

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Members' Remuneration

Paper No: 145/13

Date: 26 June 2013

Report of: Attorney General

1. Purpose

The purpose of this paper is to present to Executive Council for approval:

- (a) draft legislation amending the Members' Remuneration Ordinance; and
- (b) draft amendments to the Legislative Assembly Standing Rules and Orders (which need to be presented to Legislative Assembly in due course for approval under Standing Order 74 pursuant to section 46 of the Constitution)

2. Recommendation

It is recommended that:

- a) Executive Council approve the Members' Remuneration (Amendment) Bill for publication and presentation to Legislative Assembly; and
- b) Executive Council agree that further work be done to amend the Standing Rules and Orders as proposed in this report (and they be re-presented to Executive Council in July).

3. Summary of Financial Implications - None.

4. Background

- 4.1 Executive Council will recall paper 100/13 which presented the first report of the panel to review the remuneration, roles and responsibilities of Members of the Legislative Assembly (the Legislative Assembly Pay Review Panel).
- 4.2 Executive Council considered the report and approved the 'profile and responsibilities' for members, the recommendations on remuneration and the proposed 'working times' for members as set out in that report.
- 4.3 Further discussions with Members has further refined the thinking on the implementation of the recommendations that were agreed.
- 4.4 In summary it is understood that the Members' Remuneration Ordinance should be amended to provide that:
 - 4.4.1 Members be paid £40,000 per year in 12 equal instalments;
 - 4.4.2 Members' expenses will continue to be dealt with according to current statutory, policy and practical arrangements (with the exception of the tax position, which changes slightly as referred to below);
 - 4.4.3 Members will be taxed on the basis that they are employees for tax purposes (which has the additional effect that expenses will be deductible expenses for tax purposes only if the expenses were incurred "wholly *necessarily* and exclusively" in the production of the employment income - the italicised requirement applies to employed persons, but not to self employed persons);
 - 4.4.4 Members will be treated as employees on the basis of the Retirement Pensions Ordinance and Falkland Islands Pension Scheme Ordinance;
 - 4.4.5 following the end of the term of a Legislative Assembly, if a member decides not to stand for re-election, or was unsuccessful in being re-elected, a payment would be made to that Member equivalent to one twelfth of the annual payment; and
 - 4.4.6 a link should be made in the Ordinance so that it is clear that a failure to discharge the duties and responsibilities of a Member could result in the pay being withheld in whole or part.
- 4.5 Attached at Annex 1 is the draft Members' Remuneration (Amendment) Bill, which would incorporate the above elements.
- 4.6 Work is still ongoing within the tax office at the time of writing to ensure that the amended legislation is adequate to reflect the changes needed to taxation systems (if further amendment is required, that could be incorporated by way of government amendment at the Legislative Assembly meeting in July).

- 4.7 If the Bill is passed, the Legislative Assembly Standing Rules and Orders would also need to be amended to set out the duties and responsibilities of Members as set out in the report of the Legislative Assembly Pay Review Panel. The Standing Rules and Orders would also need to provide for a mechanism to deal with complaints concerning Members' discharge of their duties and responsibilities.
- 4.8 The duties and responsibilities proposed to be inserted into the Legislative Assembly Standing Rules and Orders are those as agreed by Executive Council and are taken from the report of the Legislative Assembly Pay Review Panel.
- 4.9 Attached at Annex 2 is an extract from the Legislative Assembly Standing Rules and Orders which shows the incorporation of the duties and responsibilities of members, and the mechanism and sanctions to deal with complaints about a failure to discharge those duties and responsibilities. These have been developed in consultation with the Speaker. Work is still ongoing in relation to some of the detail; in particular there is a lack of clarity in relation to when Members can take holidays, the system for appropriate sanctions is still under discussion, and there is room for improvement in the wording of the duties of MLA's generally (ie plain language drafting would add greater clarity).
- 4.10 Executive Council is asked to (i) approve Members' Remuneration (Amendment) Bill for publication, and subsequent presentation to Legislative Assembly; and (ii) agree that work continue on amendment of the Legislative Assembly Standing Rules and Orders as outlined in this report (with a view to a final version being presented to Executive Council in July).

