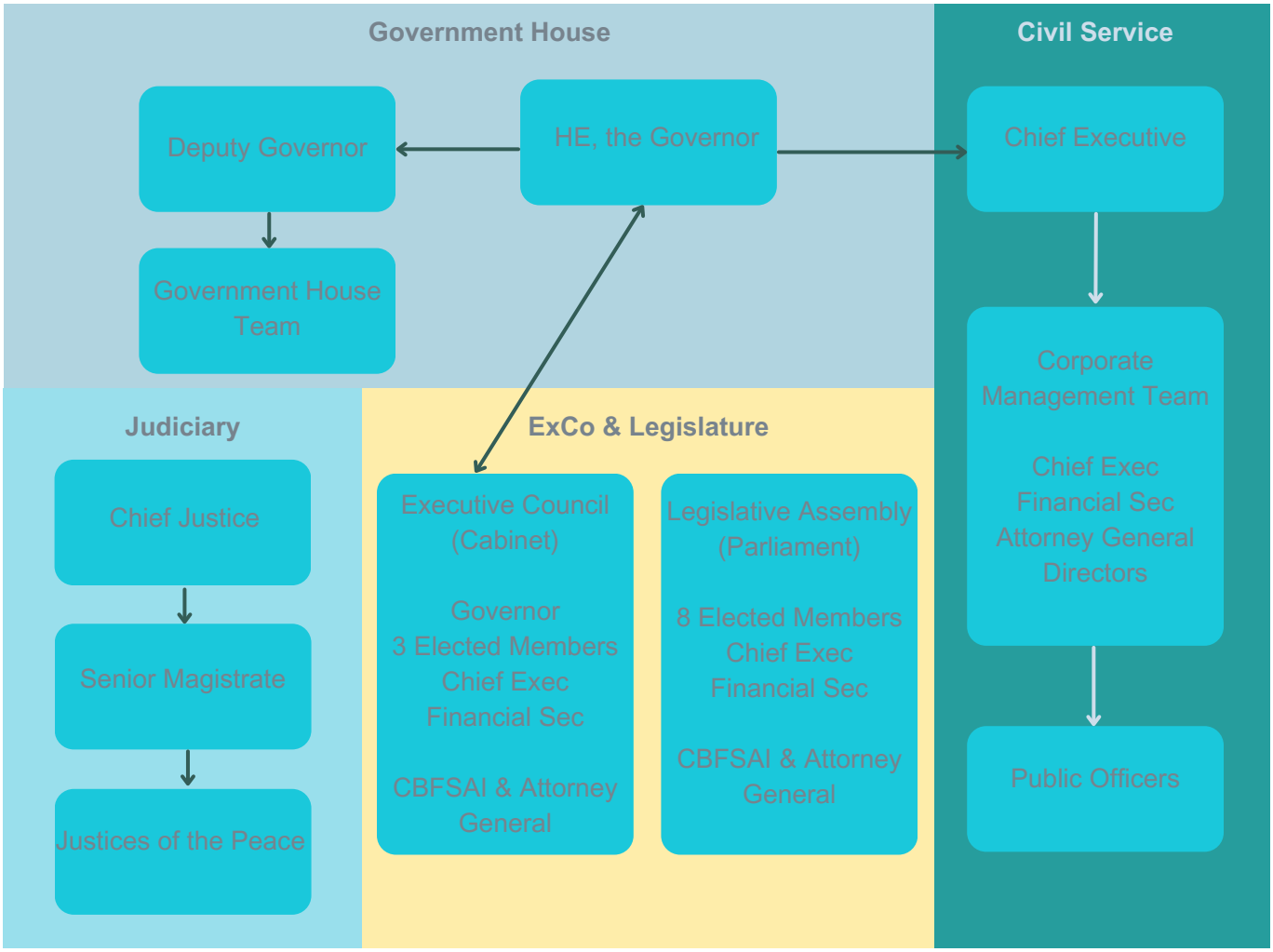
A policy is a decision by government to use its resources, and take actions, to meet some objective, and typically to solve a problem.

Sometimes a government will have a clear idea of the policy direction it wishes to take and the role of the public service will be to implement that policy decision. On other occasions the government will need a range of policy options and it is your role to research and develop those options.

2.2 Your role in policy making as a public servant

While public servants play a critical role in developing public policy, it is not public servants who decide which policy option to pursue. This decision usually lies with the executive part of the government. In the Falkland Islands, the executive role is fulfilled by the Executive Council, whose voting members are three of the elected Members of the Legislative Assembly. In a democratic system, it is for politicians to make the ultimate decisions on how the country should run.

Structures of Government:



The Legislative Assembly is the **law-making body** of the Falkland Islands. The eight elected Members of the Legislative Assembly (MLAs) act as representatives of the voting public. **The Islands Plan** sets out their aims and commitments over a four-year term. Under the portfolio system, each member takes responsibility for a particular subject area and works closely with the relevant Directorates.

Portfolio-holders do not take the role of a Minister in deciding policy – instead, questions of policy are considered by Executive Council (ExCo), which is the main policy and decision-making body of the Falkland Islands Government. Each year MLAs elect three of their number to be members of ExCo. The Governor, the Chief Executive and the Financial Secretary also attend ExCo meetings. CBFSAI and the Attorney General may also attend.

Only MLAs may vote in ExCo meetings to decide on policy. The Governor and Civil Service must then act on their decisions, unless the Governor is empowered to do otherwise through the Constitution. The Governor retains direct responsibility for foreign affairs and defence, but consults regularly with MLAs on these issues.

There are also a number of committees (some statutory), usually made up of government and non-government representatives, who can consider and advise the government on issues referred to them. Although mainly advisory, they have decision making powers in certain areas.
The Civil Service must translate the Islands Plan commitments into policy and public services. This is primarily the responsibility of the Corporate Management Team (CMT), with ExCo making decisions on policy.

The Falkland Islands has its own laws and judicial system, based on the legal system of England. Justices of the Peace and the Senior Magistrate hear the majority of cases, including criminal and civil matters, family and children's cases and admiralty and commercial disputes. The Chief Justice (non-resident) normally visits at least once a year to hear any serious or complex cases, appeals from the Magistrates Court, and those relating to constitutional rights.

The best way for a public servant to ensure that the most effective and efficient policy option is pursued is to provide the best quality advice, this is usually summarised in a paper for Executive Council, which sets out the options and recommends a way forward. Before reaching that stage, policy proposals will usually have been discussed with the relevant MLA portfolio holder, and a briefing meeting with all MLAs is typically held to ensure they have all had the opportunity to provide feedback.

2.3 Project Planning

Having a good project plan and taking an active approach to project management are essential parts of any project. It is important to have a plan, monitor the project, and be able to adjust as things develop. You are likely to need specific plans for different stages of your project (for example, an implementation plan towards the end of the project) as well as an overarching plan.

You should consider timeframes as early as possible in the policy process. There are a number of things that need to be considered –

- Is there a political or government commitment about timeframes (e.g.in the Islands Plan)?
- Are there other related government priorities? Does the policy involve funds that have been budgeted?
- Do you need to take a paper to Executive Council by a particular month?
- Do you need to consider the cycle of Legislative Assembly meetings?
- Is there an upcoming election that will impact on your plan?

Scoping and planning are important for any policy project that will require a sustained effort over an extended period. The policy process can often be long and overwhelming, so breaking it down into manageable pieces can make it easier. A common weakness in complex policy or legislative reform is setting an unrealistic or ambitious finish date for a project that fails to take into account the various steps (such as consultation) that will be required. Expectations may then become fixed around that date, leading to a choice between failing to meet these expectations, re-scoping the project, or cutting corners. On the other hand, it may be important to maintain momentum to ensure the project is completed, and the preparatory work is not wasted. There is a judgement to be made, and the particular circumstances of the Falkland Islands – where resources and capacity are limited – should be borne in mind. Having a plan and a timeline will help you to understand the knock-on effects of changes or delays to specific elements of the project, and will be helpful in making decisions around the project.

2.3.1 Project plans

To help guide projects and ensure they progress within an identified timeframe and scope, it is helpful to develop a project plan at the start. There are many ways of developing project plans, and the level of detail and rigour should correspond with the importance and complexity of your project. FIG guidance on project management can be found in the Document Library on the intranet.

For more complex projects, helpful project management tools, support and advice are available through the Programme Management Team

2.3.2 Risk management

When managing a policy process, it helps to consider what **risks** might impact on the policy's development and implementation.

When undertaking risk management, you should:

- **Identify** the risks (what kind of things could go wrong?)
- **Analyse**/assess the risks (what is the likelihood of things going wrong, and how serious are the consequences if they do?)
- **Evaluate** the risks (can we tolerate the risk, or do we need to take action?)
- **Control** the risks (take mitigating actions to reduce the risk if necessary and possible; and/or plan contingency actions that you could take if the risk is realised)

Something to consider preparing is a **'risk register'**. A risk register is a tool for analysing and monitoring risks – it is usually based on a matrix that determines the severity of the risk based on the likelihood of that risk occurring and how serious the consequences will be if it does occur. This typically generates a **Red-Amber-Green** rating to classify how serious each risk is, which in turn will influence how you monitor and manage them.

Likelihood	**Consequence**		
	1. Highly likely (no effect on ability to function)	**2. Moderate** (manageable impact on ability to function)	**3. Major** (significant reputational damage/impact on ability to function)
3. Highly likely (from past experience)	**Medium**	**High**	**Very high**
2. Possible (not unusual, should occur)	**Low**	**Medium**	**High**
1. Highly unlikely (very unusual, exceptional circumstances)	**Very low**	**Low**	**Medium**

Once you have identified the level of risk using the matrix, decisions can be made about whether you should proceed despite the risk, or what actions you can and should take to reduce the likelihood or consequences of the risk. Mitigating actions can then be recorded in the risk register, which should be reviewed regularly to assess whether the level of risk has changed and whether the mitigating actions are working as intended.

For example:
You have been asked to undertake a policy development process to address a particular issue. However, you are aware that the Falkland Islands is hosting a major regional forum in two months' time that will use significant staff resources from your department, such that there will be no-one available to conduct the policy work over this period. Inserting this information into the risk matrix you can see that the likelihood of this forum occurring is 'highly likely'. Depending on the particular policy issues being addressed, the consequence of being under-resourced is 'moderate' or even 'major'. Having identified this risk as 'high' or 'very high', you might need to think about whether certain resources can be kept isolated from working on the forum, whether additional resources can be used from elsewhere or whether additional recruitment can be carried out, or whether you need to review your project plan and timeline.

Project management techniques provide a toolkit to draw on, and should be adapted to suit your project.

Not having enough project management leads to a lack of control over the project, which may be de-railed by surprises that could have been foreseen.

Overdoing project management activities risks spending too much of your limited resource on reporting, rather than undertaking the policy work needed.

Policy Development Template

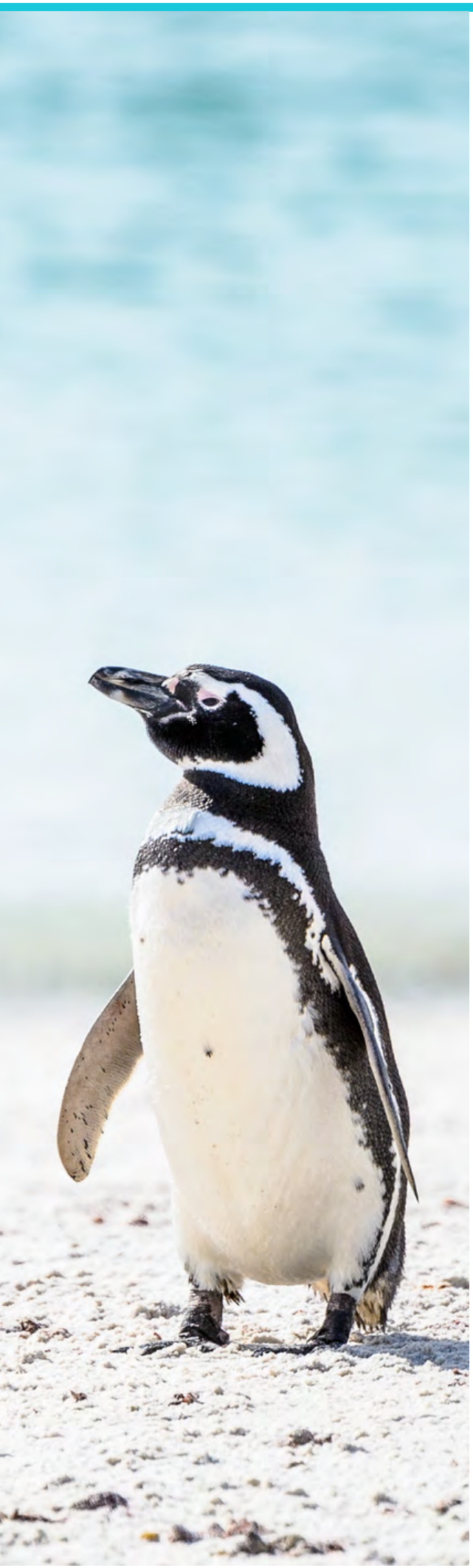
A Policy development template is attached as **Annex 1** on page 83. However, it is important to note that not all policies need to follow the format in Annex 1 as some policies can be included within an ExCo paper. If you are unclear please contact the Policy or Legal section for assistance.

2.4 Consult: engaging with stakeholders

Consultation simply means involving the people (stakeholders) who may be affected by or interested in your decisions in the policy development process. It is also sometimes called stakeholder engagement. It has a role to play at various stages throughout the policy development process, from the earliest point of setting government priorities, through to ensuring that the final product works in practice. It is important to speak to stakeholders early on, to help ensure that you have gathered as much information as possible to inform your policy development process. Consultation at later stages in the cycle can help to seek views on defined policy options, and/or to finalise the details once a decision has been made to ensure implementation and evaluation is discussed and settled with relevant stakeholders.

'Consultation' is often used to refer specifically to the process of running a formal survey or questionnaire. This is often an important part of the policy process, but may not be the best or only option in every case. There is a spectrum of stakeholder engagement or consultation, ranging from awareness-raising and securing buy-in, to collaboration and co-design. For each project you must consider the specific circumstances to decide the best approach. (see section **2.4.4** below).

It is not always possible for the public to be involved in all major decisions, or in all aspects of any decision or action, however, there will be certain circumstances where public consultation is necessary. If you think that you may wish to engage the public in the policy development process, there is a separate guidance document available from the Policy Unit, '*Public Consultation: Principles and Guidance*'. Public engagement or consultation is the responsibility of the relevant Directorate, however, the Policy Unit may be able to provide advice on best practice, survey design, data-gathering, public engagement opportunities, communication materials, and timelines for consultation.



2.4.1 Who are your stakeholders?

A stakeholder is defined as:

“any individual, group or organisation affected by, interested in, or capable of influencing the outcome of a body of work”.

Early in the policy development process it is essential to **identify** all those who:

- know about the issues; or
- are affected by the issues; or
- care about the issues (because they are affected or have a strong view); or
- are likely to be involved in implementing solutions later on.

Even if a consultation process is still a long way off, there are good reasons to identify early in the policy development process those who will likely have an interest or contribution. These reasons include that:

- you may need assistance defining your policy problem;
- some stakeholders might need consultation from the start (including, for example, interests within government or interests of vulnerable groups);
- MLAs or senior managers may require advice on who is most likely to be affected or have a view on the issue and any potential sensitivities; and
- the likely scope and method of consultations is an essential ingredient in any project planning.

You should consider not only those who may be affected by a policy proposal, but also those who may have relevant experience or expertise that can help to inform the policy development process.

As a project goes on, it is important to look at and update your list of those with an interest so that any agency, entity or individual who should be given progress updates, or who should be consulted, is not forgotten.

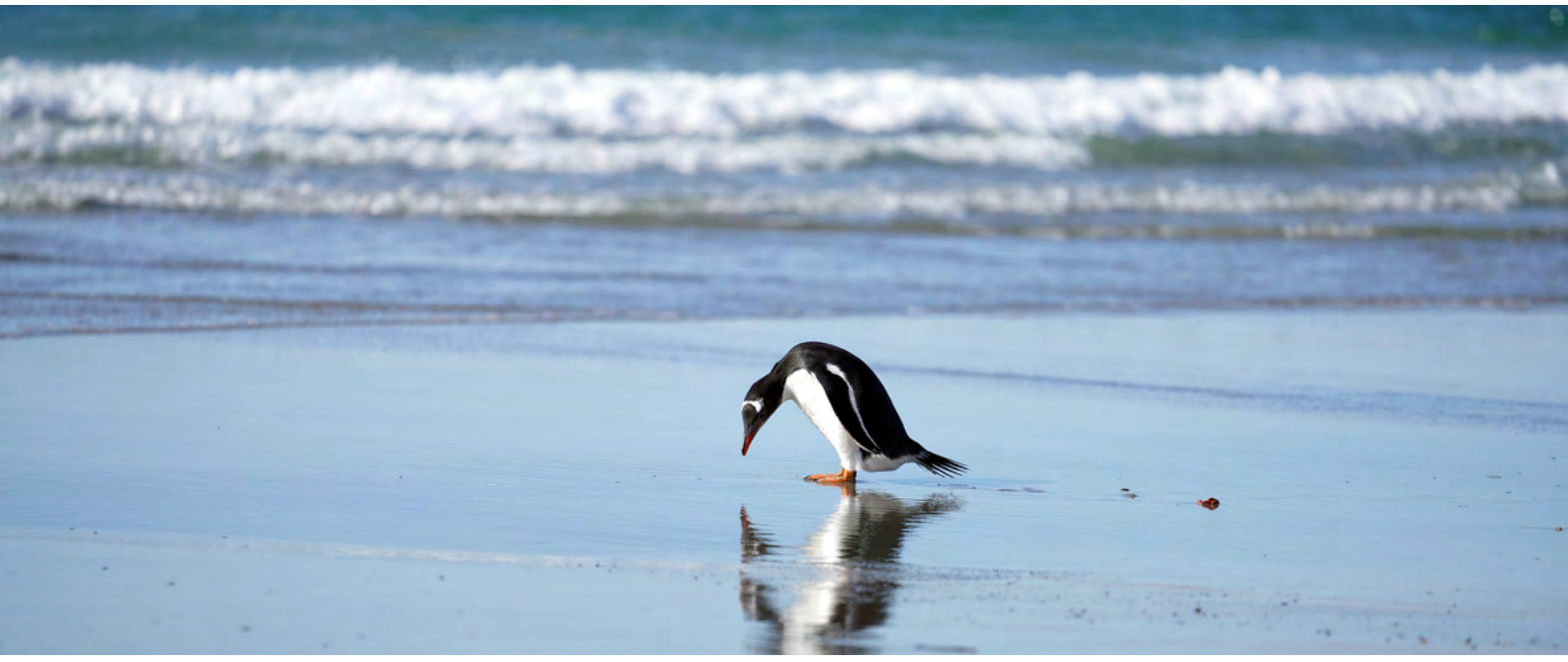
Remember to think about stakeholders:

- inside your department
- in the Legislative Assembly (for instance, the relevant portfolio-holder)
- across government (other departments, CMT, other MLAs);
- outside government in the broader community, including the general public, representative bodies, NGOs, vulnerable groups, individual citizens, private businesses, religious groups, civil society etc.)
- outside the Falkland Islands (e.g. the UK government may have a particular interest in some issues (particularly if they touch on diplomacy, security or defence or involve financial guarantees) but there may also be a range of regional or international bodies with an interest); and
- who may be under-represented, hard to reach, or seldom heard – it is particularly important to consider groups whose views, opinions and experiences may not be easily captured, and how to facilitate their participation

