



SECOND REPORT OF THE STANDING ORDERS COMMITTEE OF TYNWALD

SESSION 2007 - 2008

STANDING ORDERS COMMITTEE OF TYNWALD

The Hon S C Rodan SHK (Garff)

Mr G D Cregeen MHK (Malew and Santon)

Mr E A Crowe MLC

Mr E G Lowey MLC

Hon G M Quayle MHK (Middle)

The remit of the Standing Orders Committee is stated by paragraph 7
of the Schedule to Standing Orders

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**To The Honourable Noel Q Cringle, President of Tynwald, and
the Honourable Members of the Council and Keys in
Tynwald assembled.**

**SECOND REPORT OF THE STANDING ORDERS COMMITTEE FOR
THE SESSION 2007-08**

Introduction

- 1 This Report deals with three substantive matters which have been brought to your Committee's attention since our First Report this Session. They are:
(i) the resolution of the Court at its May 2008 sitting with regard to the remit of the Scrutiny Committee, (ii) the order of voting on divisions, and
(iii) the right of reply to amendments.

The Remit of the Scrutiny Committee

- 2 The current remit of the Standing Committee on Scrutiny is set out in the Appendix A to this Report. At the May 2008 sitting of the Court, it was resolved that:-

The Standing Orders Committee of Tynwald review the remit of the Scrutiny Committee, with a view to making express provision for the Committee to consider Orders in Council extending primary legislation to the Isle of Man and to propose amendments.

- 3 The matter had come before the Court on an interim Report from the Select Committee on Immigration, whose reasoning with regard to the remit of the Scrutiny Committee was as follows:-

“3. Your Committee [on immigration] has undertaken investigation and research into United Kingdom immigration policy and the extent to which the Isle of Man is obliged to comply with changes to that policy. The work of the Committee coincided with a substantial updating of the Island’s immigration legislation which came to fruition at the sitting of Tynwald in April 2008. A “Memorandum for Tynwald Members” was provided along with the papers for that sitting and is attached for reference to this Report. In summary, the updating comprised –

- (i) the Immigration (Isle of Man) Order 2008 (UK SI 2008 No. 680) (“the 2008 Order”). This is an Order in Council, which extends UK primary legislation to the Island. It consolidates previous Orders in Council made in 1991 and 1997, and brings the position up to date by extending to the Island relevant provisions of UK primary legislation enacted between 1996 to 2006. In line with normal procedure, the extension of each enactment was approved by a motion of Tynwald (see paragraph 1.6 of the “Memorandum for Tynwald Members”) and the 2008 Order, once made, was laid before Tynwald for information; and
- (ii) sixteen statutory documents made under the powers in the 2008 Order to update the Island’s secondary legislation. These have the reference numbers SD 172/08 to 187/08 and are listed in the Annex to this Report.

4. Your Committee [on immigration] has noted the complexity of this legislation and that the explanatory documentation does not indicate substantial political input. This is an important issue because your Committee believes that immigration is a policy area with far-reaching implications for the Isle of Man and that, as such, it merits consideration by the Island’s politicians. The purpose of this Report is to draw this to the attention of the Court and to propose a means by which additional political input could be made into the development of legislation in this area.

5. As far as the 2008 Order is concerned, your Committee understands that the purpose of the Order is to extend UK primary legislation to the Island with “appropriate adaptations and modifications”; and that this purpose has been endorsed by Tynwald through debates on a series of motions. Your Committee would comment that, while the Order itself is a complex document, its purpose is easily expressed. To that extent, an opportunity has already been given for a degree of input by the Island’s politicians into the policy associated with the Order. In terms of overseeing the implementation of that policy, however, your Committee believes that it would be desirable for Tynwald to undertake detailed scrutiny of the 2008 Order, to provide independent assurance that any adaptations and modifications which have been made are indeed appropriate.

6. The Committee of Tynwald best placed to do this is the Scrutiny Committee. *The remit of that Committee as set out in the Standing Orders of Tynwald Court refers to “secondary legislation” and strictly speaking the 2008 Order is an instrument of primary legislation. Nevertheless, it is arguable that as a UK Statutory Instrument the 2008 Order has some of the characteristics of secondary legislation;*¹ and that, in any case, it is open to the Court by resolution to ask one of its Committees to take on any appropriate task. Your Committee accordingly recommends:

¹ The emphasis here has been inserted by this Report to highlight the issue concerning the remit.