5.0 Financial Implications – None

6.0 Legal Implications - As set out in this paper

7.0 Human Resources Implications

The amendment is proposed on the basis that MLAs are not to have ordinary employment status (unless specifically stated, eg for tax purposes). Work still needs to be done on bottoming out all the effects/implications of this, which include whether MLAs need to be specifically excepted from the provisions of the Employment Protection Ordinance (and other relevant legislation) and/or whether some of the protections, such as maternity leave/pay should, as a matter of policy, be applied to MLAs.

**Extracts of Legislative Assembly Standing Rules and Orders:
showing propose amendments**

New paragraphs 25 and 26:

Code of Conduct
and Duties of
Members

25. As soon as possible after the Legislative Assembly first meets after a General Election the Clerk shall send to each elected Member two copies of the Code of Conduct and Duties of Members as detailed in Part VI Schedule 2 and 3. One copy of each document must be signed by the elected Member and returned to the Clerk as soon as possible. Similarly, the Clerk shall send such copies to any Member who is returned at a by-election as soon as possible after that Member takes his seat in the Assembly, and shall ensure that signed copies are returned.

Non-declaration of
interests, breaches
of the Code of
Conduct and
failure to discharge
duties of Members
of the Legislative
Assembly

26. (1) An “aggrieved person” (as defined by the Complaints Commissioners Ordinance 2010) may refer any matter to the Speaker if he has reason to believe that a Member of the Legislative Assembly may have failed to comply with a requirement of Standing Orders 22, 23 or 24 regarding the registration or declaration of an interest, or who may have breached a provision of the Code of Conduct. At the discretion of the Speaker the matter may be referred for investigation by the Principal Complaints Commissioner (as established under the Complaints Commissioners Ordinance 2010). Should the Speaker decline to refer the matter to the Principal Complaints Commissioner, such decision may be appealed to the Governor.

(2) Any person who has reason to believe that an elected Member of the Legislative Assembly has failed to discharge the duties of a Member of the Legislative Assembly may refer the matter to the Speaker. At the discretion of the Speaker the matter may be resolved informally, or referred for further investigation by an independent person appointed by the Speaker. Should the Speaker decline to refer the matter to an independent person, such decision may be appealed to the Governor.

(3) The results of an investigation under 26(1) or (2) above together with any findings and recommendations will be reported to the Speaker, with copies of the report provided to: the complainant, the Governor, the Member to whom the complaint relates and to the Clerk of the Legislative Assembly

(4) Any investigation must be fair, and in particular provide a Member who is the subject of an investigation or complaint with the opportunity:

(a) to make representations to the investigator about the investigation or complaint;

(b) to make representations to the investigator about any draft findings and recommendations before those findings and recommendations are reported to the Speaker.

(5) The Speaker will, on receipt of the report presented by the Principal Complaints Commissioner, or by an independent person, cause the report to be tabled and/or debated in the Legislative Assembly which will be the sole arbiter of any further action to be taken against any Member who is the subject of an investigation under this Standing Order.

(6) The Legislative Assembly when considering any such reports may at its sole discretion take any of the actions listed in (7) below. In exercising its discretion the Legislative Assembly acts in a quasi judicial capacity and will act fairly and reasonably. The Legislative Assembly in exercising its discretion will have regard to any recommendations made in the report.

(7) The Legislative Assembly may take any of the following actions as they determine is appropriate:

(a) Debate the report under a motion of censure

(b) Under a substantive Motion determine that:

(i) all or part of the annual payment made to Members may be withheld for such time as the Assembly may decide;

(ii) access to any other financial benefit (direct or indirect) or government administrative resource to which a Member would otherwise be eligible by virtue of their Member status may be withheld for such time as the Assembly may decide

(c) Recommend that the Member be subject to the procedures detailed in Standing Order 71(1), and Standing Order 71(3).

