



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS
DAALTYN
(HANSARD)**

Douglas, Tuesday, 30th January 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, Mrs. P M Crowe,
Hon. A F Downie, Mr E G Lowey and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted*Page***Orders of the Day**

| | |
|---|----|
| 1. Committee on the Broadcasting (Amendment) Bill – Report received and recommendations approved..... | 9 |
| 2. Broadcasting (Amendment) Bill – Clauses further considered | 9 |
| Broadcasting (Amendment) Bill – Standing Order 22(2) suspended to take Third Reading | 16 |
| Broadcasting (Amendment) Bill – Third Reading approved..... | 16 |
| 3. Standing Orders Committee of the Legislative Council – Mrs Christian elected..... | 17 |
| 4. Joint Committee on the Emoluments of Certain Public Servants – Mrs Crowe elected | 17 |

The Council sat in private at 11.35 a.m.

*All published Official Reports can be accessed on the Tynwald website
www.tynwald.org.im
Official Papers/Hansards – please select a year*

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

Orders of the Day

Committee on the Broadcasting (Amendment) Bill Report received and recommendations approved

1. The Chairman of the Committee (Mrs Crowe) to move:

That the Report of the Committee be received and its recommendations be approved.

The President: Hon. Members, we have a short Order Paper before us this morning, but nevertheless we have to deal with the Committee on the Broadcasting (Amendment) Bill. Now, Hon. Members, as you are aware, the Bill was brought before the House earlier and referred to a Committee and I understand that Mrs Crowe has the Report that is now before us. Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I beg to move the Broadcasting (Amendment) Bill Report from your Committee and we have made the recommendations in that Report. We concluded that two amendments were required for the Bill to bring it into line with the recommendations that were approved by Tynwald and we have also taken the view that the current wording in the Bill is rather prescriptive.

We are recommending that the reviews in the Bill suggest that reviews should be carried out on the 10th and 20th anniversaries of the commencement of the licence, but we are of the opinion that reviews should be carried out at least every 10 years. This would not reduce the reviewing requirement, but it will give the Commission the flexibility to hold the reviews at a particularly relevant time, that is if there have been any major developments within broadcasting on the Isle of Man.

So with that Report before you, Mr President, I would like to move that the Report be approved.

Mrs Christian: I beg to second, Mr President, and reserve my remarks.

The President: Does any Member wish to speak to the Report. No? You are content with the Report.

In that case, Hon. Members, as you will be aware, when dealing with the Broadcasting (Amendment) Bill before us before, we had actually passed clause 1 and had

started on clause 2, but we had not voted on clause 2. It may then be very much more satisfactory for Council, if in fact we commence again our reading of the Broadcasting (Amendment) Bill. Albeit that clause 1 has passed, we will deal with the Bill, starting again with clause 1.

Hon. Members, if you are happy, then, to do that, I will formally put to the Council that the Report of the Broadcasting (Amendment) Bill Committee put to the Council this morning by the Hon. Member, Mrs Crowe, be approved. Those in favour, please say aye; and against, no. All in favour.

Mrs Christian: Sorry, Mr President, what was that? Is it the re-reading?

Mrs Crowe: The re-reading.

Mrs Christian: The re-reading, yes.

Broadcasting (Amendment) Bill Clauses further considered

The President: Now we go to the re-reading of the Bill and, if we are dealing with the total re-reading of the Bill, we start with clause 1. So we move on to clause 1 and then swiftly can have clause 1 formally put before us.

Mrs Crowe: Thank you, Mr President.

Clause 1 is regarding the promotion of the Bill as it was promoted by the Department of Home Affairs and in this section, under clause 1, it is the licensing of programmes. In subsection (2)(a), it is the mention of 'sound' and in subsection (2)(b), it is the interests of the licensee.

There are a number of subsections here which we have already discussed and I think in fact we did agree this clause at the time and so, Mr President, I beg that clause 1 of the Broadcasting (Amendment) Bill be moved.

The President: The amendment, Hon. Members, with clause 1 of the Bill then in front of us again, I take it that Mrs Christian you will second it?

Mrs Christian: I would wish to support the amendment, Mr President, so I would prefer it if somebody else...

The President: Right, yes, okay. Because, Hon. Members, the Council has passed clause 1 before, I appreciate the difficulties we are all in, because of the Committee Report. Nevertheless, I will accept that Mrs Crowe has formally put to Council clause 1. Now then, Mr Lowey, I understand you are moving the amendment.

Mr Lowey: Yes, sir.

The President: Mr Lowey.

Mr Lowey: Yes, as the mover of the Bill has said in moving the Report, it is actually the machinery to put that in place, not to make the Bill so prescriptive. In other words, it says 30 years and a review at 10 and 20. There are practical reasons, one of which has been moved by Mrs Crowe.

Another one, which is quite self evident, is that there

may be financial appraisals that will accrue out of sync with the 10 and 20 years. This will still permit them to have that review, but at least it gives the flexibility to the Broadcasting Commission.

