

SCHEDULE

The Constitution of the Falklands Islands

CHAPTER X

MISCELLANEOUS

The Public Seal

97. The Governor shall cause to be kept and used a public seal for the Falkland Islands which shall be used for sealing all things that should pass the seal.

Reappointments and concurrent appointments

98.—(1) Where any person has vacated any office established by this Constitution he or she may, if qualified, again be appointed or elected to that office in accordance with this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, even though some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred on the holder of that office, the person last appointed shall be deemed to be the sole holder of that office.

Resignations

99.—(1) Any person who is appointed or elected to any office established by or pursuant to this Constitution may resign from that office by writing under his or her hand addressed to the person or authority by whom he or she was appointed.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it or when the resignation is expressed to take effect, whichever is the later.

Interpretation

100.—(1) In this Constitution, unless the context otherwise requires—

“Commander British Forces” means the Officer for the time being commanding Her Majesty’s Forces in the Falkland Islands;

“financial year” means any period of twelve months beginning on 1 July in any year or such other date as may be prescribed by Ordinance;

“the Gazette” means the Falkland Islands Government Gazette;

“the Government” means the Government of the Falkland Islands;

“the Governor”, in relation to any power conferred on the Governor, means the Governor acting in accordance with the advice of the Executive Council when the Governor has consulted the Council, except where this Constitution specifies that the Governor—

(a) acts on instructions given by or through a Secretary of State; or

(b) acts in his or her discretion or judgement; or

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(c) acts after consultation with, or in accordance with the advice of, any person or authority other than the Executive Council; or

(d) may act against the advice of the Executive Council in accordance with section 67;

“law” means any law in force in the Falkland Islands or any part of them, including any instrument having the force of law and any unwritten rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“the Legislature” means the Governor acting with the advice and consent of the Legislative Assembly and includes the Governor acting in exercise of the powers conferred on him or her by section 55;

“mineral” means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;

“oath” includes affirmation;

“oath of allegiance” means the oath of allegiance set out in Annex B to this Constitution;

“oath of office” means, in relation to any office, the oath for the due execution of that office set out in Annex B to this Constitution;

“oath of secrecy” means the oath of secrecy set out in Annex B to this Constitution;

“public office” means any office of emolument in the public service;

“public officer” means a person holding or acting in any public office:

“the public service” means, subject to subsections (2) and (3), the service of the Crown in a civil capacity in respect of the government of the Falkland Islands, and includes the Police Force and the Falkland Islands Defence Force;

“sitting” means, in relation to the Legislative Assembly, the period during which the Assembly is sitting continuously without adjournment and includes any period during which it is in committee.

(2) In this Constitution, unless the context otherwise requires, references to an office in the public service shall not be construed as including references to the office of—

(a) an elected member of the Legislative Assembly;

(b) a member of the Advisory Committee on the Prerogative of Mercy;

(c) a judge or acting judge of the Supreme Court or of the Court of Appeal, or Senior Magistrate;

(d) a member of the Public Accounts Committee;

(e) a Complaints Commissioner;

(f) save in so far as may be provided by Ordinance, a member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(3) For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he or she is in receipt of a pension or other like allowance in respect of his or her former tenure of office.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his or her office shall be construed as including, to the extent of his or her authority, a reference to any person for the time being authorised to exercise the functions of that office.

(5) Except in the case where this Constitution provides for the holder of any office to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority, no person may, without his or her consent, be nominated for election to any such office or be appointed to or to act in any such office or otherwise be selected for it.

(6) References in this Constitution to the power to remove a public officer from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.

(7) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his or her office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(8) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder of that office is himself or herself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was able to exercise those functions.

(9) Subject to sections 25, 66 and 67, where the Governor is directed by this Constitution to exercise any power or function after consultation with any person or authority, he or she shall not be obliged to exercise that power or function in accordance with the advice of that person or authority.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Without prejudice to section 14 of the Interpretation Act 1978(1), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, direction, or designation.

(1) 1978 c.30.