

Consultation Document

The Administration of Justice for South Georgia & the South Sandwich Islands

Summary

As part of its legislative review programme the Government of South Georgia & the South Sandwich Islands (GSGSSI) is reviewing the legal framework for the Territory. A key element of this is establishing a revised framework for the administration of justice for South Georgia & the South Sandwich Islands (SGSSI).

This consultation document seeks your views on a draft ordinance that would establish modernised and revised arrangements for the judiciary, court structure and related jurisdictions for the delivery of justice on SGSSI.

The aim of the draft legislation is to repeal the current administration of justice legislation that is no longer fit for purpose and introduce an up-to-date and clearer arrangement for the administration of justice.

These proposals have been developed by GSGSSI with advice from, and in consultation with, the local judiciary, Falkland Island Government, and the Foreign and Commonwealth Office. We have provided information on the key changes being proposed together with some questions and answers, to help clarify what the changes mean in practice.

Responses to the consultation should be sent to legal@gov.gs by 6th May 2016.

Introduction

The legislation that sets out the current arrangements for the administration of justice dates back to 1949 (as amended). It provides for a court structure that, whilst appropriate when South Georgia had a significant resident population and industry, is no longer fit for purpose for SGSSI today.

We propose to bring in a new Administration of Justice Ordinance that will repeal the existing legislation and establish a revised court structure with clear jurisdictions and appointment framework for the judiciary. In doing this the proposed legislation will provide for sensible arrangements with other Overseas Territories to help ensure that administration of justice is efficient and effective.

Current Position regarding the Administration of Justice

The legislation establishing the current court structure and administration of justice for GSGSSI dates back to a 1949 Ordinance as amended by the Administration of Justice (Amendment) Ordinance 1970 and Administration of Justice (Amendment) Ordinance 1974.

The current legislation provides for a Summary Court, a Magistrates Court and a Supreme Court for SGSSI. This structure is not out of the ordinary and is similar to the structure for the Falkland Islands and other UK Overseas Territories. However it does need to be revisited in the context of the demographics of SGSSI now as compared with 1949. Some of the problems identified with the current legislation are that it:

- the limits on jurisdiction for the courts (both civil and criminal) are set at levels that may have been appropriate for 1949 but are not suitable now. The composition of the Summary Court supposes that there are Justices of the Peace. There are now no Justices on SGSSI.
- provides for jury trials, whereas now there is no resident population from which to draw a jury.
- provides that the practice and procedure to be adopted is English court rules, but the legislation makes reference to English Courts that no longer exist such as the Courts of Assize and Quarter Sessions.
- provides for the Magistrate to be the Coroner and states that the Coroner shall have and exercise all the powers and perform the duties according to English law and practice. However the legislation contains provisions concerning the Coroner and the exercise of functions that are out of date.

The Ordinance briefly deals with officers of the court providing for the appointment of a Clerk and Registrar. Both of these matters will be picked up in new legislation. At present the Senior Magistrate for the Falkland Islands (FI) is also appointed as the Senior Magistrate for SGSSI and the Chief Justice for the FI is also appointed as the Judge of the Supreme Court for SGSSI. The Senior Magistrate who is Coroner for the FI is also Coroner for SGSSI. In addition, the British Antarctic Survey station leader is appointed as a Magistrate.

It is also important to note as part of the context of SGSSI that the amount of civil litigation is low (consisting of a small number of judicial reviews in recent years) and the volume of criminal cases is also very low.

Proposed Administration of Justice Legislation

The proposed Administration of Justice Ordinance will repeal the existing Administration of Justice legislation for SGSSI as it relates to court structures, appointments, jurisdiction and procedures.

What will stay the same?

- The basic court structure for SGSSI will stay much the same. There will still be a Magistrates Court, a Supreme Court, a Coroner's court and a Court of Appeal.

- The judges and officers of the courts will stay much the same. There will still be a Magistrate, a Senior Magistrate, a Judge (who will be the Chief Justice), a Coroner and a Clerk for the Magistrate's Court and a Registrar for the Supreme Court. The Court of Appeal for the Falkland Islands will continue to be the Court of Appeal for SGSSI.
- The people that currently hold judicial office will continue with their appointments on the same terms and conditions.

What will change?

