

PP 2016/0112



**STANDING COMMITTEE OF
TYNWALD ON EMOLUMENTS**

SECOND REPORT

2015-16

**THE ANNUAL SUM PAYABLE TO TYNWALD
MEMBERS**

**SECOND REPORT OF THE STANDING COMMITTEE OF TYNWALD ON EMOLUMENTS
2015-16: THE ANNUAL SUM PAYABLE TO TYNWALD MEMBERS**

The Committee shall -

(i) consider and report to Tynwald on -

(a) the emoluments of H E Lieutenant Governor, their Honours the First and Second Deemsters and the Judge of Appeal, H M Attorney General, the High Bailiff, the Deputy High Bailiff and the Clerk of Tynwald;

(b) the Tynwald Membership Pension Scheme; and

(c) in addition to its consultative functions set out in paragraph 4.3(ii) and as it thinks fit, the emoluments of Members of Tynwald;

(ii) carry out its consultative functions under section 6(3) of the Payments of Members' Expenses Act 1989, as the body designated by the Payment of Members' Expenses (Designation of Consultative Body) Order 1989."

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

The Hon S C Rodan SHK (Garff) (Chairman)

Hon R H Quayle MHK (Middle)

Mr D J Quirk MHK (Onchan)

Mr C R Robertshaw MHK (Douglas East)

Mr D M Anderson MLC

Mr D C Cretney MLC

Mr J R Turner MLC

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**To: The Hon Clare M Christian MLC, President of Tynwald, and the
Hon Council and Keys in Tynwald assembled**

**SECOND REPORT OF THE STANDING COMMITTEE OF TYNWALD ON EMOLUMENTS
2015-2016**

THE ANNUAL SUM PAYABLE TO TYNWALD MEMBERS¹

I. BACKGROUND

1. The first Payment of Members' Expenses Act was enacted in 1922. Speaking on 13th January 1922, the then Attorney General gave an explanation of the rationale for remunerating Members which is equally applicable today:

Prior to the Act of 1866, the House of Keys in the Isle of Man was a very close community. It consisted of members co-opted by the body itself; two members were nominated for a vacancy on it, and the Governor chose one of them. From the time of the first House of Keys Act, an entirely new set of circumstances arose... the tendency has been continually to widen the franchise... it was realised that the man of property was not the only man with a stake in the community. As members now stand, while the electorate are free to vote, it is practically impossible for a person to stand as a candidate unless he has private means, or can afford or be able to afford by some outside assistance, a very serious sacrifice of time, and some sacrifice of money. I think the House of Keys sat last year, either in the Keys or in Tynwald, on no less than 36 occasions, and every sitting was practically a full day... For a person who has to earn his living

¹ In this Report, "Tynwald Members" excludes the Lord Bishop and HM Attorney General.

by his daily work, it meant, in every case, the sacrifice of a day's work, and a day's pay...

2. The level of remuneration was initially set at £50 per year. It could originally be increased only by primary legislation. In 1957 a power was introduced to vary the level by Order subject to Tynwald approval. The equivalent power can today be found in the Payment of Members' Expenses Act 1989 and is exercisable by the Treasury.
3. Following a steady stream of uprating Orders throughout the 1970s, an Order of 1980 introduced an innovation designed to reduce the burden of making a new Order every year. It set the basic sum at £3,800 but said it should be increased in line with civil service increases. An Order of 1983 took the link to civil service pay a stage further, setting the basic annual sum at the midpoint of the Executive Officer Grade II payscale. Today the basic sum is analogued to the midway point between the top spine point salary of the Executive Officer grade and the top spine point salary of the Higher Executive Officer grade. This particular formula was adopted in 1997. The precise wording is:

the annual sum payable to members of Tynwald is the amount payable from time to time in respect of the pay spine point that is mid way between the top spine point of the Higher Executive Officer Grade and the top spine point of the Executive Officer Grade of the Isle of Man Civil Service salary scale for those Grades as determined under section 3(1)(e) of the Civil Service Act 1990.²

4. By operation of this formula, the Tynwald Member's basic salary with effect from 1st April 2015 stands at £39,547 per year.
5. In 1999 Members' pay was reviewed by an independent Commission appointed by the Commonwealth Parliamentary Association. The Commission regarded the level of the basic sum as "a fair and equitable financial reward" but thought that it should de-coupled from the civil service arrangements and should instead be uprated in line with the Manx Earnings Index. This proposal was not approved and the 1997 formula has now been in place for 19 years. During that time the basic level of pay has not been the subject of any further public debate.

² Members of Tynwald (Annual Sums) Order 2014 [SD 2014/0079], Article 3

6. Over the past 35 years or so the system of uprating by analogy to the civil service has proved a convenient way of ensuring that Tynwald Members' pay keeps pace with inflation. It is important to remember, however, that Tynwald Members are not civil servants. There are many differences, not least in their career structures.³

We conclude that the annual sum payable currently payable to Tynwald Members is appropriate. Although the formula by which the annual sum is calculated is based on civil service pay scales, this does not mean that Tynwald Members are the equivalent of civil servants in any other way.

