

Law Officers Bill 2013
Clauses considered

2.3. Mr Bell to move.

The Speaker: We turn now to the consideration of clauses and to move clause 1, I call on the Chief Minister.

The Chief Minister: Mr Speaker, with your permission, could I perhaps move clauses 1, 2 and 5 together, as they are essentially all formal and separate from the actual meat of the Bill.

The Speaker: That is in order.

The Chief Minister: Clause 1 will provide the resulting Act with its short title.

Clause 2 empowers the Council of Ministers to make one or more Orders bringing the Act into operation and to make transitional provision in connection with commencement.

Clause 5 provides for the repeal of the Isle of Man (Constitution) (Amendment) Act 1975, which is spent, and also provides for the Act resulting from the present Bill to expire on the day immediately following its promulgation, or if it is not fully enforced then, on the day after the last provision comes into operation.

Mr Speaker, I beg to move clauses 1, 2 and 5 together.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to move that clauses 1, 2 and 5 be read and to reserve my remarks, sir.

Mrs Cannell: No, you are not moving. The Chief Minister is moving. You are seconding.

Mr Teare: I beg to second.

The Speaker: I take it you are seconding?

Mr Teare: I apologise. I beg to second.

The Speaker: I put the motion that clauses 1, 2 and 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Thank you.

We turn to clause 3. Minister.

The Chief Minister: Thank you, Mr Speaker.

Clause 3 contains the amendment to the Interpretation Act 1976 so as to include within the definition of 'the Attorney General' a person whom Her Majesty has appointed as Acting Attorney General by a warrant under the Royal Sign Manual – that is Her Majesty's official signature.

The amendment has the effect that references to the Attorney General in any Act of Tynwald will be read as including the Acting Attorney General, thus putting that officer's power to act in the stead of the Attorney General beyond any doubt.

The final amendment in clause 3 also makes it clear that the amendment to the definition of 'the Attorney General' does not limit the scope of any existing delegation of the Attorney General's powers or functions.

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

The Speaker: Mr Teare.

Mr Teare: Thank you.

I beg to second that clause 3 be read and reserve my remarks, sir.

The Speaker: I put the question 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.

Clause 4, sir.

The Chief Minister: Mr Speaker, clause 4 amends section 7(a)(1) of the Isle of Man Constitution Amendment Act 1919. The effect of the amendment to this subparagraph is to permit either the Attorney General or the Acting Attorney General to attend the meetings of Tynwald and the Legislative Council.

Mr Speaker, I beg to move clause 4.

The Speaker: Mr Teare.

Mr Teare: I beg to second that clause 4 do stand part of the Bill, sir, and to reserve my remarks.

The Speaker: I put the question that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Karran.

Mr Karran: Vainstyr Loayreyder, as I say, we are pleased to see that the Bill is actually having to come here to legitimise the issue of enacting the Attorney General. My amendment is about the ability of the Attorney General to conduct litigation in person in Manx courts.

The broad issue is whether the Attorney General or an Acting Attorney General should always have to be a member of the Manx... be a Manx advocate.

At the moment, there is no statutory requirement that an Attorney General should be a Manx advocate; however, the convention in recent years has been that the Attorney General has to be selected from the Manx bar and, as such, has been able to conduct litigation in person in line with the convention that the recent advertisements specifically, that the candidate has to have 10 years' experience at the Manx bar.

The policy underlining this amendment is that a person appointed as an Attorney General should not necessarily have to be a Manx advocate. The amendment would amend the section of the Advocates Act 1995, which sets out who can be given an advocate's commission by the First Deemster. This is who can appear before Manx courts. The effect of the amendment would be to permit persons who were not Manx advocates, if appointed AG, to conduct litigation in Manx courts. Given other provisions of the Law Officers Bill 2013, this would apply to an Acting Attorney General.

The amendment would not directly change the criteria of appointment for an Attorney General or an Acting Attorney General, and would not directly affect the recruiting process which is currently underway, but it would make the practice in future to consider off-Island appointments in this role.

My concern, as far as the Attorney General's department is concerned, is the fact that, as I say, with this report and this problem, as far as the AG's department, has not just happened overnight. This is a problem that we have had for a number of years about the accessibility of justice for many of our people.

I believe that one of the problems that we have at the present time is if we really want to see this sorted out, we need to get it away from the fact that it is the Manx Bar being able to have a *guaranteed* post as far as the AG is concerned.

I want to see the AG's department once and for all being put on the right basis that represents the people and that it is something that all our citizens can trust as far as justice on this Island. I believe that this amendment will give the flexibility for us to try and get somebody who is not in bed in the present system that we have got at the present time. I believe that Hon. Members should support this proposal. I know that people will say, 'Isn't it terrible that we are going to try and get somebody from off Island to be our Attorney General?' but I believe that sometimes we need that flexibility.

My other concern is that here we have an important report that has been done as far as the AG's department, and I am just worried that if you end with somebody in 10 years' time from the Manx Bar, I do not think there will be the same will to follow it up as far as making sure that once and for all we put it on the right basis.

