



**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, 27th March 2007**

**Present:****The Hon. President of the Council (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),  
Mr D Butt, Mrs. C M Christian, Mr E A Crowe, Mr. A F Downie, Mr E G Lowey and Mr G H Waft,  
with Mrs M Cullen, Clerk of the Council.

**Business transacted**

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**Orders of the Day**

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*The Council sat in private.*

## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Lord Bishop*

### CONGRATULATIONS TO LORD BISHOP ON NEW POST

**The President:** Hon. Members, before we get underway with our formal business this morning, there are occasionally rare opportunities from the Chair to congratulate Members of the Legislative Council. This morning, Hon. Members, I am absolutely delighted to be able to offer my own personal congratulations, but I am sure, equally, the congratulations of every Member of the Legislative Council to the Lord Bishop.

As I commented earlier this morning, it seems very rare that somebody actually takes demotion. He loses the title 'Lord Bishop' but, in actual fact, becomes Dean. It is a remarkable achievement, and it is really a pleasure to offer congratulations to the Lord Bishop.

But I do so, as he already knows, with somewhat of a heavy heart (**Several Members:** Hear, hear.) because, in fact, I will be very sad to lose him from Legislative Council. I will be sad to lose him from Tynwald Court, where his words have sometimes hit that very chord which is necessary. I think the Isle of Man is losing a Bishop of sincerity and so the Church in the Isle of Man will, equally, miss his valued contribution.

Graeme Knowles, it really is, in one way, a joyous day for yourself and particularly, I think, for Susan, but it is, whilst a joyous day in recognising that you have been given this particular post, a sad day for us and the Isle of Man, when we know that you are only here now until September.

Congratulations and very, very well done.

**Members:** Hear, hear.

### WISHES OF SUCCESS TO STORMONT, NORTHERN IRELAND

**The President:** Hon. Members, having made our congratulations, which are genuinely sincere, to the Bishop, I would just like to pass one other comment which I feel is relevant. I am not 100 per cent certain whether Legislative Council will unanimously think it relevant, but I personally do feel it relevant.

Serving as we do in what is a very long-standing and stable democracy, where we have enjoyed actually generations – haven't we? – of peace here within our Island, I think we recognise, with pleasure, the steps taken in our adjacent island, in Northern Ireland, to further the peace

process. We wish the work within Stormont success in the months and years ahead.

I do that from the Chair of the Legislative Council, because I think it is important for our near neighbours and I think, as a long-established democratic system, it will be good to see it operating to the benefit of the people of that neighbouring country.

**Members:** Hear, hear.

### Civil Service (Amendment) Bill Second Reading approved

1. Mr Waft to move:

*That this Bill be now read a second time.*

**The President:** We turn then, Hon. Members, to the Civil Service (Amendment) Bill. Now, as we know, we have progressed the Civil Service (Amendment) Bill to the Second Reading stage, and I will call on the Hon. Member, Mr Waft.

**Mr Waft:** Thank you, Mr President.

As indicated at the First Reading, the purpose of the Civil Service (Amendment) Bill is to amend the Civil Service Act 1990 to provide for the Chief Minister to be the political head of the Civil Service, with the authority to appoint members of the Civil Service Commission and to give direction to the Commission.

The Bill also alters the constitution of the Commission, with the political chairperson now being supported by a vice-chairperson, who shall also be a Member of Tynwald. Further, the lay membership of the Commission is to be increased from one member up to two, but no more than three lay members.

The Chief Secretary who, under the 1990 Act, is currently a member of the Commission, will no longer be eligible for membership, but will attend meetings of the Commission in an advisory capacity. The current legislation prevents a member of the Civil Service Commission from being a member of Departments or Boards of Government. This Bill removes that restriction.

Finally, Mr President, the Bill provides that the Civil Service Commission shall submit an annual report to the Chief Minister each year of its work and such report shall be laid before Tynwald.

Mr President, during the First Reading of the Bill, I was asked to clarify certain provisions of the Bill and before we proceed to clauses stage, I would like to take this opportunity to address those provisions.

Firstly, Mr President, the Lord Bishop asked why, at clause 4 of the Bill, certain posts are excluded from subsection (6) of the Civil Service Act 1990, as amended. The posts in question are the chief executive of the Financial Supervision Commission (FSC), the chief executive of the Insurance and Pensions Authority (IPA) and the chief executive of the Manx Electricity Authority (MEA).

With regard to the chief executives of the FSC and IPA, it is considered important that the post-holders are members of their respective boards. This is in line with what is typically

the case with such appointments internationally and it is important for the Isle of Man to be seen to have equivalent standing in such matters.

This is particularly so because the post-holders will have a high profile internationally, both within the markets that they regulate and work with the various international organisations with which the regulatory bodies must interact, for example, the International Monetary Fund and the various supranational standard-setting bodies.

The MEA situation is slightly different. Under the Electricity Act 1996, the chief executive of the MEA was the deputy chairman of the Authority and, in 2001, the Electricity (Amendment) Act altered this, so that the chief executive was no longer eligible to be either chairman of the Authority or deputy chair, as those two posts are political appointments only.