Therefore I move:

Clause 1

Page 2, line 24: For 'of' substitute 'not exceeding'.

Let me read it. It is (3A):

'In the case of a licence for the provision of a public service broadcasting service, a licence may be granted for a period of 30 years.'

I have to say that what we are proposing is: 'In the case of a licence for the provision of a public service broadcasting service, a licence may be granted for a period *not exceeding 30 years*.' So it is a minor amendment but it does give the flexibility.

I beg to move, sir.

The President: Mrs Christian.

Mrs Christian: I am happy to second that amendment. I think in the discussions of the Committee, it was certainly found that neither the Commission nor the broadcasters were arguing for more than 10 years. (**Mr Lowey:** Absolutely.) I think this is a reflection of perhaps a political will that Manx Radio should be given some kind of status.

As Members will recall, it could not be previously the same kind of charter as the BBC, for example, so this, to a degree, is cosmetic. It did seem wrong to be so prescriptive as to say 30 years, because again no clue to the Broadcasting Commission as to whether using the word 'may', as it does in this clause, that it had to grant a full 30 years or it could not provide for a period of less or more than that. It is very loosely defined, in my view, and so the Committee...

I am happy to support the introduction of the words 'not exceeding' so that we know that on no occasion will the Commission be able to go beyond the 30 years, but indeed could make it for a lesser period. There is also an acknowledgement that, unless there is funding from Government, it will not continue irrespective of its licence. So I think it is a practical and sensible amendment.

The President: Mr Waft.

Mr Waft: Just one small item from me, Mr President.

I have not got any problem with the amendment. It is just in the Bill it states that Mr Pugh of Manx Radio and Mr Hewitt of the Communications Commission both agree with regard to the 30 years. Was the Department consulted at all with regard to this amendment?

Mrs Christian: Yes.

The President: Mrs Crowe.

Mrs Crowe: Yes, indeed, the Communications Commission were represented at the meetings, which of course, as you know, are part of the Department of Home Affairs.

Mr Waft: But the Department itself was not. Just with Mr Pugh?

Mrs Crowe: No, Mr Hewitt is the Communications Commission, who has the expertise in these matters for the Department.

The President: Mr Downie.

Mr Downie: I would like to speak in support of the amendment and the recommendations of the Committee. I think it is becoming obvious, even as early as Tynwald two weeks ago, that there will be some significant resources required for Manx Radio and I will make reference now to the record of the digital broadcasting element, which probably has a price tag of £1.5 million to £2 million to it.

So I think we would be failing in our duties if we did not provide a statutory mechanism that allows us to step back from time to time and carry out a review and to make sure that all the aims and objectives of putting Manx Radio on this particular footing were clearly understood. Any new technology that was introduced could be thoroughly examined and the necessary support provided where the case had been made.

So I am quite willing to support the amendments and I think it would be in everybody's favour to get this on to the statute book as quickly as possible.

The President: Can I, Hon. Members, just for my own purpose, and for the rest of the Committee, get clarity on the position in regard to the amendment, because the Bill as written, if it was to be enacted, says that it *may* be granted for a period of 30 years. Now that is a definitive period, 30 years, so you either grant a licence for 30 years or you do not grant a licence for 30 years. Because it is 'not exceeding', someone has to make that decision as to what the definitive period of the licence will be and, having made that, what happens when that licence comes up? Do they keep renewing it without reference back to Tynwald, or with reference back to the Act in any regard? If we can just clear that, I will be more content.

Mrs Crowe.

Mrs Crowe: I think, Mr President, it has to be recognised that, statutorily, the Commission can review and indeed revoke a licence at any time and the issue of licensing is generally, I think we have ascertained, for a 10-year period. That was the general view and we spoke with both the Commission and, indeed –

The President: It is definitive.

Mrs Crowe: Well, it is not definitive and indeed, of course, it could be, but what I think we were saying is, rather than be too prescriptive and say 30 years, we are suggesting that perhaps the Communications Commission would recommend at what stage this licence is set at.

The President: Thank you. Mrs Christian.

Mrs Christian: Mr President, I take a slightly different view from the point made that this is definitive. I think because of the use of the word 'may' it is not definitive.

Mr Lowey: Not definitive, that is right.

Mrs Christian: It is indicative and it reflects what

perhaps was said in the original Report. I think that is the difficulty that the Committee felt it had to deal with.

The President: I understand exactly that point, Mrs Christian, absolutely 100 per cent: 'may' is permissive and 'shall', we know, is the imposing. But in this instance, it says a licence may be granted. The 'may' applies, in my book, to the granting, whether or not they grant, and the remaining part of the sentence says 'for a period of 30 years'. It does not say 'may be for 30 years'. The 'may', the permissive part of that sentence, is relative to the granting of a licence.

Now, it is a nicety, but I am sure it is one that Mr Attorney and the legalese would like to argue for a long time and I am just reminding Members that we are writing law. Mrs Crowe.

Mrs Crowe: I would suggest that the Commission has to be satisfied, so it may grant a licence, but we cannot impose that the Commission shall grant a licence.