(i) that the Immigration (Isle of Man) Order 2008 (UK SI 2008 No. 680) be referred to the Scrutiny Committee to consider (with particular regard to the appropriateness of any adaptations and modifications the Order makes to UK legislation) and to report to Tynwald; and

7. Further, as the uncertainty in interpreting the remit of the Scrutiny Committee is itself undesirable, your Committee recommends:

(ii) that the Standing Orders Committee of Tynwald review the remit of the Scrutiny Committee, with a view to making express provision for the Committee to consider Orders in Council extending primary legislation to the Isle of Man and to propose amendments."

4 The concern is thus simply stated, that the Scrutiny Committee should have power to examine Orders in Council extending primary legislation of the United Kingdom to the Isle of Man on the same basis as it can examine secondary legislation enacted in the Isle of Man.

5 Although it would be unusual for United Kingdom secondary legislation to be extended to the Isle of Man by Order in Council, there may be cases in which for technical reasons that course may be needed; it seems to us therefore sensible that any extension of the Scrutiny's Committee's remit should provide for that eventuality also. This could be achieved by adding a new subparagraph 5.5 to the Scrutiny Committee's remit:

5.5 In paragraph 5.3, 'secondary legislation' includes Orders made by Her Majesty's Privy Council extending to the Isle of Man the provisions of an Act of Parliament or of any Order, Rules or Regulations made thereunder.

The order of voting on divisions

6 The system of electronic voting introduced during the Session 2006-07 is governed by Standing Order 3.18, reproduced in Appendix B to this Report. It will be seen that Order 3.18(13) specifically disappplies the rule in Order 3.18(3) that the Keys' votes are taken before those in the Council.

- 7 The question was raised with your Committee by the Member for Glenfaba, Hon D M Anderson MHK, whether the experience with this change had been satisfactory, and whether the system should not now revert to the former sequential voting pattern in which the Council vote only when the Keys' vote is known.
- 8 An important reason for introducing contemporaneous electronic voting in the Keys and the Council was technical; considerable difficulty had been experienced with the development of the software for the electronic voting system, and the initial teething problems with it will still be fresh in memories. Manx Radio, who designed and developed the system, are however now confident that it is working reliably, and experience bears that out. An estimate of the cost of the adaptation needed to revert to sequential voting of the Keys and the Council is of the order of £2,000.
- 9 It would therefore be feasible, and not greatly expensive, to re-establish the pattern of sequential voting hitherto in use. There are, however, contrasting views on whether this should be done, or whether the rationale which underlay the decision to move to electronic voting points to leaving the system as it is.
- 10 In favour of reverting to the practice of sequential voting is the view that there was a constitutional purpose in allowing the Council to take account of the votes in the popularly elected chamber before deciding how their votes should be cast.
- 11 On this view, the Council should at least be conscious of the Keys' vote when about to cast their own votes, and take them into account before deciding whether they feel justified in voting in a contrary manner - if that is what they are otherwise disposed to do. Thus, it is said, the absence of this opportunity may at times give rise to apparent conflict between the branches which might have been avoided had the traditional voting practice been used, with the brief pause it allows for reflection.

- 12 In this context, the provision in Standing Order 3.19 for a combined vote the following month, where a motion has been carried in the Keys but lost in the Council, recognises that the two branches do not have equal status in the event of disagreement - as does the provision in Order 3.18 that the President's casting vote when the Council is divided goes in favour of the Keys. These provisions have never been seen as implying a reflection on the independence or integrity of the Council's Members and a return to sequential voting would carry no such implication.
- 13 An opposing line of argument, which would favour allowing contemporaneous voting to continue, is drawn from the rationale for preferring an electronic voting system to the traditional called division. It will be recalled that the objection to the called division was that it tended to distort voting patterns by facilitating tactical voting; the earliest Member to vote was, evidently, not in the same position as the last Member to vote, since it could be seen as the voting progressed which way the matter was going and which Members had voted for or against.
- 14 Electronic voting cures that problem and all Members vote at once without knowing how any other Member has voted. On the same basis, it could be argued that if the Council and the Keys vote simultaneously there is no opportunity for the pattern of voting to be distorted: all vote at once, in ignorance of the other votes, in whichever branch they are cast and by whichever Member they are cast. The result therefore, it may be urged, is to achieve the most uninfluenced pattern of voting possible, and to avoid any suggestion that the Council is expected to defer to the Keys.
- 15 Having examined these issues, various members of your Committee could see force in both the opposing arguments, and saw merit in inviting Members of Tynwald generally to express their views on them, either in the course of debate on this Report or, if they prefer, in writing to the Clerk of the Committee. In the light of what Members feel, we will find ourselves in a better position to reach a conclusion on Mr Anderson's proposals and make a recommendation to the Court.