However, under schedule 1, paragraph 2(3) of the Electricity Act 2001, the chief executive of the MEA may still be appointed to be a member of the board of the MEA but may not hold the post of chairman or vice-chairman. But I would remind Hon. Members that the appointment of the board of the MEA is a Council of Ministers appointment which has to be approved by Tynwald. Consequently, the chief executive can only be appointed as a board member with both the sanction of the Council of Ministers and the approval of Tynwald.

Secondly, Mr President, Mrs Christian asked for an explanation regarding why the power of appointment lies solely with the Chief Minister, without recourse to the Council of Ministers or Tynwald. Under current legislation, the Chief Minister already has powers of direction of the Civil Service Commission, but only in areas of public interest. The Bill removes that requirement so the Chief Minister will be in a position where he can direct as he sees fit. This clause is not about power, but about authority and accountability. As head of Government, the Chief Minister will, under the provisions of the Bill, effectively be head of the Civil Service and would, therefore, be directly answerable to Tynwald.

Mr President, I beg to move the Second Reading of the Civil Service (Amendment) Bill.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Mrs Christian.

**Mrs Christian:** I would just like to clarify with the Hon. Member, whilst supporting the Second Reading, he did say – perhaps I should deal with this under a clause, but as he has just made the statement – that the constitution of the Commission will be changing to include two Members of Tynwald and he said, ‘two lay people but not more than three’. That is not what the Bill provides for. Is he indicating what the Chief Minister intends?

**The President:** Mr Waft, would you like to pick that up, sir?

**Mr Waft:** Yes, I think it is as stated in the Second Reading. The lay membership of the Commission is to be increased from one member up to two, but no more than three lay members. If that is not...

My advice is that this is not the case – one to three members.

**Mrs Christian:** Thank you.

**The President:** Mr Lowey.

**Mr Lowey:** If Mrs Christian has finished her point, it is along the same sort of lines. I have no objection up to three. I can quite see a case being made by a Chief Minister picking two at the moment, maybe someone on the horizon who he thinks may very well... he or she may very well be a good addition, not available for six months, nine months, waiting for that person to become available and then appointing him or her. So, I can see up to three being alright.

What worries me is what the mover of the Bill said regarding the removal of the Chief Secretary, and then stating that the Chief Secretary will be able to go in an advisory role. Well, I hope that is not watering down the intent of the Bill.

I think most of us would agree this is not about personalities. That I would agree with the mover. It is about authority. It is not about personalities. But if he said, if I have picked him up right, that the Chief Secretary would be sitting with the Commission in an advisory role, well, I think that is a watering down of the intent of this Bill – although I notice the clause does not say that at all; it says the Chief Secretary shall not be there.

What I am worried about... At this moment in time, the Attorney General may be asked by the Commission for advice. So, that is available: the Attorney General is available to advise the Commission, just as the Chief Secretary would be available to advise the Civil Service Commission. There is no difficulty with that.

But listening to the mover then, he actually said that she would be sitting there in an advisory role. That does not fit in with what is the intent of this Bill, which is to remove the Chief Secretary and not to be qualified for membership of the Civil Service Commission. So, she is going to have the power that she exercises now, without the accountability.

That is part of the need for this review. I just put it there. The law is quite clear. Primary law says she shall not sit. What I am worried about is listening to the mover of the Bill here today, in this particular clause, saying that the Chief Secretary will be sitting in, advising the Commission.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

I would just like to add my support to the Bill, because it will allow for more involvement by Tynwald Members, adding as a vice-chairman a Member of Tynwald, as well as the chairman. It will also give the Chief Minister a wider flexibility.

I was interested in the deletion of this part of clause 2, the deleting of ‘in relation to any matter which appears to him to affect the public interest’, which seems to be quite a narrow authority. So, it gives him wider interest, wider powers.

**The President:** Mr Butt. (**Mr Butt:** No.) Mr Waft then, to reply, sir.

**Mr Waft:** I thank the Members who have spoken and my seconder.

The situation Mr Lowey exemplifies is the Chief Secretary’s role. I think the intention is that she will not be there as a permanent person in an advisory role, but only

when they need particular advice on particular situations –

**Mr Lowey:** I would agree with that.

**Mr Waft:** – within the Chief Secretary's remit of responsibility as she sees things, as somebody at the top of the class of responsibility in various matters, and would have more insight into what happens within the Council of Ministers and how they feel, perhaps. It is just to get some advice at the meeting.

**The President:** In that case, Hon. Members, what I will put formally to Council is that the Civil Service (Amendment) Bill 2007 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Civil Service (Amendment) Bill** **Clauses considered**

**The President:** Now, clauses, Mr Waft, please. Will you take clause 1, sir?

**Mr Waft:** Thank you, Mr President.

Clause 1 amends section 2 of the Civil Service Act 1990 and provides that the Civil Service Commission shall consist of a chairperson and a vice-chairperson, who shall be Members of Tynwald, and three non-Tynwald members, all appointed by the Chief Minister.