The President: That is the permissive bit. (Mrs Crowe: Yes.) Thirty years in the Act is directed. Mr Attorney.

The Attorney General: Well, Mr President, I think you do raise a very interesting point. Shall we take an example? If the Commission decides to grant a licence for 10 years, the Commission then, at the end of the 10 years, considers that it is appropriate to grant a further period. The question I think, Mr President, you are raising is their power is to grant a further period within the initial 30-year period. I think that is a point which may have been overlooked in the drafting, because I cannot find in section 2 of the Bill, of the Act, as proposed to be amended, any power to renew a licence within a 30-year term.

The President: I think that is the point.

Mrs Crowe: Mr President, would that not only apply if it was a renewal of a licence? They have the power to grant a licence at any time. They have the power to grant a licence annually, so a renewal of a licence or a reapplication for a new licence is in the gift of the Commission to either license that broadcaster or not.

The President: I just wonder whether or not that is... yes, within that set period, whether they can do it or not. They possibly can and I am just asking. I am content, Hon. Members. I have raised the point and I think we need to look at these things.

Mr Waft: When does the 30 years start? The initial 30 years or when the next 10 years is...

Mrs Crowe: I think the whole point is that we have the 30 years, because a licence can be issued for anything up to 30 years, therefore at any time. So, say a 10-year licence was granted, after the demise of the 10 years, or at any time in between, the Commission can revoke that licence, but at the demise of that 10-year period, then presumably another licence can be granted for anything up to 30 years.

The President: That is the question. Mrs Christian.

Mrs Christian: Yes, Mr President, I think essentially

it is agreed by all parties concerned that this is a cosmetic provision –

Mr Lowey: Anyway, absolutely.

Mrs Christian: – because their future and their existence depends on the funding for Manx Radio. Whilst there was a feeling that somehow or other Manx Radio, as a public service broadcaster, should be given a different status, there was also recognition that there is an awful lot changing in the world of broadcasting and whilst we accepted that it was the view of Tynwald that some sort of distinction should be made in respect of the licence for Manx Radio, certainly the parties who are involved accepted that 10 years would be enough for them.

So I think we have met both points by saying that 30 years is somewhat rigid, but we would say that they could grant up to 30 years, after which time then, obviously, a new licence would... But once a licence has expired, it is a whole new ball game. Whether it is a renewal or not depends on who applies, I guess, and whether the same person gets it.

Mr Butt: It is not technically a renewal as such. It is to start again.

Mrs Christian: It is a new licence.

Mr Butt: Yes.

The President: I apologise, Hon. Members, but Mr Butt, please try not to talk over the top of ... Did you want to make your point, sir?

Mr Butt: Yes, I was going to say that the point that Mr Attorney made about renewal not being in the actual clause should not be that relevant, because once a licence is dead, it is finished and there is a totally fresh start, maybe with different operators even.

The President: Mr Attorney.

The Attorney General: Mr President, from what Hon. Members have said, I think the intention is that the holder of the public service broadcasting licence can envisage that, whereas it may be granted an initial term of 10 years, it is open to the Commission to renew that in periods, provided that the total amount of the licence does not exceed 30 years. That was the impression I had (Mrs Crowe: No.) from the... and if that was the impression, then I do not think that the clause which is before Hon. Members today reflects that.

The President: Mrs Crowe.

Mrs Crowe: From my perspective, the 30 years, from what I could see, was a political intervention in Tynwald. When we examined it, it was not in the original spirit of the legislation that was being brought forward. When we questioned both the Commission and, indeed, Manx Radio, they both were rather... well, not surprised, but they could give us no reason why there should be a licence granted for 30 years.

So what we are trying, I suppose, to have regard to the wish of Tynwald, what we said was that a licence might be granted for 30 years, but that is in the gift of the Commission,

but more ordinarily the licence is for a shorter period and that also suits the Commission, so what we tried to say in this legislation is that we would rather leave the power with the Commission to determine a reasonable length of time, but we would not want that time to exceed 30 years.

So the Commission would examine all the aspects that they need to examine and determine that they would grant perhaps a 5 or 10 or 15-year licence. That is entirely within the right of the Commission and they have the right to revoke that at any time, but I think what we are trying to say is that we do not believe that a licence of 30 years is necessary and we leave it in the good hands of the Commission to suggest that the licence period is their recommendation to Tynwald.

The President: Mr Lowey.

Mr Lowey: I would, Mr President, if I may, remind the Council that what we were discussing in Tynwald Court was a recommendation from the Committee that had been set up. They did not recommend 30 years. It was Tynwald Court that imposed what I would call the 30-year element into the debate, for very good reasons at the time, thinking it was state run and wanting to give it status, I think was the adjective Mrs Christian used.

What we are trying to do here is recognise Tynwald's desire and put into position a practical working document that the Commission, who are the experts in this and will deal with it, and the station, who recognise that all of these are subject to what I would call the availability of finance. So what we are trying to do in this is to reconcile the three, make it a practical working document and make it effective.

