



HOUSE OF KEYS

ELECTIONS TO LEGISLATIVE COUNCIL 2010

GUIDANCE NOTE

ISSUED UNDER THE AUTHORITY OF MR SPEAKER

Key dates

- Four members come out of office from the Legislative Council on Monday 1st March 2010: Mr Butt; Mr Crowe; Mr Downie and Mr Waft.
- Mr Speaker will issue his invitation for nominations on Monday 1st February 2010.
- In 2010 the deadline for nominations will be Monday 1st March at 5.30 p.m.
- Mr Speaker, using his powers under SO 8.2 (2)(i), has decided that the election will be held on Monday 15th March at 10 a.m.

ELECTIONS TO THE LEGISLATIVE COUNCIL

March 2010

Introduction

- 1 The purpose of this Guidance Note is to inform Members (and potential candidates) about the procedure to be followed in the elections to Legislative Council for 2010. The Note follows the recent Report of the Standing Committee on Standing Orders, which was debated on 8th December, except that the bullet point guidance notes at the end have been added to in the light of questions raised in debate on the Report.
- 2 The law relating to election of Members of the Legislative Council was amended by the Constitution (Amendment) Act 2008. The Standing Orders of the House of Keys were amended to take these changes into account just before Christmas 2009,¹ in anticipation of four members coming out of office from the Legislative Council at the end of February 2010: Mr Butt; Mr Crowe; Mr Downie and Mr Waft.
- 3 The timescale for retirement by rotation of elected Members of Council is that every elected member of the Council shall go out of office at the end of February next following the fourth anniversary of the date on which he/she was so elected.² In 2010 28th February is a Sunday. Section 36(b) of the Interpretation Act applies, so that *Members go out of office on Monday 1st March.*

¹ See Annex I for the the current Standing Orders relating to elections to Legislative Council, as amended in December 2010.

² Isle of Man Constitution (Elections to Council) Act 1971, s 10 as amended.

4 The law now provides that, when there is a vacancy in the Legislative Council to be filled, an invitation to nominate candidates is addressed to the Members of the House of Keys, following which the vacancy shall be filled at a single sitting of the House; and that voting at that sitting on the persons nominated shall take place in accordance with such provision as may be made by Standing Orders of the House.

5 **Election of Members to Council**

The principal Act under which Members are elected to the Council is the Isle of Man Constitution (Amendment) Act 1919, as amended.

- Section 7 provides that the Council shall include eight elected Members.
- Section 8 provides that such Members are to be elected by the Keys.
- Section 10 provides that elected Members have a (nearly) five-year term ending on the last day of February.
- Sections 12 to 18 make further provision about who can be an elected Member and how casual vacancies can arise (e.g. if a Member fails to turn up for six months).
- Section 22 provides that casual vacancies are to be filled in the same way as normal vacancies.

Section 8 only provides in general terms that it is up to the Keys to elect Members to the Council. Further detail is provided in the Isle of Man Constitution (Elections to Council) Act 1971 (which is printed in the Annex II to this Note, in its current form, as amended by the 2008 Act).

The main changes as a result of the 2008 Act are described below.

Before the Election

Calling for Nominations

- 6 Up to 2008, the Secretary called for nominations and he did so at a time directed by the Speaker. This was done about three weeks before the first election sitting.
- 7 Under the 2008 Act, the Speaker invites nominations and he has to do so at the time specified in the 2008 Act, namely one month before a normal vacancy occurs, or as soon as practical after a casual vacancy occurs (new section 2(1B)).
- 8 As pointed out above, in 2010 the last day of February is a Sunday. Applying section 36(b) of the Interpretation Act means that Members go out of office on Monday 1st March. **The Speaker will therefore issue his invitation for nominations on Monday 1st February 2010.**

Nominating candidates

- 9 Previously, Members had to submit their proposals in writing to the Secretary *not less than 10 days before the election sitting* (section 2(1A) of the 1971 Act).
- 10 Under the present arrangements, Members have to submit their proposals in writing to the Secretary up to *one month after proposals have been invited* (new section 2(1C)).
- 11 In 2010 the invitation will go out on Monday 1st February and the deadline for nominations will be **Monday 1st March at 5.30 p.m.** The Secretary of the House will distribute to Members copies of all nominations (SO 8.2(4)). This will be done as soon as possible after nominations close.