The existing requirement of the Civil Service Act preventing the chairperson of the Commission from being a member of a Department or Statutory Board is abolished.

Clause 1 also amends the current legislation so that the Chief Secretary and members of the Civil Service will no longer be qualified for membership of the Commission.

Clause 1 determines that members of the Commission shall be appointed by the Chief Minister and shall hold office at the pleasure of the Chief Minister. The current Commission is appointed by the Council of Ministers and approved by Tynwald. During the clauses stage in the Keys, clause 1 was amended to include a provision that the chairperson or deputy chairperson of the Commission remains in post until a successor is appointed, if that person ceases to be a Member of Tynwald, for example, after an election.

Mr President, I beg to move clause 1 stand part of the Bill.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President. There are some fairly important principles in this clause, are there not?

First of all, we are introducing a stronger Tynwald representation and whilst it does allow for three other people, it is conceivable that the majority of the Commission could be Tynwald Members. I do not have a problem with that.

What the Bill does not set out is what happens if, indeed, there were four members, but I presume that the way in which they run their business could determine whether or not the

chairperson should have a casting vote.

Perhaps the major principal change here is in subclause (2), where the appointment of the Commission shall be made by the Chief Minister and hold office at the Chief Minister's pleasure. I think the comment has been made that the Chief Minister actually has no powers at the moment, except powers of persuasion. This will be the first time, I think, that the Chief Minister will actually have an authority such as this.

I did have some concerns about whether or not the Commission's appointment should be endorsed either by the Council of Ministers or Tynwald. However, I think I will be content to leave the Bill as drafted. This is new territory and I suppose, in the light of experience, will determine whether or not this is the correct route. Should Tynwald not be content with the Commission appointed by the Chief Minister, then presumably Tynwald has the power to express its concern through a vote of no confidence.

The second... well, perhaps the third change is the removal of the Chief Secretary and members of the Civil Service from the Commission, which I think is proper. Though my hon. colleague, Mr Lowey, has expressed concern about the Chief Secretary advising the Commission, I would take the view that that would not be inappropriate. The Chief Secretary will no longer have a vote, which perhaps was not appropriate really in the past and clearly, there are a number of members there who are going to express views who may or may not be influenced by the Chief Secretary, but the Chief Secretary's powers are certainly being reduced in this process.

The ability now for members of the Commission to participate in other Statutory Boards is an interesting change. I think it is a reasonable one, in that it is not... Should there be any problem, it will come to light and I am quite sure that members participating in the work of the Commission in relation to other Departments that they may be appointed to, will know to take the appropriate action.

So, all in all, whilst I did have some concerns to start with, I will support this in order to see how the whole thing develops in relation to the powers of the Chief Minister and the running of the Civil Service Commission in the future.

**The President:** Mr Downie.

**Mr Downie:** Yes, Mr President.

On a similar vein, I support the removal of the Chief Secretary under (3A). I think there have been a lot of changes in the last 18 months to two years, in particular with the introduction of the Job Evaluation of Senior Posts (JESP) system. I think it is wrong, in principle, that the Chief Secretary is the final arbiter in assessing the performance of all of the chief executives within Government and neither should she be involved in any negotiations which reward or seem to be giving benefit to that particular group.

With the introduction of the JESP, I think there should be a much more independent stance taken in this particular area and I would hope that this will be part of the new evolving process when senior staff in this group are properly assessed as to their performance and capabilities and whether or not they are rewarded or their remuneration stays the same. I do not think that the involvement of the Chief Secretary in the Civil Service Commission is well served with this new system.

So, I am content with that, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I too.

Let me say at the start that I support the Bill. I think that it is a step in the right direction and as Mrs Christian says, the first clause is the enabling clause.

Can I just also make it quite clear that, when I said before about personalities... and maybe, when I am talking about the Chief Secretary, it seems like that. It is not.

I am sure Members – long-serving Members, anyway – will remember that when I took the Electricity Act, I can remember, as Chairman of Trade and Industry at the time, the pressures that were being placed on me to allow the chief executive... they wanted it mandatory that he should be a member of the board. I resisted that and I compromised by saying, ‘it may’. In other words, allowing them the possibility but not... Because I thought it was wrong that there was a chief executive sitting, doing the negotiations and being part of both sides at the same time, and I do not think that is right.

Therefore, it comes as no surprise that I am following the same principle here. You cannot have the Chief Secretary adjudicating on people’s performance at the same time, I know, over rates of pay, and also, at the same time, appointing those self-same people. What is the phrase they say something about, ‘Power corrupts. Absolute power corrupts absolutely’?

That is not to say that there is... but it is wrong in principle and, therefore, it should not be. That is why I welcome it and that is why I have no difficulty at all in applying what I would best describe as advice. Of course, she should be sitting advising, as and when required, not at every meeting I would suggest.

So, I am putting that in to get the flavour so that, when people come to read it, they say, ‘Oh well, Tynwald or the branches decided that the Chief Secretary should be there automatically, anyway, even in an advisory role.’ She should be there as and when required. I have no difficulty with that at all. That is common sense, just as the Attorney General should be there for legal advice, or any other senior officer that the Commission may, from time to time, have.