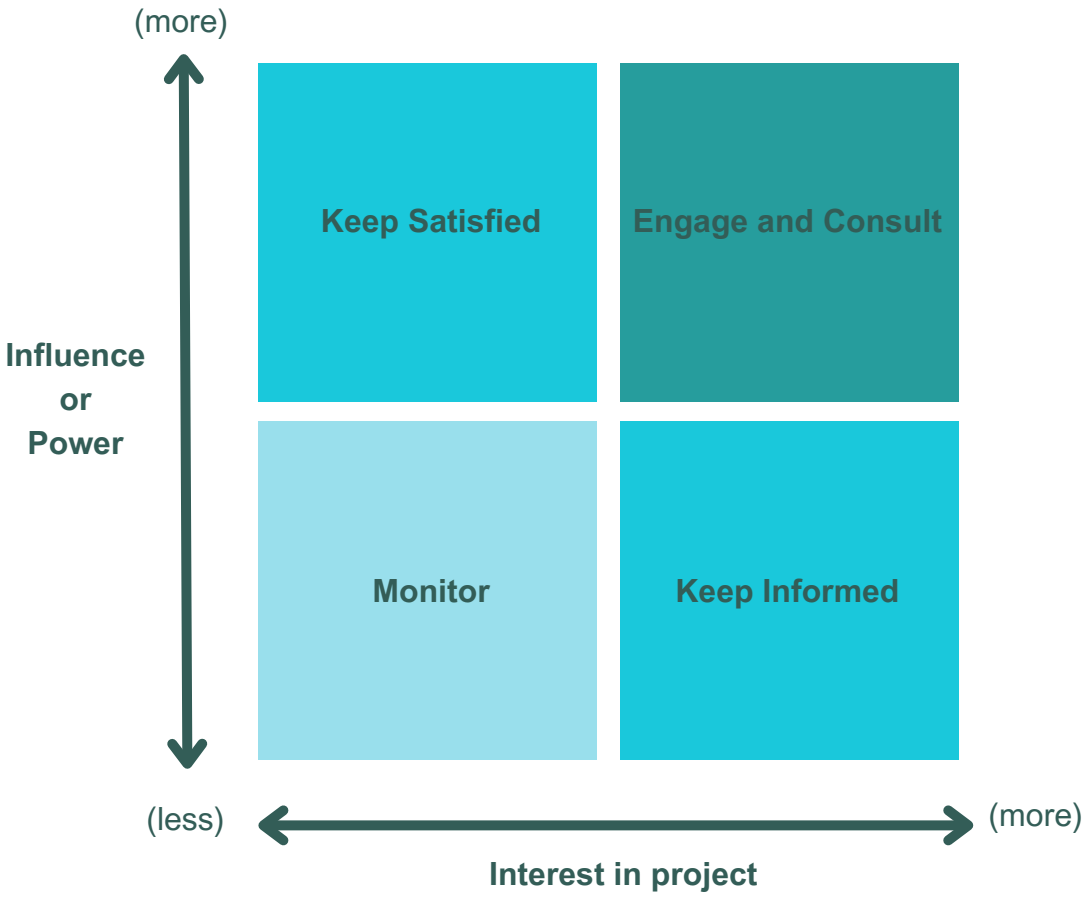
2.4.2 Stakeholder categorisation

Once you have identified your stakeholders, you may find it useful to separate them into categories. This may be as simple as grouping them according to their sphere of influence or area of interest. Or, you may be able to carry out some prioritisation, which could help to tailor your approach and decide which stakeholders to consult, and how. One way to think about prioritisation is to use a power/interest grid. Analysing the level of influence (power) and interest each stakeholder has in the area of work, they can be sorted into four categories:

1. High power/high interest
2. High power/low interest
3. Low power/high interest
4. Low power/low interest



Different categories of stakeholder will require different approaches, as set out in the grid below:



Case study: Developing the Falkland Islands Environment Strategy

A range of stakeholders were engaged with during the development of the Falkland Islands Environment Strategy. A multi-stage consultation process was designed, involving representatives from across a range of key groups including:

- Government Directorates and subject experts
- Members of the public, including children and young people
- Environmental organisations and campaign groups
- Industry bodies and business groups
- Members of the Legislative Assembly

A number of different engagement/consultation tools were utilised, including:

- In-depth thematic workshops
- Public meetings and presentations
- A detailed questionnaire

2.4.3 Do you need and/or have authority to consult?

Before issuing a formal external consultation or engagement process, you normally need **permission** from Executive Council. You should attach any documents or questionnaires to be issued, and set out your proposals for the process to be followed, the timeframes, and the list of those to be consulted. Please refer to the *Public Consultation: Principles and Guidance* document for further information.

2.4.4 How will you consult?

There is no 'right' level of stakeholder engagement or consultation. This will vary depending on what you want to achieve, the degree of influence stakeholders can realistically have over a decision, the resources available to you, and the nature of stakeholders' desire and need to participate. Broadly speaking, 'levels' of engagement and consultation can be broken down into the following categories:

- **Inform**: Where there is little scope for influence over a decision and you are simply raising awareness or seeking buy-in to support an outcome. It may be more appropriate to run an information session or communications campaign.
- **Consult**: If you want to get input and opinions at a particular point in the process. For instance, if you need to fill gaps in available evidence to support decision-making, if you want to understand the public perception of a proposal, or if you need to determine if the proposal is relevant and acceptable to specific groups.
- **Involve**: a more in-depth consultation process which involves stakeholders assessing an issue or proposal with a view to working together to find common ground and deliver consensus-based input. This could be achieved through conferences or workshops, for example.
- **Collaborate**: includes all elements of involve, but allows for effective partnering with stakeholders on all aspects of the decisions to be made. They will be involved in all key activities and decisions, and their input will be incorporated to the maximum extent possible. Consensus is not always sought at this level, and the government is ultimately the decision-maker.
- **Empower**: providing stakeholders with the opportunity to make informed decisions for themselves, usually via public voting or ballots.

There are various methods of consultation and engagement, and the option chosen will depend on the size and urgency of the area of work.

Some options for how to consult include:

- Focus groups
- Key stakeholder interviews
- Submissions
- Technical reports and discussion papers
- Questionnaires and surveys

Please refer to the *Public Consultation: Principles and Guidance* document for further guidance on levels and methods of engagement and consultation.

You should seek advice from the Communications and Media Office about what sort of communications would support help support your consultation and engagement – this could include a press notice, making use of social media such as Facebook; and working with local media (such as Penguin News, Falklands Radio, and FITV). This can help improve accessibility and ensure your consultation is as broad based as possible, helping you to capture all the relevant feedback.

A full public consultation or engagement process may include most or all of these elements, and may be appropriate for engagement or consultation on wide-ranging strategic issues and/or where a large number of people and organisations have an interest. A more targeted approach may be needed for issues that are industry or sector specific, geographically specific, technical in nature, or require a degree of confidentiality.

In any case, you should allow enough time for stakeholders to consider the issues and submit their views.

Engagement and consultation should be used as a way to help make the decision, not as a substitute for the decision, and the results should feed in as one relevant factor to inform the decision-making process.

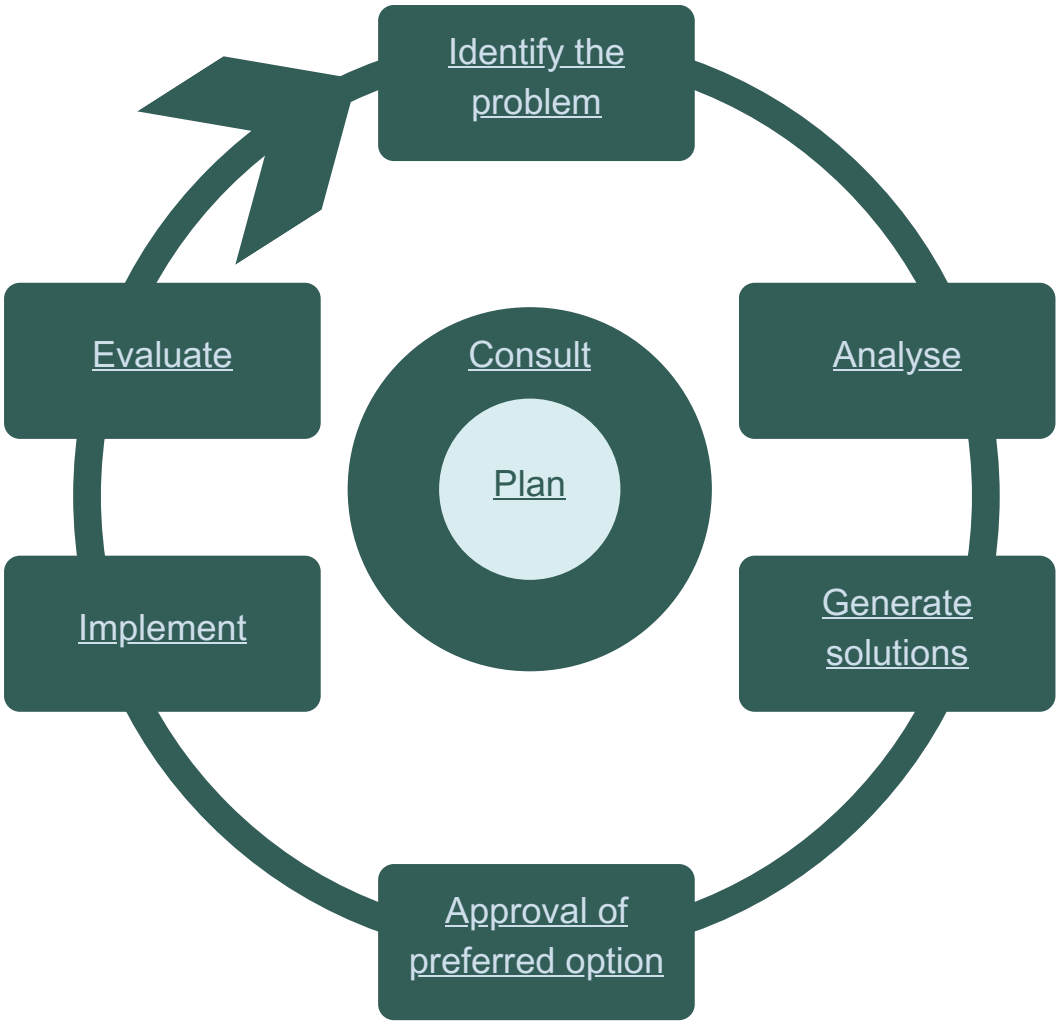
Communication plans can be a useful tool for helping guide stakeholder engagement and consultation by ensuring the ‘who, what, why, when, where and how’ are considered and planned.

3. The policy development process

Policy development, also called ‘policy making’ or the ‘policy process’, describes the process governments use to formulate public policy. The policy development process is a series of steps which help guide policy officers.

There is no standard ‘one size fits all’ way to undertake policy development – it depends on the nature and complexity of the issue or problem you are dealing with. The diagram below shows one simple model of policy development, and if you think through whether and how each of these stages applies to your project, you shouldn’t go far wrong. The model illustrates that policy development is often a circular process –while you may begin with identifying the problem(s), when you evaluate your policy at the end you may need to start the cycle again to fix issues which have arisen, or to inform the development of future policy.

The Policy Development Cycle:



The reality of policy making rarely conforms to an ideal model. These stages often overlap, and may need to be repeated at various points. In cases of genuine urgency, some of these steps may need to be missed or truncated. In other cases, as more detailed work progresses it may become clear that the problem had not been fully understood and needs to be redefined. Planning and consultation can often be an ongoing part of the process. It helps to have a project plan from the outset to set how and when the stages of the project will be conducted, and you will need some flexibility to adapt that plan as you go – see the sections on project planning and consultation at sections **2.3-2.4.**

3.1 Identify the problem: what is the policy problem you're trying to 'solve'?

Before starting to think about solutions you must first understand the problem the government is trying to solve. This is one of the most common mistakes policy officers make – they fail to clearly define the problem before starting the policy making process. This results in wasted time and effort developing policies and/or laws that do not solve the problem.

If you were a doctor you wouldn't try to prescribe medication before working out what is wrong with your patient – policy making is the same.

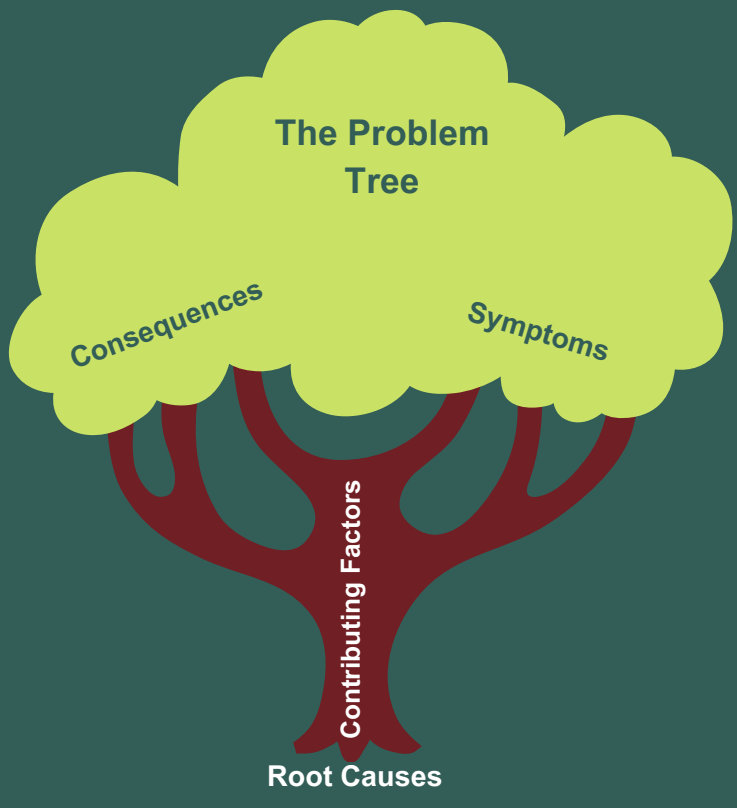
In some cases, getting a clear understanding of the problem may be one of the largest tasks in the policy development process. In these cases, you may need to get a basic understanding of the problem and continue to gather facts and refine that understanding as you go.

One way to help clarify the policy problem is to consider the issue in terms of a **problem tree**.

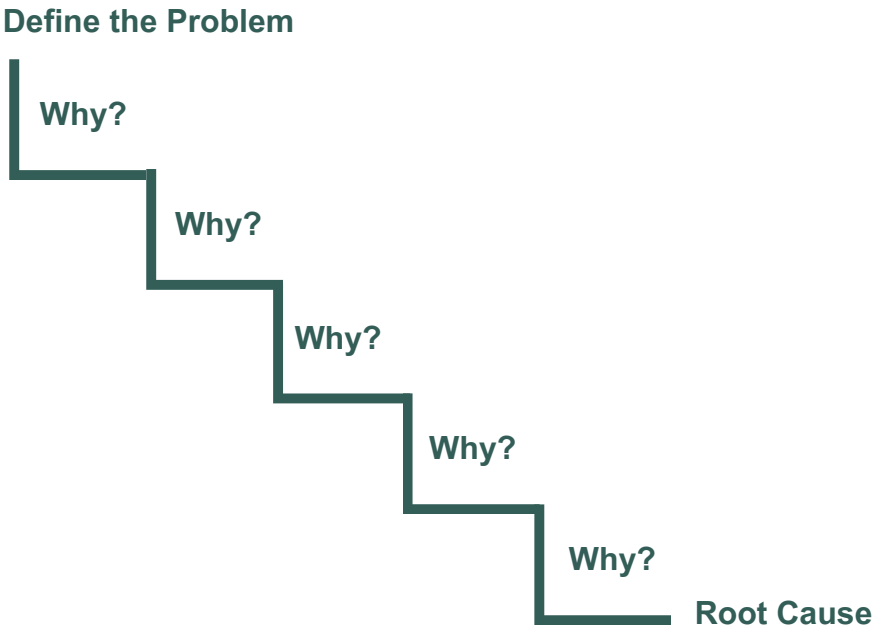
In this analogy, the tree represents the particular policy problem you are trying to address:

- the roots can be considered the 'root' or main causes of the problem;
- the trunk represents contributing factors; and
- the leaves and branches represent the symptoms and results of the problem

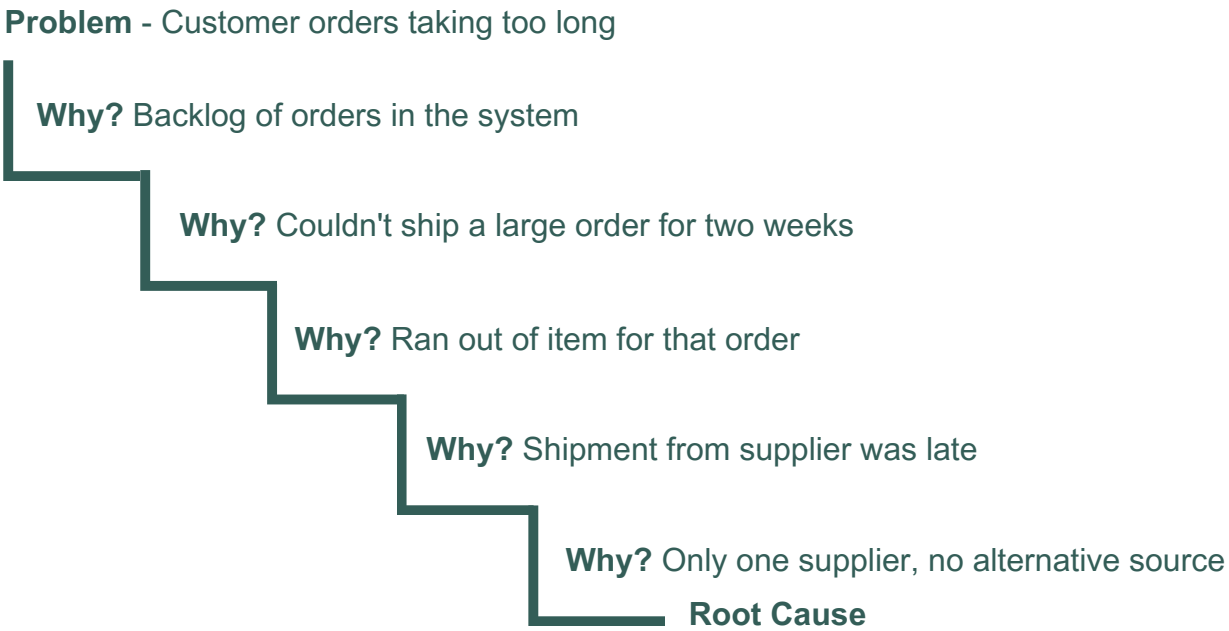
If you cut off the branches or leaves then the problem may be reduced, but you won't have completely solved the problem because the underlying cause has not been identified and addressed. However, if you cut the roots the whole problem can be solved.



Another way to identify the root cause is to use the **'Five Whys'** model, which involves repeating the question 'why?' until you determine the underlying issue.



Here is simple worked example from a delivery company:



In some circumstances the policy problem may be too large, complex or expensive to fully address the root cause. In these circumstances it may make sense to just address the symptoms. However, even where this is the case, it is important to understand the difference so you can give the best policy advice.

3.2 Analyse: practical ways to understand your problem

To understand the problem, you must undertake research. One of the most effective ways to understand the problem is by speaking to those affected. You should also identify and speak to people with key background or expert knowledge, who may be in the Islands, in the UK, or elsewhere. This is the earliest stage in consulting stakeholders (see section **2.4** on consultations). Research can also be done using existing government papers (e.g. Executive Council papers) and records, internet searches or books.