- There will no longer be a summary court for SGSSI. The reasons for this are that the volume of low level criminal activity on SGSSI is very low, there is no resident community from which to draw lay judiciary and it is felt that matters that may arise would be better dealt with in the Magistrates Court.
- The future method of appointing the judiciary will change. Currently the Commissioner appoints the magistrates and the Chief Justice, who is nominated by the Secretary of State. It is proposed that the Commissioner should consult the Chief Justice on the appointment of the Senior Magistrate. The Commissioner will also appoint a Magistrate who will be based on South Georgia. The Commissioner, with the consent of the Secretary of State, will appoint the Chief Justice. The Commissioner will also make the arrangements for the appointment of the Court of Appeal. Currently every Magistrate is automatically the Coroner. It is proposed that the Commissioner will appoint a suitably qualified person to be the Coroner and there will also be a deputy Coroner.
- The new legislation makes provision for acting appointments in the event that any of the judicial appointments fall vacant for whatever reason.
- Currently people appointed to judicial roles swear an oath of allegiance to HM the Queen and a judicial oath. The requirement to swear the judicial oath (or affirmation) will be contained in the legislation. In practice the judiciary will also be asked to swear an oath of loyalty to Her Majesty the Queen.
- Currently the SGSSI Courts sit in the Falkland Islands, which is where the judiciary and the administrative facilities are in place to hear cases. Under the new legislation the courts will continue to normally sit in the Falkland Islands unless, in the opinion of the judge, it should sit in SGSSI because it is in the interests of justice to do so. Arrangements will be made so that people can take part in proceedings remotely if necessary. It is possible for the Magistrate based on South Georgia to deal with preliminary procedural matters and minor criminal offences where the defendant pleads guilty. The Magistrate will also be able to deal with any matters that the Senior Magistrate can subject to any directions made by the Chief Justice.

- The jurisdiction of the SGSSSI courts will mirror the jurisdiction of the courts of the Falkland Islands. The Falkland Island arrangements are tried and tested and are familiar to the judiciary, and the legal professionals that are likely to be advising and representing people before the SGSSI courts.
- The position on court procedure will be clarified so that the judiciary and legal professionals will know what rules apply. Court procedure will mirror the procedure in the Falkland Islands. If these need to be modified then the Chief Justice can do this by issuing a Practice Direction and where necessary the procedure of the courts of England and Wales will apply.
- An important proposed change is that there will no longer be an option to have trial by jury in the SGSSSI courts. The reasons for this are that there is no community on SGSSI from which to draw a jury. Whilst a jury could be drawn from the Falkland Islands this is not felt to be appropriate to try SGSSI matters. The option of a jury trial under the existing legislation is at the discretion of the judge. Trial by judge alone is compliant with people's right to have a fair hearing and there is no requirement that there must be trial by jury.

Responding to Consultation

We encourage and welcome the engagement of our stakeholders in the development of these proposals. If having read the draft administration of justice ordinance and this consultation document you wish to comment on the proposals you should send your comments by email to legal@gov.gs. The deadline for comments is 6th May 2016.

FAQs

If I commit a criminal offence on South Georgia & the South Sandwich Islands which court would hear my case and where would the hearing be held?

The Senior Magistrate's court would hear all but the most serious offences. The Senior Magistrate would hear these cases. The Chief Justice would hear serious offences such as rape, murder and arson in the Supreme Court. Cases would almost always be heard in the Falkland Islands.

What if I have a non-criminal case to take to court, where would this be dealt with?

Depending on the type of case these could either be heard in the Senior Magistrate's court or the Supreme Court. Again these cases would normally be dealt with in the Falkland Islands.

Why can't I have my case heard on South Georgia & the South Sandwich Islands?

There are no court facilities and no legal professionals to give legal advice or representation on SGSSI. So having a court sitting on South Georgia is practically very difficult. Exceptionally the court may decide to sit in SGSSI where this is in the interests of justice. In these circumstances complex special arrangements will have to be made to hold the hearing and ensure that the right to a fair hearing is respected. However for some procedural matters and minor criminal offences where the person pleads guilty, it is possible for these to be dealt with on South Georgia.

Why is GSGSSI mirroring the Falkland Islands court structure and jurisdiction?

Due to the historical relationship with the Falkland Islands, the fact that much of SGSSI law is the same law as applied to the Falklands Islands, that the people appointed to judicial office are the same for both SGSSI and the Falkland Islands and that the legal professionals on the Falkland Islands understand the jurisdiction and practice it makes sense to continue to mirror the Falkland Islands structure and jurisdiction.

Why can't I opt for a jury trial?

Currently whether there is a trial by jury is a matter for the judge to decide. It is proposed to remove the option of a jury trial. Trial by judge alone is compatible with your right to a fair hearing providing the other requirements of a fair hearing are met. The European Convention on Human Rights is extended to SGSSI, and GSGSSI are committed to respecting those rights. In the context of SGSSI it is considered that trial by judge alone provides a high standard of justice.