II. "NEW TERMS FOR NEW STARTERS"

7. In April 2013 the Office of Human Resources issued a consultation document on a proposal to establish a new Public Services Commission. It said:

The Review of the Scope of Government recommended consideration be given to determining a set of new and fair structures and conditions of service. It is therefore suggested that the new set of grading structures, pay and reward arrangements and other terms and conditions of service should be developed and determined by a Public Services Commission, in negotiation with the respective staff associations / trade unions and that all new appointments to the groups mentioned in this proposal, after an agreed date, would be made in accordance with these new arrangements.

The terms and conditions for existing staff within the scope of a Public Services Commission would be changed only through negotiation with existing staff and their representatives, through any new JNC structures and in compliance with employment law.⁴

8. In November 2014 it was reported in the press that terms and conditions for all new civil servants and government manual workers were to be reviewed; and that if implemented, the review could save in the region of £1m the next year and up to £10m after eight years.⁵

³ See Annex 1

⁴ <https://www.gov.im/lib/docs/hr/consultation/pscconsultation.pdf>

⁵ <http://www.iomtoday.co.im/news/isle-of-man-news/changes-for-new-govt-starters-could-save-many-millions-1-6949856>

9. In January 2015 Royal Assent was announced to the Public Services Commission Act. On 23rd July 2015 the Public Services Commission (Classes of Employees) Order 2015 [SD No 2015/0237] was approved. This Order provided that from 1st September 2015 all civil servants and Whitley Council workers became employees of the Public Services Commission.
10. On 8th February 2016 it was announced that, following consultation with Prospect and Unite, new terms for new starters were subsequently agreed and were to be implemented from 1st April 2016.⁶ Meanwhile the previous payscale is still in existence. It is likely to remain so for the foreseeable future in order to cater for those civil servants who were in post before 1st April 2016 and who continue to work at the same grade.
11. In March 2016 the Public Services Commission suggested to us that consideration might need to be given as to how Members of Tynwald should be remunerated in the light of the “New Terms for New Starters” pay provisions.⁷ We have given this matter due consideration.
12. We note that it has been argued that Tynwald Members should be treated the same as civil servants and consequently that the basic pay for Members entering Tynwald after 1st April 2016 should be calculated by applying the existing formula to the rates for the relevant grades according to the new payscales. Our view is that this is not appropriate given the significant differences between Members of Tynwald and civil servants (see Annex 1). Moreover, unlike employees of the Public Services Commission, Tynwald Members have not been consulted about any such change.

We conclude that the “New Terms for New Starters” is a Public Services Commission initiative and should not apply to Tynwald Members.

We conclude that, as a matter of policy, all Tynwald Members should continue to be entitled to the same basic annual sum irrespective of the date of their election; that for the moment the level of that sum should continue to be that which was applicable immediately before 1st April 2016; and that for the future the basic annual sum should continue to be uplifted on the same basis as it has in the past.

⁶ <https://www.gov.im/news/2016/feb/08/public-service-commission-announcement/>

⁷ Appendix 1

III. IMPLEMENTATION

13. As the existing payscales are still in place for civil servants who were in post before April 2016 there is no practical obstacle to a continuation of the status quo under which the formula in the Members of Tynwald (Annual Sums) Order 2014 (SD 2014/0079) is applied to the civil service spine points and grade boundaries as they stood immediately before 1st April 2016.
14. We have received legal advice from HM Attorney General's Chambers to the effect that under the existing legislation the sum applicable immediately before 1st April 2016 will continue to be payable to all Tynwald Members irrespective of the date of their election; and that it should be calculated on the same basis going forward.⁸

We conclude that our policy can be implemented without any change to legislation.

We conclude that no change to legislation requires to be made.

S C Rodan
C R Robertshaw
R H Quayle
D J Quirk
D M Anderson
D C Cretney
J R Turner

⁸ Appendix 2

ANNEX 1: DIFFERENCES BETWEEN TERMS AND CONDITIONS APPLICABLE TO CIVIL SERVANTS AND TYNWALD MEMBERS

Tenure	Civil servants are normally appointed on a permanent basis. Every Tynwald Member is appointed for a fixed term of five years.
Progression	Civil servants normally progress by increments up the payscale for their grade, subject to performance. Tynwald Members' pay is based on a fixed point and there is no incremental progression.
Promotion	For civil servants, higher pay grades are available for more responsible posts. Where a civil servant is promoted to a higher grade this is normally done on a permanent basis. Backward moves are rare and where they happen an individual's pay is normally protected for 10 years. For Tynwald Members, higher pay is available for certain offices but there is no expectation of permanency. Backward moves (e.g. from Ministerial office to the back benches) are much more common and there is no pay protection.
Hours of work	Each civil servant is expected to work a certain number of hours per week. There is no equivalent expectation for Tynwald Members.
Annual leave	Each civil servant is entitled to a set number of days' annual leave. There is no equivalent entitlement for Tynwald Members.