The type and amount of research you will need to do depends on the complexity of the problem, how important it is and the urgency of the task. If you need to find an answer by next week, you will have to be selective about the research you undertake. If you have a longer timeframe you can conduct more thorough research using a broader range of sources.

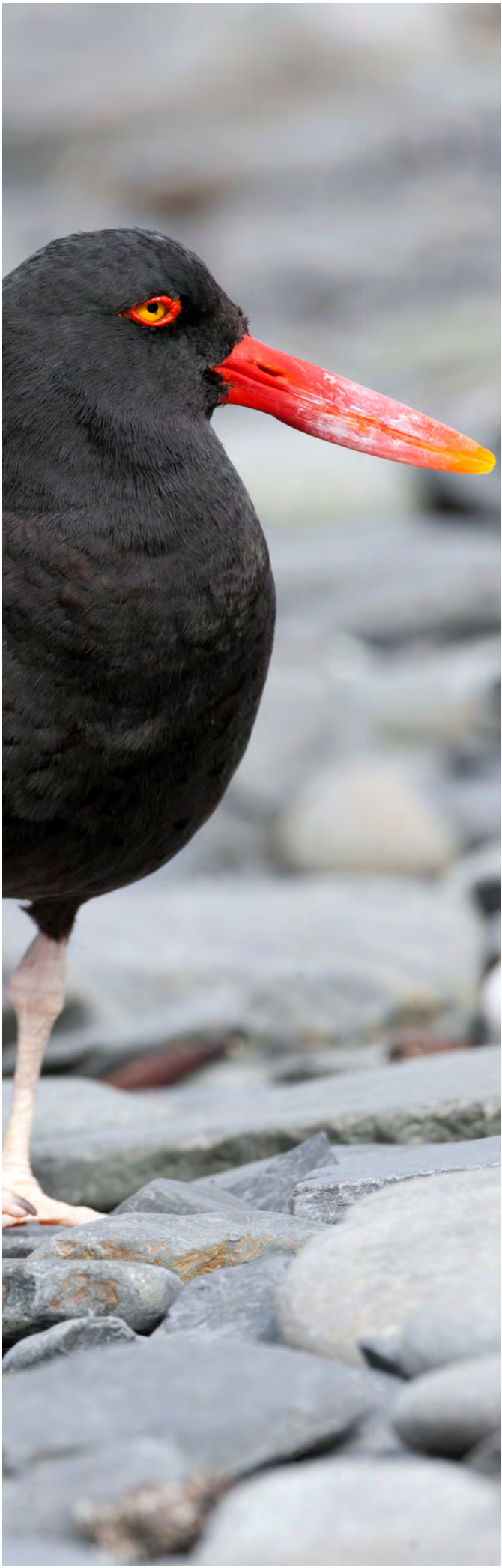
There are a number of practical steps you can take to understand your problem. Some of these are likely to overlap with the first stage of problem identification, outlined above.

3.2.1 Ask questions to understand the source of the problem

This may require you to clarify the issue with the person who raised it.

For example, if the issue has been raised by an MLA, why is the MLA interested in solving this problem? Where has it come from? For example, it may be an election commitment, an issue that has received media scrutiny, a concern raised by a member of the public, or a matter that has arisen from a court case.

Knowing the source will help you to focus your research.



3.2.2 Desktop research

Desktop research involves using the information resources available to you to understand the issues. This could include doing research to investigate:

- How the Falkland Islands has considered and dealt with the issue in the past (e.g. files, earlier legislative amendments, past committee reports).
- How similar issues have been addressed in other policy contexts, and in other countries. Examples from the UK may be particularly relevant to the Falkland Islands given our status as a British Overseas Territory and our strong political and cultural links. Remember that in some fields there may be different approaches in England, Scotland, Wales and Northern Ireland – and some areas will be dealt with by local authorities, whose policies can also be worth looking at. Equally, other Overseas Territories or small island communities can be useful reference point. Examples from other jurisdictions, such as New Zealand, may also offer ideas and insights.
- Stakeholder views – including submissions or papers on relevant topics by stakeholder bodies (see section **2.4** on consultation) – in some cases, stakeholders may have evidence or position papers on their websites, or you may need to contact them to understand their views.
- Models, recommendations or standards put forward by relevant international bodies, and relevant areas of international law.
- Academic research – this may involve reviewing the published literature or undertaking primary research.

3.2.3 Speak to stakeholders

- People in your Directorate who have dealt with the same or similar problems.
- Key stakeholders (section **2.4**). You may need permission to discuss this issue externally and it may not be necessary at this point.
- Other Directorates - check whether the problem is already being addressed in a different way by somebody else.

The importance of evidence-based policy

'Evidence-based policy' refers to situations where public policy is informed by objective evidence. It supports the idea that better policy decisions are made when they are based on objective evidence, rather than on 'gut feelings' or evidence that is manipulated or 'cherry picked'.
Finding good evidence can be challenging, take time and be expensive – but the costs of developing or implementing an incorrect policy that does not solve the problem can be even greater. You must ensure your evidence comes from a variety of sources and is rigorous. Where possible, this means corroborating your evidence – that is, confirming it is true using two or more different sources.
In reality, there is rarely a perfect and fully formed evidence base, and decisions need to be made on imperfect information. The aim should be to develop the best evidence base possible.

3.3 Generate solutions: What are the policy options?

Once you have a clear understanding of the policy problem (section **3.1**), have identified the various stakeholders (section **2.4.1**), and developed a project plan (section **2.3**), you can start to generate possible policy solutions.

In some cases, there will be a clear choice between a particular solution to a problem, or maintaining the status quo. However, it is important not to rush to the conclusion that there is only one possible or preferred option. Exploring different policy options is a key part of policy development. The process of identifying and exploring options helps to ensure that whichever option is pursued is likely to be the best. Also, the final proposal might draw elements from what started out as a series of different options. Don't dismiss new or creative ideas without testing them out first.

As a general rule, the more significant the problem, the greater the need to explore and provide more options. There will generally be a range of possible options – from doing nothing, to public information and education campaigns, through to law reform. But conversely a simple problem may have a straightforward answer that does not require a full policy assessment process.

Depending on the issue, policy options might include:

- **Law reform** – usually the most burdensome option in terms of the time it takes to develop and put in place, as well as its impact on the community;
- **Using the existing law** – perhaps what is needed already exists and has just not been well implemented or is not being enforced;
- **Providing monetary or other incentives** – for example through a subsidy, fee or tax (noting this will most likely require legislative reform to support it, see section **5.1**);
- **Self-regulation** – such as voluntary standards or codes of practice;
- Changes to government operations of service-delivery methods;
- Information or education campaigns;
- **No intervention** or maintaining the status quo – this should always be considered as one of the options, while noting the risks.

- A combination of options may be considered.

3.4 Assessing policy options

At this stage you will need to assess the various policy options you have developed. There is unlikely to be a 'perfect' option. As a public servant it is your role to provide honest and well thought through advice on the viable options, including the costs, benefits, and risks of those options.

It might be useful to consider the following categories:

- **Impact**: is the option likely to address the underlying causes of the problem and really make a difference, or does it only address contributing factors or symptoms?
- **Time**: will the option take a long time to implement or be relatively quick?
- **Money**: will the option be very expensive or not (resourcing and staff)?
- **Stakeholders**: will stakeholders and the community be supportive or not? Who will be most affected if the option was adopted (both positive and negative impacts)?
- **Uncertainty/risk**: what are the potential risks, including unintended consequences, and can they be reduced in any way?

To compare options, it may help to summarise the advantages and disadvantages of each option considered – either as a simple list (pros vs cons), in a grid using the five headings above, or in a grid against the agreed success criteria for the project.

3.4.1 Assessing law reform as an option

A common type of policy action is changing the law to facilitate, enforce, require or prohibit certain behaviours. Law reform is only one of many possible options for achieving public policy outcomes. It involves creating or amending written laws to address an issue where there may have been gaps identified in the current law, or where the current law (whether written or judge-made) is not considered to be suitable or sufficient to achieve the goals of a policy.

Sections **4** and **5** cover the key issues that may need to be thought through when turning policy into legislation. Section **6** provides guidance on working with lawyers to draft legislation and the process for passing legislation in the Falkland Islands.

To a large extent, law reform should be considered a last resort in policy development, because it can take a long time and place a burden on government to implement and enforce the law. Law reform can:

- be a long and difficult process;
- have unintended consequences;
- involve significant costs in relation to creating legislation;
- require a lot of resources for the content, implementation and enforcement;
- create a burden on those who have to comply with the law; and
- make policy inflexible, when implemented through legislation.

However, in some cases, legislation may still be essential or otherwise the most appropriate way to implement a new policy or to solve a particular problem. Therefore, if the decision to undertake law reform has been made, there are a range of other considerations that arise when turning that policy into law. Some benefits of using law as a policy instrument are:

- it provides clarity around (and may be required to grant) powers of the government or public officials to take certain actions;
- dependability and compliance – as generally people seek to follow their obligations under the law;
- it provides a clear statement on the government's approach to a particular issue; and
- it may provide certainty and uniformity – the law applies equally to all.

The decision to undertake law reform should not be taken lightly. Always ask yourself:

- Are there existing laws governing the issue?
- If yes, what does the problem seem to be with them?
- How can it be fixed? This might involve a legislative amendment or secondary legislation, but some problems can be resolved through a better understanding of the existing framework. For example, the belief that a problem exists may stem from a misinterpretation of relevant law or guidelines.

You also need to ensure that your proposal is permitted by the Constitution, as set out in the *Falkland Islands Constitution Order 2008*. If there is any uncertainty about this, the Law and Regulation Directorate will be able to advise you.

Case study – law reform and alternative policy options

Before undertaking law reform you should be confident that it is both absolutely necessary and the most effective way of resolving your particular policy issue. The example below demonstrates that law reform is not always the best option for addressing a policy problem:

THE VOLSTEAD ACT

In the early 1900s, the US was facing a range of social problems, including increased crime and corruption. In an effort to address this, a public policy decision was made to introduce a complete ban on alcohol. As a result, the Volstead Act (also known as the National Prohibition Act) was introduced.

Operational between 1920 and 1933, this prohibition was intended to "reduce crime and corruption, solve social problems, reduce the tax burden created by prisons and poorhouses, and improve health and hygiene in America."

Rather than achieve these goals, the prohibition instead saw an increase in alcohol consumption, the introduction of more dangerous forms of alcohol, an increased use of other dangerous drugs and substances, an increase in organised crime and the already stretched court and prison system become even more burdened. Not only did the Act fail on these grounds, but it removed a substantial source of government revenue.

Governments around the world now use a variety of policy tools to address the potential harms arising from alcohol consumption, illustrating the range of options which might be considered. For instance, taxes and duties, licensing regulations, health education, and addiction services.

3.5 Approval of preferred option: presenting options to decision makers

Once you have developed policy options and recommendations as required, a decision will need to be taken, at the appropriate level, on which route to pursue. Depending on the circumstances, this may come before or after stakeholder engagement and consultation (see section **2.4**). For instance, you may wish to gather stakeholder views on a range of options in order to collect more evidence. Alternatively, it may be more appropriate to narrow down the options to a more concrete proposal which you then discuss in more detail with stakeholders. It is possible that a combination of both will be required.

For most significant policy changes in the Falklands Islands, decisions need to be made by the Executive Council (please see a summary of the structures of Government at section **2.2**) It is your role to ensure that decision-makers have sufficient information to understand the background to an issue, and the **full implication**s of the policy options presented, so that they can make informed decisions. For Executive Council, this is done through papers. There is a template for Executive Council papers (available by contacting Gilbert House or on the Intranet) that should be used. Other decisions may be delegated to the Chief Executive or to Directors. Certain decisions may be made by the Governor.

Executive Council is the decision-making body, but it may also be useful to conduct a briefing for all MLAs to capture their views and inputs before finalising the ExCo paper. The relevant portfolio holder(s) should also be briefed regularly on progress.

It is important to establish who the relevant decision-makers are for your area of work. The appropriate policy approvals must be sought and gained before time is spent on work that decision-makers may not agree with.

Obtaining policy approval will also assist in determining the priority of any changes within the government's broader agenda. This is particularly relevant for law reform. A **legislative drafting plan** is prepared each year that sets out how drafting resources will be allocated across a range of different legislation projects. The earlier you can confirm your intention to propose legislative reform, and the earlier that approval for this approach can be obtained from Executive Council (the relevant decision-maker in this instance), the easier it will be to incorporate the work into this plan. In general, drafting work will not begin before Executive Council has approved the policy and agreed that legislative drafting should proceed.

3.6 Implement: how will your policy be delivered?

Policy alone cannot solve the issues identified. Implementing the approved policy proposals means taking action to address the problems identified at the beginning of the process. This will have implications for financial, human and other resources. Implementing your policy is likely to involve working closely with the stakeholders involved in putting the proposal into effect – whether that's one individual or team within government, multiple Directorates, or external organisations – to decide the best way forward.

In reality, policy design and implementation are not separate processes, and the practicalities of implementation should be taken into account throughout the policy development process. You should identify any implementation challenges, resources, timeframes, roles and responsibilities very early on, possibly even before recommending the preferred option to Executive Council. This is even more critical when the policy is connected to other regulations, initiatives, policies or projects being undertaken to address the issues.

Some specific considerations include:

- Are there any elements of the process which require further approval, information, or direction from decision-makers before implementation?
- What is the best way to put the changes into action? What resources will be required? Does this method represent value for money?
- Is this method realistic and practical, given available capacity and resources?
- Are there any obstacles to implementation? Are there alternative options?
- Who will be involved in implementation on the ground? Are their roles and responsibilities clearly defined?
- Does everyone involved have the necessary knowledge and resources to understand and implement changes effectively? Is any training required?
- Are the right processes in place? Is there a need for accompanying guidelines or standard operating procedures?
- When is the best time to implement the changes? Are there any factors to consider, for instance other government priorities or campaigns which might be launching at the same time?
- Who needs to know about the changes? Who are the key audiences, internally and externally? Have stakeholders been adequately informed and included in the process?
- How will changes be communicated to key audiences? What methods of communication will be most successful?
- Have any threats and risks been identified and mitigated against?
- If there are any issues with implementation, who should be informed? Is there a clear resolution process in place?
- How will the key actors be held accountable for implementation? Are reporting procedures in place?

Implementation plans can assist by creating a shared understanding of who is responsible for what actions, documenting what needs to change in order to put a policy proposal into action, and when activities will be undertaken. An example of a simple implementation plan is set out below:

Policy name (What)	Actions (How)	Responsible (Who)	Timeframe (When)	Budget (Cost)	Budget Source (Cost)	Status
	What actions must be completed to implement this policy?	Who is responsible for the action?	When must the action be completed by?	How much will it cost to implement the action?	Where will the funding come from?	Is the action not started, in progress, or complete?

3.7 Evaluate: how will you monitor and measure success?

It is important to build monitoring and evaluation into policy development. These steps will help you assess whether the intervention is effectively addressing the issues and achieving the desired result. For example, if the policy problem being addressed was underage drinking and the policy option pursued was to increase penalties for this offence in the *Control of Drinking by Juveniles Ordinance*, then monitoring and evaluation would help you determine if the levels of underage drinking have actually declined as a result of the law reform undertaken.

Monitoring is essentially a management process to periodically report against planned targets. The gathering of this evidence over time will help evaluation. It helps to have what is called 'baseline data' – relevant information on how things were before the policy was implemented. Sometimes data availability and accessibility can be challenging, so it is helpful to understand early on what data is currently available, and how it could be better gathered in the future.

Once this evidence has been gathered, evaluation can be undertaken to make judgements about the effectiveness of the policy action/option, and can help to make further decisions on whether to expand, modify or stop the policy.

Evaluation is usually focussed on how effective, efficient and appropriate the policy response is to the relevant issue. It is also a key mechanism for gathering evidence to inform future policy making.

The design of any policy should include a system for evaluating effectiveness. A systematic evaluation process will support learning over time and provide objective evidence to support decision-making. How the success of a particular intervention is measured and assessed will depend on the details of the policy, and should be proportionate to the size and relative importance of the intervention. It may involve a range of methods, tailored and scaled to fit the circumstances. To enable effective evaluation, policies should have clearly defined objectives, underlying reasoning/rationale, and expected outcomes. Evaluation can take place at various stages, including during policy design, when implementation is ongoing, and once a given policy intervention is completed and/or when results can be measured.

It is worth noting that the effects of policy interventions, much like the issues they seek to address, may be complex and challenging to measure. Rather than being directly attributable to a single policy intervention, outcomes might represent the cumulative impact of a range of different initiatives and factors. These complexities and interactions should be taken into account when building a system of evaluation. Evaluation may look at factors such as:

- whether policy content is clearly articulated;
- whether outcomes have been as anticipated;
- if there have been unexpected or unintended results;
- if outcomes can be attributed to the policy intervention;
- the overall costs and benefits;
- how implementation has worked in practice.

Some specific considerations could include:

- At what point should the policy be evaluated? Are there key decision points when evidence will be required? Will ongoing monitoring be needed?
- How will policy implementation be monitored? Who will be responsible for tracking this?
- Who will design and execute the evaluation? Will independent expertise or insight be needed?
- How will change be measured? What data will be needed to inform this? How will this data be captured?
- Are there key performance indicators or achievement milestones which should be recorded?
- How will evaluation be reported and to who? What will the results of the evaluation be used for (for example to identify cost savings, to improve and inform the policy, for accountability and transparency)?
- Are the proposed evaluation procedures practical and realistic? Will they work with the resources and capacity available?

3.7.1 Stages of evaluation and key questions

Type	Description	Key questions
Content/Design	To understand the extent to which the policy is clearly defined and designed. Can inform implementation and impact evaluation.	• Are the goals, requirements for implementation and rationale for the policy clearly articulated? • Is the evidence for the policy clearly set out? • Does the policy indicate mechanisms and indicators for monitoring and evaluating success?
Implementation	Investigates how the policy is delivered. May inform changes or improvements to implementation processes.	• How is the policy being implemented? • Are the key elements of the policy being delivered as intended? • Is the target population being reached? • Could the policy be delivered by an alternative method? • Are there any major barriers in the way of policy implementation? • Have there been unforeseen hurdles/issues and how have these been managed?
Impact	To be carried out once the policy has been implemented long enough to see results.	• What have the effects of the policy been? • Is the policy achieving the intended results? • To what extent can any results be attributed directly to the policy? What other factors might be at play? • Is effective use being made of available resources? • What impact would cessation have? • What alternative options could be considered?

