

## **TIME FOR A NEW PITCAIRN CONSTITUTION?**

### **What is a Constitution?**

A Constitution is the foundation of the legal and political system. All other laws are inferior to a Constitution. All Pitcairn Ordinances must therefore comply with the Pitcairn Constitution; and if there is any conflict, then the Constitution will prevail.

But a Constitution should not be seen as just a legal document. It acts as a safeguard to individuals, defining and protecting their rights, ensuring the government acts impartially, and that high standards of government are maintained. So it is relevant to everyone, not just to lawyers.

### **So why doesn't the United Kingdom have a Constitution?**

It does. But in the case of the UK there is no single document called the Constitution; rather it comprises several statutes and constitutional practices known as conventions. The reason for this is historical, and stems from the fundamental principle of parliamentary supremacy. In other words, the UK Parliament remains free to enact such laws as it considers appropriate.

### **What Constitution does Pitcairn have now?**

Pitcairn's Constitution is set out in a single document - The Pitcairn Order 1970 as amended in 2000 and 2002. Some issues which you would normally expect to see in a Constitution which relate to the Pitcairn Courts are set out in separate Orders.

### **Why the need for change?**

1970 was a different world to 2009. The current Constitution simply does not live up to the demands and obligations of the 21<sup>st</sup> century.

In 1999, the British Government's White Paper encouraged Territories to come up with proposals for constitutional change which it said it would consider carefully. Since then, new Constitutions have been introduced in seven Overseas Territories. As a result, Pitcairn's current Constitution looks increasingly out of date.

## What would a new Constitution bring? What would be different?

- **Partnership values.** An innovation for Pitcairn. These would set out the nature of the relationship with the UK. The values would establish a tone through a set of principles which we would all have to live up to – eg good faith, the rule of law, good government, sound financial management, impartiality of the courts and of the public service.
- **A Bill of Rights.** Again an innovation for Pitcairn. This would mean that, for the first time, an individual could test their clearly set out rights in a Pitcairn Court. The rights would be closely based on the European Convention of Human Rights (ECHR) ones. But they would be specific to the circumstances of Pitcairn. And they would not be able to be weakened or removed by local Ordinances. Examples of the rights covered are: right to a fair trial, right to respect for private and family life, freedom of thought and of expression, children’s rights and the prohibition of discrimination. The nature of each right is set out in the draft; together with what would not count as breaking that right.
- **The Governor.** The Governor would continue to be appointed by Her Majesty and would continue to have such powers as are given by Her Majesty, by the Constitution, or by Pitcairn law.
- **Implementing Government plans, actions or laws.** The Governor would continue to be responsible, on behalf of Her Majesty, for the executive authority of Pitcairn. The role of the Island Council would also be recognised in the implementation of Government policy in line with Pitcairn law.
- **Law making.** The Governor would continue to have the power to make laws for Pitcairn – though in some cases only with specific instructions from London. But, for the first time in the Constitution, the Governor would normally be obliged to consult with the Island Council before making laws. And if the Governor acts contrary to the advice of the Council, then Council members will have to right to submit their views to the Foreign Secretary in London.
- **Pitcairn Courts.** There would continue to be a Pitcairn Supreme Court and a Pitcairn Court of Appeal, with final appeal to the Privy Council. Judges’ independence would be guaranteed by the Constitution.
- **Attorney General.** An Attorney General would be appointed for the first time, to replace the present Legal Adviser. The Attorney General would be the principal legal adviser to the Government of Pitcairn, and would also be responsible for deciding whether any criminal proceedings should be started or stopped against any person.

The Attorney General would be independent of the Governor, the Island Council and any other person.

- **The public service.** The Governor would have ultimate responsibility for the appointment, dismissal and discipline of members of the Pitcairn public service whose independence would be guaranteed. The Governor would, as planned, still be able to delegate some of those responsibilities.
- **Finances.** Independent audit of the Pitcairn accounts would be obligatory.

### **What consultation will there be?**

There will be formal consultations with the Island Council. But views are welcome from all Pitcairners. In addition to this guide, copies of the full draft Constitution will be available from the Governor's Representative on the island, from the Governor's office, or on the Pitcairn Government website. We will arrange a meeting on the island when the issues can be discussed with experts. And anyone is also welcome to comment in writing to the Governor's Representative or direct to the Governor's office at the British High Commission, 44 Hill Street, PO Box 1812, Wellington, New Zealand. All comments will be sent to the Foreign and Commonwealth Office for their consideration.

Any comments will need to be received by 30 October 2009. A further draft will then be produced.

### **Who makes the decision on whether to have to a new Constitution or not?**

The Queen in the Privy Council on the advice of the Foreign and Commonwealth Office Minister. But the Minister will seek the view of the Island Council, as the elected representatives of Pitcairn, before making any recommendation.

### **Would a new Constitution be set in stone for ever?**

No. Constitutions are meant for the medium rather than short term. But, for example, if circumstances change or there is a clear demand for certain changes, then the UK Government would certainly consider it.