



## **COUNCIL OF MINISTERS (AMENDMENT) BILL 2019**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Bill Malarkey, MHK.*

#### **INTRODUCTION**

- 1.** These explanatory notes relate to the Council of Ministers (Amendment) Bill 2019. They have been prepared by the Department of Home Affairs in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 2.** The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

#### **SUMMARY AND BACKGROUND**

- 3.** The independence of the judiciary and the principle of the rule of law have been guiding principles underpinning the Island's unwritten constitution over the years. They are crucial to the Island's democracy, its economic and social well-being and in making the Island a special place in which to live. These guiding principles have been accepted and followed by convention, in effect as if they had the force of law.
- 4.** In bringing forward this legislation on behalf of the Council of Ministers the Department is recognising that the environment is changing. Whilst the guiding principles outlined above could remain in operation by convention, the trend is increasingly to place substantive matters on a statutory basis. This is important not least in acknowledging the principles set out in the Articles to the Human Rights Act 2001 that require important matters to be set out in, or prescribed by, law.
- 5.** The Department submitted the Criminal Justice Strategy\* to Tynwald for debate and the Strategy was received at its December 2012 sitting. In the years that have followed the Department has implemented elements of the Strategy. However, in pursuance of the Strategy some matters require Primary legislation and some involve the administration of justice in general and the courts in particular. This Bill is being promoted with the object of emphasising the primacy of the rule of law and acknowledging through statute the special role and independence of the judiciary.
- 6.** The Bill is also important in one further aspect. In effect, this Bill represents a further constitutional development for the Island by recognising in law the importance of the rule of law and the independence of the judiciary by placing legal responsibility for upholding and supporting the rule of law and the independence of the judiciary on the Council of Ministers.
- 7.** Should the Bill be passed by the Branches, it will come into operation at the beginning of the month following the announcement of Royal Assent to Tynwald.

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\*GD 0061/12.

## 8. EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Council of Ministers (Amendment) Bill 2019 are compatible with the Convention rights.

## 9. FINANCIAL EFFECTS OF THE BILL

In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any financial or personnel implications.

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## NOTES ON CLAUSES

### PART 1 – INTRODUCTORY

**10. Clauses 1 and 2** provide that the short title of the Act will be the Council of Ministers (Amendment) Act 2019 and that the Act will come into operation at the beginning of the month following the announcement of Royal Assent to Tynwald.

**11. Clause 3** inserts new sections 6A and 6B into the Council of Ministers Act 1990.

**New section 6A** does two important things. Firstly, through subsection (1), it declares that the constitutional principle of the rule of law continues to exist, and by doing so affirms this constitutional principle has existed even if not previously spelt out in statute. This provision, therefore, places that principle in statute and in doing so supersedes convention.

Subsection (2) is important because it specifies who is responsible for upholding and supporting the constitutional principle of the rule of law. The subsection specifies that the Council of Ministers has a constitutional role in upholding and supporting the principle of the rule of law.

**New section 6B** places a duty on the Council of Ministers acting collectively, each Minister and all others with responsibility for matters relating to the judiciary or otherwise to the administration of justice to uphold and indeed to support the continued independence of the judiciary. It also sets out two particular duties that are to be exercised for the purpose of upholding that independence.

The first is a duty on the Chief Minister as head of Government, the Council of Ministers collectively, and on individual Ministers not to seek to influence particular judicial decisions through any special access to the judiciary.

The second duty requires the Council of Ministers, each Minister and every other person having responsibility for matters relating to the judiciary or otherwise for the administration of justice to have regard to the need to defend the continued independence of the judiciary, the need for the judiciary to have the support necessary to enable them to exercise their functions, and the need for the public interest in matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.

The reference in subsection (5)(b) to any other court or tribunal would, for example, include any tribunal established under the Tribunals Act 2006.