(Adapted from *Government of Western Australia Program Evaluation Guide*)

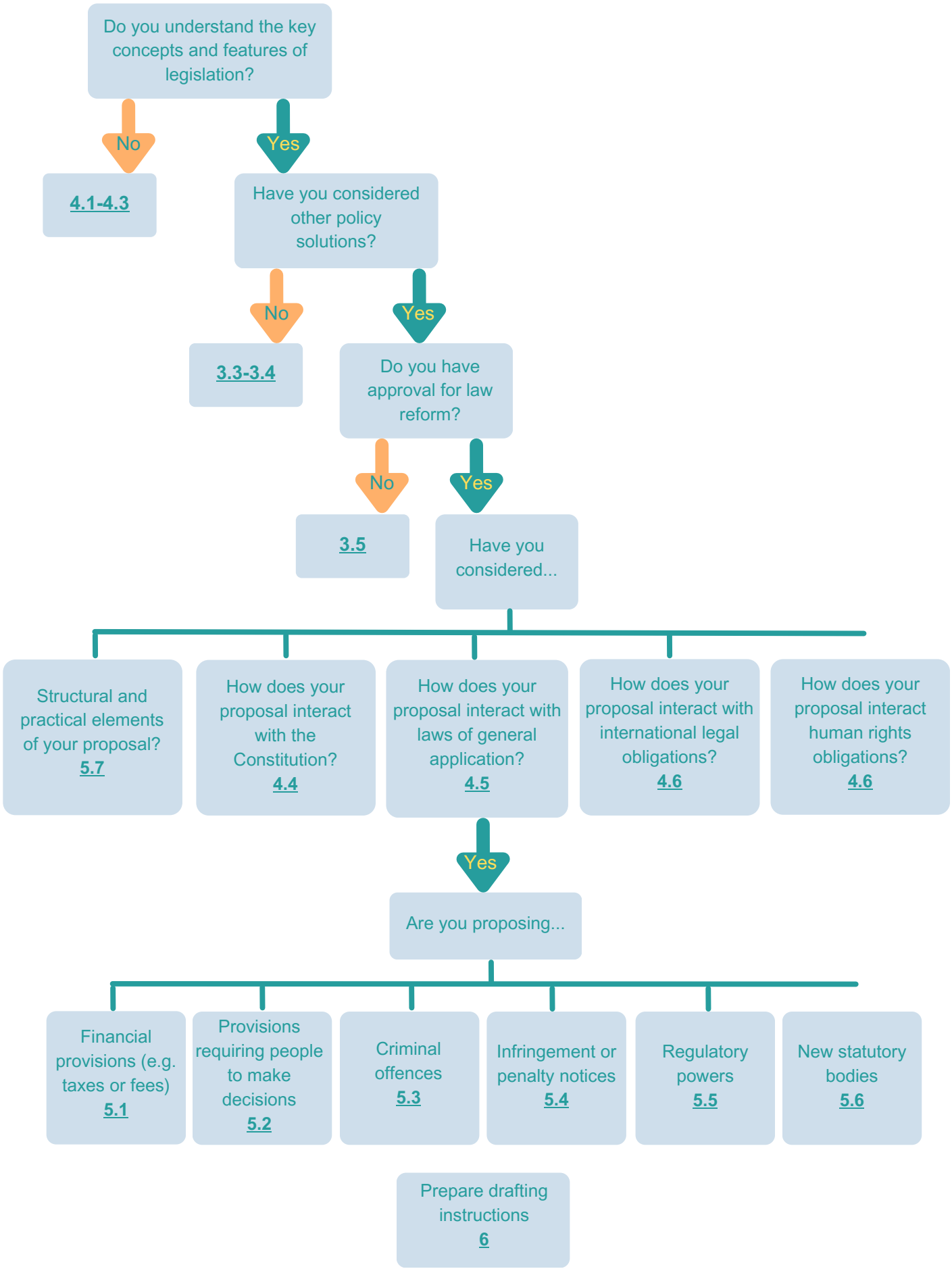
4. Turning your policy into law

If the government has decided to undertake law reform, you will need to take steps to turn the approved policy into drafting instructions, which can be provided to a legislative drafter to turn into legislation. The process of working with a legislative drafter, including the role of the drafter and your role as the instructing officer, is explored further in section **6**.

Depending upon your reform, you may still have only a very broad policy decision at this stage. There may still be a range of additional considerations to think about, make policy decisions on and provide appropriate drafting instructions for. This section, and the next, will help you to turn a broad proposal for law reform into a detailed proposal. This will enable you to provide enough detail to a legislative drafter to develop legislation that will work well in practice, integrates effectively with other existing laws and minimises the risk of unintended consequences.

The following sections provide further guidance on factors to consider when addressing common law reform outcomes, such as imposing a tax, introducing a criminal offence or creating a new legal entity. Section **5.7** deals with practical issues you will need to consider when developing your law reform, such as whether the reform will be an Ordinance or secondary legislation, when it will come into force, and how you might transition from an existing legislative regime.

It is unlikely that everything in this section will be relevant to you, so the flow chart below will help you identify what is relevant and guide you to the correct section.


Do you understand the key concepts and features of legislation?
No
4.1-4.3
Yes
Have you considered other policy solutions?
No
3.3-3.4
Yes
Do you have approval for law reform?
No
3.5
Yes
Have you considered...
Structural and practical elements of your proposal? 5.7
How does your proposal interact with the Constitution? 4.4
How does your proposal interact with laws of general application? 4.5
How does your proposal interact with international legal obligations? 4.6
How does your proposal interact human rights obligations? 4.6
Yes
Are you proposing...
Financial provisions (e.g. taxes or fees) 5.1
Provisions requiring people to make decisions 5.2
Criminal offences 5.3
Infringement or penalty notices 5.4
Regulatory powers 5.5
New statutory bodies 5.6
Prepare drafting instructions 6

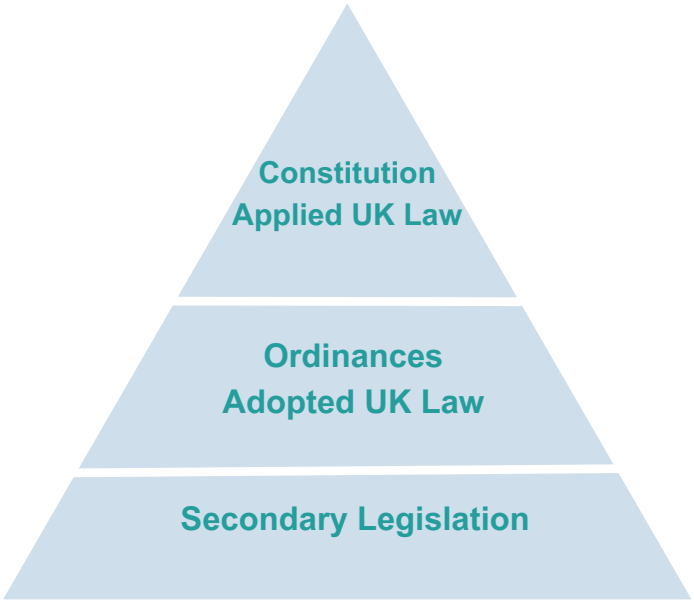
4.1 Legislation and law reform – key concepts

Before undertaking law reform, it is important that you have a clear understanding of

- the legislative hierarchy of the Falkland Islands;
- the different types of legislation and; and
- the key characteristics of legislation.

4.2 Legislative hierarchy

To understand the law reform process and develop drafting instructions you must first understand the legislative hierarchy and the different types of laws that exist in the Falkland Islands.



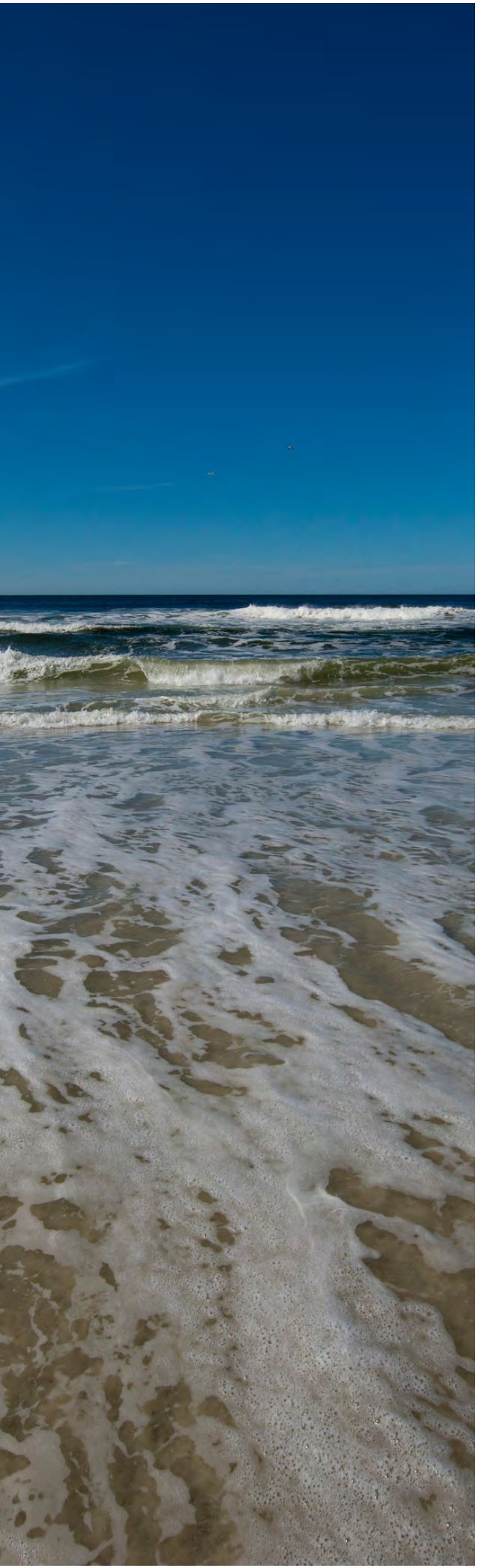
4.2.1 Constitution

A Constitution is the supreme law of a country, to which all other laws are subject. In the Falkland Islands, the main constitutional document is contained in the *Falkland Islands Constitution Order 2008*.

Further information on constitutions and how a proposed reform interacts with the Constitution is provided in section **4.4.**

4.2.2 Directly applied UK law

As a British Overseas Territory, the Falkland Islands is subject to certain laws made in the UK. Acts of the UK Parliament that directly apply to the Falkland Islands either because they expressly state that they extend to the Falkland Islands, or through necessary implication, and Orders in Council take precedent over laws passed by the Legislative Assembly. The Legislative Assembly cannot disapply or amend these laws. The Constitution is an example of this type of law – it is an Order in Council made under the *British Settlements Acts 1887* and *1945*.



4.2.3 An Ordinance

An Ordinance is a written law that has been approved by the Falkland Islands Legislative Assembly and officially enacted. It might be a new piece of legislation (for example, the *Crimes Ordinance 2014*) or an amendment to an existing piece of legislation (for example, the *Crimes (Amendment) Ordinance 2019*). Some may be a combination of both of these by establishing a new legislative scheme and, at the same time, amending existing laws to allow the new scheme to operate.

Legislation approved by the Legislative Assembly becomes law once it has been assented to on behalf of the Queen by the Governor or through a Secretary of State. The Ordinance cannot take effect until it has been published in the Gazette, an official government publication that notifies the public of the actions and decisions of government. The Ordinance may, however, commence (that is, start to have effect) at a later date (see section **5.7.4**).

4.2.4 Adopted UK law

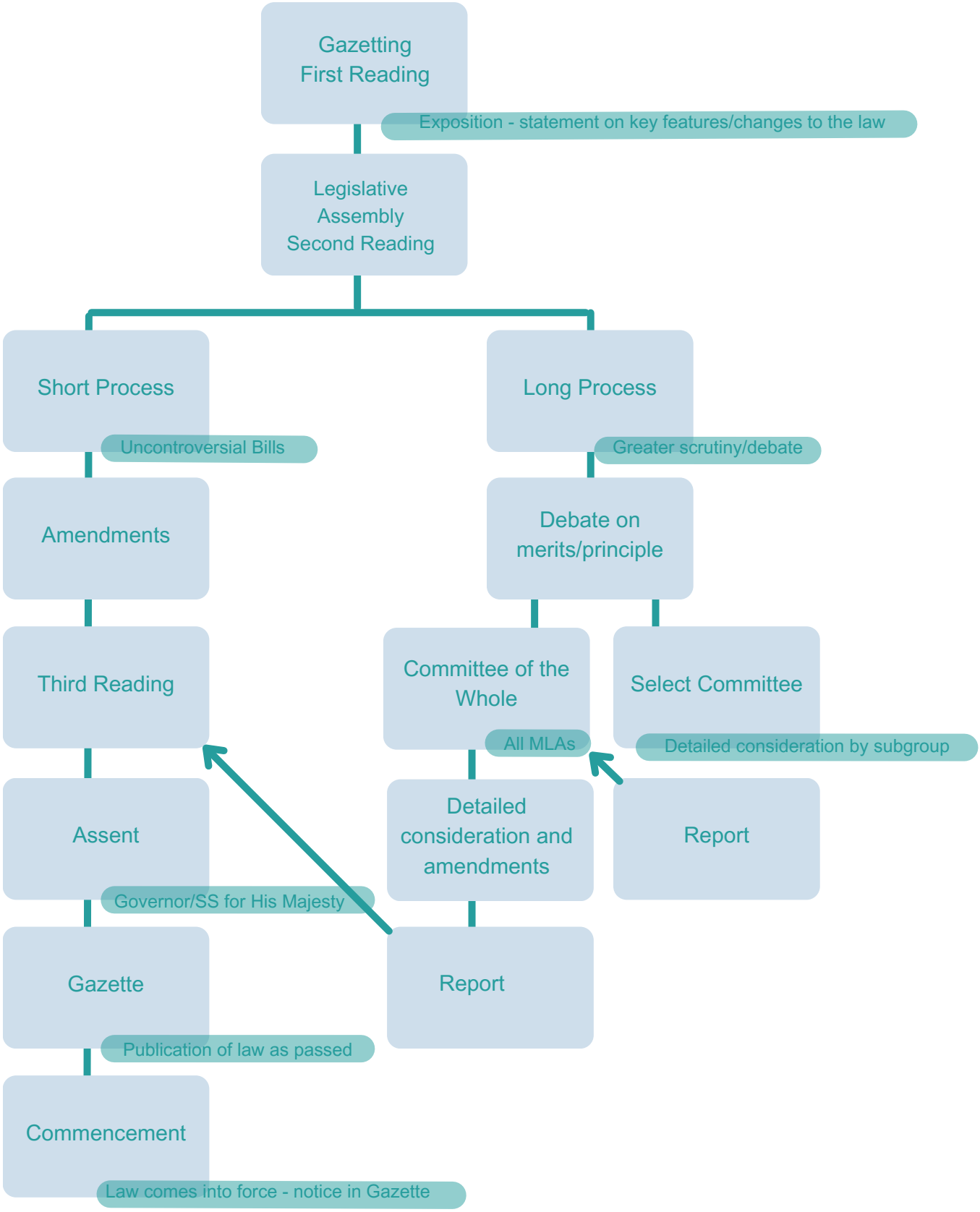
In addition to UK law that is directly applied to the Falkland Islands, the Legislative Assembly can choose to adopt UK law so that it applies in the Falkland Islands. These laws may be adopted in whole or in part, and may be adapted in terms of how they apply in the Falkland Islands. These laws have the same status as Ordinances passed by the Legislative Assembly.

4.2.5 A Bill

At any time before an Ordinance is enacted (for example, while still being debated by the Legislative Assembly or before receiving assent) it is called a Bill.

A Bill does not become an Ordinance until it has been agreed to by the Legislative Assembly and enacted. A Bill is essentially a draft Ordinance.

In the Falkland Islands, the process of a Bill becoming an Ordinance is shown in the following diagram.



During these stages, the ‘reading’ of the Bill does not generally refer to literally reading the Bill aloud. The first reading is usually simply the publication of the Bill in the Gazette. The second reading takes place in the Legislative Assembly and involves an explanation of the Bill.

Following this stage, a decision is taken on whether to follow the short or the long procedure, as illustrated in the diagram. After the necessary steps for the chosen procedure have been completed, the Bill is then read for a third time, which is when it is voted on and may be passed.

4.2.6 Secondary legislation

Secondary legislation is also referred to as legislative instruments, delegated, subordinate, or subsidiary legislation. There are many kinds of secondary legislation, including regulations, rules, orders and proclamations.

These are still laws but are made under the authority of an Ordinance (the ‘primary legislation’) rather than through the approval of the Legislative Assembly. In other words, they sit under (and are secondary to) the Ordinance.

For example, the *Sea Lion Islands National Nature Reserve Regulations 2017* are made under section 16 of the *Conservation of Wildlife and Nature Ordinance 1999*. This is set out on the first page of the Regulations.

SUBSIDIARY LEGISLATION

CONSERVATION OF WILDLIFE AND NATURE ORDINANCE

Sea Lion Island National Nature Reserve Regulations 2017

S. R. & O. No: 27 of 2017

Made: ..... 7 September 2017
Published: ..... 5 October 2017
Coming into force: upon publication

I make the following regulations under section 16 of the Conservation of Wildlife and Nature Ordinance 1999, on the advice of the Executive Council.

The Ordinance under which the instrument is made (the ‘enabling Ordinance’) must provide a power for secondary legislation to be made under it and set out who has the power to make such secondary legislation. The wording of the enabling provision will determine the type of instrument that can be made. The enabling Ordinance may include restrictions or guidance on what may be in the secondary legislation.

When making secondary legislation you must take care to ensure that what you are proposing to do is permitted by the enabling Ordinance. If there is any doubt, you can seek advice from the Law and Regulation Directorate.

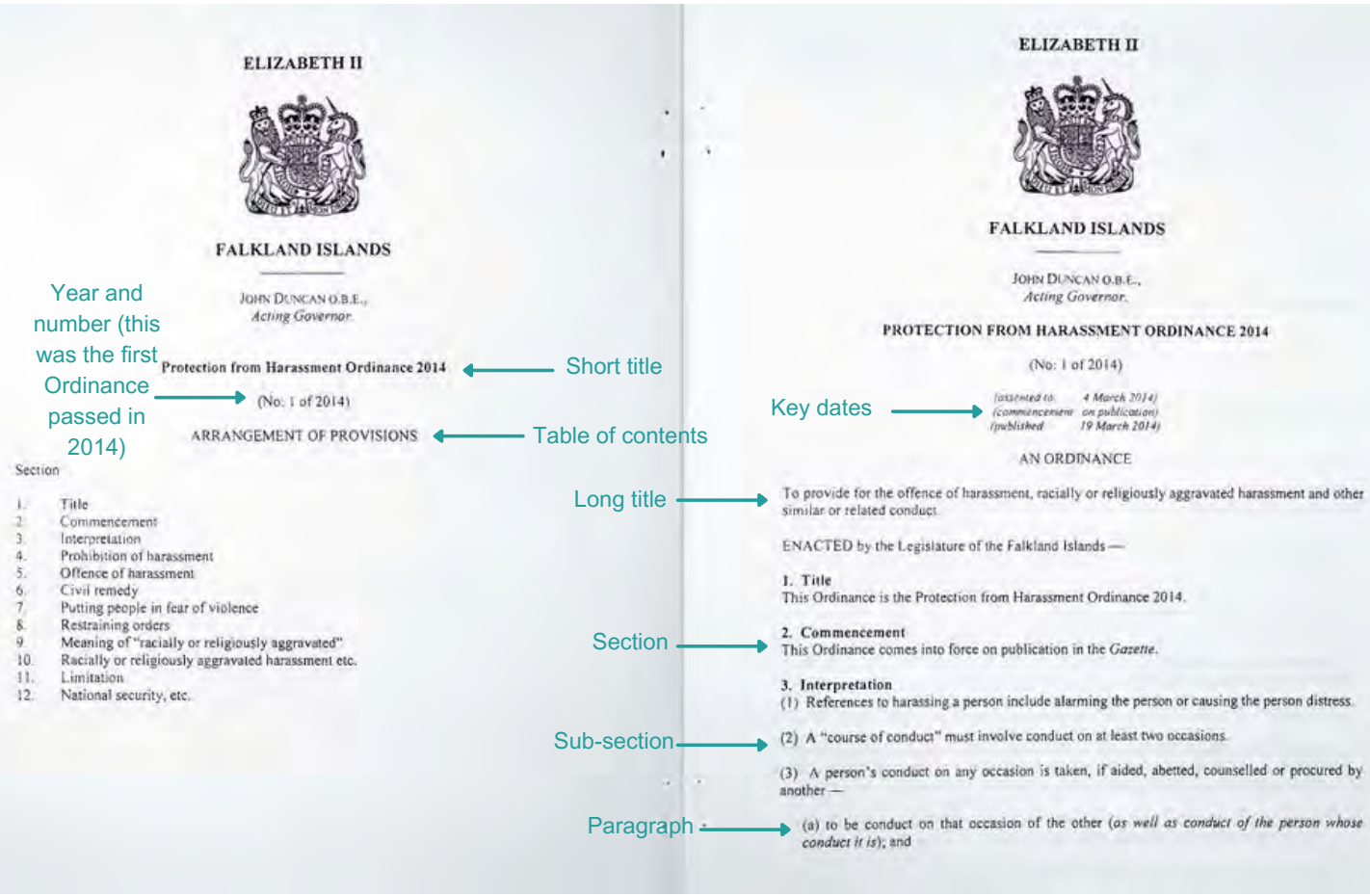
As secondary legislation does not undergo as much scrutiny as an Ordinance, significant matters and issues of great public interest should only be in primary legislation. Secondary legislation generally contains the detail surrounding the significant principles set out in an Ordinance, as well as matters that are likely to change frequently, for example, forms and fees. Further information to help you decide whether a proposed reform should be included in an Ordinance or secondary legislation is at section **5.7.1**.