New SCHEDULE 3

DUTIES OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

Responsibilities

1. To participate constructively and effectively and openly in the good governance of the Falkland Islands and represent the Falkland Islands Assembly at all times and in any place
2. To be a full time member of the Falkland Islands Legislative Assembly and be available at what ever times required. It is expected that:
 - Members will be available to attend for government business in Stanley from mid-day Monday until 4.30pm Thursday

- Members will be available for constituency surgeries and other work or research on Monday mornings and Fridays
 - Members will take holidays at times when the Legislative Assembly is adjourned except that Members are able to take up to 10 days holiday at other times of their choice
3. To be aware of, understand and comply with the requirements laid out within the Falkland Islands Constitution, the Legislative Assembly Standing Rules and Orders and in particular the Code of Conduct.
 4. To be an effective member of the Assembly by contributing actively to the formation and scrutiny of the Legislative Assembly's policies, budget, strategies and service delivery including the Island Plan and other national strategies.
 5. To champion causes which best promote the interests and sustainability of the present and future of the Falkland Islands and campaign for improvement of prosperity and quality of life in the community in terms of equity, economy, and the environment.
 6. To represent effectively and impartially the constituency to which he or she is elected as well as the Falkland Community in general.
 7. To deal with individual constituency enquiries and representations and act as advocate in resolving particular concerns or grievances, while recognising and understanding the correct channels within FIG to deal with such issues.
 8. To participate effectively as the Chair or member of any Committee, Sub-Committee, Working Group or other body to which he or she is appointed and to develop and maintain a working knowledge of the Government's services, powers, duties, policies and practices and promote a good working relationship with officers of the Administration.
 9. To work closely with the Heads of Department of all their portfolios, to be fully involved in policy and strategy making and understanding the operation of their portfolios in order to act as the lead in any decision making committee or board and leading any discussion on the portfolio issues in Legislative Assembly.
 10. As Chair of any Advisory Committee; fully consult the lay members of that Committee on policy issues and ensure that the lay members' views are reflected in any report.
 11. To represent the Legislative Assembly effectively on any outside body to which they are appointed, providing two-way communication between the organisations and report on the work of that body as appropriate to Legislative Assembly.
 12. To develop and maintain a good working knowledge of all departments

and services within the Falkland Island Government.

13. To contribute constructively to open government and generally encourage all sections of the community to participate in the democratic process.
14. To represent the Falkland Islands in what ever fora, conference, interview or political arena that may be required.

New paragraph added to “Role of the Speaker”:

(c) To receive complaints from any person where such complaint refers to a failure to discharge the duties of a Member of the Legislative Assembly, and to determine whether such complaint may be resolved informally, or be referred for further investigation to an independent person appointed by the Speaker. A decision not to refer a matter for further investigation may be subject to an appeal to the Governor.

DRAFT: 21.06.2013

Members' Remuneration (Amendment) Bill 2013

(No: of 2013)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 - INTRODUCTION

1. Title
2. Commencement

PART 2 - AMENDMENT OF MEMBERS' REMUNERATION ORDINANCE

3. Amendment of Members' Remuneration Ordinance
4. Amendment of section 4
5. New section 4A inserted – Resettlement grant
6. Amendment of section 7 – Income Tax and Medical Services Tax on amounts paid to Members
7. Amendment of section 8 – Publication of amounts paid to and in respect of Members
8. Amendment of Schedule

PART 3 - AMENDMENT OF MEDICAL SERVICES TAX ORDINANCE

9. Amendment of Medical Services Tax Ordinance
10. Amendment of section 3 – Interpretation
11. New section 13A inserted - Workers supplied through agencies and intermediaries
12. Section 15 repealed
13. Amendment of section 19 - Each business separate
14. Amendment of section 37 - Assessment of Medical Services Tax for employees, self-employed persons and MLAs

