



**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, 29th June 2004

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),
Hon. C M Christian, Hon P M Crowe, Mr D F K Delaney, Mr D J Gelling CBE,
Mr J R Kniveton, Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted*Page***Order of the Day**

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The Council sat in private.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Lord Bishop

[MR PRESIDENT *in the Chair*]

Order of the Day

National Health Service (Amendment) Bill Second Reading approved

The President: Right, Hon. Members, we have but the one matter on our Order Paper this morning to deal with, the National Health Service (Amendment) Bill. It is in the hands of Mrs Christian and it is down for Second Reading. Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

As I outlined last week, the Department is bringing forward this Bill to amend the National Health Service Act 2001.

The two main effects of it are: first, to introduce greater flexibility in the provision of family practitioner services; and, secondly, it makes new provisions for the superannuation of Health Service staff.

Family practitioner services as described in the current Act are the provision of medical, dental, pharmaceutical and ophthalmic services in the community by independent contractors who are either individual professionals or, in the case of pharmaceutical services, companies that employ relevant professionals.

At present, part 2 of the National Health Service Act 2001 requires the Department to bring forward Regulations to describe the provision of each of the family practitioner services. The current Regulations allow little flexibility in the provision of each service, with any changes in service provision usually requiring amendment of the corresponding Regulations. The amendments proposed by the Bill will allow the Department to provide services in a more flexible and innovative manner.

The amendments contained within the Bill will allow the services to be described in Regulations, set out in contract, or provided directly by the Department.

The Bill will also allow the Department to make arrangements with individuals, partnerships and companies to provide family practitioner services, provided the services are delivered by persons with appropriate qualifications.

The move of the responsibility for the National Health Service Superannuation Scheme, from the Civil Service Commission to the Department, will bring together the responsibility for the employment of staff, their terms of service and pensions within one Government body.

Mr President, I beg to move the Second Reading of the

National Health Service (Amendment) Bill 2004.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Delaney.

Mr Delaney: There is only one part of the Bill that I am interested in, particularly. The Bill obviously has to be brought forward. It is in the notification of the Council of Ministers. which I understand the Minister is aware of, through another Member: is that amendment to be brought in by the mover, or has it been agreed by the Council of Ministers?

The President: Mr Singer.

Mr Singer: I am a little bit surprised that the Minister has not mentioned it at all, at this stage, as she did ask me for information on it last week, and the wording of it and said she would go to the Council of Ministers, and see whether they would wish to support it or not.

It would be very useful to know what the feeling is, and I gave the reasons last week, which were that I felt that a Minister – a Minister, not this Minister – was left open during negotiations if that Minister was to sign an agreement within which there may be problems at some time, and the Minister did not have the backing of anyone else, other than herself, and I felt that as a safeguard to the Minister, as well as to the public and the Government, that the Council of Ministers should at least endorse the agreements, before they were signed.

The President: Mr Kniveton.

Mr Kniveton: Just one small point, Mr President.

I am not going to repeat all that has been said, but I would like just a quick word on the Superannuation Scheme or fund. I note the aim is to transfer the scheme or fund from the Civil Service Commission to the DHSS, and, so long as the Minister assures me, sir, that the recipients – both the present recipients and the future ones – will not be affected, by being worse off, then I accept the move, sir.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Just on the same thoughts as the previous speaker: with regard to the move from the Civil Service Commission to the DHSS, I think it is an understandable move, the DHSS to undertake the oversight of the NHS schemes. The Home Affairs do the fire and the police, and Education is responsible for the teachers.

As regards the Personnel Office, it only has limited resources, and the DHSS has far greater resources, and will be able to monitor the new schemes as they come in, in future years.

The President: Mr Lowey.

Mr Lowey: I was just on the original point moved by Mr Delaney – that was my concern last week – which is ‘consult’, and I know, like all advice, it can be accepted or

rejected. That is the nature of consultation. If you have got two diametrically opposed... somebody has got to make a decision, so I can recognise that, but again I think that 'lay before Tynwald' is alright, but that is almost a *fait accompli* and there it is, finished, and it is a poor substitute. I did raise that concern.

That is the only thing that I can see, because all the aims and objectives I think everybody would agree with. I think there is a need for flexibility, and I think the Minister and the Department have actually recognised that, and are right to be moving in this way.

But with that one little proviso, which is just giving me a shadow of a doubt, although I was reassured to a degree by the Minister last week, I still would like it drawn a little bit further, teased out a bit further this morning if possible.

The President: Mr Gelling.

Mr Gelling: Thank you, Mr President.

I have only got one comment, really, and that was: when I look at the arrangements, and the Minister said it gives them more flexibility for the provision of suitably qualified persons, or medical services for persons in the Island; does that in any way alter the way in which they provide those premises from which the services are actually given to the people? In other words, we know at the moment the Department actually either pays the rent for, or builds the premises from which the service can be provided: is that in any way affected, or does that remain the same?

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

If I could first of all deal with the proposed amendment. I did not refer to it, Mr President, because it is not actually before us yet; nevertheless, I will comment upon it.

I did raise the issue with the Council of Ministers to see what their view might be on such a proposed amendment. There is concern, Mr President, that this would set a precedent, really, in terms of the involvement of the Council of Ministers in relation to a statutory requirement for the Council of Ministers to oversee or become involved in the decision of a Minister, with the responsibilities of the Minister has been set out in statute.

So, without them formally discussing in great detail, their initial reaction was that this was not an amendment that they would be particularly comfortable with. When we set up the structures that we currently have in relation to the Council of Ministers, with Ministers having statutory functions given to them, this would add a new layer of involvement, which Members may feel is appropriate or not, but it could set a precedent in relation to any other Department, with any other Minister then having to go to the Council of Ministers for endorsement of their actions, and it seems to undermine the principle of the legislation which we currently have.