4.3 Key features of legislation

When working on a law reform project, it is helpful to be familiar with how written laws look and are structured. This will make it easier to review existing legislation (especially if you are planning to amend an existing piece of legislation) and to review the drafts that you will receive from the legislative drafter.

Ordinances, Bills and secondary legislation usually have similar features:

- arrangement of provisions (table of contents)
- year and number
- short title
- long title
- commencement date
- schedules



The text of the Ordinance or secondary legislation is grouped in a certain way (depending on the length). An Ordinance may be broken up into chapters, parts, divisions and subdivisions, sections and subsections and paragraphs and Schedules as appropriate.

Notes can appear throughout legislation in smaller text underneath the section to which they relate, but do not create substantive law themselves.

Amending schedules – set out amendments to be made to other legislation, which are called consequential amendments (discussed in more detail in section **5.7.7**).

Non-amending schedules – contain information that relates to an earlier section of the Ordinance/Bill/secondary legislation. For example, section 6 of the *Licensing Ordinance 1994* provides for the application of *schedule 2* which regulates applications for justices' licences.

4.4 How does your proposed law reform interact with the Constitution?

The Constitution is the central law which sets out how the Falkland Islands is organised and governed.

This means you must always ensure, throughout the entirety of your process, that your proposed reforms comply with the Constitution.

When undertaking law reform you should consider what restrictions exist within the Constitution and may limit the nature and scope of your reform. For example, the Constitution contain articles setting out the fundamental rights and freedoms of people in the Falkland Islands, which may limit the scope or potential application of a proposed reform.

The core rights protected by the Constitution are contained in *Chapter I Protection of Fundamental Rights and Freedoms of the Individual*, including:

Protection of right to life
Protection from inhuman treatment
Protection from slavery and forced labour
Protection of right to personal liberty
Provisions to secure protection of law
Protection of rights of prisoners to humane treatment
Protection of freedom of movement
Protection for private and family life and for privacy of home and other property
Protection of right to marry and found a family
Protection of freedom of conscience
Protection of right to education
Protection of freedom of expression
Protection of freedom of assembly and association
Protection from deprivation of property
Protection from discrimination

Paragraph 19 explicitly provides that a person can apply to the Supreme Court if any of their rights protected by Chapter I have been or are likely to be contravened.

Other issues, such as the establishment and makeup of the judicial system, the Legislative Assembly, and Executive Council, the role and powers of the Governor, and finance related issues (such as establishing funds for public money), are found in the Constitution and may impact on your particular reform.

If you have any doubt as to whether your reform complies with the Constitution, it is a good idea to speak to the legal team as early as possible.

4.5 Have you considered laws of general application?

When developing new or amending legislation, it is helpful to be aware of any laws of general application. These are laws which apply to all legislation and provide the rules that apply to, or are necessary for, the interpretation of all other legislation. It is helpful to be aware of these and how they might interact with your proposed law, as they may affect the way it operates.

For example, the *Interpretation and General Clauses Ordinance 1977* provides information and definitions that are relevant to all legislation. A drafter must always have regard to this Ordinance and it is good practice for you to also be aware of how this Ordinance applies to your proposed reform.

Have a look at some of the definitions in the *Interpretation and General Clauses Ordinance 1977* and think about the different situations in which you might find those terms in other laws. For example, the definition of 'land' might be relevant when looking at the powers of a statutory body to hold and manage land, and the definitions relating to time can be very important when looking at notice periods.

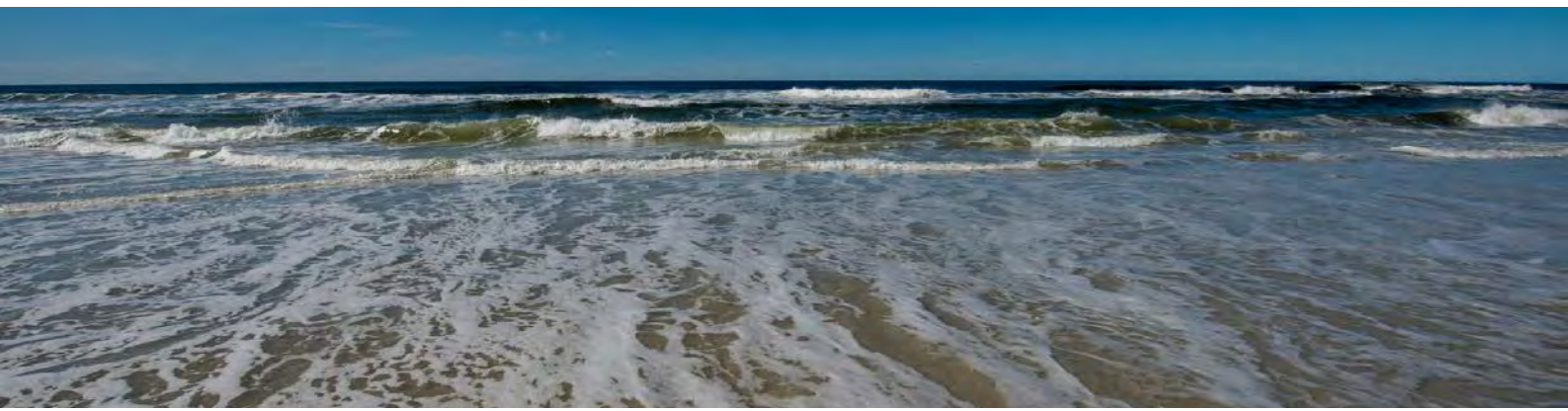
Other laws of general application to consider include:

- criminal legislation, such as the *Crimes Ordinance 2014*;
- legislation on the applicability of UK law to the Falkland Islands, such as the *Law Revision and Publication Ordinance 2017*; and
- legislation dealing with public finances and accounts of statutory bodies, such as the *Finance and Audit Ordinance 1988*.

It's important to have a general awareness of these areas of law, but if you have any doubt it is best to seek legal advice early.

4.6 How does your proposed law interact with international legal obligations?

International law consists of rules and principles which apply to the conduct of states and international organisations in their relations with one another and, in some cases, with individual groups and transnational companies. From these rules and standards arise a range of rights and obligations. You must be aware of these rights and obligations when undertaking any legislative reform which may interact with international law.



The most relevant part of international law for the purposes of domestic law reform is international treaties. The term ‘treaties’ covers a variety of international instruments, such as conventions, protocols or exchanges of notes.

The Falkland Islands does not sign up to international treaties in its own right. Instead, the UK will expressly extend the scope of its own treaty obligations to the Falkland Islands. This can be done at the time that the UK ratifies a treaty, or at a later date.

If your law reform is relevant to international treaty obligations, you need to be aware of any ‘reservations’ the UK may have made to the treaty which apply to the Falkland Islands and modify the extent to which the treaty applies.

The UK and the Falkland Islands take a dualist approach to the application of international law. This means that we treat international law and domestic law as two separate legal systems. In a dualist system, legislation needs to be enacted separately to give the treaty effect domestically.

You may be incorporating international law or may otherwise have issues of international law that are relevant for your proposed reform. If you have any questions about this, it is a good idea to speak to the legal team.

In particular, an important area of international law to consider is human rights law. Human rights work to promote fairness and equality and apply universally to all people. International human rights treaties provide an agreed set of human rights standards and mechanisms to monitor the way a treaty is implemented.

Key international human rights treaties that apply to the Falkland Islands are:

- **the International Covenant on Civil and Political Rights;**
- **the International Covenant on Economic, Social and Cultural Rights;**
- **the Convention on the Elimination of All Forms of Racial Discrimination;**
- **the Convention on the Elimination of All Forms of Discrimination Against Women;**
- **the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- **the Convention on the Rights of the Child; and**
- **the European Convention on Human Rights.**

Many of the rights contained in these treaties are reflected in the Constitution, as discussed in section **4.4**.

5. Legislation and law reform - specific issues

There are a number of common legislative provisions that often form part of a policy solution, and a variety of practical and structural considerations to consider when developing new law. The first part of this section sets out some of the detail you will need to consider when developing your policy and drafting instructions, if you want your new legislation to include one of these elements. Not all law reform will include all, or any, of these types of provision, and you may want to skip the sections that are not relevant to your particular project.

There is also UK government guidance available on a range of common legislative solutions, which you can refer to for more information on these and other common provisions.

The specific types of provision considered in this guide are:

- Financial provisions (taxes, fees, etc) (section **5.1**)
- Decision-making and reviews (section **5.2**)
- Criminal offences and penalty notices (sections **5.3** and **5.4**)
- Regulatory powers (section **5.5**)
- Creating statutory bodies (section **5.6**)

The second part of this section sets out some practical considerations, including what type of legislation is most appropriate for your proposal, options for bringing a new law into force, and thinking about the impact of new law on the existing legislative framework.

5.1 Are you introducing financial provisions, such as taxes or fees?

Financial legislation relates to government revenue. Typically, this is in the form of either a tax or a fee.

There are a number of factors you will need to consider when introducing financial provisions, including:

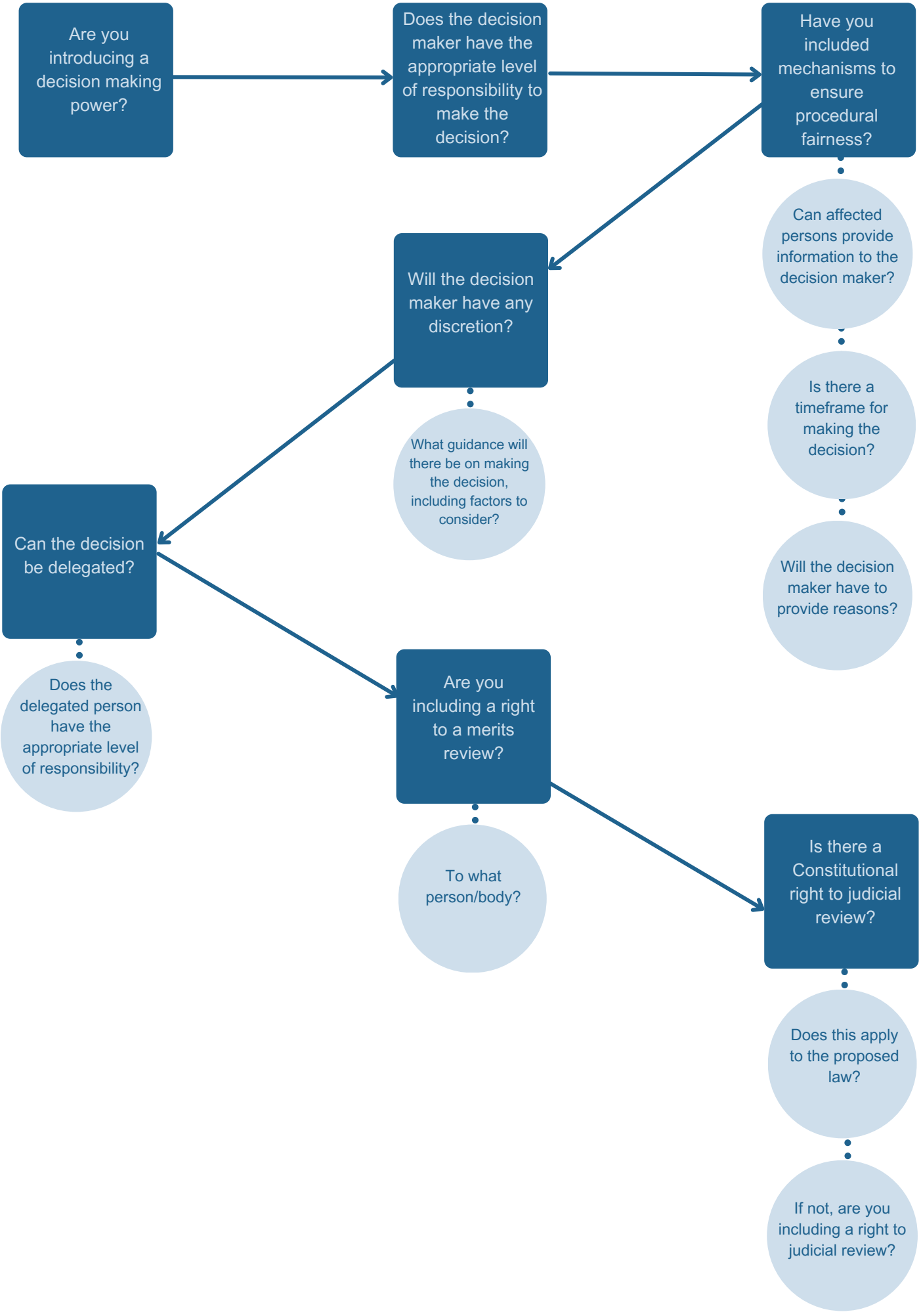
- how money is to be collected;
- how it will be held by the government and accounted for; and
- how the funds will be dispersed.

The provisions of public financial management legislation, such as the *Finance and Audit Ordinance 1988*, will apply to these kinds of issues. You should also consider any relevant existing taxes, fees or incentives that the government has in place (e.g. tax or fee exemptions) and the legislation which relates to these.

You should talk to the Treasury as early as possible in the process to ensure that the policy introduced by your scheme is consistent with other financial schemes and that any obligations under existing financial management legislation are met.

5.2 Are you requiring government officials to make decisions?

Administrative law is the area of law relating to government decisions. Essentially, administrative law ensures that administrative decisions made by government officials are consistent, fair and accountable. This might include providing people affected by a decision with a right to seek a review of that decision, either internally within the department, by another agency or through the courts.


Are you introducing a decision making power?
Does the decision maker have the appropriate level of responsibility to make the decision?
Have you included mechanisms to ensure procedural fairness?
Can affected persons provide information to the decision maker?
Is there a timeframe for making the decision?
Will the decision maker have to provide reasons?
Will the decision maker have any discretion?
What guidance will there be on making the decision, including factors to consider?
Can the decision be delegated?
Does the delegated person have the appropriate level of responsibility?
Are you including a right to a merits review?
To what person/body?
Is there a Constitutional right to judicial review?
Does this apply to the proposed law?
If not, are you including a right to judicial review?

5.2.1 Appropriate level of decision-making and procedural fairness

When developing legislation that provides a government official with a decision-making power, the responsibilities of that person should be proportionate to the nature of the decision being made. Decision-making powers should only be delegated to a level at which the person exercising it is equipped and appropriately trained to make the required decision.

For example, where a decision might affect a large part of the population, or could impact on the national interest, the appropriate decision-maker would most likely be the Governor or Executive Council. Where decisions are less serious or affect only particular people, the appropriate decision-maker might be a particular level of public servant, such as the relevant Director.

Decision-makers must act in a manner which affords procedural fairness (or natural justice) to people affected by the decision. Broadly, procedural fairness requires that the decision-maker be, and appear to be, free from bias and that the person be given a fair opportunity to provide any relevant information to the decision-maker before the decision affecting them is made. Procedural fairness may also require decisions to be explained in a way that people can easily understand.

5.2.2 Discretion in decision-making

In many cases, decision-makers will have discretionary powers, meaning they have a choice about whether or not to do something, for example, whether to approve or not approve an application.

In cases involving discretion, you should consider whether the legislation needs to provide a decision-maker with guidance on how to exercise their discretion. This can help guide decision-makers and ensure that discretionary powers are not too broad and are applied consistently.

Where the discretionary power is broad it is especially helpful to include guidance (or provide for guidance to be made) and examples of relevant factors the decision-maker should take into account.

5.2.3 Delegation of decision-making power

It is common for legislation to allow a decision-making power to be delegated from the primary decision-maker to a public servant.

In these cases, the issues you will need to consider are similar to those in section **5.2.1** about who should make the decision. Where a decision involves a limited exercise of discretion, it may be appropriate for more junior officers to make the decision. Similarly, where a provision will give rise to a high volume of decisions, it is not usually appropriate for senior officers to take on the workload. It may be more efficient for a larger number of junior officers to make primary decisions.

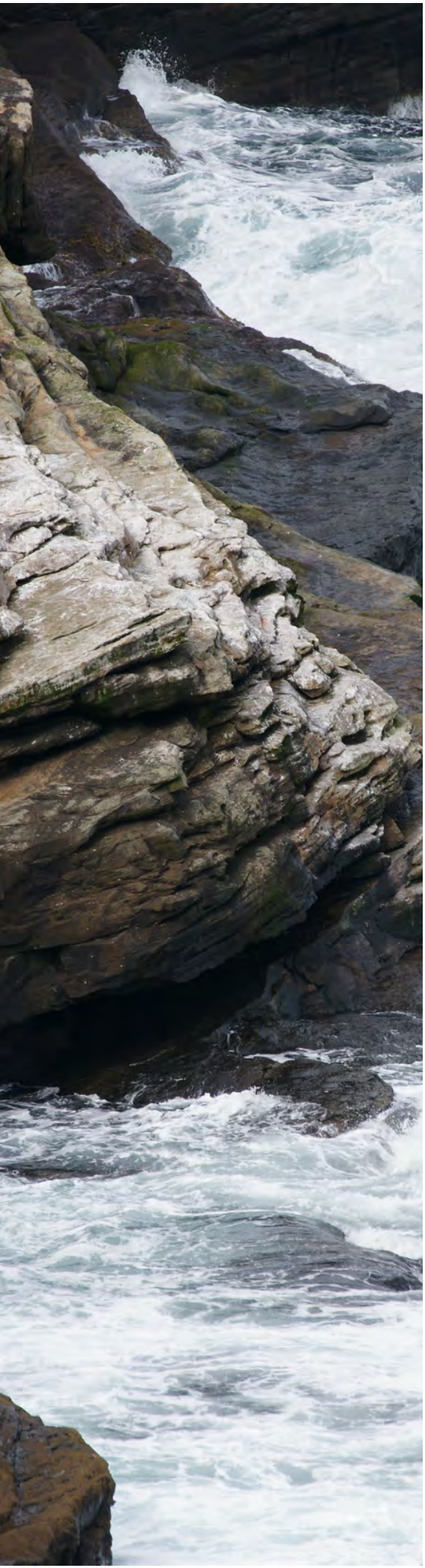
Delegations of power should only be as wide as necessary. Decisions also don't have to be wholly delegated. For example, the provisions may be structured so that decisions can be delegated in most cases, but more significant decisions can be made at a higher level.

5.2.4 Merits review

If a person is not happy with a decision, they may be able to seek a review of that decision, and you may need to include this right to seek a review in your legislation. In administrative law there are two different types of review: merits review and judicial review.