So, I just wanted that contribution to be for *Hansard*. I think Mrs Christian has... Can I also say... No, I think Mrs Christian has covered that point more admirably than I. That is all I have got to say.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

Just on a small point, the only problem on voting rights would occur if it happened that there were two Tynwald Members and two lay people. You would have an equality of voting and presumably in that case, you could seek guidance from the Chief Minister under his new power.

**The President:** Mr Butt.

**Mr Butt:** Yes, could I ask a query about the duration of office of the members. I am presuming that the way it is worded that, should the Chief Minister come through a second administration for a further five years, he could just keep the same people there or would he have to actually announce that he is re-appointing the members in the new term?

**The President:** In raising that particular point, Hon. Members, you are working from your white paper which you were given this morning when we had our briefing. It does not have in that white paper the amendment which, I understand, was circulated with that, which is (3B), where it states:

‘Clause 1

Page 2; after line 9: add –

“(3B) Where the Chairperson or deputy Chairperson of the Commission ceases to be a member of Tynwald that person shall continue in office for all purposes (except that of filling the vacancy) until a successor is appointed.”

There is a new (3B) which we are dealing with with this clause at the same time, Hon. Members.

Mr Lowey.

**Mr Lowey:** No, I was just trying to think what happens under existing ones. They are all offices of profit. When we finish, they carry on until the new appointments are made. There is not a vacuum, is there, when the old House is rescinded?

**Mrs Christian:** I think the point, Mr President, that Mr Butt makes is an interesting one, because this does not say that their office dies when the House dies.

**The President:** No, it does not.

**Mrs Christian:** So, whether he will determine to disband and re-appoint at that point, it seems to be in the Chief Minister’s power.

**Mr Downie:** I think, Mr President, there has been a recent review of Statutory Boards and within the new guidelines – I think I am correct in assuming – periods of office are constantly renewed. In fact, there are people now who write in to the Chief Minister’s Office expressing an interest in names going on a list and, although it is not here in this particular Bill, I think the guidelines that cover the operation of these particular boards and advisory committees, there is an indication there of how the system actually works.

**The President:** But I think Mr Butt’s point is that if the Chief Minister continues, then, once he has appointed someone, a lay person to the Commission, irrespective of the fact that Tynwald ceases and you might have new Members coming into the House of Keys, for example, or the Legislative Council, the lay members could continue if the Chief Minister continues *ad infinitum*.

Mr Lowey did you wish to...?

**Mr Lowey:** No, no. It just seems again that life is full of contradictions at times. Taking on what Mr Downie said, we have set our course, really, on an independent Appointments Commission which will do certain things. This Bill does not apply to that. It is one of personal direction by the Chief Minister, which again, in itself, is a departure from what we traditionally come to expect.

My own particular view is, as Hon. Members know, that I do believe the Chief Minister’s position needs strengthening. In my view, it is like having a conductor of an orchestra where each section of the orchestra, the wind, the percussion, the brass – and I have forgotten the other one – oh, strings, can

act their own little part without reference to the conductor. I always thought the conductor was the man who kept them going.

I think, in the present system, we are a little bit weak at the top and too strong at that level. Perhaps my corollary is a wrong one, but I do think the conductor should be strengthened.

**Mr Crowe:** We are all reading from the same song sheet.

**Mr Lowey:** Thank you, Alan.

**Mr Butt:** I think my point, Mr President, was that in the new administration, there might be a new Council of Ministers and that Council of Ministers might be opposed to the current membership and the Chief Minister would have to, perhaps, tear his cloth to fit what their views were. In the Act here, he does not have to.

**The President:** Hon. Members, Mr Waft to reply to the discussion.

**Mr Lowey:** The soloist.

**Mr Waft:** Mrs Christian mentioned the stronger Tynwald representation, and I think most Members will agree with that. It has been necessary, over quite a long period of time really, to have one Member of Tynwald in that position. Of course, it was quite onerous with regard to the number of people that he represents. It is some 2,500 people, with their pay negotiations and disciplinary matters: it is hard work. A stronger Tynwald representation has been on the cards for some time.

There was a question also about whether the decisions of the Chief Minister should be endorsed by the Council of Ministers and then Mrs Christian went on to say that there could, of course, be a vote of no confidence.

With the removal of the Chief Secretary, reducing the powers of the Chief Secretary, I think everybody would agree that recent events, perhaps, have put the spotlight on the Commission. There has been recognition that the Chief Secretary is, perhaps, a powerful person to have on the Commission when you are dealing with both sides of the argument at times.

But the query of members of Departments being members of the Commission, there was a discussion about that and they came down on the fact that departmental members can be members of the Commission, but obviously where their Department is particularly highlighted then they would obviously step down.

Mr Downie supports removal of the Chief Secretary as the final arbiter. He mentioned the introductions of JESP and the way that senior staff are properly assessed, there needs to be changes there.