I hope Hon. Members will support the amendment standing in my name:

On page 6 at the beginning of line 12 insert –

'4A Amendment of the Advocates Act 1995: s.16

(1) Section 16 of the Advocates Act 1995 (qualification for an advocate's commission) is amended as follows.

(2) Renumber the existing text as subsection (1).

(3) At the end insert –

“(2) A person is also qualified for the issue of an advocate's commission if the person is the Attorney General.”.

Renumber the following clause accordingly.

The Speaker: Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Hon. Member for Rushen, Mr Watterson.

Mr Watterson: I would just like to put a few questions to the hon. mover of this amendment because I am a little bit concerned about where he is going with this and might seek some reassurance before I come to vote on it.

I appreciate that the law as it stands at the moment says that the Attorney General does not have to be a Manx advocate – that is a matter, shall we say, for the job description – and then a matter of convention that they should have 10 years' standing, and I can see the reason for that, inasmuch as it is the duty of the Attorney General to provide Tynwald with legal advice. It is the job of the Attorney General to provide Government with legal advice. Of course, it is essential that the legal advice that we get is based on Manx law because that is, at the end of the day, what he is going to have to be advising on.

So I do not deny that *in extremis* I could potentially see that there would be cause for a UK Attorney General, should we find some sort of endemic corruption in the Manx system. I do not foresee that that is realistic, but let us never say never on some things.

But he would be heading up a Chambers of Manx advocates and I therefore do not see why we need to go out of our way to allow him to appear in court in person, appearing in front of a Manx court without Manx experience to argue points of Manx law. That is what gives me the worry and I was wondering perhaps if the mover could just provide some sort of assurances as to why he thinks that somebody with *no* experience in Manx law should be able to come in and argue Manx law in front of a Manx Deemster without that sort of experience. I have no problem with him heading up the Chambers, which is one thing, but appearing in Court arguing Manx law is perhaps something else.

So I would just look for that from the mover.

The Speaker: Continuing with the debate in principle on the new clause. I call on the Hon. Member from Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

I would follow on from the previous speaker in that whoever heads up the Attorney General's Chambers needs to have a real understanding of Manx law, irrespective of whether they actually practise in the courts or not.

But the thing I will take issue with is the explanatory memorandum provided by the Hon. Member, Mr Karran, and the start of the second paragraph says:

'At the moment there is no statutory requirement that the Attorney General should be a Manx advocate...'

So why legislate? That is my question. What is the requirement for the clause?

At the moment there is not an obligation that the AG should be a Manx advocate. So there is freedom of choice if the selection process decided that they were going to appoint somebody from off Island. I cannot see the point of the amendment when there is no statutory requirement that the Attorney General should be a Manx advocate, which seems to be the main bone of contention for the Member.

So I cannot support the amendment in principle I am afraid.

The Speaker: Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Just on the mover of the clause and his comments to the clause there, I am sorry but I think the Member is disparaging to the Manx Bar and to the advocates who are on the Island. I wish that if the Member has this bundle of evidence that we are cosy or that we are bought off, or whatever, he brings it to this House or another place.

Regarding these allegations regarding the AG's department, we are well aware of what has gone on. I do not know whether it has gone on in the past before I was actually into this particular House, but I have high regard for those advocates who are in the Manx Bar, and really to denigrate the advocates, who are young advocates and older advocates who are coming towards the end of their careers as such, I think is poor.

I think that for myself, really, I will not be supporting the clause.

The Speaker: Hon. Member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

Mr Speaker, Mrs Cannell makes an excellent point, but I would like to build on that and to say that this Bill has a sunset clause, so what is the point of putting an amendment in this particular clause? Far better to wait for the Chief Minister to bring the appropriate Bill that he has already mentioned in the Second Reading for a permanency, if it was so supportable by the House then.

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

Mr Speaker, whilst the Hon. Member moving the amendment considers it does not change the criteria of appointment for the Attorney General or Acting Attorney General, this is not the case. Although there is no statutory requirement that the Attorney General should be a Manx advocate, one of the essential criteria held by candidates applying for the position is 10 years' experience at the Manx Bar, as is set out in the agreed formal practice and process in regard to this appointment, which has been discussed and endorsed by the UK on behalf Her Majesty the Queen. Do not forget this is a Crown appointment. Consequently, the recent advert of the post for Her Majesty's Acting Attorney General included this requirement.

The broader issue underpinning this amendment is whether the Attorney General need always to have this experience as a Manx advocate, and there has been no consideration or discussion on this. By convention, in common law jurisdictions the Attorney General is the leader of the relevant local Bar – that is the case here. If the convention is to change, that ought to be done after proper discussion with all parties (**A Member:** Hear, hear.) who have legitimate interest in relation to the point and not, I would suggest, in the context of a Bill which has been framed to deal with a particular issue only, and within a particular limited timeframe.

In my view, it is clearly desirable that the Attorney General should have strong substantial experience of the laws of the Island and of the practices of its courts. Mr Speaker, if the Hon. Member wishes to change the criteria for the position of Her Majesty's Attorney General to allow applications from other than Manx advocates, it is my view that a more appropriate mechanism will be the Law Officers (No. 2) Bill, which will come forward later this year in respect of the establishment of a second Crown law officer, who can deputise for the Attorney General. More importantly perhaps, this will allow proper consultation on the proposal both on and off Island, and would prevent the Bill before this Hon. House today, as much emergency, from being delayed.