Replies to amendments

- 16 A proposal has been put to your Committee by one of the Members for Douglas East, Mrs B J Cannell MHK, that Standing Order 3.26 should be amended to allow a right of reply to a Member moving an amendment to a motion. At present, this Order only allows a right of reply to the mover of a motion or the mover of an adjournment.
- 17 This issue is one which has been very thoroughly debated in the past, in particular when the current Standing Orders of Tynwald were comprehensively revised in 1995 and 1996. A right of reply to an amendment has been permitted in the Keys since 1988 but, despite an initial recommendation by our predecessors in 1995 that Tynwald Standing Orders should allow the same right in Tynwald, opinion in the Court was against it and the change was not made. Full details of the discussion appear from the Hansard reports of the debates which are at Appendix C.
- 18 In summary, the case for allowing a right of reply to amendments is that comments may be made on the amendment during debate which are, in the mover's view at least, misleading or incorrect, and which if not corrected may result in a conclusion on the amendment reached on the basis of incomplete or incorrect information, which is evidently not a desirable state of affairs. The same logic, it is said, which allows the mover of a motion the right of reply must allow a reply to the mover of an amendment: if a matter is to be debated at all, it should be debated thoroughly and all the factors relevant should be brought out.
- 19 This case for allowing a right of reply to the mover of an amendment is arguably supported by the frequency with which 'points of order' are being raised. In truth, they are often not points of order at all, but a means by which a previous speaker who no longer has an opportunity to speak seeks to correct or challenge what he or she believes to be a misrepresentation or misapprehension. The fact, however, that this device is seen as needed could suggest that the present rules of debate are too rigid.

- 20 Against allowing a right of reply to amendments is the argument that the custom and practice of Tynwald allows virtually any change to a motion under the guise of an amendment, so that there needs to be a counter-balance to that freedom by way of a restriction on debate, in order to prevent debates becoming so prolonged and diverse that business is effectively impeded as a result.
- 21 The practice with regard to the scope of amendments is, on its face, apparently lax. An amendment which begins: *delete all the words after 'That'*, as many do, and proceeds to substitute a substantially different motion for the one being debated, is arguably no amendment but a new motion, and moreover one moved without due notice. But while it is easy to state that objection in principle, it is very difficult to devise a workable method of preventing it happening. An on-the-spot decision as to whether a proposed amendment is or is not within the spirit of the motion would be almost impossible to achieve.
- 22 Whether or not an amendment is within the scope of the motion, however, it can be argued that a disadvantage in allowing a right of reply to the mover of the amendment is that the result is in any event to prolong the debate. This disadvantage is multiplied by the number of amendments moved, and it is quite common for there to be two or three amendments to a motion. If each amendment were to be accompanied by a right of reply – there being no restriction on the length of the speeches – it is clear that the time needed for the dispatch of the business of Tynwald would be lengthened significantly.
- 23 It is worth also reflecting on the reasons given for the right of reply having been accepted in the Keys, but not in Tynwald. Thus, it is said that the very specific and technical nature of legislation, the main subject of proceedings in the Keys, makes it especially necessary that, even at the cost of prolonging the proceedings, the implications of matters should be very thoroughly debated.

- 24 The rationale for making that distinction between proceedings in the Keys and those in Tynwald is that statute law cannot easily be amended once enacted. By contrast, many of the decisions of Tynwald on policy matters, for example, do not necessarily have such wide implications in terms of their permanency; the efficient conduct of business can therefore safely be allowed greater weight in that context. (It may be said that the more flexible procedure in the Council does not offer a fair basis for comparison with either Tynwald or the Keys, on account of the difference in the sizes of the assemblies.)
- 25 Research shows that, in earlier times a middle way of addressing the problem under discussion was by allowing interventions if the Member speaking agreed to give way. This is a procedure used in the House of Commons to good effect, and would allow the mover of an amendment who believes that a further clarification is called for to seek the indulgence of the Member speaking to give way while that clarification is offered.
- 26 There are various nuances which could be attached to a procedure of this kind. For example, if the Member speaking declined to give way, the intervener might seek the leave of the President to intervene; or the possibility of intervention might be restricted to the mover of an amendment, or it might be open to all Members. Interventions, being of their nature brief, the concern about prolonging debates excessively if a full right of reply to an amendment were to be permitted would in large measure be addressed.
- 27 As in the case of Mr Anderson's proposal with regard to voting, your Committee could see force in the opposing arguments and merit in inviting Members of Tynwald generally to express their views on them, either in the course of debate on this Report or, if they prefer, in writing to the Clerk of the Committee. We will then review the matter further before making a recommendation to the Court.