ANNEX 2: LEGAL ADVICE

In June 2016 the Emoluments Committee asked HM Attorney General’s Chambers to advise on the rate payable to Tynwald Members under current legislation in the light of the “New Terms for New Starters” initiative as set out in the letter from Jon Callister to the Emoluments Committee.⁹ The advice provided to the Committee as to the rate payable, if no change is made to legislation, is set out below.

The pay of all members of Tynwald after the General Election, irrespective of whether they are “new starters” (however that term could be defined, which is definitely up for debate) will continue as it is now. The fact that the decision was made to peg members’ pay to a point on the Civil Service Pay Scale – albeit calculated by reference to specific grades, rather than by identifying an existing single point – cannot be taken, on its own, as agreeing that members would be bound by changes to the way in which that Scale would later be applied to individuals to whom specific criteria apply.

The fact that members have benefitted from pay increases in exactly the same way as civil servants generally have is not relevant as those increases were applied uniformly across the grades/pay scale. Had there been a pay cut across the board, this would have applied to members also. But the New Terms for New Starters has not been applied generally, only to those individuals who commence employment on Civil Service and Manual and Craft terms and conditions. Further, as the Pay Scale for existing Civil Servants remains in place, there is no difficulty in calculating members’ pay going forward.

Whilst I note Jon Callister’s letter to the Clerk to the Tynwald Emoluments Committee, it does no more than draw the Committee’s attention to the changes as “consideration may need to be given” by the Committee “as to how Members of Tynwald should be remunerated in the light of the New Terms for New Starters pay provisions”. The letter is not definitive as to whether the new provisions must be deemed to apply to newly elected members, and this is not a matter for the Public Service Commission in any event.

Of course, there is scope for debate as to members’ remuneration and the extent to which the changes which apply to new Public Service workers should be reflected in the salaries of MHKs but, in the absence of unequivocal evidence that, by fixing the pay of members by reference to the Civil Service pay scale, as opposed to another published scale, the intention was that members would

⁹ Appendix 1

thereafter be treated for the purpose of their pay in exactly the same way as public service staff at equivalent points in their service, it cannot be taken that the New Terms for New Starters will apply to any "new" MHK or MLC. Further, in the case of doubt as to how an individual should be treated, the course which provides the least detriment to him or her should always be followed.

WRITTEN EVIDENCE

Appendix 1:
Letter dated 16th March 2016 from the
Secretary of the Public Services
Commission



Isle of Man
Government

Reiltys Ellan Vannin

Public Services Commission
Barrantys Shirveishyn y Theay

Mr Jonathan King
Clerk to the Tynwald Emoluments Committee
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Contact: Jon Callister
Our ref: PT01

16 March, 2016

Dear Clerk

The Members of Tynwald (Annual Sums) Order 2008 (SD 476/08)

As you know the Members of Tynwald (Annual Sums) Order 2008 states that the basic salary of Members of Tynwald is to equate to an amount equivalent to the mid-point between the top spine point of the Higher Executive Officer Grade and the top spine point of the Executive Officer Grade of the Isle of Man Civil Service salary scales.

With effect from 1 April, 2015, this amount equates to £39,547 as detailed below in Table 1.1.

Following the recent ballots undertaken by Prospect and Unite the Union the proposals for New Terms for New Starters and Promotions for staff employed on Civil Service and Manual and Craft terms and conditions within the Public Services Commission (PSC) have been accepted. These new terms and conditions also include new pay scales.

The PSC Joint Negotiating Committee will finalise the proposals for implementation from 1st April 2016. These changes only apply to new starters after this date, and will not affect existing staff except those who successfully apply for promotion or re-grading after the implementation date.

In light of the forthcoming elections in September 2016, I am alerting you that consideration may need to be given by the Tynwald Emoluments Committee as to how Members of Tynwald should be remunerated in light of the New Terms for New Starters pay provisions.

Table 1.2 below indicates the amount a Member of Tynwald would receive under the new pay provisions.

Table 1.1 - current pay arrangements for Members of Tynwald

Max spine point		Value With effect from 1 April 2015	Mid-point of HEO & EO	Mid-point value
HEO	32 + 2%	£43,760	£21,880	£39,547
EO	27	£35,333	£17,667	

Table 1.2 – following the introduction of New Terms for New Starters pay provisions

Max spine point		Value With effect from 1 April 2016	Mid-point between HEO & EO	Mid-point value
HEO	30	£36,730	27	£35,333
EO	24	£29,098		

The difference between the amount existing Members of Tynwald currently receive and the amount payable under the New Terms for New Starters provisions is £4,214 per annum.

If you require any further information or wish to discuss this matter further please contact me.

Yours sincerely

Secretary
Public Services Commission

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