This piece of legislation could be seen to be too rigid. We cannot have an inquiry because it is not up to year 10. It may be at the end, it may be in the middle of a financial reappraisal, or technology will have overtaken it and because of the way it was written, we cannot operate it, we cannot review it until 10 years and 20 years and the review element is important because any situation that has been given a monopoly should be reviewed on a regular basis. That, we think, should be the Commission's role and job.

The President: Mr Downie.

Mr Downie: I think where there appears to be a misunderstanding, Mr President, is that the Broadcasting (Amendment) Bill that we are discussing this morning makes special provisions for a public service broadcaster using Manx Radio. Allied to that is the 1993 Broadcasting Act, which actually sets out the rules and regulations and the provision of programmes and services and clause 7 of that Act makes reference to the variation and revocation of licences.

My understanding of this is that the Commission can revoke the licence at any time, but what I think the object of the original Amendment Bill is to give some special status to Manx Radio to give the system some longevity, so that they do have a number of years to develop various aspects and they are seen as the state-subsidised, or the national-subsidised broadcaster, not too similar to what happens with the BBC in the UK.

Alright, things are changing at a very rapid rate in the United Kingdom, with a whole host of other radio stations and television companies being introduced, but this is showing some commitment to Manx Radio and I think what

the amendment does that we are moving forward today is to not say that Manx Radio is the operator set in aspic for 30 years. We want an opportunity to come back 10 years or less, however the Commission may determine, and look at various aspects of it and perhaps justify their need for additional expenditure or perhaps branching out into other areas.

So I just ask Hon. Members to bear in mind we do have this very good piece of legislation, the 1993 Broadcasting Act, which really sets down the ground rules.

The President: I think we have given this a good airing but, Mrs Crowe, is there anything else you wish to add?

Mrs Crowe: No, but what I would like to reiterate is that both the Communications Commission and indeed Manx Radio could not actually give us a valid reason why they would need to have a 30-year licence and indeed both parties considered it unnecessary. I think that was the critical part for the Committee and so that is the reason why we thought the amendment would make it far less prescriptive, that they do not have to issue Manx Radio or whoever with a 30-year licence, but they can issue a licence more appropriate to the needs of the day.

The President: Okay now, Hon. Members, the amendment that I put to Council is the amendment moved by the Hon. Member, Mr Lowey. Hon. Members, for clarity again, the amendment is to clause 1 on page 2, line 24, for 'of' we will be substituting 'not exceeding', so it will read: 'In the case of a licence for the provision of public service broadcasting service, a licence may be granted for a period not exceeding 30 years.'

Hon. Members, those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

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

Now, we turn then to clause 2. Mrs Crowe, would you formally put the clause please?

Mrs Crowe: Thank you, Mr President.

Clause 2 amends section 4 of the Act by providing that in the case of a licence for public service broadcasting, the licence may include conditions enabling periodic reviews of the provision of the service on the 10th and 20th anniversaries of the grant of the licence.

Mr President, I beg to move clause 2.

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

The President: Again, Mr Lowey, will you move the amendment suggested by the Committee?

Mr Lowey: Thank you, Mr President. Again, without reiterating, it is:

Clause 2

Page 3, line 10: For 'may' substitute 'shall'.

Page 3, line 13: For 'on the tenth and twentieth anniversary of the grant of that licence' substitute 'at least every 10 years'.

In other words, the option, it shall be and it shall be

at least every 10 years. That gives the flexibility to the Commission to review it before, not waiting for the 10th anniversary or the 20th anniversary, if necessary, and it does give the flexibility that we were speaking of.

I beg to move, sir.

Mrs Christian: I beg to second, Mr President.

The President: Mr Attorney.

The Attorney General: Mr President, just really following on from the debate on clause 1 of the Bill, I think that Hon. Members will appreciate that it follows from this amendment that if the Commission decided to grant the licence for a period of, shall we say, five years, then there is an obvious conflict between the five-year licence and the requirement that the licence shall include conditions stipulating a review at least every 10 years, because we are not going to get as far as 10 years.

So it may be a technical point, but clearly the Commission and the movers of the Bill envisage that the licence is going to be for at least 10 years, and that is the point I make. It is not going to be for five years or less.

Mr Lowey: That is really why the amendment is in, to give that flexibility. In other words, the very opposite, really, to what the Attorney has said, because the existing one says it shall be on the 10th anniversary and 20th anniversary. What we are saying is, even if it is five years, the Commission can still call a review within that period of time. As written in the Act at this moment, it says it will be on the 10th and 20th anniversary.

The President: Would you like to have another go at that, Mr Attorney?

The Attorney General: Well, I think the point I made still remains.

The President: It still remains, yes. I was wondering, can you just go over it again because I think... I am sorry. I know exactly where you are coming from, but I just want it clear for the Council.