Mr Lowey supports the Bill, irrespective of the personality. He said he cannot have the Chief Secretary appointing and assessing. The Chief Secretary, as and when required, he mentioned has been stated with regard to the Chief Secretary, is only called in when advice is particularly needed, where her expertise would be able to come into being.

Mr Crowe mentioned equality of voting. I think generally they would like to have a consensus of voting with regard

to... without the Chief Secretary's input.

Dudley Butt mentioned the duration of the offices. There was comment made of the amendment in another place, and the fact that the Chief Minister can change the situation as and when – if there is a new Chief Minister or members of the Council of Ministers, then changes can be made from that time.

Part of the Statutory Boards Act is repealed for the Civil Service Commission, so when it comes into being, hopefully it will cure some of the problems that have been highlighted by Members over the past year, indeed with regard to the situation with the Commission. Certainly, the Chief Minister put it in his manifesto for the job, that these are the changes that he would envisage making.

So, this is a continuation of that, and I beg to move clause 2, Mr President.

**The President:** Now, Hon. Members, we are dealing with clause 1 –

**Mr Waft:** Clause 1, sorry.

**The President:** We are dealing with clause 1. I make it plain again, Hon. Members, for the purposes of our record that it does incorporate, into the new Green Bill, (3B), which was passed in another place, Hon. Members. So, it is clause 1, which has within it a new (3B) circulated to you on your white paper. Hon. Members, those in favour of clause 1, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Waft.

**Mr Waft:** Mr President, clause 2 of the Bill amends section 2(7) of the Civil Service Act 1990. The subsection confers a power on the Chief Minister to issue directions to the Commission regarding the exercise of its functions.

Currently, the Chief Minister has powers of direction which can only be exercised when it is in the public interest. This removes the reference to 'public interest', thereby enabling the Chief Minister to give directions to the Commission as he or she thinks fit.

I beg to move clause 2, Mr President, stand part of the Bill.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Mr Butt.

**Mr Butt:** Yes, I wonder, Mr President, could Mr Attorney remind us what the actual original clause said. Was it 'may' or was it 'shall' as regards the powers of the Chief Minister in the original version?

**The President:** In the Civil Service Act 1990?

**Mr Butt:** Yes, yes.

**The President:** Mr Attorney.

**The Attorney General:** The position, Mr President, is that, under section 2(7) of the existing Act, the Commission must comply with any such direction given by the Chief Minister, and that still will be the position with this amendment, Mr President.

**Mr Butt:** Thank you.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, just to say I think this also an important part of the Bill. If the Chief Minister is going to exercise some authority at all, it needs to be wider than is currently defined in the 1990 Act. Therefore, I think this is to be welcomed, given the tenor of the whole Bill.

**The President:** Mr Crowe.

**Mr Crowe:** I agree with Mrs Christian on that point, Mr President. Thank you.

**The President:** Now, Mr Waft, do you wish to reply?

**Mr Waft:** No, I will just go along with what has been said; I am totally in agreement, I think.  
I beg to move clause 2 stand part of the Bill.

**The President:** Yes. Right, Hon. Members, I put to Council formally that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Waft.

**Mr Waft:** Clause 3, Mr President, requires the Commission to submit a report of its work to the Chief Minister on carrying out its functions. The report must be laid before Tynwald.

I beg to move clause 3 stand part of the Bill, Mr President.

**The President:** Mr Downie.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Are you ready, Mr Downie?

**Mr Downie:** Thank you, Mr President.

I think this is a very useful section, and I think for the first time it will require the Civil Service Commission to produce an updated progress report. I think Members of Tynwald and, in fact, perhaps the public could be better informed about the various aspects of the Commission and the work it undertakes.

I hope it will allude to things like provisions for improving training and moving the whole Commission and the quality of the Civil Service along and, of course, in clause 3, in subsection (10):

'A copy of every report under subsection (9) shall be laid before Tynwald.'

so it is there, if any Member wants to raise it in Tynwald Court and have a debate on the issue and the performance of the Commission or JESP or any other element of it.

So, I am quite supportive of this particular clause.

**The President:** Mr Lowey.

**Mr Lowey:** I just say, too, that I think it will take a lot of the mystique away of the role of the Commission. When you

have got a Commission that in the past has had, if you like, that you are not allowed to be involved in any other... there is a mystique somehow, and there is not. It is a very difficult and complex job recruiting and training and changing the world that we are in, but I do think it is one of what I would call 'accountability'. I think it gives the Chief Minister nowhere to hide. It is up front, Members are aware and it does not give the Members a place to hide, either.

So, I think, all in all, that is a win-win situation, and I would agree with the clause as written.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

Just to support the clause and to notice that we do not have to wait for an annual report; it can be submitted more frequently, if the Chief Minister so directs. So, there is provision to allow for an urgent or important issue to be laid before Tynwald.

**The President:** Mr Waft, do you wish to reply, sir?

**Mr Waft:** Yes, I would just like to thank Members for their comments. An updated report is necessary – this is from Mr Downie – for training and performance of the Commission. It is worth noting with regard to the training, the massive amount of training that has to go on when we pass Bills and Acts through the Chambers. They are then passed over to the Civil Service, who are expected to carry it out in the way in which it is taken to be. That involves a lot of training, which has to be permeated down through all the Departments and every member of the Civil Service staff. So, a lot goes on with regard to training and there is a training manual that is issued each year to tell the members exactly what is needed and what goes on.

