



**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, 22nd May 2007

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

The Attorney General (Mr W J H Corlett QC), Mr D Butt, Mrs C M Christian, Mr E A Crowe,
Mrs P M Crowe and Mr E G Lowey,
with Mrs M Cullen, Clerk of the Council.

Business transacted

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The Council adjourned at 10.43 a.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

LEAVE OF ABSENCE GRANTED

The President: This morning, Hon. Members, we have apologies from the Lord Bishop, who is absent. I have given leave of absence also to Mr Waft and to Mr Downie.

Order of the Day

Personal Liability (Ministers, Members and Officers) Bill Third Reading approved

1. Mr Butt to move:

That the Personal Liability (Ministers, Members and Officers) Bill be now read a third time and do pass.

The President: We have just the one matter before us on our Order Paper this morning, which is the Third Reading of the Personal Liability (Ministers, Members and Officers) Bill. The Member in charge is the Hon. Member, Mr Butt, please – Third Reading, sir.

Mr Butt: Thank you, Mr President.

I should like to thank Members of Council for supporting the passage of the Personal Liability (Ministers, Members and Officers) Bill at the clauses stage. I will now summarise the purpose of the Bill and the issues addressed by it.

Some time ago, the Tynwald Management Committee raised with Government their concerns regarding Members of Tynwald exercising their governmental functions and finding themselves vulnerable to legal action in respect of the decisions they take. The Committee believes that Members were particularly vulnerable in relation to legal costs during the litigation, even though they may have acted in good faith or in accordance with advice.

The view was that Members should have the same protection as officers are given, in schedule 1 of the Government Departments Act 1987, and as officers of Statutory Boards are given, in schedule 2 of the Statutory Boards Act 1987. These Acts provide that an officer of a Department shall not be personally liable in respect of any act done by them in the performance or the purported performance of their functions, if they acted reasonably and

in the honest belief that their duty required or empowered them to do it.

The Acts also enable officers to be indemnified against damages or costs, if the Department is satisfied that an officer honestly believed that the act complained of was within the scope of their functions, and that their duty required or empowered them to do it.

The Government Departments Act and the Statutory Boards Act include provision that the Department or Board may apply any money in its hands for the purpose of indemnifying itself against any costs or damages which it may occur in or in consequence of the exercise of its functions. This is achieved through the purchase of indemnity insurance, which covers claims from third parties which arise from accidental errors or omissions.

This cover extends to employees, political Members and lay members of Departments, Boards and Offices, subject to various conditions, including that no indemnity will be provided to persons in respect of their own fraud, dishonesty or criminal act. The cover for political Members of Departments relates only to action taken by the Member as part of the Department's business and does not cover any other actions.

The insurance provides for payment of damages and claimants' costs and expenses for the financial loss arising as a result of a negligent act or accidental error or accidental omission. In addition, the insurer will pay all costs and expenses incurred, with its written consent, in defending any claim which may be the subject of indemnity.

The provisions of the Government Departments Act and Statutory Boards Act ensure that the officers covered by those Acts will, unless they have acted in bad faith, have their costs met in defending an action. However, it cannot be guaranteed that the insurance policy will provide this cover for Members.

Therefore, there is a degree of vulnerability for Members of Tynwald and others who are not covered by the statutory provisions of the two Acts.

It is also important to note that the two Acts apply only to officers of Departments and Boards. Officers employed within the Offices of Government, including the Chief Secretary's Office, the Personnel Office, the Attorney General's Chambers and General Registry, as well as the Office of the Clerk of Tynwald, do not presently benefit from the statutory provision and are, therefore, in the same position as Members of Tynwald and lay members of Statutory Boards.

It has been concluded that the only means by which the situation can be rectified is through amendment to primary legislation in order to provide to relevant officers, Members of Tynwald and lay members of Statutory Boards the same protection as given to departmental and Board officers under the two relevant Acts.

It is important to note, however, that such indemnity will not be provided if it is found that the person concerned acted outside the functions of the Department, the Board or the Office concerned or outside their level of authority.