Technical amendment

- 28 In Standing Order 10.6 – Bills to be signed by a quorum of each Branch – the reference to section 10 of the Constitution Act 1961 is now to section 1 of the Constitution Act 2006.

Recommendations

- 29 **The following changes to Tynwald Standing Orders with effect from the start of the Session 2008-09 are recommended:-**

(i) Add to paragraph 5 of the Schedule to Standing Orders (remit of the Scrutiny Committee) a new subparagraph:

5.5 In paragraph 5.3, ‘secondary legislation’ includes Orders made by Her Majesty’s Privy Council extending to the Isle of Man the provisions of an Act of Parliament or of any Order, Rules or Regulations made thereunder.

(ii) In Standing Order 10.6 - Bills to be signed by a quorum of each Branch – for the reference to section 10 of the Constitution Act 1961 substitute a reference to section 1 of the Constitution Act 2006.

S C Rodan (Chairman)
G D Cregeen
E A Crowe
E G Lowey
G M Quayle

June 2008

APPENDIX A

Remit of the Scrutiny Committee

5. Scrutiny Committee:

5.1 There shall be a Standing Committee of the Court on Scrutiny.

5.2 The Committee shall be composed of five Members.

5.3 The Committee shall -

(a) consider -

- i. items of approved or rejected secondary legislation which have been referred by Members; and
- ii. other items of secondary legislation as the Committee sees fit; and report to Tynwald as and when the Committee sees fit.

- (b) i. examine the Annual Tynwald Policy Decisions Report and consider whether the action taken has adequately responded to Tynwald resolutions,
- ii. consider whether any of the Tynwald Resolutions which have not been fully implemented are appropriate for removal from the list; and
 - iii. lay an Annual Report before Tynwald, with recommendations for action where appropriate.

(c) be authorised in terms of sections 3 and 4 of the Tynwald Proceedings Act 1876 as amended and of Standing Orders to take evidence and summon the attendance of witnesses and further to require the attendance of Ministers for the purpose of assisting the Committee in the consideration of its terms of reference.

5.4 A Member of the Committee shall not sit when an item is being considered, in respect of which -

- (a) the Member could be perceived as having a personal interest; and/or
- (b) the Member is a member of the Department with responsibility for that item, or was a member of that Department at the relevant time.

APPENDIX B

Standing Order 3.18

Voting on a Division

- 3.18** (1) Every Member entitled to do so, and present in Tynwald when a motion is put, shall vote.
- (2) Unless otherwise provided, the Council and Keys shall vote separately.
- (3) Except as otherwise provided, the votes shall be taken orally, the Keys votes being taken first.
- (4) Each vote shall be recorded by the Clerk of Tynwald.
- (5) In the case of confusion or error concerning the numbers on a division, the vote shall be taken again.
- (6) The Speaker shall announce the result of the voting in the Keys and the President the result of the voting in the Council.
- (7) Unless otherwise provided a motion shall be determined in a Branch by the majority of votes of the members of the Branch then present in Tynwald.
- (8) The President shall declare the decision of Tynwald.
- (9) Unless the motion has been carried in each Branch, the President shall declare the motion to be lost.
- (10) Where there is an equality of votes in the Keys the motion shall be lost in that Branch.
- (11) Where there is an equality of votes in the Council, the President shall have a casting vote, but shall only exercise such vote to ensure that the vote of the Council is the same as that of the Keys.
- (12) From and after the sitting of the Court in December 2006, votes shall for the remainder of the Session be taken by a system of electronic voting in accordance with directions issued by the President. *(July 2006)*
- (13) Where votes are taken by means of electronic voting, the Council and the Keys shall vote simultaneously and paragraph (3) above shall not apply. *(July 2006)*
- (14) If after a division has been taken by electronic voting a Member so requests, the Clerk of Tynwald shall read out the names of the Members voting and indicate the votes which they have cast, those for and those against. *(July 2006)*

APPENDIX C

Hansard reports of the debates in 1995 & 1996 on the revision of
Tynwald Standing Orders

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