Mr Lowey mentioned it takes the mystique away. There never was any mystique in there; it is the work they do, but I think, perhaps, it does enable some more transparency than what there was there before. The work that goes on there is ongoing all the time.

Mr Crowe mentioned not having to wait for the annual report: if there is something of significance which he wants to know about, he can find out quite rapidly and I think that is important. Sometimes, there is a lot of publicity from time to time in a given place, with regard to what is happening at that particular time and the transparency will allow Members to know exactly what is happening within the Commission.

I beg to move, Mr President.

**The President:** Now, Hon. Members, the motion I put to Council is that clause 3 do stand part of the Bill. Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, we turn to clause 4. Mr Waft, please.

**Mr Waft:** Thank you, Mr President.

Clause 4 amends section 1 of the Civil Service Act 1990 and makes ineligible civil servants, officers of Departments, Statutory Boards and certain statutory bodies to be members of those bodies. The disqualification does not apply in respect of the Financial Supervision Commission, the Insurance and Pensions Authority and the Manx Electricity Authority.

I beg to move clause 4 stand part of the Bill, Mr President.

**The President:** Mr Downie.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Now, Lord Bishop.

**The Lord Bishop:** Thank you, Mr President.

At the First Reading, I expressed a certain unease about the MEA being exempt in this particular way. At the presentation we had before this sitting, I quite understand why the FSC and the IPA are exempt, because quite clearly they have an international standing and the Members going across or abroad, meeting other people from like bodies, will need to meet on an equal basis.

I think if we are actually talking about transparency and accountability, which seem to be the buzz-words in the political life of our nation at the moment, then I think we have an opportunity for putting transparency and accountability into the MEA and actually stating that, although there is the provision for Tynwald to approve appointments to the board, it will be much better for the primary legislation to say that the chief executive officer should not be a member of the board, because we are not comparing like with like, with the FSC and the IPA, when we come to look at the Electricity Board.

So in order to test the mind of the Council, I am proposing an amendment, which you have before you, which is:

*Clause 4*

*Page 2, line 24: Before "In section 1" insert (1)*

*Page 3, line 1: delete subsection (c)*

*After subsection (d) insert:*

*(2) In Schedule 1 of the Electricity Act 1996 subsection 3(3) is repealed.*

So that removes the exemption, and subsection (d) will become (c), obviously.

So, we actually amend the schedule of the Electricity Act and I think by doing so, we will give a clear signal that we do not think it appropriate that the chief executive officer of the MEA should actually have the opportunity to be a full member of the board.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, I would be very happy to second that, Mr President. I think that in exploring the reasons for the chief executive officer (CEO) of the MEA being exempt in this way, it is seen that the cart has been following the... no, was the horse before the cart, or the other way round? I do not know.

This particular measure was being drafted to fit in with the current MEA legislation, but I do think that it is something that we were not particularly comfortable with. This amendment will allow us to use this piece of legislation to change that by way of this amendment.

I think that that is a useful amendment. We may or may not have views about whether the Financial Supervision Commission and Insurance and Pensions Authority should be exempt in the same way, but I think there is a stronger case for them being exempt than there is for the CEO of the MEA being exempt in this clause.

So, I am very pleased to second the amendment and hope

Members will take the opportunity to amend the Electricity Act.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, can I read from the Manx Electricity Authority Act, schedule 1, because it is very clear to me that it is allowing the chief executive to be a member of the MEA, the Authority? I think what you are trying to do, Lord Bishop, is to delete that totally from this Act, but reading this, paragraph 3(3) of the Manx Electricity Authority Act:

'Without prejudice to sub-paragraph (2), the chief executive officer of the Authority shall be eligible to be appointed a member (other than the chairman) of the Authority, but –  
(a) may not be appointed vice-chairman of the Authority under paragraph 1 of Schedule 2 to the Statutory Boards Act 1987; and  
(b) shall not as such a member be entitled to be paid any sum under the Payment of Members' Expenses Act 1989.'

So, I think, what you are trying to do, seems to be to stop the chief executive officer of the MEA from being a member of the Manx Electricity Authority, which to my mind seems to be a negative point of view. I think a person who is eligible and qualifies and would be a suitable member of the Authority should stay on the Authority.

So, I would oppose the amendment.

**The President:** Mr Lowey.

**Mr Lowey:** Well, let me declare an interest on two fronts. I am the vice-chairman of the Electricity Authority at the moment. I was also the Industry Minister who passed the 1996 Act.

As far as I am concerned, I know I am on the side of the Lord Bishop and Mrs Christian. I was when I moved the Act. I was under extreme pressure, as I said before, to make it not mandatory and perhaps looking back in history, we would not be in the mess we are in today, if this amendment had been in place, because you will remember the transition from being a director to the chief executive, who then became a member of the board. However, that is history and past.