Merits review is a reconsideration of the decision within the same legislative framework as the original decision. Essentially the decision is made again, but this time by someone other than the original decision-maker. All of the same discretions and powers which applied to the original decision-maker will apply to the person reviewing the decision. As well as ensuring the decision is made correctly, merits review contributes to the broader goal of improving the consistency of decision-makers.

Generally, any administrative decision that will, or is likely to, adversely affect the interests of a person should be subject to merits review, unless there are particular reasons to exclude it.



Two types of decisions are generally not appropriate for merits review:

- decisions which do not apply to an individual factual scenario, but which apply to the public more generally; and
- decisions which automatically occur following a specific set of criteria (i.e. where there is essentially no discretion in decision-making).

You will also need to consider which body or official would be appropriate to undertake this merits review.

If an existing body or official has similar functions you should consider whether that person or body can undertake merits review. Merits reviews may be conducted internally (for example, by a more senior official than the original decision-maker) or externally (such as by a tribunal).

The possible outcomes of a merits review are usually that:

- the original decision is upheld;
- the original decision is varied;
- the original decision is set aside and a new decision is substituted; or
- the matter is returned to the original decision maker to reconsider with specific directions.

5.2.5 Judicial review

Judicial review is not the re-hearing of the particular merits of a decision, but rather a review of whether the decision-maker used the correct legal reasoning and/or followed the required legal processes.

Judicial review is carried out by a court, but it is a more limited right than a right of appeal. If the court finds that a decision was made unlawfully, then generally the decision will be referred back to the decision maker for reconsideration within the correct legal framework.

5.3 Are you introducing criminal offences?

5.3.1 Is a criminal offence necessary?

A criminal offence is the ultimate sanction for a breach of the law, with serious consequences involved for a person if convicted. Making an action subject to criminal law may provide police (or other law enforcement agencies) with powers to search and arrest people, and to search and seize property.

Additionally, a person subject to a criminal conviction may experience a loss of personal freedom (i.e. through imprisonment) or a loss of property (i.e. through confiscation of assets), as well as the stigma associated with a criminal conviction which can affect employment, travel, and standing within the community.

Before introducing a criminal offence, you should consider the range of alternatives and work out whether any of these would effectively deter the conduct you are trying to prevent.

Some alternatives to consider include:

- penalty notices (see section **5.4**);
- civil penalties, which are usually monetary penalties (though can include injunctions, banning orders or compensation) imposed outside of the usual criminal process; and enforceable undertakings and administrative sanctions, such as licence cancellation.

There are a number of factors to consider when deciding whether to impose a criminal sanction. These include:

- the nature of the conduct to be deterred;
- the circumstances surrounding the proposed provision;
- whether the proposed provision fits into the overall legislative scheme;
- whether the conduct causes serious harm to other people;
- whether the conduct so seriously contravenes fundamental values as to be harmful to society;
- whether it is justified to use criminal enforcement powers in investigating the conduct;
- whether similar conduct is regulated in the proposed legislative scheme or other legislation;
- if the conduct has been regulated for some time, how effective have existing provisions been at deterring the undesired behaviour; and
- the extent to which the level and type of penalty may provide deterrence.

5.3.2 Framing criminal offences

If you decide that a criminal offence is necessary, it must be defined clearly so that people know what is and is not prohibited. It is important that the offence be clearly described and rationally connected with the harm targeted by the policy objective. An ambiguous statement of the offence may lead to inconsistent enforcement of the law, uncertain application, unintended changes in behaviour or failure to address the conduct that the offence was intended to prohibit.

As part of your policy development process you must decide what the elements of that offence will be.

The following sections provide an overview of what you'll need to consider when developing a criminal offence. However, it is recommended that you seek legal advice as to what best suits your reform.

In general, criminal offences are made up of physical elements (the act) and fault elements (the state of mind). In order to prove a person is guilty of an offence, the prosecution will generally need to prove that both of these elements existed (though for certain 'strict liability' offences, only the physical element is required). The standard the prosecution must meet in proving these elements is beyond reasonable doubt. This means that the facts of the case have been proven to such an extent that there is no other conclusion to draw other than the defendant's guilt.

5.3.3 Physical Elements

Physical elements can be:

- **Conduct** - an action or a combination of actions, an omission or series of omissions, a combination of both actions and omissions, or a state of affairs being allowed to develop or continue.
- **Result** - what happened as a result of the conduct.
- **Circumstance** - (or context) what was happening at the time of the conduct.

Most of the time, offences are committed by the accused carrying out a positive act. For example, picking up a knife and striking a person with it.

However, some offences occur when an accused does not do something they have a legal duty to do. This is known as an 'omission'.

For example, families, in particular parents, have a legal duty to care for their children. A person who has taken responsibility to look after a sick or disabled person has a legal duty to look after that person.

Similarly, teachers, doctors, and law enforcement officers all have a duty to look after people in their care. A failure to fulfil these legal duties may constitute a criminal offence.

5.3.4 Fault elements

The fault elements of an offence are concerned with the accused's state of mind at the time the physical elements of the offence occur. For a defendant to be found guilty, the prosecution must prove each physical element and the corresponding fault element beyond reasonable doubt. Proof of guilt is not established unless the physical and fault elements occur at the same time.

The standard fault elements are:

- **Intention** – did the person mean to do a particular act (or omission) or bring about a particular result? Or did the person believe a particular set of circumstances existed or would exist?
- **Knowledge** - a person will be considered to have knowledge if they were aware of something in a given set of circumstances. For example, did the person know that the information they provided in a statement was false?
- **Recklessness** - recklessness can be shown when the accused foresaw a substantial risk that a certain consequence would result from their conduct, but went ahead with their actions (or omissions) anyway.
- **Negligence** – a person is negligent if their conduct involves a falling short of the standard of care that a reasonable person would exercise in the circumstances. Generally, negligence should be applied to a circumstance or a result, rather than to conduct.

5.3.5 Setting the penalty

When developing an offence, you will need to consider what the penalty should be. Each offence should have a separate maximum penalty. The maximum needs to be high enough to provide a deterrent effect and also sufficient scope for a court to punish the most serious cases, including repeat offences. It also needs to appropriately reflect the seriousness of the offence relative to other offences and penalties.

It can be helpful to look at similar offences in other pieces of legislation to ensure that the penalty for any new offence fits within the existing penalty scale. Many offences in legislation are linked to the standard scale of fines found in *schedule 8 of the Criminal Procedure and Evidence Ordinance 2014*. This scale is updated from time to time, which in turn automatically updates the penalties in Ordinances that refer to it. It can also be helpful to look to other countries to get a sense of how similar offences are treated.

Something else to consider is whether a fine should be prescribed as an alternative to imprisonment. This gives the court some flexibility if the circumstances are appropriate.
The ratio between imprisonment and fines and other sentences will need to be determined. Again, looking at how this has been treated in existing legislation can be helpful.

5.3.6 Defences

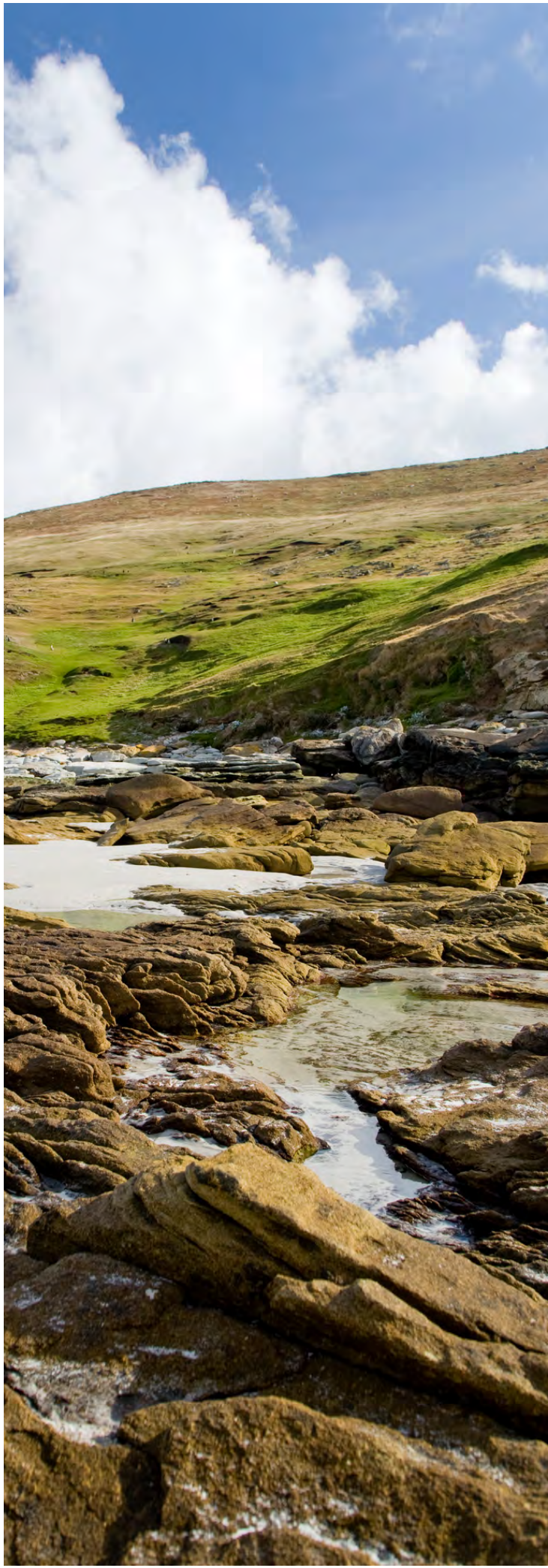
When introducing a criminal offence, you must consider what defences may be relevant and how they should apply. A defence may already exist that applies. For example, *section 5 of the Crimes Ordinance 2014* provides that, in general, no person can be guilty of an offence by omission if they were physically incapable of acting in the way required. Alternatively, general defences may need to be extended or restricted in their application, or offence-specific defences may need to be included. For example, *section 194 of the Fisheries (Conservation and Management) Ordinance 2005* states that a lack of knowledge is not a defence unless it's expressly provided for in the Ordinance.

5.4 Infringement/penalty notices

Infringement or penalty notices provide an alternative to prosecution for an offence or litigation of a civil matter. Generally, these notices are used for minor offences, especially ones that are committed frequently, and give the recipient the option to either pay a fine or elect to have the matter heard in court. In addition, infringement notices should also be limited to offences where a breach is readily assessable by an enforcement officer based on physical elements, rather than mental elements.

A common example in many jurisdictions is minor traffic offences.

Infringement notice schemes can be included in secondary legislation, such as regulations, so that fine amounts can be easily adjusted. Where this is the case, remember that the primary legislation must provide a power for making such a scheme (see section **4.2.6**).



Some things to think about when you are preparing to include an infringement notice scheme in legislation include:

- who should be authorised to issue a notice;
- what amount should be payable for each offence in the scheme (including amounts for a natural person and a corporation);
- the process for withdrawing a notice;
- the process for paying the notice; and
- what should be included in the notice itself, including:
- a unique identifier for each notice;
- the name of the person (or some other way to identify the offender) to whom the notice is to be issued;
- the authorised officer who has issued the notice;
- the alleged offence and the details of the offence (e.g. time, nature and place of the offence);
- the amount to be paid;
- the option to attend court instead of paying the fine; and
- the method for seeking to have the notice withdrawn.

5.5 Are you creating regulatory powers?

Regulatory powers are coercive and enforcement powers used by government agencies to ensure individuals and industry comply with legislative requirements.

This includes things like:

- monitoring powers, which can be used to monitor compliance with provisions of an Ordinance and to monitor whether information given to the government is correct;
- investigation powers, which can be used to gather material that relates to the contravention of an offence or civil penalty provision;
- the power to apply to a court for civil penalty orders and injunctions; and
- the power to issue infringement notices.

If you are considering including such powers in legislation, you should also think about what safeguards and guidelines need to accompany that power. For example, if you are introducing a power to execute a warrant of some kind, you should think about who can issue the warrant, who can exercise it, how the warrant should be executed, what powers that person has while executing the warrant, and what rights the person who is the subject of the warrant has.

5.6 Are you creating a new statutory body?

Occasionally, legislative reform will include the creation of a new body to implement the purpose of the legislative scheme.

An example of a statutory body can be seen in the *Falkland Islands Tourist Board Ordinance 2014.*

Before creating a body through a legislative reform, there are a number of things you should consider.

Firstly, is a new body really needed? Statutory bodies still carry out a governmental function, so you should think about whether the function can be carried out by an existing government department or body, or a collaboration of existing agencies. Having the desired activity carried out by a government structure already in existence can avoid unnecessary costs, and can take advantage of existing resources and knowledge.

Generally, a statutory body is only necessary when the function is more effectively performed outside of the government. This might be because the particular function requires a level of independence from government, or because there is a specific need to establish a separate legal entity.

When deciding whether to establish a new statutory body, you should check what legislation may already exist which would be common to all such entities. For example, financial management legislation.

5.6.1 Functions

Any legislation to create a new body must clearly outline the purpose and functions of that new body.

A lack of clarity about the purpose of the body can result in ineffective governance structures that inhibit the efficiency and performance of the body tasked with undertaking the activity. Only when the purpose of a body is clear can the direction be set for the body to achieve its objectives. Issues to consider include the intended outcome of the body's activities and whether there will be any restrictions on what it can do.

In this part we are primarily considering bodies with a fairly high degree of independent function from the government. However, other types of body established by legislation might include, for example, committees with a more limited, advisory function. Not all of the following sections will be relevant to every statutory body. Whatever the type of body being created, it is important to think through its purpose and functions and ensure that you provide for all of the appropriate powers and governance arrangements to allow it to properly fulfil its role.

5.6.2 Powers

It is critical to be clear about what powers the body can exercise, including whether you want to restrict what it can do or put special procedures in place for certain actions. For example, you might want to require Executive Council approval for disposal of land.

5.6.3 Governance structure

The legislation will need to address the body's governance arrangements. This will include issues such as:

- whether there will be a governing board and, if so, what will the authority and functions of the board be?
- how will board members be appointed, terminated and how long will their length of service be?
- will there be a chief executive or chairperson of the board? How will this be decided and what will the terms be?
- can the body make its own procedural rules, or do these need to be specified in the legislation?

5.6.4 Staffing

How will the body be staffed? Will employees be considered public servants, in which case will existing public service legislation and conditions apply?

If this is not the case, then how will staff be engaged and how will their conditions be determined? How will other human resource issues be dealt with, such as misconduct and termination?

A further employment consideration is whether, and how, to implement things like delegations and authorisations. Who in the organisation will be able to perform what functions and how can these functions be delegated to others?

5.6.5 Financial accountability

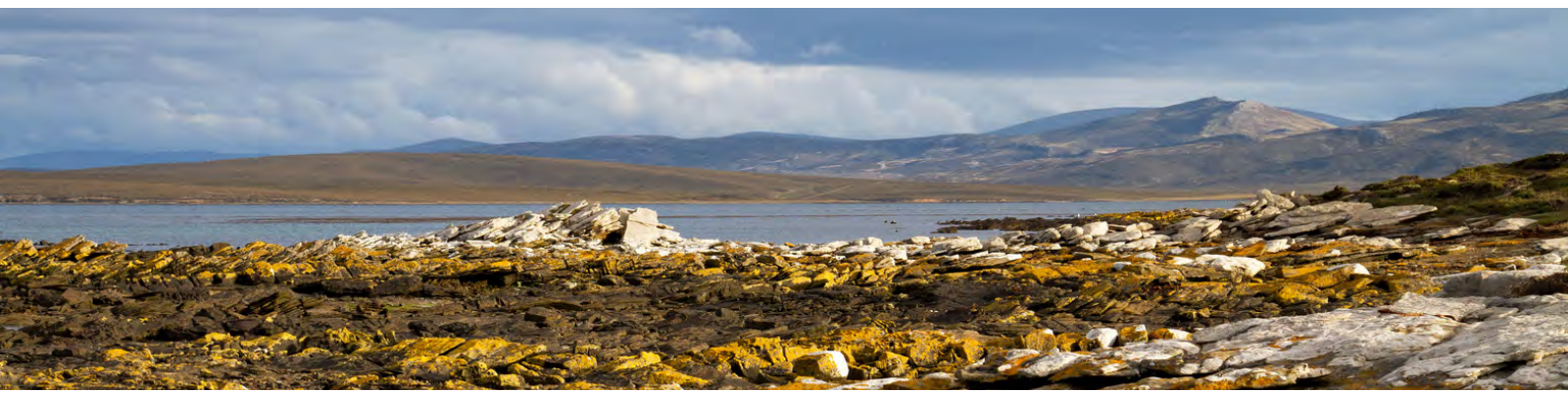
While statutory bodies generally have more independence than a government department, they are still using public money and must be held equally as accountable.
As such, any enabling legislation will need to specify how the body and its employees spend and receive money, if that is not already dealt with in other public financial management legislation. You will need to consider issues like:

- how the body's financial resources will be managed;
- whether the body can enter into contracts and hold property;
- what kind of financial reporting will be required; and
- what the approval process will be for spending money and making payments.

You should note that all statutory bodies are subject to audit under *Part VII of the Finance and Audit Ordinance 1988*.

5.6.6 Reporting

In addition to financial reporting, what other forms of accountability are needed? For example, should the body be required to report to the Director, or Executive Council, or the Legislative Assembly more broadly? Should there be a requirement to produce and make annual reports publicly available? You may also need to think about the role other bodies or parts of government may play.



5.7 Structural and practical issues

This section covers a number of practical matters that a policy officer must consider in order to effectively manage the law reform process. It is important not only to think about where your reform will best sit within the existing legislative framework, but also about from when your reform will be required to operate. You will also need to consider how the reform should be implemented and how you will be able to evaluate whether it has successfully 'solved' the original policy problem.

5.7.1 Will your proposed reform require primary or secondary legislation?

When legislating, a key practical question is whether the subject matter being legislated is better suited to an Ordinance or to secondary legislation, such as regulations. An additional question is whether new legislation is required or if existing legislation can be amended.

5.7.2 Ordinance v regulation

The decision on whether the reform should be achieved through an Ordinance or through regulations will need to be resolved in consultation with your drafter. It is important to understand this distinction for the purposes of instructing and ensuring legislative proposals are within the authority of the existing legislative framework.

While there is no definitive list of what should be contained in Ordinances as compared to secondary legislation, the following is a list of issues that would generally only be dealt with by primary legislation:

- appropriations of money;
- significant questions of policy including significant new policy or fundamental changes to existing policy;
- rules which have a significant impact on human rights and personal liberties;
- provisions imposing obligations on individuals or organisations to undertake certain activities (e.g. to provide information or submit documentation, noting that the detail of the information or documentation required may be included in secondary legislation) or desist from activities (e.g. to prohibit an activity and impose penalties);
- provisions creating offences or civil penalties which impose significant penalties;
- provisions imposing administrative penalties for regulatory offences (administrative penalties are imposed automatically by force of law instead of being imposed by a court);
- provisions imposing taxes or levies;
- provisions imposing high or substantial fees and charges;
- provisions authorising the borrowing of funds;
- processes that are fundamental to the legislative scheme as opposed to more minor details around how that scheme will be implemented;
- provisions creating statutory entities (noting that some details of the operations of a statutory entity would be appropriately dealt with in secondary legislation); and
- amendments to Ordinances.

As regulations and other secondary legislation does not undergo as much scrutiny as Ordinances, significant matters and issues of great public interest should only be addressed within Ordinances. Regulations generally contain the detail surrounding the significant principles set out in an Ordinance, as well as matters that are likely to change frequently, for example, forms and fees.

