



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 1st June 2004

Present:**The President of Tynwald (The Hon. N Q Cringle)**

The Attorney General (Mr W J H Corlett QC), Hon. C M Christian, Hon. P M Crowe, Mr D J Gelling CBE,
Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council

Business transacted

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The Council sat in private.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Chaplain of the House of Keys

[MR PRESIDENT *in the Chair*]

LEAVE OF ABSENCE GRANTED

The President: Hon. Members, leave of absence has been granted to the Lord Bishop, Mr Delaney and Mr Kniveton, who, as Members know, are all away today.

Order of the Day

Constitution Bill

For First Reading

Consideration adjourned

The President: We have but the one Item on our Order Paper, which is the Constitution Bill, down for First Reading, Hon. Members, and I call on the Hon. Member, Mr Singer.

Mr Singer: Thank you, Mr President.

This is a Private Member's Bill that has passed in another place, in the name of the Hon. Member, Mr Rodan.

Hon. Members will be familiar with the short interim report of the Select Committee considering the Constitution (Legislative Council) Bill. The interim report was concerned with a single principle: that is, the potential which this Hon. Council holds of delaying – theoretically, indefinitely – the passage of legislation. Put in another way, the will of the directly elected Chamber can be thwarted by the non-directly elected Chamber.

This Bill is a direct result, as I say, of the interim report and is a principle for all legislation, not just Bills for constitutional change. The Bill was amended at the clauses stage in another place. Hon. Members, I believe, have those amendments.

This Hon. Council can totally reject a Bill, and the Bill can then be introduced again, in another place, in the next session, and not come to Council, but go straight to Tynwald for signature.

However, if a Bill is not proceeded with by this Council, or is sent to committee and then 'lost', the Bill cannot be re-introduced in another place until after the next general election.

The simple question is: should Legislative Council be permitted to adopt that practice? It has happened in the 1960s, and it happened in the 1980s, with a Bill of Mr Victor Kneale's.

The power of this Hon. Council to delay is accepted in

Tynwald Court, as we have seen more than once recently, when an Item has had to be brought back for a vote of both Houses, and this is one of the accepted checks and balances within a democratic legislature.

But the question asked, and the reason for this Bill, is: should the power delay mean indefinite delay? If Council does not like a Bill, the best way for them to act is not to reject it, but rather not to progress it at one of its Readings, send it to committee, which meets in secret and which never reports. So, should a body, not popularly elected, be able to have that power over the elected House, because the will of the Keys would certainly not prevail?

Hon. Members might say that this present Council would not use that form of stone-walling, but one could envisage that possibility occurring in the future. This piece of legislation intends to block what is seen as a loophole, by stipulating a time limit within which Council must operate their scrutiny role.

Whilst the printed Bill stipulated three months, this was amended to six months at the clauses stage, in the other place. After six months, which does not include recess times, the Bill will return to the Keys.

The original Bill called for the Keys to muster 16 votes in support to then pass the Bill. However, this was amended to 17 votes, which is a Tynwald majority.

Mr President, there has not been any difficulty in the recent past caused by Council delaying a Bill. In fact, one could argue that it is the Keys which has delayed legislation. We have all had copies of the Select Committee final Report on the reform of the Legislative Council, which is being discussed today in another place, but this Bill, whilst emanating from that Select Committee, introduces a principle that can be applied to any Bill sent to us from the other place.

Therefore, Mr President, I move that the Constitution Bill 2004 be read for a first time.

Mrs Christian: Mr President, I will second it to get debate on the matter, even if it comes to a point where later it is rejected; but I think that we ought to be expressing a viewpoint on it, even if it is... I would not like it to be a silent viewpoint, simply by not seconding it; I do think that we should debate it.

It is a curiosity that it is felt necessary, for an incidence of one in twenty years, that we should need to have this change to the constitutional powers of the Legislative Council. The amendment that was made in another place to extend the period from three months to six months was, I think, a measure to slightly soften the stance of the other Chamber in relation to this, but it is still difficult to understand why they feel that such a measure is necessary.