Timing of the election

- 12 Up to 2008 the election sitting had to happen *within 14 days from* the date on which Members go out of office under section 10 (i.e. when a normal vacancy arises).³ However, the words “Within 14 days from the date on which” in the 1919 Act were changed to “Where” by section 1(5) of the 2008 Act.
- 13 The timing of the election sitting is provided by the new section 2(1E) inserted into the 1971 Act by the 2008 Act. It is set as *not less than 14 days after* the end of the period for making proposals but “as soon as practicable thereafter”. This means that the earliest date on which the election can be held is Monday 15th March 2010.
- 14 Mr Speaker, using his powers under SO 8.2 (2)(i), has decided that *the election will be held on Monday 15th March at 10 a.m.* This will allow (if the House agrees) for the possibility that some or all of the vacant seats on the Legislative Council will be filled.

Election procedure

Majority required

- 15 Previously, if a candidate got a majority of those present and voting but this was less than 13, there was a further vote on that candidate alone (sections 2(3)–(5) of the 1971 Act and SO 8.3(9)) and if he got up to 13 he or she was elected. These sections in the 1971 Act have now been repealed. It is still a requirement, however, that a candidate must achieve 13 votes in order to be successful.

³ 1919 Act, section 8

- 16 Before the 2008 Act, the 1971 Act provided for repeated votes on candidates with insufficient majorities. If vacancies remained, the Speaker announced a further election under SO 8.3(10). Now, if there is still a vacancy after all the candidates nominated in advance have been voted on, Members may nominate from the floor (new section 2(1I)).
- 17 Mr Speaker may suspend the House at this point for private discussion (see new SO 8.2(2)(ix)). A nomination from the floor need not be accompanied by a written CV or other information. However, a Member making a nomination from the floor is required to inform the House that the nominee has been consulted and has indicated willingness and capacity to serve (see new SO 8.2(2)(ix)).
- 18 Once a round of elections has started, it is to be finished on the same day, although it may be adjourned to the next day, but only once. The House is not allowed to turn to any other business until it has dealt with the elections: see New section 2(1F) (and see new SO 8.2(2)(vi)(b) & (c)).
- 19 If, after the written nominations have been considered and voted on, and after nominations from the floor have been voted on, and there are still vacancies, Mr Speaker may call for fresh nominations and there will be a limit of a further period of one month for these to be made in writing. (New section (1K)).
- 20 Points of detail:
- The order of names of nominees on the Order Paper will be alphabetical.
 - When nominations are taken from the floor a new ballot paper will be prepared with all nominations and the result will be announced with the number of votes for each candidate.

- All nominations will be taken from the floor at once. The process will be stopped when there are no more nominations, or when the House would have no one eligible to serve as a scrutineer.
- Any names already voted on will be able to be re-nominated immediately; any such candidates must be re-nominated and seconded and the Member nominating must indicate that the nominee is still willing to serve.
- There will be a maximum of nominations to ensure that the scrutineers can be named, depending on whether the person nominated was a Member of the Keys or not.
- The Speaker is not eligible to nominate or second a candidate nor serve as a scrutineer.
- Members are able to nominate or second candidates up to the number of remaining vacancies both in writing and from the floor.
- Candidates who are MHKs are not eligible to serve as scrutineers.
- It should be noted that there is no rule against Candidates being able to nominate or second themselves.
- Mr Speaker has discretion when to adjourn the election process under Standing Order 8.2 (2)(vi)(b); therefore, the sitting will not necessarily end at 5.30 p.m. under the usual rule.
- There is no restriction on nominees proposing and seconding other candidates.
- Candidates who fail to obtain the requisite number of votes may be re-nominated on any subsequent vote. Each vote is a fresh vote with fresh nominations.
- The provision in SO 8.3(8) that length of term goes with the number of votes cast relates to votes cast in a particular voting round: previously elected candidates are always senior for these purposes to those who are elected afterwards.

Any further arrangements may be made by the Speaker under the general provisions of SO 11.5, which gives him power to determine procedure not otherwise catered for in Standing Orders.

The Hon S C Rodan

Speaker

December 2009

ANNEX I

The Standing Orders of the House covering elections to Legislative Council, as amended in December 2009, are as follows:-

VIII: ELECTIONS TO THE LEGISLATIVE COUNCIL

Vacancies of elected Members of the Council

8.1 (1) Where any Members elected to the Council by the House go out of office pursuant to section 10 of the Isle of Man Constitution Amendment Act 1919, the House shall elect in the manner provided by section 2 of the Isle of Man Constitution (Elections to Council) Act 1971, as amended, to serve as Members of the Council, such number of persons as are equivalent to the number of persons who have so gone out of office. Within three days after that election a return shall be made, under the hand of the Speaker of the House, to the President of Tynwald certifying the decision of the House and giving the names and addresses of the persons so elected.