Remember that secondary legislation can only deal with the subject matter allowed under the enabling provision of the Ordinance (see above in section **4.2.6**).

5.7.3 New legislation v amending legislation

A key preliminary issue is whether new legislation is required, or if the policy change can be achieved through amending existing legislation. If legislation already exists on the subject matter, then it may be more appropriate to amend that legislation rather than introduce a new Ordinance.

For example, a country may want new legislation to deal with an emerging issue, such as cybercrime.

The benefits of this are that all issues relating to cybercrime can be located in one piece of legislation, which can be helpful for familiarising and training law enforcement. This approach also allows a government to highlight a particular issue to the public, by announcing the introduction of a standalone piece of legislation that addresses a public concern. However, this can also mean that broader issues, such as criminal offences and police powers, can be spread across multiple, subject-specific Ordinances. This can make criminal offences and relevant police powers harder to find.

You may be tempted to 'clean up' the statute book by repealing and replacing existing legislation. This may be especially tempting if a number of previous amendments have occurred without being compiled into a single version of the Ordinance. However, this can open previously settled issues up for debate and create more complications in the legislative process.

When undertaking legislative amendments, you should also check whether there have been previous amendments made to the Ordinance or instrument. Any amendments must be read into the Ordinance so that you can be sure you are amending the right version. Viewing Ordinances on the *Falkland Islands Statute Law Database* will show you the most up to date version of an Ordinance, incorporating previous amendments, though you should be aware of the possibility of errors or of recent changes not yet being reflected. If you think there is an error in any of the materials published on the Statute Law Database, you should *contact the Statute Law Commissioner.*

5.7.4 When and how will your law commence?

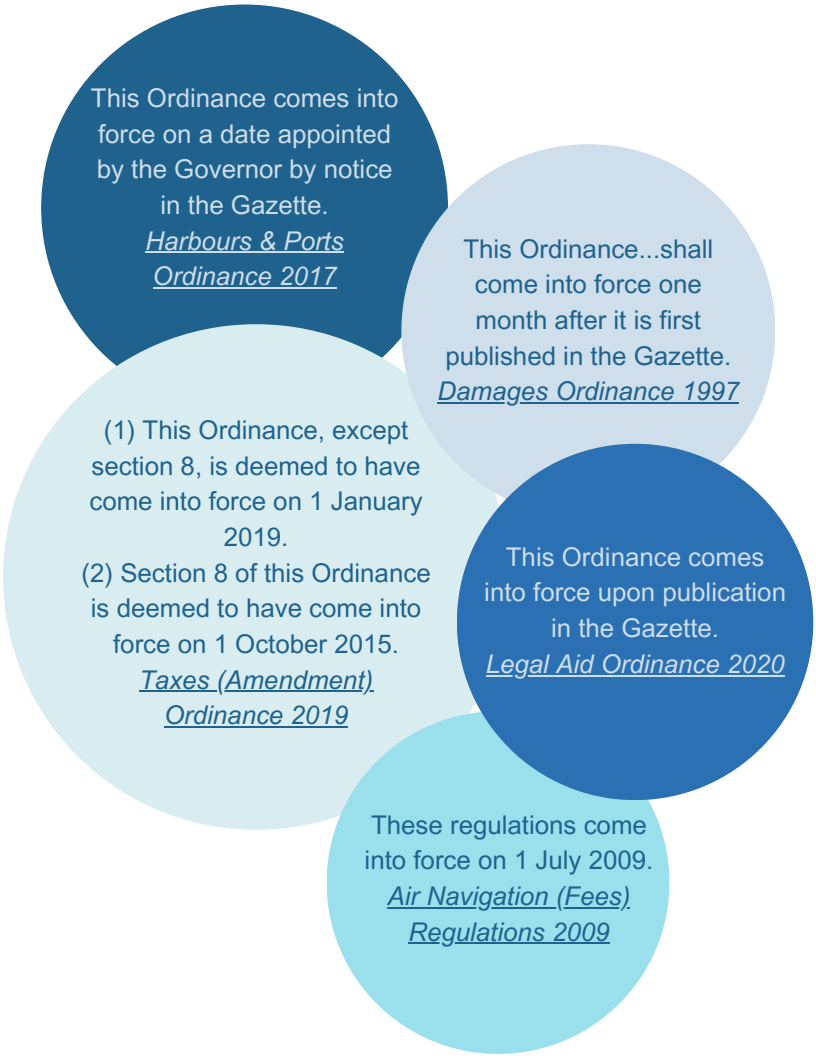
You will need to decide when the draft legislation, once enacted, is to come into effect, known as commencement. No Ordinance can come into operation before it has been published in the Gazette, but it is possible for commencement to be postponed or for the effect of the law to be applied retrospectively (within limits) if this is expressly stated in the Ordinance.

Some common mechanisms for commencements include:

- commencing on a specific date;
- commencing on a future date to be decided – for example, commencing on a date to be proclaimed by the Governor; or
- commencing on gazetting

Other more complicated commencement provisions may involve a contingent commencement.

For example, an Ordinance may be stated to commence at the same time as another piece of relevant legislation. Alternatively, there may be a staggered commencement, where different parts of the legislation commence at different times. See some examples below of the variety of commencement provisions.



In deciding the most appropriate commencement, you should consider what time frame you require to ensure that the legislation can be appropriately implemented on commencement.

Questions to consider when working out an appropriate commencement date include:

- do regulations need to be prepared to commence with the Ordinance?
- what practical steps need to be taken before the public service will be ready to implement the law?
- what will be the practical effect of this legislation on the community?
- is there is sufficient time for the community to learn about the law, and develop ways to comply with it?

5.7.5 Retrospectivity

A key matter to consider is the principle against retrospective commencements. A retrospective commencement is when legislation is applied to conduct that has occurred in the past. The principle against retrospectivity is that laws should not impose liability for acts (or omissions) which were not considered unlawful at the time they occurred.

While retrospective application of legislation does occasionally occur, it should never create a detriment to anyone other than the government. For example, retrospective legislation may be enacted in order for the government to make payments, but should not be enacted if it has a detrimental result for members of the general public in relation to things that occurred in the past. This is particularly important for criminal offences, and paragraph 6(5) of *Chapter I of the Constitution* states that a person cannot be held criminally responsible for conduct which was not an offence at the time it occurred, or be given a penalty that is more severe than would have been imposed at the time the offence was committed.

Talk to your legislative drafter early on about the anticipated commencement provisions and remember to include an explanation about the reasoning for commencement in the explanatory information (see section **6.5.3**).

5.7.6 What impact will your law reform have on existing legislation?

Each piece of law must be considered in the context of the full body of Falkland Islands legislation. It is important that the broader legal framework is consistent and that interactions between laws are well thought through to make sure that the overall effect works in practice and does not have unintended consequences.

5.7.7 Consequential amendments

It is important to start thinking early on in the reform process about what impact your law reform will have on existing legislation. When your new legislation interacts with existing legislation, it may be necessary to change the existing legislation. Such changes are referred to as consequential amendments.

For example, the *Criminal Procedure and Evidence (Miscellaneous Amendments) Ordinance 2019* updated the *Criminal Procedure and Evidence Ordinance 2014* and included consequential amendments to other legislation, such as changing references from previous Ordinances to the new one. These amendments are located in *Part 3 of the Ordinance*.

5.7.8 Transitioning from an existing legislative scheme

Where a legislative reform creates a change from an existing legislative arrangement to a new one, a specific provision to deal with the changeover period may be required. This kind of transitional provision explains how the existing scheme should be treated when the new scheme comes into force.

For example, a legislative scheme might exist where people who would like to operate small businesses must apply for a small business permit for which they must meet a variety of criteria. If a legislative reform was introduced to change that criteria, then a number of issues would arise that the new legislation would need to address. These issues include:

- should a permit granted under the old scheme continue to have effect once the new permit scheme begins?
- if a person applied for a small business permit under the existing legislation, what should happen to their application when the new legislation is enacted? Should they have to apply again?
- if there were any regulations or other subordinate instruments relating to the existing permit scheme, do these continue as if they were made under the new scheme?

It is also possible to 'save' an existing rule, right, privilege, obligation or liability by preserving such a provision (either wholly or partially) from being repealed or ceasing to have effect because of new legislation.

An example of a simple transitional provision can be seen in *section 209 of the Electoral Ordinance 1988*, which allows for existing registers to be used until such time as the new registers come into force.

Another example can be seen in the *Banking Ordinance 1987*, where *section 4(1)* allows existing banking businesses to carry on operating for a limited period before having to apply for a licence under the Ordinance.

6. Working with a legislative drafter

6.1 Drafting instructions

Once the government has decided that legislative reform is necessary, you will need to engage a legislative drafter to draft the reform. The legislative drafting team is part of the Law and Regulation Directorate, and sometimes private drafters are engaged by the Attorney General. Whatever the arrangement, instructions will need to be prepared for the legislative drafter.

6.1.1 What are drafting instructions?

Drafting instructions provide the link between the policy and the legislation. They should be set out in writing and provide the legislative drafter with an explanation of:

- what needs to be done and why – the policy that needs to be put into law;
- when the draft legislation is required by and when it should commence;
- what is the background and context for the reform; and
- any legal issues of which the drafter should be aware.

6.1.2 Why do drafting instructions matter?

The importance of clear drafting instructions cannot be underestimated. Not only do good instructions contribute to a smoother, more efficient drafting process, but they are critical to achieving clear and good quality laws. Where instructions are unclear, ambiguous or lacking in detail, not only will time be wasted, but there is the potential for the resulting legislation to also be unclear, ambiguous and confusing.

Imagine, for example, a drafter receives an instruction that the government would like all people fishing in Town A to be licensed.

A range of policy issues are left undefined, such as:

- Does this apply to residents of Town A only or to visitors to Town A also?
- Where are licences obtained?
- How long do licences last for?
- Will there be a fee for a licence – if so, how will that be collected?
- What geographical area does this apply to?
- Are there any exceptions?
- What are the consequences of fishing without a licence?
- Who will check that people have a valid licence?
- What is the problem the issuing of licences is hoping to address?

Good drafting instructions should consider and seek to address these types of questions.

6.2 What is the role of the instructor?

As the instructor it is your role to tell the drafter everything they need to know in order to be able to effectively and efficiently prepare a draft that solves the policy problem the reform is intended to address.

The instructor is the primary contact point for the drafter on everything to do with the reform, so it is critical that the instructor:

- has a full understanding of the policy problem;
- understands how the reform will address the policy problem;
- understands the current legal framework and how the reform will affect it; and
- is familiar with the legislative process.

Ideally, all the policy decisions regarding new legislation should be clearly determined before you start working with the drafter to prepare the legislation. However, in reality this is rarely the case, and your drafter will often identify further policy questions that you will need to consider. It is your role to resolve these matters in a timely manner.

6.3 What is the role of a legislative drafter?

It is the role of the legislative drafter to receive the drafting instructions and ‘translate’ them into a legally effective draft Bill.

The drafter is not the policy officer. Although the drafter may point out gaps in policy, they will ask you as the policy officer to clarify these issues. It is not the drafter’s role to develop policy or make policy decisions.

In order to give effect to instructions, a drafter will strive to produce a draft that:

- gives effect to the stated policy intention;
- is clear and easily understandable;
- is legally effective – for example, a draft that is made within authority of the Constitution or enabling legislation;
- is consistent with the existing legal framework; and
- is error-free.

The drafter will ask many questions during the drafting process to achieve this – and you must be prepared for this.

6.4 Giving instructions – drafting instructions checklist

The following checklist provides a helpful overview of what should generally be included in drafting instructions.

✓	Information Required in Instructions	Hand book Ref:
	1.Contact details Provide the name(s) and contact information for the person who is providing these instructions. If there is more than one person, give the name of the lead contact so we know who is responsible for providing us with the information we need.	6.2
	2. Proposed title State if there is a particular name that the legislation should have, and why. The legislative drafter will discuss and agree on the most appropriate title with you.	
	3. Enabling Ordinances If your instructions relate to drafting secondary legislation (e.g. regulations), include the name and particular section of the Ordinance (or other law) which provides the power to make the regulations etc. Also include the title of the person who has the power to make the regulations etc (this will usually, but not always, be the Governor).	4.2.6
	4. Policy Approval/ Authority Provide the details of who gave authority for this proposal to be progressed. In most situations this will mean the ExCo decisions to authorise the policy and drafting of legislation – provide all relevant ExCo papers, the Policy approved by ExCo, associated minutes and the date of approval of the Policy.	3.5
	5. Summary Provide a summary of the approved Policy objectives/aims that are contained in the approved Policy. This can be provided in a table format or just a small summary or both.	

	6. Timetable for legislation and legislative priority Insert the proposed timetable for the proposal, including: when the legislation is intended to be introduced to the Legislative Assembly, and when it is intended to be implemented, when consultations on the draft law (if any) are planned any other key dates known, such as leave dates for the person providing instructions. Further indicate whether the project is already on the Legislation Programme and what priority it has been given by ExCo.	**3.5**
	7. Introduction and Background information 7.1 Provide background information in a logical sequence on the policy problem or issue, how the problem has arisen and why legislation is being proposed. Outline the current challenges being experienced and the legal, practical and political issues that are linked to the policy problem, if any. 7.2 The proposed legislation often has a history which contributes to the proposed Policy solution. Therefore outline:- 7.2.1 the background information through describing the facts in a logical or chronological sequence; 7.2.2 what the current situation is, how the system is currently working and reference any current relevant law; 7.2.3 the exact problem that needs to be addressed; 7.2.4 the challenges being experienced; 7.2.5 when the problem/challenge arose, if known; 7.2.6 the legal, practical and political issues that are linked to the problem, if any; and 7.2.7 whether the problem is regulated under any existing law.	**6.4.1**
	8. Purpose and objectives of the proposed legislation State concisely the purpose and objectives of this proposed legislation. Outline what the proposed legislation is expected to do about the identified problem.	
	9. Rationale State the reason for choosing the legislative route and indicate how you expect the proposed legislation to address the identified problem. The reasons are normally based on evidence or facts that led to the logic behind choosing legislation as an appropriate tool to solve the identified problem.	
	10. Stakeholders and Summary of consultations State who is affected/impacted by the proposed legislation. Summarize any consultations that have occurred, or are intended to occur, on the proposal including consultation with particular stakeholders or other departments as well as the public. Indicate whether there have been any changes to the approved Policy after analyzing the inputs received during stakeholder consultations.	**2.4**

	11. Relationship to existing laws and projects (if any) List any existing laws (Ordinances, secondary legislation, or UK law applying to the Falkland Islands) dealing with this subject matter. If there are existing laws, describe how the proposal will fit with that existing framework of laws. Outline the gaps identified or challenges experienced under the current regulatory framework. Describe any related projects, either existing or proposed, including any related projects run by another department or Directorate.	**5.7.6**
	12. Detailed Policy proposals Outline the detailed policy solutions aimed at solving the problem - this must be linked to the approved Policy.	
	13. Detailed Explanation of what is required State concisely how the Policy will now be implemented into a law. Set out a picture of how the proposed law will work i.e.: describe the intended effect of new legislation; indicate who will do what and how; outline whose conduct will be affected and how and what the consequences are if a person does not comply; for each administrative decision that will need to be made, state who will make the decision, the nature of the decision, the criteria that will be used by the decision maker to make the decision. Please consider the following issues and provide instructions on those that are relevant for the proposed law:-	**6.4.2** **5.2**
	13.1 General matters:	
	13.1.1 Commencement Provide instructions on when the law should commence. Keep in mind that different parts of the law may commence at different times. If commencement is contingent upon an event (for example, the commencement of a related piece of legislation), provide information about that event.	**5.7.4**
	13.1.2 Provide an explanation of technical terms for guidance.	**4.5** **6.4.3**
	13.1.3 State the application of the proposed law, i.e. indicate whether the application of the law should be expanded or confined in any way? (e.g. geographically, or time period, or by subject matter).	**6.4.2**
	13.1.4 State whether it is intended that the law, or elements of it, should apply to the Government;	

	13.1.5 Outline the guiding principles upon which the legislation is based;	
	13.1.6 State whether powers to make secondary legislation should be included in the proposed law and what those powers should be (they can either be very broad, or limited/specific). Please give an initial indication, if you can, of which proposals you believe should be reflected in primary legislation, and which should be reflected in secondary legislation. The legislative drafter will work with you to agree this. Usually primary legislation contains the overarching policy framework, and the finer details of a legislative scheme are contained in secondary legislation in more depth; for example, administrative and procedural matters. Please also see paragraph 16 below;	**4.2.6**
	13.1.7 Indicate whether there is a need to develop Guidance Documents/ Guidelines, see paragraph 17 below;	**5.2**
	13.1.8 State whether there is a need for public consultations on any matters before any administrative decision to be made under the law is finalised;	
	13.1.9 Indicate any miscellaneous provisions that should be included in the proposed law such as confidentiality, limitation of liability; etc;	
	13.1.10 Indicate whether there will be any dispute resolution provisions that will be included in the proposed law such as negotiation, mediation, arbitration;	
	13.1.11 Outline the procedures for review and appeal (timeframes, process and to whom?);	**5.2**
	13.1.12 Indicate whether the new law will repeal or save any existing law; and	**5.7.8**
	13.1.13 Provide details on any arrangements required to transition from the existing law to the new law (e.g. does the existing law need to continue in force in relation to something which is ongoing?).	**5.7.8**
	13.2 Provide details on how the policy objectives will be implemented through the proposed law:	

	13.2.1 Specify the conduct that will be subject to the proposed legislation and whether any rights will be conferred or whether any obligations will be imposed;	**5.7.2**
	13.2.2 Outline the functions and powers that will be required and who will perform them and how they will be performed, e.g. licensing;	
	13.2.3 Indicate whether a statutory board/committee/company/entity (statutory entity) will be created;	**5.6**
	13.2.4 Provide instructions on the statutory entity's administration;	**5.6**
	13.2.5 Outline what is the relationship of any new statutory entity with the Government;	**5.6**
	13.2.6 State where will the statutory entity report to and who will provide oversight of that entity;	**5.6**
	13.2.7 Indicate how the activities of the statutory entity will be funded;	**5.6**
	13.2.8 Indicate whether the statutory entity's employees will be public servants who are governed by the public service legislation and clearly outline their functions/powers;	**5.6**
	13.2.9 State the composition of the statutory entity and how will the officers/members of such entity be appointed;	**5.6**
	13.2.10 State the qualifications, experience, qualifying criteria, term of office, remuneration of the officers and members of the statutory entity;	**5.6**
	13.2.11 Outline clearly the powers and functions of the officers/members of the statutory entity; and	**5.6**
	13.2.12 Outline how the statutory entity will manage its meetings/procedures/record keeping.	**5.6**
	13.3 State the administrative instruments that will be introduced by the new law:	
	13.3.1 Indicate whether any plan/strategy/programme/report must be developed/ adopted and who develops them and who approves them;	

	13.3.2 Indicate whether the plan/strategy/programme/report need to be published for comments and/or for implementation;	
	13.3.3. Indicate the frequency of reviewing the plan/ strategy/ programme/ report;	
	13.3.4 State whether licences/ registration schemes/ permits/ authorisations will be introduced;	**6.1**
	13.3.5 Indicate how the application process/ forms/ fees/ conditions will be determined;	
	13.3.6 State the criteria to be used when deciding whether to either grant or refuse an application/ licences/ permits / authorisations;	
	13.3.7 State whether there will be any renewal of licences/ authorisations/ permits and what are the conditions / requirements of renewal and whether fees will be payable;	
	13.3.8 State whether any exemptions will be issued and the conditions under which the exemptions will be issued;	
	13.3.9 State whether agreements will be negotiated, the parties to the agreements and any mandatory clauses that should be included in the agreements;	
	13.3.10 State whether there will be any delegations of powers by the administrators mentioned in the law and the conditions for such delegations;	**5.2.3**
	13.3.11 If the proposal is introducing financial provisions, state how the money will be collected, held, accounted for and distributed. The charging of fees etc must be authorised by legislation; and	**5.1**
	13.3.12 If the proposal includes the power for a person to make a decision as part of the administration of the new or amended law, include information on who should have the power to make that decision, and what the nature and criteria of that decision should be. Also include any discretionary powers with regards to the decision, and whether decisions are subject to review, how, and by who.	**5.2**