The Attorney General: Mr President, before the amendment was made to clause 1 of this Bill, we had a situation where a public service broadcasting licence could only be granted, if at all, for 30 years and it therefore made sense, Mr President, moving on to clause 2 of the Bill, that the Commission has had the discretion, under the clause as it was, to require a periodical review on the 10th and 20th anniversary. So if there was going to be a review, it had to be, if at all, on the 10th and 20th anniversary. The amendment now to clause 2 of the Bill states that when a licence is granted to a public service broadcasting service, the licence *must*, it shall, it must include conditions enabling the Commission to undertake a review at least every 10 years.

So my point was that if the Commission wanted to grant a licence for five years, it would make a bit of a nonsense requiring the Commission to say there had to be a review at least every 10 years, because the licences are granted for 10 years.

The President: Right, Mrs Christian.

Mrs Christian: I partially accept the point made by the learned Attorney, but we did it knowingly on the basis that, first of all, if we look at line 9, this deals with conditions which may be included in the licence, 'may'. Now as drafted, and accepted in another place – and I will come back to the point of what we have changed earlier in a moment – but if you look at this it says it may include a condition where the Commission *may* undertake a periodical review at 10 years and 20 years of that original 30-year licence.

In our view, the Committee, we felt the fact that they *may* carry out a review in 10 years or 20 years was not strong enough, if someone has got a 30-year licence, but also bearing in mind that they can actually carry out a review – and one would hope that they would – whenever they like.

So the view of the Committee was that having said that the amendment we have just approved could grant a licence for a period of up to 30 years, it might be a lesser period, it could be, say, 18 years, we do accept that in this amendment, it is defunct because at 20 years there is not a licence to review, but they would have to be obliged to carry out a review at 10 years.

We discussed the issue of the licence being awarded for a period of less than 30 years and it was our advice – we were given the advice that, in those circumstances this would not matter, because it was not actually applicable.

But what I think is important about this amendment is that it may include a condition, and if it does include a condition, then there is an obligation on the Commission to carry out a review at least at 10 years and 20 years, if the duration of the licence is sufficient to justify it.

Mrs Crowe: So the conditions of the licence are drawn up by the Communications Commission and may include a review at 12 months or whatever. But what we are saying at this point – I would just reiterate what Mrs Christian has said – if indeed a licence is issued for a longer period, then we suggest that there should be an obligation to pay up.

The President: Mr Attorney.

The Attorney General: Well, I absolutely accept everything that both Hon. Members have said, if it was envisaged that in all cases the licence would be for a period exceeding 10 years. The difficulty, Mr President, is that if, as I say, the Commission decided to grant a licence for five years, then it makes a nonsense, does it not, to say that the licence must include a condition saying that it has to be reviewed after 10 years, every 10 years, because we are not going to get that –

Mrs Christian: It does not say 'must'; it says 'may' and they do not have to include –

The Attorney General: No, it says 'shall'.

Mrs Christian: No, it says it *may* include a condition, but if the condition is included they *shall*.

Mr Butt: Mr President, the first 'may' on line 9 in effect gives the Commission –

Mrs Crowe: The Commission the right to approve the conditions or not.

Mr Butt: Yes.

The President: Well –

Mr Butt: Two ‘mays’ do not make a right!

The President: Mr Downie.

Mr Downie: Mr President, if Members will turn to... the pages are not numbered, but it is a condition of licence which is at clause 4 in the Broadcasting Act of 1993, it is quite clear a licence may include it. If we go to clause 2 of that Act, the licensing of programmed services, when looking at this legislation and looking at what has been proposed today, where Manx Radio is put, as it were, on a higher plane, it is given its own uniqueness, and separate legislation to control it. It is quite clear in this section as well, a licence may be granted for the provision of such a service, as is specified in the licence for such period not exceeding 10 years as the Commission thinks fit.

The Commission actually has the discretion, and I think this is referred to in a number of places in the legislation. Knowing that this new piece of legislation forms part of the group of Acts which the Communications Commission have to work to, it would know that Manx Radio was treated in a different way and have regard to that. There is no point in giving them a five-year licence if they know that everything else in the legislation makes reference to 10 years. It just does not make sense. Ten years actually strengthens it now because –

The President: Hon. Member, could we just stick with the point which Mr Attorney has made in relation to the two lines, line 9 and line 10. If you read line 9, it says, ‘in addition to those conditions which *may* be included in addition under subsection (1) of this section, the licence *shall* include conditions’. That is where the confusion is because the ‘shall’ replies to the addition which is in... they are permissive. We have got a number of conditions which they *may* but in addition to those they *shall* include this specific one, that is the way your amendment is worded. So long as we are all clear on that.

Mr Attorney.

The Attorney General: Well, Mr President, I think that is absolutely right. If I may, section 4, as proposed to be amended, is now to be divided up into two subsections. Section 4(1) starts off, a licence may include various things.

We then have a completely new regime which Mr President very correctly pointed out, which states that where a licence is granted to a public service broadcasting service, the licence *must*, it shall, contain certain conditions, so there is a completely new regime being created with the subsection, subsection (2) which is quite different from the discretionary part in subsection (1).