(Isle of Man Constitution Amendment Act 1919 s8, as amended)

Casual Vacancy

(2) Should any casual vacancy occur in the office of elected Member, by death, resignation, disqualification, or otherwise, the House shall forthwith fill up the vacancy by election in the manner provided under these Standing Orders.

(c.f. Isle of Man Constitution Amendment Act 1919 s22)

Elections to the Council

8.2 (1) When it is necessary to elect a person to fill a vacancy for an elected

Member of the Council, Members of the Keys may, upon being invited to do so by the Speaker, propose persons to be candidates for election to the Council.

(Statute Law Revision Act 1989 Sch 1 and Constitution (Amendment) Act 2008 s.1.)

(2) The following procedure shall apply to elections to the Legislative Council -

- (i) The Speaker shall, notwithstanding any other provisions in Standing Orders, choose the day for holding an election to the Legislative Council and the Secretary shall notify Members of the House in writing of the date when the election is to take place and the date by which nominations must be received.
- (ii) The Speaker shall invite members of the Keys to propose persons to be candidates for election to the Council -
 - (a) one month before an elected member of the Council goes out of office in accordance with section 10 of the principal Act (retirement);
 - (b) as soon as practicable after an elected member of the Council goes out of office, or a vacancy otherwise occurs, for any other reason.
- (iii) Proposals may be made at any time during the period of one month immediately following the invitation made by the Speaker.
- (iv) All proposals shall be in writing and delivered to the Secretary of the House and shall be accompanied by particulars in writing of -
 - (a) the qualifications and experience of the candidate, and
 - (b) the reasons why the proposer considers the candidate to be suitable to be a member of the Council.
- (v) The sitting of the Keys at which the election to the Council is held shall be not less than 14 days after the end of the period for the making of the proposals, but as soon as practicable thereafter.

- (vi) (a) In this Standing Order -
 - (aa) a 'round of elections' means voting by the Keys on candidates proposed in accordance with subsections (ii) to (iv) or under subsection (ix); and
 - (bb) a round of elections is 'completed' when all the vacancies have been filled or the Speaker has called for proposals under subsection (xi).
 - (b) Once the Keys have commenced a round of elections then, subject to paragraph (c), that round of elections must be completed on that day; and, notwithstanding any other provisions of Standing Orders, the Speaker shall have discretion to determine the time at which a sitting of the Keys to elect Members of the Legislative Council shall adjourn.
 - (c) A round of elections may be adjourned to the next day once only.
 - (d) When a round of elections appears on the Keys Order Paper for a sitting then, once it has commenced, no other business may be taken by the Keys sitting alone either that day or the next day until that round of elections is completed.
- (vii) Each member of the Keys shall, at each stage of an election to the Council either -
 - (a) vote for any one or more candidates up to the number of vacancies to be filled; or
 - (b) vote for no candidates.
 - (viii) A voting paper that does not comply with either paragraph (a) or paragraph (b) of subsection (vii) shall be a spoilt paper.
 - (ix) If the Keys do not elect any person who has been proposed for membership of the Council under subsection (iv), the Speaker may at any time suspend the sitting to allow for private discussions. Any Member of the Keys may then propose any other person for election to the Council. When making such a nomination the Member shall

indicate that the person nominated has indicated his or her willingness and capacity to serve.

- (x) A proposal under subsection (ix) shall be treated as a proposal made in accordance with subsections (ii) to (iv) and subsections (vi) to (ix) shall apply accordingly.
- (xi) If a vacancy remains in the Council after the members have been given the opportunity to make proposals under subsection (ix), the Speaker shall invite the members of the Keys to propose persons to be candidates for election to the Council.
- (xii) An invitation under subsection (xi) shall be treated as an invitation under subsection (ii) and subsections (iii) to (xi) shall apply accordingly.
- (2) No person shall be so elected unless not less than thirteen votes shall be recorded in his favour.