Mr President, I would like to clarify some comments that were made at the clauses stage of the Bill on 8th May, with regard to the Clerk of Tynwald's Office. In my response to Mrs Christian's enquiry regarding the separation between parliamentary functions and political actions, I perhaps did not make it clear that I meant the political actions of Members in the parliamentary sphere are not covered by this

new Bill. However, the actions in the course of their duties in good faith of the Clerk of Tynwald and his officers are covered in the Bill.

In order to avoid any doubt, therefore, I would like to make it clear that my remarks at the clauses stage of the Bill to administrative duties in the Clerk of Tynwald's Office include all the official duties undertaken by the various sections of that Office.

Mr President, I beg to move the Third Reading of this Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, I will support the Third Reading. It is a measure which is needed. It does not take away from Members the responsibility to understand the context in which they are making decisions, and the legal framework within which they make decisions; but it does give them a measure of protection where they are acting in good faith.

I think, to that extent, it is important that we do support the Bill and give Members that measure of cover, because their personal possessions should not be at risk when they are fulfilling their duties responsibly.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I would like to add my support to the Bill. It does fill a gap as far as members of Departments are concerned and designated persons, as long as they are acting in good faith. There is an enabling provision to allow other designated persons to be added in the future by an Order from the Council of Ministers which has to be approved by Tynwald.

The question I would ask is: when would the Act come into being? Would it be with Royal Assent or will there be an Appointed Day Order?

The President: Mr Lowey.

Mr Lowey: It has really all been said. I think Mrs Christian put her finger right on the thing. This is not a green light for Members and officers to do *carte blanche*, knowing that they have got cover; it is if they act in good faith. I think that is both reasonable and fair.

There are occasions when one has to ask awkward questions and one should not be inhibited from asking awkward questions, in good faith, to try and elicit the... I will not say the truth, but to elicit correct answers. This is a necessary safeguard, I think, for legitimate purposes.

I stress the point, it does not give the green light to be able to say whatever you want with absolute freedom. It does not. You have to act in good faith and I would support the Bill. I think it is a reasonable attempt to cover the situation that we have found ourselves in.

The President: If I may just add a pennyworth into it, as it were, Mr Butt, I think towards the end of your comments, you commented about the level of authority: someone acting

outside – I think your words were – the level of authority. Just out of interest, if a Member is acting as Minister or a civil servant is acting up, as they sometimes do, whilst I understand that they would have authority for that time, would it, in fact, make any difference?

Mr Crowe.

Mr Crowe: Mr President, could I just ask for clarification. Are you saying that when a Member acts in the absence of a Minister, taking place under delegated authority, are you saying, is that covered as well?

The President: Well, I want to be sure that it is covered. That is the point I am raising.

Mr Butt.

Mr Butt: Thank you.

Could I thank everyone for their support through the process of this Bill and for the occasional interesting debate, from which I learn something every time we are here! *(Laughter)*

I think the main point of this Bill is that it should not be seen as being a get-out, to escape the wrongs that you may commit. Everything has to be done in good faith and with the correct authority.

As regards the level of authority, my understanding is that you do have a delegated authority in writing, when you start your job, and on occasions you are asked to act up. I suspect that every case will be judged on its merits as to whether you have exceeded what you are entitled to do in terms of authority.

As regards the implementation date, the Bill will come into effect with Royal Assent, I understand.

I have a note here that, again, the delegation is the crucial element in terms of what the authority is.

So, thank you for your support Members. I beg to move the Third Reading.

The President: In that case, Hon. Members, I simply have to put to Council, this morning, that the Personal Liability (Ministers, Members and Officers) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: Hon. Members, our adjournment is to 29th May next, and we have a problem there, because I am hoping that the Presiding Officers Bill will receive its Third Reading today; if it does not receive its Third Reading today, it could be, Hon. Members, that we will not have a Bill before Council for next week. But providing it reaches its Third Reading today, we will start with the Presiding Officers Bill on 29th.

Thank you, Hon. Members. That draws to a conclusion our business this morning.

The Council adjourned at 10.43 a.m.