Falkland Islands Constitutional Review - 2023

Thinking about Fundamental Rights and Freedoms

Supplementary guidance notes

These notes supplement the general guidance on Chapter 1 of the Constitution – Fundamental Rights and Freedoms – issued on 20 June 2023 https://www.falklands.gov.fk/assembly/the-constitution/select-committee?task=download.send&id=3784&catid=586&m=0

Right to Education

1. **Background**

Section 12 of the Constitution makes provision to protect the right to education. It principally provides that there is a right to primary education and that education should be provided free by the Government. The definition of "primary" age is left to be determined by a law made by the Legislative Assembly.

Those responding to the Constitutional Review were specifically asked if the right to free education should be extended to secondary education.

Respondents were also asked if they have any further comments about any other aspects of the right to education.

This note aims to provide additional information to assist with the discussions in this area.

2. The Right to Education and International Convention Obligations

The right to education is reflected in article 26 of the Universal Declaration of Human Rights (see Chapter 1 – Guidance above for more information about the Declaration).

> "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children."

This key International Convention which gives effect to this right is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was extended to the Falkland Islands in 1976.

Article 13.2 of the Convention provides for:

- primary education to be compulsory and free to all

- secondary education in its different forms, including technical and vocational secondary education to be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education"; and

- higher education to be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education

- the development of a system of schools at all levels to be actively pursued etc

Article 13.3 respects the educational freedom of parents by allowing them to choose private educational institutions for their children "to ensure the religious and moral education of their children in conformity with their convictions".

Article 13.4 permits the establishment of private educational institutions for children; subject to the general principles (below) and provides that the State may lay down minimum standards for such education.

The Article 13.1 states that these rights should be directed to "the full development of the human personality and the sense of its dignity… strengthen the respect for human rights and fundamental freedoms… [and] enable all persons to participate in society.

The Convention does not stipulate ages for primary, secondary or further education (that is left to the discretion of the relevant State to determine).

The Convention on the Rights of the Child makes very similar provision in relation to the right to education, and has similarly been extended to the Falkland Islands (in 1994).

3. <u>The right to education – the Constitution</u>

Section 12 (1) meets the first requirement of Article 13.2 of the Convention; providing for free primary education.

Section 12 does not make any provision in relation to secondary or higher education.

Section 12(3) and (4) meet the requirements of Articles 13.3 and 4 of the Convention.

4. The right to education – other Falkland Islands laws

Education (Governance and Accountability) Ordinance 2022

Section 6 of the Ordinance provides that its purpose is to promote the intellectual, social, cultural, spiritual, moral and physical development and well-being of the people of the Falkland Islands by making educational provision in a manner that is consistent with sections 11 (protection of freedom of conscience), 12 (protection of right to education) and 16 (protection from discrimination) of the Constitution.

Section 7 provides for compulsory education of children of children between 5 and 16 (by reference to academic years). This can be considered as primary and secondary education.

Section 9 imposes a general duty on the Government "to ensure sufficient educational provision is made "for children and young persons of compulsory education age who are ordinarily resident in the Falkland Islands" and for other persons as may be provided for in regulations.

The Ordinance does not explicitly provide for compulsory education to be available free, but that is reflected in practice (and it is arguably implicit from the compulsory nature of it).

Education (Financial Assistance for Further Education) Regulations 2022

These regulations provide for financial assistance to be provided for further education of certain persons (they must be under 20 and the young person and their parent must be ordinarily resident in the Falkland Islands) in certain circumstances (eg it must be an approved course).

Education (Financial Assistance for Further Education) Regulations 2022

These regulations provide for financial assistance to be provided to Falkland Islanders who are ordinarily resident in the Falkland Islands in respect of higher education and post-graduate courses. The assistance is to be provided in accordance with the relevant Government policy for education funding.

5. Summary

The Constitution could be amended to enhance the right to education, potentially in line with the International Covenant on Economic, Social and Cultural Rights.

However, it will be important that the following distinct issues are considered in formulating any change of policy under the Constitution:

-the nature of the education to be provided

-the ages of persons to whom it is to be provided

-if it is to be provided free

-if it is to be compulsory

-if there is to be discrimination involved in the availability of the education

-if there is to be discrimination involved in the availability of free education (or the provision of financial assistance).

In particular, when proposing change, careful regard should be had to what level of detail might properly be contained in the Constitution, and what level of detail should be left to be legislated by the Legislative Assembly.

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