I should have thought it, possibly, better, if they were concerned about matters going to a committee, that some steps might be taken about reporting by a committee, rather than having statutory law saying that we have to conclude our consideration of a Bill within a fixed period of time.

So, Mr President, I have considerable reservations about the Bill; nevertheless, perhaps contrary to my own previously declared principles, I do think that, at least, in this Council, we should be seen to be making our point about it, rather than simply remaining silent.

The President: Now, Hon. Members, the First Reading is before Council. Mr Lowey.

Prayers

Leave of absence granted

Constitution Bill – For First Reading – Consideration adjourned

Mr Lowey: Yes, I concur absolutely with the Hon. Member, Mrs Christian.

I do not think that any case has been made, either in another place, or this morning, in support of this Bill. I think that it is misconceived – no doubt, genuinely held beliefs.

The mover of the Bill referred to the interim Select Committee Report that allowed this Bill to come before us. I have a copy of that and 2.1 of that, part 2, says, and I quote:

‘In our deliberations one of the matters that had been considered is the procedure for implementing any changes we may propose and the potential for the Legislative Council to delay the will of the House.’

So it was the ‘potential’; and then it says – and this where I take great umbrage:

‘History has shown that when the Legislative Council has received Bills passed by the House, which may affect the status of the Council, the Bill has been lost on a number of occasions due to opposition by the Council.’

I can only go in modern times, and I cannot recall, and said so... Then they did a bit of research. It is quite clearly there that we would be actually thwarting the will of the elected House. I cannot think of anything, in 30 years, where, actually, we have thwarted the will of the democratically elected House.

The mover this morning tried to make a case that, in theory, we could delay it indefinitely – *in theory* – when, in effect, I do not think that that stands examination, either. It really does not, but just to repeat, it is actually to strengthen that myth externally: that here we are, ‘undemocratically elected’, as is commonly the currency used. I find it really quite amazing. I could recite other parts of this Report that actually defied the reality of the situation.

But, dealing with the constitution, and the mover of the Bill said that the Council have the right to delay: that is our purpose in life, to ask people to think again.

He made the case again, I thought, in making bricks without straw, if I may say so to my hon. friend, where he said that the Council had thwarted the will of the House in recent months in Tynwald Court. There is a huge difference between thwarting the will of the elected House by voting against and delaying things for a month. Perhaps that is a right that will be getting taken away from us, because we are an irritation...

I think if you are going to have a second Chamber, or a tripartite Chamber, which is as we run, then it is wrong, I think, for one House to say to the other House that you can do anything... it is a bit like the Ford motorcar advertisement: you can have any colour you like, as long as it is black. In essence what we are saying here is: ‘you can do anything; but agree with the elected House!’

Our job is not always to agree with the... It is to point out when we feel that they are wrong, and if we feel strongly about things, then I think that we have a right and a duty to examine that in a proper, unrushed, uncoerced way.

When I took an oath of allegiance, when I came up to this place, elected by that self-same House... we take an oath of allegiance that we will do what is right – what is the phraseology? ‘Consanguinity and...’ It is lovely language but is, in effect, judgement and to make it ‘without fear or favour’. I think that it is only right and proper that we should retain those democratic rights.

Mr President, while, again, it seems a little ironic that I will no doubt be accused of doing the very thing that this Bill is designed not to do, it seems to me... and having read, I may add, the final Report of this Committee, which is being debated, and, as the mover said, rightly. Again, the myths and the misconceptions!

First of all, they could not agree a final Report, so they have put it back to the House – after 14 months, by the way, delay – it was supposed to be reported in 12 months, in April, and here it is June, when they are reporting, so who is delaying what and when? There is another example of the pot calling the kettle black: they practise it, and we do not; and I think that we sat here in December to get vital legislation through, because of the delay in another place – it seems to me really a little insulting.