Is it right in principle? I think it is right in principle, I have already enunciated that the Chief Secretary should not be there and I do not think the chief executive of any organisation, in my view, finds it comfortable to divorce his – what I would call – working relationship and making and carrying it out. A chief executive carries out the wishes of the board. So, if you are on the board, making the decision, you are carrying out your own wishes and I do not think that is right.

Having said that, then I have to address what about the other two, the Financial Supervision Commission and the Insurance Authority? We have already been told this morning, in international affairs, it is right and proper that they should be there, and I can see the case for that.

Nothing is ever black and white. There can be no case, in my view, for the Electricity Authority to stand alone; therefore you should have the right of the chief executive of the Water Authority to be a member of the water board. That is not included. Why not?

Therefore, I come back to my main argument, which in 1996 was to resist, but as a compromise we allowed 'may' to come into play. I think it is an opportune time to put the matter right and, therefore, I will be supporting the

amendment in the name of the Lord Bishop.

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President.

At first, I must admit, I had some concern as to whether the amendment fell within the scope of the long title to the Bill, but I think the Lord Bishop has certainly replied to that, by saying that if we look at the long title, it includes provision to make certain officers ineligible for membership of Departments, Statutory Boards and certain public bodies. So, I think that that would probably be sufficiently broad to encompass this proposed amendment.

I think, the only reservation I would perhaps have, and which I put forward to Hon. Members, is that the Electricity Act 1996 carried over some of the provisions of the older legislation, relating to electricity and the MEA, and made specific provisions for the experience that members of the MEA had to have. So we see, for example, in schedule 1 of the Electricity Act, paragraph 1(2):

'In appointing members of the Authority the Council of Ministers shall secure that, so far as is practicable, the members of the Authority include –

- (a) one or more persons having substantial experience in the generation and distribution of electricity, and
- (b) one or more persons having substantial financial experience.'

Therefore, I suppose, Mr President, the drafters of the legislation envisaged that the MEA was a special case: so important is the generation and distribution of electricity for the Island's wellbeing that the MEA board has to consist of, or has to include, people who have expertise in those particular functions.

I suppose again, given the history of the MEA and the relationship of the chief executives to the board, there have been situations where the only person who had financial experience, shall we say, was the chief executive – or the only person who had substantial experience in the generation and distribution of electricity was the chief executive. That is why you had to have him on the board as well.

Now, clearly, that does not exist at the moment, that the MEA board –

**Mr Lowey:** Not for the last 10 years.

**The Attorney General:** – is different, but I just highlight that, Mr President, because I think that there was a case, certainly, for a different consideration for the MEA.

But clearly, this is an amendment which I think, Hon. Members, can make if they wish.

**The President:** Mr Downie.

**Mr Downie:** Mr President, without appearing to be cynical in all this, looking at the Electricity Act, it is quite clear to see, for those who wish to see, that there was a member of the board who had aspired to become a chief executive and in my view, that is why this particular piece of legislation was drafted the way it was. It was to suit a certain period in history and whether or not we have paid the penalty for that, we do not know – that is yet to be determined.

I am perfectly happy with the amendment that has been moved by the Bishop. I do not think it matters one way or the other, but it does really set out the responsibility that a chief

executive has and I think in this age where everything now has to go into the melting pot on a regular basis, it clearly defines the role of the board.

In my view, the executives are there to give advice and not to set the policy. This is an area that I am content to have cleared up.

**The President:** Mrs Christian.

**Mrs Christian:** I think the learned Attorney has made an interesting point and I think we could be in danger of reacting to events. However, I am still of a mind to support the amendment.

If we look at the example of the Financial Supervision Commission or the Insurance and Pensions Authority, it has been the case that where they have needed expertise, they have appointed people from outside the Island.

So, one assumes that, if the Act requires someone with electricity generation experience or knowledge to be appointed to that board and there was not someone local, that it is not impossible to appoint from outside the Island.

So, I think, on balance, the chief executive officer should be just that and not a member of the Authority and that the other aspect of the Act in terms of appointments, can be dealt with in other ways.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, we are in danger of being blinded by history, but I remember the Chairman of the Electricity Authority was appointed from off-Island because he was a man of experience in distribution. I have to say that within the Island we are very blessed with a lot of people who come back with careers in such a wide... Like the present member of the board: distribution; worked all his life in the generation of electricity in power stations throughout and distribution. Dr Reed, for example, is a valued member of the Authority. We have an accountant, a local accountant on the board, who is first class with figures.

So, there is the balance there, but when you come to the chief executive, no matter, in my view, he needs to... what is the role of the chief executive? Is the chief executive to be the arbiter of generation or expertise? His real power is to interpret the wishes of the board and implement them. He is an administrator first and foremost and therefore, the need to be on the board is not paramount. It was my view when the Act was coming and you are quite right, the pressures were on, I have no doubt about that. Anyway, the result is, I think, as we say, history.