If Hon. Members are content with that, that is fine, but I do think it is my duty to point out that I quite agree with the Hon. Member, Mr Downie, it might make a nonsense to grant a public service licence for five years, but it can do that now under the new (3A), which we have just passed.

So in my respectful submission, you are definitely creating a duty for the Commission when granting the PSB licence to require a review at least every 10 years, so it does not make any sense at all to grant a licence of under 10 years.

The President: That is the point. As long as we all know where we are coming from. Ten. Mrs Christian. No hold on, just for the moment – one moment please. Are you happy? Mrs Christian.

Mrs Christian: Mr President, I think the Committee was of the view and of course Council can accept or reject its views that, if there is an extended licence period beyond the normal 10 years, there should be an obligation to carry out a review. So we are quite firm about the obligation and that is why we have suggested that the word ‘shall’ be substituted for the word ‘may’.

The difficulty seems to come perhaps, Mr Attorney – and forgive me if I misinterpret – the difficulty seems to arise, in perhaps drafting terms, in this view with the reference to the 10th and 20th anniversaries for a licence which might not be granted for that length of time.

I do not know whether he suggests it needs redrafting or whether it is simply not effective, I do not know, I think that may be, but I have no doubt at all what we meant about shall –

The President and another Member: Yes, that is right.

Mrs Christian: – so whether or not he feels that there should be some redrafting under the provisions in relation to the 10th and 20th anniversary of a licence which might not have been granted for a period over 20 years –

The President: Hon. Members, I think, if we can... I accept what Mrs Christian is saying and I do not think there is any doubt that everybody is of the same view that, if a licence is longer than 10 years, it shall be reviewed at the 10-year period, there is no doubt in that question.

The question which is being raised is, is there a confusion when the licence may be granted for less than 10 years and is the confusion in the drafting now in relation to this amendment and the part IV of the Broadcasting 1993 Bill.

Mr Attorney.

The Attorney General: Mr President, I do take the point made by the Hon. Member, Mrs Christian. I think the way out, if I could suggest it, is that it needs to be redrafted to say that – if I could just read: ‘In the case of a licence granted under section 2(2)(c) to provide a public service broadcasting service, in addition to those conditions which may be included under subsection (1) of this section, the licence shall, where the term of the licence exceeds 10 years, include conditions enabling the Commission to undertake a periodical review of the service at least every 10 years against such criteria as the Commission may prescribe.’

So in other words we are making it clear that this only kicks in where the licence is for more than 10 years.

The President: The ‘shall’ only applies if it is for 10 years, which is as I understood it.

The Attorney General: It is a technical point, Mr President, and I am sorry to raise it but –

The President: Mr Attorney, I have no problem over that. You have made the point many times that, in fact you are dealing with law and what you write is what somebody will interpret.

Mr Lowey: Would it assist, Mr President, if I suggest we adjourn it for a week to meet the requirement, unless there is an amendment... Well, if it is amended today that is fine, if it is able to be amended today, but again if we are amending it, do we then not need to make sure that it does not affect somewhere down the line?

I am very conscious... is there a pressure to get this Bill through at this moment today? If not, then I am just suggesting that we will meet the same response by getting an amendment that obviously reflects the wishes of the Committee and the chances of getting the legislation right.

Mrs Crowe: I think Mr President, if I may, I take the Member of Council's view, Mr Lowey, but really I think the intention of what all Members of the Committee wish, would be achieved by a very simple four-word amendment from the learned Attorney. I am sure all Members of the Committee are most grateful for pointing out that addition.

I think if we found, as we are moving through a little bit further, then certainly adjourn. I think if we can move this amendment, then the position would be solved and we can get this legislation back to the Keys the sooner.

Mr Lowey: I would agree Mr President, with Mrs Crowe, there was no deviation between the Committee, we knew what we wanted to do, we thought we had got the formula right, but it is right that a fresh pair of eyes can look... That is what Council and yourself is rightly pointing out, there is a fresh pair of eyes will actually... The result, however well meaning, does not interpret it right; the way we are looking at now is that we will get the intention and the result right.

So I am easy, I did not want any suggestion that we were divided on the Committee; we were not, we knew exactly what we were about.

The President: Mr Waft.

Mr Waft: I just think, I would make the comment that I think the whole Bill is connected with local broadcasting and it is to do with, more than anything, the heavy investment that is due to take place to be able to carry it into the future and the limitations placed on the licence reflect the investment they would have to make I would think we would be in that position.

The President: I just reiterate the point, Hon. Members, once the Bill is enacted that is what somebody will interpret and that is the problem.

Mr Lowey: It is not what was intended.

The President: I think Mr Attorney had some words with our Clerk and I am quite happy to take a moment or two to have this picked up and written out. So if Council are prepared to wait a moment or two, I am sure we would get it in...

Well, Hon. Members, whilst we wait to come back to clause 2. The amendments are for clause 1 which we have approved and the amendment as for clause 2. Now the Clerk is pointing out rightly, whilst we deal with that, there is nothing to stop us at this particular stage dealing with say clauses 3 and 4, which I understand there are no alterations from the Committee anyway. So perhaps Hon. Members, just holding on clause 2, we will revert to it this morning.