And when I read in this Report that I do 15 per cent less work than Members of the House of Keys, I do not know about my hon. colleagues, but I do know one particular hon. colleague does more than 15 per cent work more than anybody (*Laughter*) – 150 per cent more than anybody! (*Mrs Crowe:* Absolutely.) And that goes for most Members in this, and I look around this experienced Chamber: I do find it rather demeaning, to put it politely – again, a myth, of course, because this will be taken as accepted fact.

So, I am going to propose, Mr President, that we delay our consideration of this Bill until the elected House has looked at this particular piece of legislation in the round, because, if ever there is a piece of legislation that is the ‘cart before the horse’ it is this one. What they are saying is: ‘Delay it’. Now, you are going to cut your delaying time by half, from a year to six months. Quite candidly, I cannot see where the case is being made that we have ever done it, or why it should be done.

Is the case for why it should be done right? Now, I do not believe that any case has been made, and I believe that a year in a parliamentary... It is for the House of Keys to arrange its business to get it... The mover of the Bill, today, said it falls... because it could be delayed until the House was dissolved at the end of its five-year term: then is it not incumbent on the House to get its arrangements made, so that it cannot fall at the end of the House? Of course, all legislation falls at the end of the House and has to be re-introduced into a new parliamentary session.

No, there has been no case made. I do not think that there is any pressure on it, and I do think that it is premature until the House of Keys has finally made its mind up what they want on this particular piece of constitutional reform. Constitutional reform, Hon. Members, seems to me to be far too important to be left to one section of the legislature, as opposed to another. We work, as I said, in a tripartite system. Tynwald Court makes policy and deals with finance. We have a Constitutional Committee of Tynwald set up, whose job it is to look at the constitution periodically, and keep it going. We have a second constitutional committee, in Government terms, because the Chief Minister has a constitutional committee – I know because I am on it: the Constitutional External Affairs, which, again...

So, we have got two bodies that look at the constitutional changes, and they have been the engines, if you like, for introducing reform of the constitution, and I believe that is the route it should have gone, not one element of the legislature – the elected House – actually changing the legislation of Tynwald Court, and our role here.

So, I would say that, for those reasons, we should just

make haste a little slowly today, and delay debate on this Bill until the House of Keys has decided their stance on the main Report, and then, perhaps, we can deal with it in detail.

So to that extent, I would move:

That consideration be adjourned until the Constitution (Legislative Council) Bill completes its passage through the House of Keys, or the decision is taken not to proceed with the Bill.

The President: Yes, Hon. Members, our Standing Orders are somewhat silent, in effect, on adjournment. 'Adjournment' says that:

'The President may adjourn the Council of his own motion at any time, or may adjourn any particular business before the Council.'

Mr Lowey is making a case, Hon. Members: at this particular stage, I would say that it is not before Council, but I am open to consideration of it.

Mrs Crowe: Sorry, Mr President. What is not before Council – the adjournment?

The President: The adjournment. Mr Lowey has made a case, but I would not say that it is yet before Council.

Mr Lowey: It has not been seconded.

The President: It has not been seconded, and has not had discussion. I would wish it to have discussion before, in fact, I would put it to Council.

Mrs Crowe.

Mrs Crowe: I would like to second it. I think that that is a very sensible way forward.

Because I had an hour to pass, as well, in the middle of the night, when the clocks were trying to catch up, I, too, tried to get to sleep by reading the rather confused Report from the Select Committee that seems to go 'every which way' and I, too, believe that, once the determination has been made, maybe that is the time for this to be considered.

The President: Mrs Christian.

Mrs Christian: Mr President, I do think that it is interesting that this Bill is being put forward to deal with *all* legislation, ostensibly, but only emerged as a result of consideration of constitutional reform and is clearly introduced in order that the Council would not be able to use its delaying powers to delay constitutional reform.

So, to the extent that there is a slightly ambivalent approach from another place, in the presentation of this Bill, I do think the facts of the matter are that it is being presented to take away any thoughts that we might have (*Laughter*) of potentially delaying any constitutional reform, but, as it is not before us yet, and as their ideas are not clarified, I do not see any problem with adjourning it.

If there had been a strong case made in respect of *all* legislation, one might have taken a different view, but I honestly do not believe that this is being put forward because there has been a problem with all legislation. So I would, too, support the adjournment.