**The President:** Well, I think we have given it a good airing. Mr Waft, do you want to reply, sir?

**Mr Waft:** Yes, Mr President.

The situation we find ourselves in is that we are agreeing that the Financial Supervision Commission and the Insurance and Pension Authority chief executives being part of the board, but not the Manx Electricity Authority. The FSC and the IPA they are more or less tied to a degree through the IMF, another country I might say that advises that we should not be doing other than having the chief executives as members of the board.

When it comes to the MEA, I personally feel that we are reacting to events in a way, that we are changing legislation

because of recent events. I am not saying that we do not have to do that, but the knee-jerk reaction has to be considered as to why we are doing things.

Mr Lowey mentions the fact that they have a local accountant and different specialities within the board, at the moment, and as Mrs Christian said, if they want experience, they can get it from somewhere else, across or wherever. We can do that, but at great expense, I might add, when we do get specialists in to advise boards or Departments. It is usually at great expense.

It suits, perhaps, a period in history. I think Mr Downie mentioned that and I would agree with him wholeheartedly, that the period of history we are going through, we are tending to change legislation to compensate for that. So, I think, perhaps, it is an over-reaction to make a stance on the... and put an amendment, indeed, forward, with regard to the MEA chief executive. So, I do not think I have got any more to say there, other than I propose the Bill go forward.

**The President:** Now, Hon. Members, the motion that I put to Council is that clause 4 do stand part of the Bill. You have, Hon. Members, before you, the amendment moved by the Lord Bishop to clause 4. Hon. Members, putting to you first the amendment. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, I put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Waft.

**Mr Waft:** Clause 5, Mr President, provides for transitional arrangements for the implementation of the amendments of the Civil Service Act 1990. In effect, this clause provides that the current members of the Civil Service Commission will stay in place until replaced.

Mr President, I beg to move clause 5 stands part of the Bill.

**The President:** Mr Downie.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Hon. Members, the motion I put to Council is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Waft.

**Mr Waft:** Clause 6, Mr President, provides for a short title of the Bill. Clause 4 of the Bill will come into operation on a day or days to be specified by an Appointed Day Order made by the Council of Ministers. The other provisions of the Bill will come into operation when the Bill is passed.

I beg to move clause 6, Mr President.

**The President:** Mr Downie.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Again, Hon. Members, I formally put

to Council that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Civil Service (Amendment) Bill Standing Order 22(2) suspended to take Third Reading**

**The President:** Mr Waft.

**Mr Waft:** Mr President, in view of the fact that we have amended this Bill and it will have, naturally, to go back to the House of Keys, the fact we are not sitting again in this Chamber for at least four weeks and we have a number of Bills on the way through, and as we are agreed with the way it has gone and we have had a presentation on the Bill as well, I think if we suspend Standing Orders and put the Third Reading through, it would certainly send it down expeditiously. As a Bill of six clauses, it would, perhaps, need to be looked at.

I beg to move:

*That Standing Order 22(2) be suspended to enable the Third Reading of this Bill to be taken.*

**Mrs Christian:** I beg to second, Mr President.

**The President:** Hon. Members, are we happy that we suspend Standing Orders to take the Third Reading of the Civil Service (Amendment) Bill this morning? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Civil Service (Amendment) Bill Third Reading approved**

**The President:** We will move on and take the Third Reading, Mr Waft.

**Mr Waft:** Thank you, Mr President.

The purpose of the Civil Service (Amendment) Bill is to amend the Civil Service Act 1990 to provide for the Chief Minister to be the political head of the Civil Service, with the authority to appoint members of the Civil Service Commission and to give directions to the Commission. It will also alter the constitution of the Commission, with the political chairperson now being supported by a vice-chairperson, who shall also be a Member of Tynwald.

Further, the lay membership of the Commission is to be increased from one member up to two, but no more than three lay members. The Chief Secretary, who under the 1990 Act, is currently a member of the Commission will no longer be eligible for membership, but will attend meetings of the Commission in an advisory capacity.

Mr President, I beg to move:

*That this Bill be now read a third time and do pass.*

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Mr Crowe.

**Mr Crowe:** I support the Bill, Mr President, because it would help the administration, the constitution and it will, I think, improve the administration of the Civil Service.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I support it. I think the Chief Minister should be congratulated. He made it a plank that he wished to see this brought forward quickly. I think it has been brought quickly. I think Council has done its job to make sure it is an effective piece of legislation. I think the slight amendment does not affect the Bill materially at all and, therefore, I would hope that the other place would see fit to accept it.

I support the Bill.

**The President:** Do you wish to reply, Mr Waft?

**Mr Waft:** I would just like to thank the Members for

their support of this Bill. It is a Bill that has been promised to the Members of Tynwald and we have got it passed through expeditiously, I would say. I thank the Members for their support.

**The President:** Hon. Members, as is often the case when you get a short Bill which has lots of cross-references to other Acts, it often becomes quite interesting in the effect it has on those other Acts. Nevertheless, I put to you that the Civil Service (Amendment) Bill 2007 be read for a third time. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

**The President:** Hon. Members, that will conclude our business before us this morning.

I would wish for Council to stay behind for a few words in private, if you will, please.

*The Council sat in private.*