So, that is the comment which has come from the Council of Ministers, and I think Members may want to consider that inter-relationship between the statutory responsibilities of Ministers, as they are currently set out, and this particular proposed amendment.

With regard to Mr Lowey's comment, I did illustrate that there will be consultation. 'The Department shall consult', and I accept that consultation means taking advice, but that you do not have to necessarily respond.

The Department, certainly, has to take into account the views of the professions concerned. They would have to, in terms of a negotiation of new contractual arrangements, and it is down, then, to a political decision, as to where to draw the line, and one would assume that one comes to a negotiated agreed settlement on all sides, in order to deliver a service to the community.

The Bill does propose that the information is laid before Tynwald, and it would then be for anybody, if they felt uncomfortable with any of those terms and conditions, to raise the matter in Tynwald Court. I accept that, then, agreement has been reached, but Tynwald can express its view on any of these issues.

With regard to the pension arrangements, I can give an assurance that there will be, effectively, no change to the pension arrangements; it is simply an administrative matter that the Department will, in future, be responsible for the administration of those pension schemes, and I would endorse the comments of my hon. colleague, Mr Waft, who has indicated that this is the pattern in other departments, and there is no reason why it should not be appropriate for the DHSS, who do have staff who monitor and implement the necessary changes to these Pension Schemes on a continuous basis, and I think that has been part of the problem in the Civil Service Commission, where they simply have not had the people – either the people on the ground or the people with the necessary expertise – to monitor the changes to these schemes, which should have been implemented in the past, and have now been actually brought up to date. So, I think that is an appropriate move.

Mr Gelling has enquired about whether the contract would change the arrangements for the Department, funding or producing the accommodation for practitioners. I would suggest that that would be possible under the new regime; I would not suggest that it is going to be probable. I feel quite sure that where practitioners have had that kind of support in the past they would not, unless some other financial arrangement was made, see the responsibility transferring in any way to them, unless there was an equal financial benefit.

So, the new provision will allow those matters to be negotiated, but I do not anticipate there being any major change on that particular matter.

Thank you, Mr President.

Mr Lowey: Can I, Mr President –

The President: Mr Lowey.

Mr Lowey: – ask Mrs Christian, just for clarification of the Council of Ministers' position, regarding the fact that it would set a precedent.

It seems rather strange to me that the Council of Ministers has already set a precedent, on a major scale, as opposed to a specific item such as this, in that the Treasury now used to set the Budget; now the Council of Ministers actually sets the Budgets for every Department. That is a major departure from what used to be, and here we are, the Council of Ministers saying to us, if the Minister is right, that this would set a precedent, when the precedents have already been set on a huge scale, as opposed to this narrow, specific one of terms and conditions of the people that you are dealing with. It does seem rather strange to me.

Mr Singer: A precedent, again.

The President: Mr Singer.

Mr Singer: Somebody always sets a precedent: it does not mean that you should not be setting a precedent. There is always a first time for anything.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. I am happy to respond to that issue.

The illustration that the Hon. Member has given is an interesting one, and I am not saying that Council cannot support such an amendment. It is up to Council to do so, but I think we need to consider what practical effect this might have.

In terms of the Treasury function, that is a matter dealing internally with Government and the distribution of resources as between Departments. In terms of the provisions that this measure is dealing with, we are talking about negotiated contracts with third parties outside of Government, and, with respect, if you then bring in a Council of Ministers to say, 'We do not like what you have negotiated; go away again and do it', you are setting up a difficult structure, I might suggest, in terms of coming to any settlements, where you have a settlement that is negotiated between the Department and the practitioners, and then you bring in another whole body who have their own views on it. I think you might be setting up a recipe for some difficulty in ever concluding a contract.

The President: Mr Kniveton, now, Hon. Members, I think in fairness we are dealing with the Second Reading of the Bill. There is suggested, proposed, in the air, the possibility of an amendment. We can deal with it, I am sure, when we come to the next stage.

Hon. Members, what I put to Council this morning is that the National Health Service (Amendment) Bill 2004 be read for a second time. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

National Health Service (Amendment) Bill **Statement by the mover**

The President: Now, I understand that Mrs Christian, as

the Minister, does not wish to move any further this morning. Mrs Christian.

Mrs Christian: No, Mr President, if I might just explain to Members.

It is usual to move on to the clauses; however, as you are aware, this Bill is being implemented partly because of changes in the structures in the United Kingdom.

Subsequent to the drafting of the Bill, and only last Friday, we received an intimation from the Constitutional Affairs Department in the United Kingdom about certain changes which have taken place there, which will have implications for the wording of some of our clauses and we have not had time to consider appropriate amendments. For that reason, it is my intention to hold over the consideration of clauses, rather than go through the clauses, and have to seek to amend at Third Reading stage.

Mr Singer: Can I ask a question please?

The President: Mr Singer.

Mr Singer: What effect does that then have, these changes now, on the decision of the Keys, obviously, to pass this Bill?

It is going to come, so it means we will then, if necessary, accept the new clauses, and then send it back to the Keys for acceptance. Is that it?

The President: It will be the same as any other measure. The Council will deliberate on any amendment which comes forward, and if the Bill is amended, well, then it gets passed back to the Keys. So, it is a straightforward measure, I would say, in that regard.

Hon. Members, that concludes the business which we have on our Order Paper.

The adjournment is to the sitting of Tynwald commencing on 13th July, that is, of course, following next Monday's open air sitting, Hon. Members.

So we will now sit, if we will, in private for a few moments. Thank you.

The Council sat in private.