The President: Mr Gelling.

Mr Gelling: Yes, Mr President.

I must admit, I tried to find a reason to come to support the Bill, and I could find nothing. I could only concur with what the Hon. Mr Lowey has said.

In fact, the only proof that I could find of anything that was delayed was actually in the House of Keys, where it went to a committee and it was out for – oh, I do not know how long! – two years or more, and I just had to go along with what Mrs Christian has said: it is obviously a strategy that is being used by some to try and pave the way for the Legislative Council not being able to, in any way, adjourn or put aside or delay what is coming in the future.

So, I would have been prepared, in this case, to have voted against it, in fact, but I will go along with the adjournment. I think that it is a quite sensible way forward.

The President: Mr Waft.

Mr Waft: Yes, I would agree with the adjournment, Mr President.

As has been said in the Keys itself, the other place, it is not a stand-alone Bill. This is particularly for the introduction of reform in the Legislative Council and that is solely what it is.

We do not know at all how the other place is going to go forward with that, and I think, once we have had definite information and the view of the Keys, that will have a bearing on how we act in the Legislative Council, I would have thought, and we are, to a degree, putting the cart before the horse by instituting this Bill at this present time.

I think that we need a lot more information about the views on this Bill, and the reasons for it, before we make legislation.

The President: Mr Attorney.

The Attorney General: Yes, thank you, Mr President.

Mr President, as the last hon. speaker has said, it would appear that the Bill is tailor made to accommodate the reform of Legislative Council, but, as various hon. speakers have said this morning, the effect of the Bill, of course, has general impact and, therefore, it must be of grave concern to Council when considering a Bill such as this, which has such significant constitutional importance.

Mr President, if I may speak just briefly in favour of the adjournment, because it seems to me that there is a technical point, but one which is of extreme importance to those who advise Her Majesty, or, indeed, His Excellency, in relation to the passing of Bills.

We see, Mr President, in the schedule to the Bill that it is proposed that section 10 of the Isle of Man Constitution Act 1961 is to be repealed, and that, of course, is the section in our existing Constitution Act which deals with the restriction of powers of Council to delay Bills, and Hon. Members will be very familiar with that provision.

But if I may just draw attention to one subsection of section 10 – it is subsection (2) – which says, and if I may quote from the Act:

'A Bill placed on the agenda of Tynwald in accordance with the provisions of the foregoing subsection shall be deemed to have been passed by the Council and by the Keys and Her Majesty to have the advice and consent of the Council and Keys in Tynwald assembled, whether or not such Bill be then signed by a quorum of the Council, if then signed by the President of Tynwald and by not less than thirteen members of the Keys, and such Bill shall thereupon be submitted to Her Majesty for her Royal Assent.'

Now, the point, Mr President, I think, is this: that it is well accepted in our constitution that, for legislation to go to Royal Assent, it must be passed by both Houses, that is by Keys and by Council, or, in accordance with section 10(2), be deemed to have been passed.

The problem, as I see it, in this Bill – and that is why I am suggesting, with respect, it would be wise to take a second look at this – is that there is no deeming provision. In other words, those who are advising Her Majesty, or His Excellency, do not know that the legislation has passed, because, of course, those who are advising have to sign a certificate that the legislation, if passed, may be given Assent, and so on and so forth.

What the Bill does say is that, in subsection (5) of the Bill – clause 1(5):

‘A Bill submitted to Her Majesty pursuant to subsection (4) shall, if assented to by Her Majesty, be an Act of Tynwald and have full force and effect according to its tenor, notwithstanding any law or custom to the contrary’.

but that, Mr President, presumes that the Bill has already been submitted to Her Majesty.

My concern is the stage before that, when those who are advising Her Majesty, or His Excellency, need to be sure that the Bill has passed through both Branches. We do not know that, under this present Bill, and, therefore, if the Bill eventually comes again to – as I am sure it will come – this Council, it seems to me, with the greatest respect, we need to have some sort of protection by a deeming provision, such as we had in section 10(2) of the 1961 Act.