PART 4 - AMENDMENT OF FALKLAND ISLANDS PENSION SCHEME ORDINANCE

15. Amendment of Falkland Islands Pension Scheme Ordinance - General Amendment
16. Amendment of section 2 – Interpretation
17. Amendment of section 17 – Membership of the Scheme
18. Amendment of section 17A – Opting-in elections
19. Amendment of section 18 – Contributions to the Scheme by the Director of Corporate Resources
20. Amendment of section 18B – Contributions by opted-in MLAs

PART 5 - AMENDMENT OF RETIREMENT PENSIONS ORDINANCE

21. Amendment of Retirement Pensions Ordinance
22. Amendment of section 2 – Interpretation
23. Amendment of section 14 – Payment and collection of contributions

**PART 6 – AMENDMENT OF FALKLAND ISLANDS PENSION SCHEME
(GENERAL PROVISIONS) REGULATIONS**

24. Amendment of Falkland Islands Pension Scheme (General Provisions) Regulations

MEMBERS' REMUNERATION (AMENDMENT) BILL 2013

(No: of 2013)

(assented to: 2013)

(commencement: in accordance with section 2)

(published: 2013)

A BILL

for

AN ORDINANCE

To amend the Members' Remuneration Ordinance (No. 13 of 2009); and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands

PART 1 INTRODUCTION

1. Title

This Ordinance is the Members' Remuneration (Amendment) Bill, 2013.

2. Commencement

(1) This Ordinance comes into force on a date appointed by the Governor by notice published in the *Gazette*.

(2) The Governor may appoint different dates for different provisions to come into force.

PART 2 AMENDMENT OF MEMBERS' REMUNERATION ORDINANCE

3. Amendment of Members' Remuneration Ordinance

This Part amends the Members' Remuneration Ordinance.

4. Amendment of section 4

Section 4 is repealed and replaced with the following —

“4. Amounts payable to Members

(1) The amounts specified in the Schedule are payable to Members in respect of their salaries and expenses.

(2) The payment or a part of the payment of any Member may be withheld in accordance with the procedure laid out in the Standing Rules and Orders of the Legislative Assembly.”

5. New section 4A inserted – Resettlement grant

The following new section is inserted after section 4 —

“4A. Resettlement grant

A resettlement grant equivalent to one month’s salary is payable to a Member who, at the general election following a full term in which the Member has served

—

- (a) stands for election and is not re-elected; or
- (b) does not stand for election.

6. Amendment of section 7 – Income Tax and Medical Services Tax on amounts paid to Members

Section 7 is repealed and replaced with the following —

“7. Members not employees

For the avoidance of doubt Members are not employees but they are to be treated as employees for purposes of —

- (a) income tax, under the Taxes Ordinance (Title 69.1);
- (b) Medical Services Tax, under the Medical Services Tax Ordinance (No. 13 of 2010);
- (c) contributions under the Retirement Pensions Ordinance (No. 20 of 1996);
and
- (d) contributions under the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997).”.

7. Amendment of section 8 – Publication of amounts paid to and in respect of Members

Section 8(1) of the Ordinance is repealed and replaced with the following —

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

- (a) the amounts paid to each Member during that year in respect of annual salaries made under paragraph 3 of the Schedule;
- (b) the amounts deducted from the payments made to each Member during that year in accordance with —
 - (i) section 23 of the Medical Services Tax Ordinance;
 - (ii) section 14 of the Retirement Pensions Ordinance;

- (iii) section 18B of the Falkland Islands Pensions Scheme Ordinance; and
- (iv) regulation 8 of the Payments on Account of Tax (Employees' Deductions) Regulations;
- (c) the amounts paid in respect of each Member in accordance with section 11 of the Retirement Pensions Ordinance;
- (d) the amounts contributed to the Falkland Islands Pensions Scheme in respect of each Member in accordance with section 18 of the Falkland Islands Pensions Scheme Ordinance;
- (e) the amounts paid to each Member in respect of expenses claimed under the Schedule; and
- (f) a detailed breakdown of the amounts paid to each Member in respect of such expenses."

