

CONSULTATION DOCUMENT FOR CONSTITUTIONAL REVIEW

1. Why do we need a change? Constitutions are being reviewed or have been reviewed in many other Overseas Territories to bring them up-to-date. The Pitcairn Order 1970 is not very comprehensive. It does not include partnership values. Nor does it set out rights and freedoms of individuals, as most constitutions do. Also, Orders in Council and Ordinances have been passed in recent years to set up a Courts system. We want to consolidate them into the Constitution as is the case elsewhere. We believe modernising the Constitution will benefit the island. Much of this draft is based on the new Constitution of St Helena, Ascension and Tristan da Cunha. We want to work with the community to adapt it to the needs of Pitcairn. Nothing will be imposed, this will be a co-operative process.
2. The first 3 pages are introductory sections to set out when the Constitution will begin, to cancel previous Orders which are now redundant and to make it clear that laws made under previous Orders are not cancelled, they just need to be applied in a way that is consistent with the new Constitution. Also, any officers appointed or Councillors elected under previous Orders continue as before. Any legal proceedings that started before the new Constitution was introduced will continue.
3. Schedule 2 is the draft Constitution. Part 1 sets out our joint understanding of partnership values – most of these are familiar to you as they were set out in the Governance restructure document. These values are the same as those in the Constitution of St Helena, Ascension and Tristan da Cunha. We believe they are ones we should all aspire to.
4. Part 2 sets out rights and freedoms of the individual. These are widely recognised Human Rights and the wording is taken from the European Convention on Human Rights (ECHR) except for some minor amendments to adapt them to Pitcairn. For example, in section 4 words are added to make clear that “public work” is not regarded as forced labour. You will see that in most sections there is a statement of the right or freedom followed by an explanation of what does not count as breaking that right. So, for example, section 5 gives a right to liberty but of course, if someone breaks the law and is convicted the Courts have every right to order the detention of that person.
5. You will see that some rights carry responsibilities or limitations so, in section 10 for example, everyone has the freedom to hold opinions but, in expressing those opinions people have to obey laws or rules protecting the reputation or rights of others. Section 17 allows anyone to go to the Supreme Court to enforce their rights and freedoms, describes the circumstances in which the Court may award damages, and provides for appeals to the Court of Appeal and the Privy Council.
6. Part 3 is about the office of the Governor. Most of it already exists in the Pitcairn Order 1970. But it introduces a need for the Governor (or Acting Governor) to take an oath of allegiance and adds a section about disposal of Crown land which is standard in other Overseas Territories.
7. Part 4 is about Pitcairn’s organs of Government. It starts with standard language for Overseas Territories explaining where the Governor gets his authority (from Her Majesty). Then, it incorporates the Island Council into the Constitution for the first time and clarifies the role of the legal adviser. All other Overseas Territories have an Attorney General. Pitcairn should have the same. This section sets out what the Attorney General’s powers and authority would be.
8. Part 5 explains the Governor’s power to make laws and the procedures for doing so. It sets out an obligation to consult with the Island Council and, if the Governor then goes against Council advice, Councillors may submit their views to the Secretary of State in the UK. The Governor will only be allowed to introduce laws without consulting Council if he is instructed to do so by Her Majesty.
9. The aim of Part 6 is to bring into the Constitution all the basic provisions about the Supreme Court, the Court of Appeal and judicial officers which is currently spread around in various Ordinances and Orders in Council. It is more usual for these to be set out in Constitutions as in

other Overseas Territories.

10. Part 7 reflects the Governor's ultimate responsibility for appointments to the Public Service (which is already in the Pitcairn Order 1970). Of course, he will not in practice make all appointments – authority will be delegated where it makes sense to do so in line with the Governance restructure. We would expect island procedures to handle disciplinary action/removal from office for most jobs but the Governor retains ultimate power to do so if necessary. The Code of Management will be based on work underway on island.
11. Part 8 just brings current audit practice into the Constitution, and Part 9 gives more explanation about some terms used in the document.

GOVERNOR'S OFFICE
22 September 2009