Mrs Christian: Mr President –

The President: It feels like I need protection to sign. Mrs Christian.

Mrs Christian: Could I ask the learned Attorney for some clarification, please?

In terms of deeming that the Bill has passed, then, under the current provisions, how would one interpret that, or how would you interpret it in the future, in terms of Legislative Council? If, for example, we had held something up and we had come to the point where the other place was being dissolved, would it then be assumed that it was deemed to have passed? Would all legislation go through on that basis?

I am not sure about the technicalities here. I am not sure that I understand them.

The Attorney General: The point that I wished to draw to Hon. Members’ attention was that, under the existing law, where a Bill is held up by Legislative Council and, therefore, has not been passed, subsection (2) of section 10 says that, notwithstanding that, the Bill is deemed to have been passed by the Council and, therefore, it can safely go to Her Majesty.

Mrs Christian: I think that I understand the point now, Mr President. So, is there any reason, then, to repeal section 10?

The Attorney General: I think, Mr President, that if this Bill were to be enacted, certainly the repeal would have to go with it, as part of the package, but what I am suggesting

is that we have –

Mrs Christian: An alternative.

The Attorney General: – to work back into this Bill a deeming provision, such as we had in section 10(2).

Mrs Christian: Thank you.

The President: Mr Lowey.

Mr Lowey: Yes, the only other point that I would like to say, and it is a point that I think must be borne in mind by the wider general public: this idea that, somehow, we are not elected. We are elected.

Can I remind you that, when I first came and I know that, Mr President, the Legislative Council was primarily appointed by the Governor. Since then, of course, we have got rid of the Deemsters and we have got rid of the appointment system, and they are elected. They are elected, under the constitution.

Anybody can alter that constitution if they want, in Tynwald, where the policy is being made. I come back to this undermining of the traditions of the Manx Government, and I have to say that the Isle of Man, perceived from the outside, has been a prosperous place for the last 25 years, under the constitution. The idea that, somehow, by altering the constitution, we are improving things, where is the case for that?

Is this in spite of us? And I look around this table, and I think, who has been the driving force over this period of time? Part of it is that we are seen as a jurisdiction where we are sound, politically stable, and, in a troubled world, that is important, and here we are altering the very system that is making us successful!

Now, when I am looking at it, not from a purely selfish... I am – not like you young people – in the autumn of my political career – very late autumn, too, I may add. (**The President:** Steady!) Yes! Having said that, I have to put that question out into the public domain: what is wrong with the system? How can it be improved?

And if somebody then says to me that we are not accountable, I am afraid that I am accountable, as every other Member is. If you are a Minister up here, you are accountable every month in Tynwald Court – any Member can move a vote of no confidence in you, at any time, if they so wish. So, the idea that you are not accountable... we are here because of the constitution.

I do not feel politically illegitimate. I feel very legitimate, and I will defend that publicly and, therefore, I do not think that there has been any case made, either in another place, or this morning, for this Bill. But, having said that, I want to delay it.

The President: We have the motion for adjournment of this particular measure before Council. I think every Member has spoken on it.

Mr Singer, Hon. Member, do you wish to pass any comment on the adjournment, sir?

Mr Singer: I understand, and I thank the learned Attorney for his contribution, but I really do not think that there is a need there, even so, to delay, to adjourn. So, I will vote against that.

The President: Now, Hon. Members, what I have to put to Council is that, in fact, we adjourn the consideration of the Constitution Bill – now, just get me right, Mr Lowey, if I am wrong on this one – until such time as the Report currently in front of Keys has been finalised.

Mr Lowey: Indeed; that was it.

The President: I think that is where we are coming from. I think that we may need, Hon. Members, to take stock of that, in relation to how it is progressing, but, at this particular stage, I am prepared to accept that the motion before us is that the Constitution Bill 2004 be adjourned until such time as the Report before Keys on the Constitution of the Legislative Council is finalised. Are we content –

Mrs Christian: Mr President, could I have an interpretation of that? (**The President:** Yes.) Does that mean it is simply received or approved? Is that what you mean by ‘finalised’?