(Isle of Man Constitution (Elections to Council) Act 1971 s2(1A), as amended by the Constitution (Amendment) Act 2008 s 1)

(3) A person to be qualified as an elected Member must be not less than twenty-one years of age, and must be, at the time of election, and must, so long as he or she continues in office by virtue of such election -

- (a) be resident within this Isle; and
- (b) not be a person in receipt of a salary payable by either the United Kingdom Government or the Isle of Man Government.

(c.f. Isle of Man Constitution Amendment Act 1919 s12)

(4) The Secretary of the House shall distribute to Members of the House, either with the Order Paper for the relevant sitting or earlier, copies of all nominations.

(5) The Order Paper for the sitting at which the election is to take place shall include the names of the nominees and their proposers.

Election Procedure

8.3 (1) The Speaker shall call for nominations up to a maximum which leaves two Members qualified to act as scrutineers and the proposer and seconder of each candidate shall be entitled to speak in favour of their candidate, but no other Member shall speak.

(2) Every Member shall be supplied with a printed voting paper prepared under the direction of the Speaker.

(3) Every Member shall place the letter 'x' opposite the name of the candidate or candidates for whom the Member wishes to vote.

(4) The Speaker shall announce the names of all persons proposed and seconded for election in the order in which their names appear on the voting paper.

(5) Each Member may vote for none of the candidates or for any number of candidates up to the number of vacancies to be filled; any paper not so completed shall be invalid.

(6) The voting papers shall be collected and the Speaker shall appoint two Members to be scrutineers who, with the Secretary of the House, shall ascertain the number of votes for each candidate and the Secretary shall report the same to the Speaker; no Member who has proposed or seconded a candidate may be a scrutineer.

(7) If on the first ballot a person receives not less than thirteen votes that person shall be declared elected.

(8) If the vacancies to be filled differ in length of term, the person receiving the greatest number of votes shall fill the vacancy for the longer term of office.

(9) Where any vacancy remains to be filled, persons previously nominated but not elected shall be eligible for nomination.

Speaker to notify successful candidates of election

8.4 The Speaker shall, within three days of the election by the House of any person as a Member of the Council, notify such person of that person's election.

(Isle of Man Constitution Act 1919 s20)

Completion of election and notification

8.5 (1) No person shall be deemed to be an elected Member of the Council unless that person has -

- (a) within fourteen days of this election signified in writing to the Speaker willingness to accept such office, and
- (b) within the said fourteen days, given to the Speaker an address to which all communications may be sent, and
- (c) received from the Speaker a formal warrant certifying election as a Member of the Council.

(2) It shall be the duty of the Speaker, as soon as may be after the receipt of the acceptance and address mentioned in paragraph (a) and (b) of (1) above, to cause -

- (a) the formal warrant mentioned in paragraph (c) of (1) above to be delivered to the person elected, and
- (b) the paper writing signifying such acceptance to be delivered to the President of Tynwald.

(Isle of Man Constitution Amendment Act 1919 s21)

ANNEX II

Isle of Man Constitution (Elections to Council) Act 1971

As amended by the Constitution (Amendment) Act 2008

2 Provisions to be followed in elections of persons as members of the Council

(1) Every election by the House under section 8 of the principal Act of a person or persons to serve as a member or members of the Council shall be conducted in accordance with this section.

But Standing Orders of the Keys may provide for the practice and procedure to be adopted in such elections, and shall have effect in respect of any circumstances arising for which this section does not make provision.

[Subs (1) substituted by Constitution (Amendment) Act 2008 s 1.]

(1A) Where there is, or there is to be, a vacancy to be filled in the elected members of the Council, members of the Keys may, upon being invited to do so by the Speaker, propose persons to be candidates for election to the Council.

[Subs (1A) inserted by Statute Law Revision Act 1989 Sch 1 and substituted by Constitution (Amendment) Act 2008 s 1.]

(1B) The Speaker shall invite members of the Keys to propose persons to be candidates for election to the Council -

(a) one month before an elected member of the Council goes out of office in accordance with section 10 of the principal Act (retirement);

(b) as soon as practicable after an elected member of the Council goes out of office, or a vacancy otherwise occurs, for any other reason.

[Subs (1B) inserted by Constitution (Amendment) Act 2008 s 1.]

(1C) Proposals may be made at any time during the period of one month immediately following the invitation made by the Speaker.

[Subs (1C) inserted by Constitution (Amendment) Act 2008 s 1.]