We will deal Mrs Crowe, with clause 3.

Mrs Crowe: Thank you, Mr President.

Clause 3 inserts a new section 12A into the 1993 Act which enables the Treasury to make grants to the holder of a public service broadcasting licence after consultation with the Council of Ministers and with the approval of Tynwald.

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

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

The President: Now Hon. Members, does any Member wish to speak to clause 3? In that case, Hon. Members, I will formally put to Council that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Difficult as it is sometimes, Hon. Members, we will deal with clause 4. Mrs Crowe, please.

Mrs Crowe: Thank you. I hope it is not difficult, Mr President.

Clause 4 provides the short title of the Bill and deals with the commencement of the Appointed Day Order and this may be cited as the Broadcasting (Amendment) Act 2007 and, with the Broadcasting Act 1993, may be cited together as the Broadcasting Acts 1993 to 2007.

The President: Hon. Members, I think that we can accept that the dates in relation to the year that it will be enacted will be naturally picked up.

Mrs Crowe: And the Act shall come into operation on such day or days as the Department of Home Affairs may by Order appoint.

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

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

The President: Again Hon. Members, I put it simply to Council that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Within a moment or two now, hopefully, if our technology works, we will have coming off the printer details of what we have amended.

Mrs Christian: Mr President, perhaps while we wait we could ask the advice of the learned Attorney on the interpretation of 'enabling', whether it should require the Commission to review at 10 years?

The President: Right, now I think the easy way of planning this Hon. Members, if Mr Lowey is prepared to accept Mr Attorney's words on that one, I see no reason why we could not substitute the amendment, which is now being suggested, rather than a printed amendment which is the second one of the Committee's Report. I think if Mr Lowey is content.

Mrs Crowe: Could I just, Mr President?

Mr Lowey: Yes, I am content, Mr President.

The President: Right.

Mrs Crowe: Just before moving that amendment, Mr President, could we have a determination from the Attorney General and perhaps wrap it up in the same amendment if it is required? It is just the alteration of the licence, which will now read the licence *shall* include conditions and the word is 'enabling' and we were just wondering, should that word be 'required', which might just make it rather more...?

The President: Mr Attorney, the suggestion is that maybe the words, 'include conditions *requiring* the Commission to undertake the review' rather than *enabling* the Commission.

The Attorney General: I have to say, Mr President, that from what the Hon. Members have said, namely that the Committee were determined that if it was for more than 10 years, there had to be a review, it would be better to have requiring than of enabling, I would have thought.

Mrs Crowe: Well, it is only one word.

The President: It is definition of 'enabling' and definition of 'requiring'. Again it would be more... my understanding was that the Committee were trying to be definitive in saying if it is more than 10 years, it has to be and therefore I think 'requiring' is actually a stronger word, is it not, than 'enabling'?

Have we all got a copy now of the amendment?

Mrs Christian: Yes.

The President: Right. So, Mr Lowey, you are prepared to now not move the Committee amendment, but in fact move the amendment, which is now on a white paper before us, which is actually in the name of Mr Attorney. You are content to accept that?

Mr Lowey: I am, yes.

Mrs Crowe: Is it this amendment or with the words 'requirement' added?

The President: We want to add that now. We want to add into that now the licence may include conditions 'requiring' so that would be on line 12, replace 'enabling' with 'requiring'. So it comes in, on your amendment you have got on line 10, you will now have line 12, for 'enabling' – there we are, it is already done for me – substitute 'requiring'.

I think for clarity then – Mr Lowey is happy – Mr Attorney, can you move that as an amendment? You move this now as an amendment.

The Attorney General: Thank you, Mr President. I beg leave to move the amendment standing in my name:

Clause 2

Page 3, line 10: For 'may' substitute 'shall, if the licence is granted for a period exceeding 10 years'.

Page 3, line 11: For 'enabling' substitute 'requiring'.

Page 3, line 13: For 'on the tenth and twentieth

anniversary of the grant of that licence' substitute 'at least every 10 years'.

The President: It is circulated on the white paper.

Mr Waft: I second that.

The President: Mr Waft has seconded that. Now Hon. Members, that clarifies the position, so that in clause 2 you have now before you, having considered that wording, you have the words on the white paper before you now, moved by Mr Attorney. Does anybody wish to add anything to that?

Mrs Christian: Mr President, I think that satisfies an improvement in the drafting and clarifies the feeling that in the light of an extended licence there shall emphatically be a review.

Mrs Crowe: We thank Mr Attorney for his help.

The President: Thank you, Hon. Members. What I will put to Council is the amendment on the white paper circulated in the name of Mr Attorney. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, having cleared the Committee Report and earlier moved clauses 3 and 4 of the Bill, we have reached the end of that particular stage.

Broadcasting (Amendment) Bill

Standing Order 22(2) suspended to take Third Reading

The President: Mrs Crowe.

Mrs Crowe: Mr President, could we suspend Standing Orders and move the Third Reading to enable this Bill to be dealt with?