The President: I would think that when they have finished their deliberations, and, if that spawns legislation, I would consider that that legislation would need to run as well.

Mrs Christian: Right.

Mr Singer: Mr President, is that implying that those people who vote for this are clear in their minds that this Bill is purely being introduced here because of this Constitution Report –

Mrs Christian: It is.

Mrs Crowe: Yes.

Mr Singer: – that is going to Keys? (**Mr Lowey:** Yes.) Fine, that is the implication?

The President: It is an opinion which is flowing out of the interim Report. Nevertheless, it is a measure which could – as long as Members are aware – stand on its own. Hon. Members –

Mr Waft: Again, just clarification that it might very well – I am not saying that it will – be received today. (**Mrs Christian:** Yes.) If it is received, do we then progress when the legislation comes through, or after it has been received?

The President: We have the time to be sure that we are content and right, Hon. Members. I think that what I said originally is, in the way in which I see it, although this Bill can stand on its own, the Report which is currently before the Keys does mean, in fact, that legislation is likely to flow from that Report. If that legislation does (**A Member:** Yes.) come from that Report, I would consider that this measure is held until such time as that is making progress.

Mrs Christian: That’s right.

Mr Waft: Just one minor point, Mr President. Can we

adjourn a First Reading before it has actually been taken?

The President: I see no reason why not, sir. I can, under Standing Orders, adjourn consideration of any matter at any juncture. I can –

Mrs Crowe: So this, Mr President –

The President: – and I have done it quite deliberately, to take consideration of what Council Members were saying this morning. Mrs Crowe?

Mrs Crowe: So, to be absolutely clear, we are adjourning this Bill to run concurrent with any legislation provided for us by the House of Keys, with reform or otherwise?

The President: That would seem to be the way in which it was heading, and that is the way in which I am accepting that the adjournment will be put before Council this morning. Mrs Christian.

Mrs Christian: Yes, Mr President, that gives me a minor concern, in the sense that if such legislation is not forthcoming, and if the Keys do not agree a formula for constitutional reform of the Legislative Council, we have taken a form of words which effectively leaves this in limbo.

The President: Yes, I think that, at that stage –

Mrs Christian: Whether we could at that point reconvene and deal with this piece of legislation, I would hope that we could, otherwise we will be accused exactly of what this says we can do.

The President: I would, at that stage, bring this back to Council, on the understanding, as I said originally, that, in fact, it is a measure which could stand on its own, and if, in fact, nothing flows from the current Report before Keys, then this will come back to Council for its own deliberation.

Mr Singer: Mr President, would it not, then, be better if we took the First Reading, and then what we are deciding now, we did later on, then at least it is there. I would have thought that that would have been, perhaps, a better way of doing it.

The President: It is an opinion, and I think that, at either stage, we could... You see, the difference with Keys and Council often is that, in fact, Council do, as a general rule, consider, in effect, the policy of a Bill at its First Reading stage, which is exactly what we are doing, which is somewhat different from the Keys. Although the other place does have that provision, it is usual that they accept it...

Everybody content then, Hon. Members, that the motion I put to Council is that this matter be adjourned at this stage, until the Report currently before the Keys, dealing with the Constitution of the Legislative Council, is finalised, and, if no legislation flows from that, this measure will come back to the Council? (**Mr Lowey:** Agreed.)

Those in favour, Hon. Members, please say aye; against, no.

A division was called for and voting resulted as follows:

FOR

Mr Lowey
Mr Waft
Mrs Christian
Mr Gelling
Mrs Crowe

AGAINST

Mr Singer

The President: With 1 vote against, Hon. Members,

all the remaining votes being in support, the adjournment, therefore, carries.

Now, Hon. Members, that concludes the business on our Order Paper this morning. We will adjourn until the sitting of Tynwald commencing on 15th June, and thereafter to a sitting of the Legislative Council on 22nd June.

Thank you, Hon. Members.

The Council adjourned.