(1D) All proposals shall be in writing and delivered to the Secretary of the House and shall be accompanied by particulars in writing of -

(a) the qualifications and experience of the candidate, and

(b) the reasons why the proposer considers the candidate to be suitable to be a member of the Council.

[Subs (1D) inserted by Isle of Man Constitution (Amendment) Act 2008 s 1.]

(1E) The sitting of the Keys at which the election to the Council is held shall be not less than 14 days after the end of the period for the making of the proposals, but as soon as practicable thereafter.

[Subs (1E) inserted by Constitution (Amendment) Act 2008 s 1.]

(1F) (a) In this subsection -

(i) a 'round of elections' means voting by the Keys on candidates proposed in accordance with subsections (1B) to (1D) or under subsection (1I); and

(ii) a round of elections is 'completed' when all the vacancies have been filled or the Speaker has called for proposals under subsection (1K).

(b) Once the Keys have commenced a round of elections then, subject to paragraph (c), that round of elections must be completed on that day.

(c) A round of elections may be adjourned to the next day once only.

(d) When a round of elections appears on the Keys Order Paper for a sitting then, once it has commenced, no other business may be taken by the Keys sitting alone either that day or the next day until that round of elections is completed.

[Subs (1F) inserted by Constitution (Amendment) Act 2008 s 1.]

(1G) Each member of the Keys shall, at each stage of an election to the Council either -

(a) vote for any one or more candidates up to the number of vacancies to be filled; or

(b) vote for no candidates.

[Subs (1G) inserted by Constitution (Amendment) Act 2008 s 1.]

(1H) A voting paper that does not comply with either paragraph (a) or paragraph (b) of subsection (1G) shall be a spoilt paper.

[Subs (1H) inserted by Isle of Man Constitution (Amendment) Act 2008 s 1.]

(1I) If the Keys do not elect any person who has been proposed for membership of the Council under subsection (1D), any member of the Keys may then propose any other person for election to the Council.

[Subs (1I) inserted by Constitution (Amendment) Act 2008 s 1.]

(1J) A proposal under subsection (1I) shall be treated as a proposal made in accordance with subsections (1B) to (1D) and subsections (1F) to (1I) shall apply accordingly.

[Subs (1J) inserted by Constitution (Amendment) Act 2008 s 1.]

(1K) If a vacancy remains in the Council after the members have been given the opportunity to make proposals under subsection (1I), the Speaker shall invite the members of the Keys to propose persons to be candidates for election to the Council.

[Subs (1K) inserted by Isle of Man Constitution (Amendment) Act 2008 s 1.]

(1L) An invitation under subsection (1K) shall be treated as an invitation under subsection (1B) and subsections (1C) to (1K) shall apply accordingly.

[Subs (1L) inserted by Constitution (Amendment) Act 2008 s 1.]

(2) No person shall be so elected unless not less than thirteen votes shall be recorded in his favour.

(3) to (5) inclusive

[Subss (3) to (5) inclusive repealed by Constitution (Amendment) Act 2008 s 1.]

3 [Substitutes section 21 of the principal Act.]

4

[S 4 repealed by Constitution Act 1990 Sch 2.]

5

[S 5 repealed by Isle of Man Constitution (Amendment) Act 1975 Sch.]

6 Meaning of principal Act

In this Act the expression '**principal Act**' means the Isle of Man Constitution Amendment Act 1919.

7 Short title, citation, construction and commencement

(1) This Act may be cited as the Isle of Man Constitution (Elections to Council) Act 1971 and shall be construed as one with the Isle of Man Constitution Acts 1919 to 1971 and those Acts and this Act may together be cited as the Isle of Man Constitution Acts 1919 to 1971.

(2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.

Isle of Man Constitution Amendment Act 1919.

8 Election of members to the Council by the House

Where any members elected to the Council by the House go out of office pursuant to section 10 of this Act, the House shall elect, in the manner provided by [section 2](#) of the [Isle of Man Constitution \(Elections to Council\) Act 1971](#), to serve as members of the Council, such number of persons as are equivalent to the number of members who have so gone out of office; and, within three days after that election, a return shall be made, under the hand of the Speaker of the House, to the President of Tynwald certifying the decision of the House and giving the names and addresses of the persons so elected.

[S 8 substituted by Isle of Man Constitution (Amendment) Act 1975 s 3 and amended by Constitution Act 1990 Sch 1 and by Constitution (Amendment) Act 2008 s 1.]