I move:

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

Mr Downie: I would like to second that Mr President.

The President: Hon. Members, you have had the suggestion that we seek the suspension of Standing Orders to proceed with the Third Reading. Those in favour, Hon. Members, please say aye; against, no. The ayes have it.

Broadcasting (Amendment) Bill

Third Reading approved

The President: Mrs Crowe, we move on to the Third Reading.

Mrs Crowe: Thank you, Mr President.

In formally bringing the Third Reading, I would like to thank the Attorney General for being so helpful at this sitting of the Legislative Council in bringing forward the

amendment that I think clarifies, with certainty, exactly what the Committee felt should be put as part of this Bill, if indeed licences for the public service provision were to be issued for what would be quite a lengthy period of time.

I am also conscious that we did try to take on board the views of the Communications Commission and, indeed, of Manx Radio in our deliberations to enable the Bill now to read with the spirit of not only what was the intention of Tynwald, but the original Bill that came from the Department of Home Affairs and all other interested parties. So I do hope it will progress now as speedily through another place.

Mr President, I beg to move:

That the Broadcasting (Amendment) Bill 2007 be now read a third time and do pass.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President, and I would reiterate that I did hope that in another place the amendments will find some favour. I accept that amending subclause (1), we have made a variation on what they determined. However, they were permissive also about the 30-year licence, so I hope they will accept we are still being permissive, but more flexible.

The President: Mr Lowey.

Mr Lowey: I too have been on the Committee. The role of the Council is to try and reflect the wishes, not just of the elected House but of Tynwald Court that decided this policy. I am just trying to make it a more practical document and, to that, I too would endorse the comments of the previous two speakers and the role of Mr Attorney.

The role of this Council is not to speedily get the legislation through, but to reflect what I would call the aims and objectives in a practical working document. I think we have tried in this and that is the message that I would like to give to the Keys. We are trying to be helpful and not to be...

I would also like to point out that if the witnesses that gave evidence to the Commission... it was a very constructive dialogue with the people that we had before us, they were extremely helpful and duly worked with us, not against the grain. They were working with us.

With that I would support the Bill.

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

I would just like to comment on a clause we did not discuss today, clause 3, which is perhaps the most important section in the Bill, which provides the commitment to provide some public funding towards Manx Radio for years to come, which perhaps may give them some reassurance for the future.

The President: Mr Waft.

Mr Waft: Yes, I think, Mr President, it is essential that we do carry through the spirit of what was envisaged with regard to this Broadcasting (Amendment) Bill. I think we have and I do not think we have watered it down to any degree, probably clarified in a certain place, but I think we

should, when we do look at Bills, carry forward the spirit of what is envisaged within the Bill itself and we do not defer from that.

Thank you, Mr President.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I think we have reiterated that we have indeed, as Mr Waft has said, tried to carry forward the spirit of the Bill and in fact to clarify what that spirit was, for all parties.

Thank you, Mr President.

The President: Hon. Members, the motion that I put to Council is that the Broadcasting (Amendment) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

It is somewhat remarkable, is it not, how one word can make the difference.

Standing Orders Committee of the Legislative Council Mrs Christian elected

3. Election of one Member.

The serving Members of the Committee are Mr President and Mr Lowey and H M Attorney General (ex officio)

The President: We deal now, Hon. Members, with our Order Paper, Item 3 then, the Standing Orders Committee of the Legislative Council and we need to elect one Member. The serving Members of the Committee are myself and Mr Lowey and Mr Attorney, ex officio. The Standing Orders Committee of the Legislative Council, to elect one Member.

Mrs Crowe: Sorry, Mr President. Could I put forward the name of Mrs Christian to go on the Standing Orders Committee?

Mr Lowey: I beg to second that, sir.

The President: No other nomination being made, Hon. Members, Mrs Christian will then become our new Member on the Standing Orders Committee for the Legislative Council.

Joint Committee on the Emoluments of Certain Public Servants Mrs Crowe elected

4. Election of one Member.

The serving Council Members are Mr Lowey and Mr Waft.

The serving Keys Members are Mr Speaker, Mr Anderson, Mrs Craine and Mr Crookall.

The President: Item 4 on your Order Paper, Hon. Members: the Joint Committee on the Emoluments of Certain

Public Servants. Again the election of one Member. Now the serving Council Members are Mr Lowey and Mr Waft. The Keys Members are Mr Speaker, Mr Anderson, Mrs Craine and Mr Crookall. Election of one Member, Emoluments of Certain Public Servants.

Mr Downie: I propose Mrs Crowe.

Mr Lowey: I beg to second, sir.

The President: Again, Hon. Members, with the one

nomination of Mrs Crowe, then Mrs Crowe is then duly elected to serve as a Member of the Legislative Council on the Joint Committee on the Emoluments of Certain Public Servants.

I think Hon. Members, that brings us to the conclusion of our Order Paper, Hon. Members.

The Council will now sit in private.

The Council sat in private at 11.35 a.m.