	13.4 Outline and describe the enforcement regime:	
	13.4.1 Criminal offences - If it has been decided that a criminal offence is necessary, state the relevant physical and fault element for each offence. Also include what the penalty should be and state any defences which should apply to the offence;	**5.3**
	13.4.2 What are the other sanctions for non-compliance with the proposed law (administrative penalties, suspension/revocation of licences/ authorisations /permits and the procedure to be followed);	**5.3.5** **5.7.2**
	13.4.3 Indicate whether the levels of offences in the proposed law will be linked to the levels identified under Schedule 8 of the Criminal Procedure and Evidence Ordinance 2014 or whether the new law will have its own specific offences and penalties/other sanctions;	**5.3**
	13.4.4 State whether any compliance/ infringement notices/ directives/ orders will be introduced and the instances that will trigger these enforcement tools;	**5.4**
	13.4.5 Set out the detail of any coercive and enforcement powers intended to be used by government, and who should be able to exercise them; and	**5.5**
	13.4.6 State and describe the powers of enforcement in respect to entry, search and seizure.	**5.3**
	14. Comparative Legislation and Additional Information	
	14.1 If the proposed law is based on legislation existing in another jurisdiction like a UK Act, provide links to the relevant legislation and a full commentary on how it will apply within the Falkland Islands context (i.e. an analysis of every section). Detail is key – don't assume that the law will work in the Falkland Islands because it works elsewhere. You must consider every aspect of the law and how it should work in practice.	**6.4.4**
	14.2 State whether there are any international treaties that bind the Falkland Islands that are relevant to the proposed legislation, including what obligations arise under those treaties.	**4.6**

	14.3 Provide the relevant background information such as legal opinions, reports and materials from the United Nations or any of its affiliated organisations (such as reports, conventions, standards), law reform bodies, similar legislation from other countries, on the proposed revisions to legislation. (Provide copies of any documentation).	**4.6**
	14.4 Provide any other relevant legal advice or opinions, that have been given on the matter.	**6.4.6**
	14.5 Provide a list any relevant case law you are aware of; and	**6.4.6**
	14.6 Include any further relevant information, particularly if it is unique to the subject or to the proposal.	
	15. Other Relevant Issues to be Considered	
	15.1 Whether the proposed law is consistent with the Constitution;	**4.4**
	15.2 Are there any human rights implications relevant to the proposal being undertaken? Is any potential discrimination permitted under the Constitution? In the event that the proposed law is discriminatory in nature please provide the justification for the discrimination;	**4.4**
	15.3 Are there any significant gender, environmental or regional issues the legislation might give rise to;	
	15.4 State how the proposed legislation will impact vulnerable groups such as children, the youth, women, the elderly and people living with disabilities, etc;	**4.4** **4.6**
	15.5 State whether there are any other legal aspects to be considered, such as, deprivation of rights;	
	15.6 Whether any Ordinance of general application (such as the Interpretation and General Clauses Ordinance 1977) will apply to the proposal;	**4.5**
	15.7 Whether the proposed law is in conflict with any other existing law and whether there are overlaps with existing legislation; and how will they work together; and	

	15.8 Consequential amendments - effect of proposed legislation on existing legislation and whether any legislation will need to be amended as a result of the proposed law. Provide instructions on how the affected provisions are to be amended.	**5.7.6** **5.7.7**
	16. Outline and Explain Matters that should be Covered in Secondary Legislation (if any)	
	16.1 Procedural and administrative matters e.g. how to apply for a licence/permit/authorisation;	
	16.2 Matters that require frequent adjustments, e.g. forms, fees payable;	
	16.3 Outline of the applicable penalties;	
	16.4 Any matters that require to be dealt with in emergency;	
	16.5 Any situations that require to be accommodated rapidly under changing situations; and	
	16.6 Minor or technical matters to implement the law such as schedules, long lists; tables.	
	17. Outline and Explain Matters that Require Guidance Documents/ Guidelines	
	Indicate whether there is a need to develop Guidance Documents/ Guidelines which provide detailed information on how a decision-maker will exercise their discretionary powers. This can help guide decision-makers and ensure that there is transparency and that discretionary powers are not too broad and are applied consistently.	**5.2**

Legal advice

If you haven't already sought legal advice when developing your proposal, it is strongly recommended that you contact the Legal Services Team to seek advice and discuss issues such as Constitutional and human rights implications, criminal offences, administrative powers, decision making processes and appeals.

6.4.1 Introduction and Background

As a starting point, you should provide the legislative drafter with some background to the policy.

This includes a description of the broad policy proposal as agreed by Executive Council and the objective of the reform. This should be in general terms. The specifics can be provided within the more detailed instructions. The background should just give the legislative drafter an understanding of the policy story.

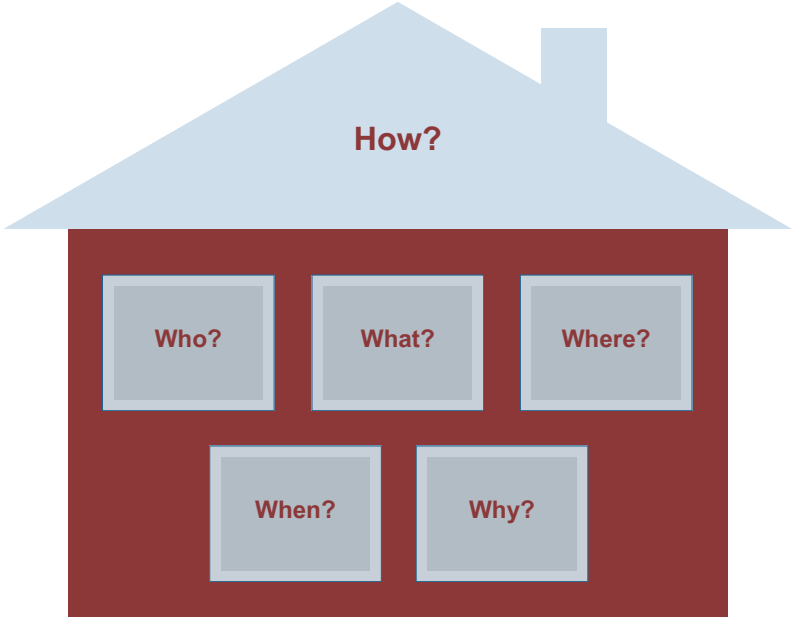
In the background section, you should also include things like:

- describing the background of the policy problem or issue in a logical sequence, the exact problem that needs to be addressed, how the problem has arisen and why legislation is being proposed. Outline the current challenges being experienced and the legal, practical and political issues that are linked to the policy problem, if any;
- an overview of the legislative scheme being created/amended/replaced – this provides the drafter with an understanding of the current arrangement so they may determine where to best fit the proposed reforms, for example, whether new legislation is necessary or existing legislation can be amended;
- the timetable for the reforms – including when versions of the draft will be required (for example, for consultation purposes) as well as the final deadline for sending the Bill to Executive Council;
- any related proposals;
- identification of enabling provisions – for example, if the instructions are for regulations, then the enabling provision of the Ordinance should be identified and an explanation provided of how the proposed regulations are within the scope of the enabling provision; and
- an outline of any consultations that took place and a summary of their outcome, including consultations held with other departments, relevant stakeholders or the public more generally.

6.4.2 The specifics

Where possible, you should break the broad policy proposal into individual concepts so that you provide specific instructions in relation to each.

The 'House with five Windows' analogy can remind you to provide as much detail as possible as well as help you to spot potential policy gaps before the instructions reach the legislative drafter.



As an example, if the government wanted to provide an incentive payment to parents for vaccinating their children, applying the House with five Windows tool might prompt you to consider and provide instructions for issues like:

Who?

- Just parents? What about other people the child lives with or other kinds of guardianship?
- Who is authorised to give the vaccinations?
- Who is responsible for making the payments?

What?

- Vaccinations for which diseases?
- What happens if parents do not get their children vaccinated – will there be any negative consequence for them?

When?

- All children or just children of a certain age?
- Is there a certain time that vaccinations need to have been given by for eligibility? For example, by the time the child turns two?

Where?

- Are there particular providers parents are required to use in order to be eligible for the incentive payment?
- Does this scheme apply to all children in the country or just in a certain geographical area? For example, in the capital city where diseases might spread more easily.

Why?

- Is there a particular disease that has become a concern?
- Have vaccination rates fallen in recent times? Why?

How?

- How will parents prove that vaccinations have taken place?
- How will payments be given? For example, cash payment, cash transfer, voucher, cheque etc.

As well as providing instructions in this narrative form, tools such as diagrams, flowcharts and tables can help explain processes and relationships between concepts.

6.4.3 Defining terms

Many of the terms used in your legislation may need to be defined. Definitions not only make the legislation more readable (by reducing the need to repeat concepts), but help minimise ambiguity and interpretation problems. The legislative drafter should be able to help you identify which terms require definitions, but you should also be mindful of this and form your own views.

6.4.4 Using overseas legislation and lay drafts

Frequently, an instructor will have seen legislation from another country that appears to address the policy issue they are currently facing. The temptation in these cases is often to either use the overseas example, substituting one country's name for another, or to instruct the drafter to follow this example. Alternatively, the temptation exists for instructors to simply draft what they think the legislation should look like in an effort to assist the legislative drafter.

You should avoid these practices. Legislative drafters need to understand the intention behind provisions, not simply see provisions. As each country's legislative framework and context is different, inserting legislation from another country without adapting it appropriately may lead to messy and unsatisfactory outcomes. In addition, in order to ensure that the draft legislation goes through all of the proper quality control checks and processes, it is important to leave the drafting process to the legislative drafting team.

While providing examples from other countries is common, and may be used as an illustration or guide for how legislation might look, it is not enough to simply provide the example without explanation. The legislative drafter cannot be expected to understand what it is about that example that is considered 'good' and how it should fit within the broader context. Instead, each example provision being provided should include an explanation of the objective and rationale for the example, including instructions on where the example should be departed from and why.

Instructions should describe the effect of a provision – that is, what the provision is trying to achieve – rather than provide the actual wording of the provision. You should not tell the legislative drafter to use a specific form of words in the Bill.

6.4.5 Power to make secondary legislation

The power to make secondary legislation is found in the primary piece of legislation, i.e. the Ordinance to which the secondary legislation relates. As secondary legislation must be made within the power granted by the Ordinance, it is important when developing that power to think about its nature and scope.

How broad should it be? Should it be limited to specific subject matter? Who may make the legislative instrument, e.g. the Governor? Are there any conditions imposed on the exercise of the legislative instrument making power?

It is common for Ordinances to provide general regulation making powers by stating that secondary legislation may be made which are 'required or permitted' or are 'necessary or convenient'. While such terms are relatively general, they cannot be used to extend the scope or general operation of the Ordinance. Legislative instruments can only be used to flesh out the framework of the Ordinance and support its operation. Examples of the sorts of things that should only be contained in the Ordinance can be found at section **5.7.2**.

6.4.6 Supporting documents

It is important to also provide the legislative drafter with any other relevant documentation. This may include:

- links to any relevant legislation;
- any legal advice which has been obtained;
- details and summaries of consultations which have been carried out in relation to the policy;
- copies of any relevant court cases;
- details of any relevant international agreements or obligations; and
- any Executive Council papers and decisions, including the relevant minutes.

6.5 Reviewing the draft

Given that legislative drafting is inevitably an iterative process, you can expect to review and comment on several – often many – drafts before the Bill is finalised.

6.5.1 What should you do when you receive a draft Bill back?

Once you receive a draft Bill back from the legislative drafter, it is important to review it with a critical eye to ensure it gives effect to the policy intention. There are a few things to look for when reviewing the draft:

- Has the draft given effect to the policy proposed? Remember to check it against your instructions to make sure everything has been captured appropriately;
- Is there anything missing? Reviewing the draft is an important opportunity to determine whether there are any gaps in the policy for which further instructions will be needed;
- Has the legislative drafter raised any questions that need to be resolved?
- Does the draft make sense to you? Do not be afraid to point out if something does not make sense to you in the draft. As the policy officer, you are best placed to be able to assess this and if it doesn't make sense to you, then it will not make sense to those without your policy knowledge;
- Are the provisions in a logical order and easy for the reader to follow?; and
- Are there any grammatical errors, spelling errors or internal inconsistencies?

When reviewing the draft, it is helpful to test it by generating practical scenarios in which the legislation will be used and assessing how it will operate.

6.5.2 Commenting on the draft

Comments on the draft can be made in any way (for example, in writing or during a face to face meeting), though the legislative drafter may have a preference on how they would like to receive feedback.

When providing comments, focus on the concepts rather than the particular words – for example, if the draft does not work, try to explain how the draft does not reflect the policy, rather than return the draft with suggested wording. It is more useful to explain why the draft does not work, rather than how it should be fixed. Using examples to highlight the problems may also assist.

6.5.3 Explanatory material

Draft legislation is generally accompanied by explanatory material that explains how the law is expected to operate. Explanatory material is an important interpretation tool and can be used by a court and lawyers to assist in understanding the intention of the legislation. Due to the need to ensure that legislative provisions are short, simple and clear, explanatory material provides the opportunity for policy officers to explain what the policy intention of the legislative provisions are in more detail. This may include a summary of the reform and consultations held on the policy issue.

It is helpful to prepare the explanatory material at the same time the draft is prepared. Many decisions will need to be made about the draft as it is written and it is much easier to record the reasoning of these decisions at the time.

Annex 1 – Policy Development Template

Name of the Department/Office:

Falkland Islands Government

Title of the Policy

This template provides a framework for how to structure a Policy document for internal and/or external publication. While there is no one-size-fits-all approach that will work for every Policy document, there are common elements across all Policies which can and/or should be included.
A Policy document need not be lengthy, but it must be relevant to the Falkland Islands context and it should convey all of the necessary information in a clear and concise manner, using simple language.
When you complete your Policy document, remember to delete or replace all guidance and sample text in italics, as well as any sections not relevant to your specific Policy.

Document control information
The table below should be completed by the document owner and included within every FIG Policy Document.

Document Name	[Name of the policy]
Owner	[Name, job role and section]
Version Number	[Version number, with 0.1 increments for minor amendments]
Approval Date	[Day/month/year]
Approved By	[e.g. CMT, ExCo, committee name]
Date of Commencement	[Day/month/year]
Date of Last Review	[Day/month/year]
Date for Next Review	[Day/month/year]
Related Policy Documents	[List all applicable]

TABLE OF CONTENTS

A table of contents may not be necessary, depending on how long and/or complex your Policy is, but it's a good idea to clearly set out the different parts of your Policy so that people can easily refer to it and find what they are looking for.

✓	Information Required in a Policy
	1. DEFINITIONS *This section should include all important and/or unfamiliar terms that are used in the Policy, which a reader may not immediately understand without an explanation. Note that all defined terms must be capitalised throughout the Policy.*
	2. PURPOSE *This section should clearly and concisely outline the rationale and context for the Policy, including any regulatory and legislative requirements for having the Policy.*
	3. BACKGROUND *3.1 State concisely what exactly is the problem that you are trying to solve, i.e. outline the problem; how and why the Policy came to be considered, including the local context and global context if relevant; the reasons for developing the Policy; and what is hoped to be achieved through Policy implementation.* *3.2 Outline the links of the proposed Policy to the relevant Islands Plan objectives/ Key government priorities (if any).*
	4. SCOPE *State the scope of the Policy – the audience to whom the Policy applies, when it applies, and its inclusions and exclusions i.e. the types of services, operations, assets or documents to which the Policy applies, as well as those to which it does not. The scope of the Policy should not duplicate the purpose.*
	5. POLICY PRINCIPLES *5.1 State and describe the key principles that the Policy is founded on. Statements should be short, concise and unambiguous.* *5.2 For example, include relevant statements of values and expectations that relate to, for example: collaboration, alignment with best practice or existing standards, information sharing, promotion of autonomy, education and awareness raising etc.*

6. POLICY STATEMENT

6.1 This is the core section of your Policy document, where you briefly state the desired outcome(s) that the Policy is intended to achieve.

6.2 The operational detail for achieving those outcomes is not included here; they are covered in the Procedures section, or are annexed at the end of the policy document.

7. POLICY FOCUS AREAS/ INTERVENTIONS

7.1 State the key Policy Focus Areas/ Policy Solutions/ Policy Interventions to the identified problem and briefly explain how these aspects will be implemented.

7.2 The examples of Policy Focus Area include Law Reform, Education and Awareness, Licensing/ Authorisations, Incentives, Intergovernmental Cooperation, International Cooperation, Research and Technology Development, Integrated Authorisations, Self-Regulation, Food Safety, etc. However, please note that the identified Policy Focus Areas/ Policy Solutions/ Policy Interventions depend on the subject matter of the identified problem.

7.3 Depending on how simple or complex your policy objectives are, you may wish to break this section down into subsections dedicated to different aspects or elements of your Policy framework.

8. ROLES AND RESPONSIBILITIES

8.1 This section should be used to list all roles, responsibilities and delegations related to this Policy and its subordinate Policy documents. For example, the person who has strategic oversight of the Policy, which committees review and monitor the Policy, and contact information for at least one member of staff who can answer questions on the Policy.

8.2 The table below may be used where relevant for listing roles and responsibilities relevant to the Policy and to subordinate Policy documents, including procedures, guidelines, frameworks, plans or protocols that fall under the Policy. The number of rows and columns should be amended as required.

ROLE	RESPONSIBILITY
[Insert position title]	*[Insert responsibility]*
[Insert position title]	*[Insert responsibility]*
[Insert position title]	*[Insert responsibility]*

9. POLICY IMPLEMENTATION

Briefly explain how the Policy will be implemented. State the tools that will be used to implement the Policy, e.g. Policy Implementation Plan, Communication Plan, Evaluation Plan, etc.

10. RELATED DOCUMENTS, FORMS AND PROCEDURES

10.1 List and provide a link to related legislation, regulations, policies, standards, procedures and other internal or external documents that provide helpful, relevant information. Include links to forms or tools that are required for compliance with the Policy.

10.2 The operational detail for how the policy objectives should be referenced here; concise action or delivery plans can be included in this section, but any complex or detailed tables/ figures/ flowcharts should only be referenced and annexed at the end of the Policy.

11. REVIEW, APPROVAL AND PUBLICATION

This section should:

- Outline the review process, including who would be responsible for review, who/which body or committee would be consulted and the maximum duration between reviews;

- Include which body/committee will ultimately be responsible for approval;

- Include where the document will be located/published, including a link to the relevant webpage.

12. ANNEXES

Where required, additional tables, diagrams or documents should be provided within an annex at the end of the policy, with clear referencing within the main Policy. Annexes should be named as Annex A - …; Annex B - …; etc.

13. REFERENCES

This section must list the references used to develop the Policy.

7. Further resources

7.1 Policy Resources

- *Public Consultation: Principles and Guidance*
- *Communications Unit Trigger Template*
- *Australian Government Policy Hub*
- *Executive Council Papers: Falkland Islands Government*

7.2 Legal Resources

- *Falkland Islands Statute Law Database*
- *UK Legislation*
- *Common Legislative Solutions*