8. Amendment of Schedule

The Schedule to the Ordinance is amended as follows —

- (a) in paragraph 1 by inserting at the end of the definition of “Assembly duties” the words, “or such other duties as may be specified in the Standing Rules and Orders of the Legislative Assembly”;
- (b) by omitting the heading to Part 2 and replacing it with “Annual salaries”;
- (c) by repealing paragraph 3 of the Schedule and replacing it with the following —
 - “3. Annual salaries**
 - (1) Annual salaries are payable to Members at £40,000.00.
 - (2) The salary under sub-paragraph (1) is payable in 12 equal instalments.”;
 - and
- (d) by inserting the following new paragraph after paragraph 3 —
 - “3A. No double payment**
 - A Member may not receive any payment for attending any meeting within the scope of paragraph 2(e).”
- (e) by deleting Part 3 (paragraphs 4,5, 6, 7 and 8).

PART 3 AMENDMENT OF MEDICAL SERVICES TAX ORDINANCE

9. Amendment of Medical Services Tax Ordinance

This Part amends the Medical Services Tax Ordinance.

10. Amendment of section 3 - Interpretation

Section 3 is amended as follows —

(a) in the definition of “employee” by omitting paragraph (b)(ii) and replacing it with the following —

“(ii) as the holder of an office (including that of an MLA)”;

(b) in the definition of “employer” by omitting paragraph (b) and replacing it with the following new paragraph —

“(b) in relation to employment of the holder of another office (including that of an MLA), the person or body responsible for paying the earnings and benefits in kind of the holder of the office;”;

(c) in the definition of “self-employed person” by omitting paragraph (b) and replacing it with the following —

“(b) in business as a sole trader or partner.”

11. New section 13A inserted - MLAs to be treated as employees

The following new section is inserted after section 13 —

“13A MLAs to be treated as employees

MLAs are liable for Medical Services Tax on amounts paid to them under the Members’ Remuneration Ordinance (No 13 of 2009), as if they earned the amounts as employees.”

12. Section 15 repealed

Section 15 is repealed.

13. Amendment of section 19 - Each business separate

Section 19 is repealed and replaced with the following —

“19. Each business separate

(1) Subsection (2) applies to an individual if the individual carries on more than one business.

(2) If this subsection applies —

(a) the relevant profits of each business are separate; and

(b) losses from one business may not be set off against relevant profits from another business.”

14. Amendment of section 37 - Assessment of Medical Services Tax for employees, self-employed persons and MLAs

The heading to section 37 is omitted and replaced with the following —

“37. Assessment of Medical Services Tax for employees (including MLAs) and self-employed persons”

PART 4
AMENDMENT OF FALKLAND ISLANDS PENSION SCHEME ORDINANCE

15. Amendment of Falkland Islands Pension Scheme Ordinance - General Amendment

(1) This Part amends the Falkland Island Pension Scheme Ordinance (No. 18 of 1997).

(2) The Ordinance is amended by omitting —

(a) “opted-in MLA” in each place it appears and substituting “eligible MLA”
; and

(b) “opting-in election” in each place it appears.

16. Amendment of section 2 – Interpretation

Section 2 is amended as follows —

(a) by omitting the following definitions —

(i) “opted-in MLA”;

(ii) “opting-in election”; and

(iii) “annual and daily allowances”

(b) by inserting the following new definition after the definition “the Board” —

““eligible MLA” means an MLA who has not yet attained the age of 70 years;”

(c) in subsection (2) by omitting paragraph (b) and replacing it with the following
—

“(b) any reference to an employee is to a person who –

(i) works under a contract of service,

(ii) is employed in government service,

(iii) is a director or other officer of an incorporated or unincorporated body, or

(iv) is an eligible MLA,

and references to an employer shall be construed accordingly.”

(d) by omitting subsection (2A) and replacing it with the following –

“(2A) For the avoidance of doubt an MLA is not (in that capacity) employed in government service.”.

17. Amendment of section 17 – Membership of the Scheme

Section 17 is amended by omitting subsection (3A) and replacing it with the following —

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

(a) any period before 6 November 2009;

(b) any period during which the MLA was an opted-in MLA before the date of commencement of the Members’ Remuneration (Amendment) Ordinance [*No of 2013*]; or

(c) beginning on or after the Member’s 70th birthday.”

18. Section 17A repealed

Section 17A is repealed.

19. Amendment of section 18 – Contributions to the Scheme by the Director of Corporate Resources

Section 18(2A) is amended by replacing “annual and daily allowances for that month” with “their salary for that month.”

20. Amendment of section 18B – Contributions by opted-in MLAs

Section 18B is amended as follows —

(a) in subsection (1) by replacing “annual and daily allowances for each month” with “their monthly salary.”; and

(b) in subsection (2) by replacing “allowances” with “monthly salary”.

PART 5

AMENDMENT OF RETIREMENT PENSIONS ORDINANCE

21. Amendment of Retirement Pensions Ordinance

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

22. Amendment of section 2 – Interpretation

Section 2 is amended as follows —

(a) in the definition of “employee” by omitting paragraph (b);

(b) by omitting subsection (3A).

23. Amendment of section 14 – Payment and collection of contributions

Section 14 (2A) is amended by replacing “allowances” with “salary”.

PART 6

AMENDMENT OF FALKLAND ISLANDS PENSION SCHEME (GENERAL PROVISIONS) REGULATIONS

24. Amendment of Falkland Islands Pension Scheme (General Provisions) Regulations

The Falkland Islands Pension Scheme (General Provisions) Regulations (SR&O No.2 of 1999) are amended as follows —

(a) by omitting “opted-in MLA” in each place it appears and substituting “eligible MLA”; and

(b) in regulation 13 —

(i) by omitting article (1)(da); and

(ii) by inserting “or eligible MLAs” after “opted-in MLAs” in each place it appears.

OBJECTS AND REASONS

This Bill amends the Members’ Remuneration Ordinance and makes consequential amendments to several other Ordinances to bring them in line with the new changes.

Clause 4 amends section 4 to replace the current allowances and expenses with ‘salaries and expenses’ and the corresponding paragraph 2 under the Schedule sets out the amount of the annual salary.

Clause 5 introduces a resettlement grant which is equal to one month’s salary for a Member who at the next general elections stands for elections and is not re-elected or who does not stand for elections at all.

Clause 6 replaces the current section 7 and while it clarifies that Members are not employees lays out a number of Ordinances under which the amounts payable to Members would be taxed on an employee basis and under which they are to make contributions in the same manner as employees.

Clause 7 provides that details of the amounts paid to or in respect of Members in relation to allowances, pension contributions and expenses would have to be published each year by the Clerk of the Assembly and expands the current provision to take into account contributions made by the employer as Members are now treated as employees.

Clause 8 amends the Schedule to provide for the amount of the annual salary and to delete all the provisions relating to annual and daily allowances and the procedure for claiming them.

Part 3 of the Bill addresses the consequential amendments in the Medical Services Tax Ordinance brought about by treating Members as though they are employees.

Clause 10 amends section 3 to include an MLA under the definition of ‘employee’ and deletes reference to MLAs under the definition of ‘self-employed person’.

Clauses 11, 12, 13 and 14 removes references of MLAs as ‘self-employed’ and provides in clause 11 that MLAs are liable to pay MST on amounts they earn as though they are employees.

Part 4 amends the Falkland Islands Pension Scheme Ordinance to make it compulsory for all eligible MLAs to make contributions on their salaries. Clauses 15 to 20 provides for this, and make the necessary amendments to the terms used. The provisions also go on to provide a definition for ‘eligible MLA’ to show which MLAs can make contributions under the Ordinance. The necessary consequential amendments are also made to reflect that Members are now paid ‘salaries’ instead of ‘annual and daily allowances’.

Part 5 amends the Retirement Pensions Ordinance to reflect that Members’ contributions are deducted from monthly salaries instead of allowances.

Part 6 amends the Falkland Islands Pension Scheme (General Provisions) Regulations to bring them in line with the Ordinance and reflect that Members are no longer allowed to opt-in and are required to make contributions if eligible to join the Scheme.