The Ministry of Justice has advised that the Bill, as currently drafted, can be put forward for Royal Assent. Should the Bill be amended though, we will need to discuss further with the relevant parties in the UK and this will then lead to a delay in the consideration of Royal Assent.

I think it is most important, Mr Speaker, that Members remember this: this is a short-term exercise. It does have a sunset clause, as has been mentioned, to deal with a specific immediate problem that we have. The issue that the Hon. Member raises in his amendment broadens it out considerably and we do need to have thorough understanding, discussion and consultation on that.

We have worked very closely with the Minister of Justice and with the Palace – and as I say, do not forget this is a Crown appointment ultimately – to agree a timetable to get this Bill fast tracked through Privy Council as quickly as possible, to allow an Acting Attorney General to be put in post as quickly as possible. We have agreed that timeframe.

If an amendment or any amendment... but if *this* amendment was to be passed today it would completely change that timeframe that we have talked about and probably delay the granting of Royal Assent by anything up to another couple of months. I do not believe that is acceptable under the present circumstances. We have gone without the position of Attorney General being filled actively now for over 12 months. We need to get it sorted out as quickly as possible.

There is an opportunity for the Hon. Member to bring back the amendment in the next Bill when it comes along. I have no problem with that at all, but it needs to be brought along in a proper and structured way, where it can get proper discussion.

So I would urge Hon. Members, please, to help us get this urgent matter out of the way, do not to vote for this today and let us move on as quickly as we can.

The Speaker: I call on the mover to reply. Mr Karran.

Mr Karran: Vainstyr Loayreyder, Mr Watterson asked the question about the experience as far as having somebody who is not a member of the Manx Bar is concerned. The situation would be that obviously the first thing is that it would not necessarily be a person who was from the UK that we would be looking at.

The second is the fact that under the present criteria of becoming a member of the Manx Bar, it takes several years on that point. If you had somebody who was bright, sharp and would not need to wait and jump through the loopholes of the closed-shop arrangement that we have already got with the Manx Bar on the Island as far as being able to get himself up to speed, as far as being experienced enough as far as the Manx law is concerned.

So I think it is important that when we talk about this, we might not just be talking about our colonial colleagues from the adjacent isle. We could be talking about somebody from somewhere else who would not be a member of the English Bar either. The point is that if we want somebody who is bright enough, they would be quick enough to be able to pick up the different facets as far as the Manx law, particularly over the UK law, even though increasingly we just seem to follow an awful lot of the United Kingdom law on many things.

I think the point as far as the Hon. Member for East Douglas is concerned is the real understanding of why I am wanting to try and do this. I believe that this and the whole structure that we have seen develop over the last 25 to 30 years, we have seen a revolution in this Island as far as how things have matured. Like the point, even the quip about how it is good to know that Mr Karran... whatever it was from the Chief Minister.

The fact is at one time these things would never have come near this Hon. House. What we must do is develop a real understanding of what we want as far as a modern functioning democracy is concerned. I believe that the problem is, and what Mrs Cannell does not realise is the fact it is still that the Manx Bar is too cosy.

The reason why I brought this proposal in front of us today is that I want somebody with firm commitment to see what needs to be done as far as the Attorney General's department, which has not just happened in the last 18 months; it has been happening for a long time.

As far as Mr Quirk is concerned about him taking offence, he is not a lawyer. He is a Member of the House of Keys and it is a shame that he does not understand the difference; but then nothing surprises me with the Hon. Member (*Interjections*) for Onchan. I think that is about all that can be...

The very relevant point that the Hon. Member for North Douglas raises is about the issue of the sunset clause, and I understand that. What I am trying to do is highlight the fact that issues have been raised about potential replacements for an Acting AG is concerned, and I think it is important that we put a marker down here that we want to make sure that we get somebody who is not compromised in any way and will actually get on with this job that needs to be done of getting this report sorted out.

Mr Bell talks about the issue that he is the leader of the Manx Bar. I understand that and I understand that that is a swipe at the chops of the Manx Bar, what I am proposing here today, but one of the reasons why I have moved this amendment, I had new young... newer Members, not *younger* Members, on to me the other week there about how they want independence and we have got to have independence. We have to have firm, robust systems in Government, both in parliamentary scrutiny, the executive, the judiciary and the AG's department as far as the criminal and civil justice is concerned. My concern is that I feel that we are losing the opportunity that allows for the sunset clause that we should not be looking at somebody to be coming in, to be the Acting Attorney General, who has 10 years' experience, because I believe there will not be the will to address the real issues. I think this House needs to address the issue of access to justice for the ordinary working people.

I believe there are a number of fundamental issues which are not part of this Bill, which I would be wrong to go into, but I hope Hon. Members will consider what I am saying and will actually support this proposal. Do not come back later on and be full of shock horror and disbelief when we find out who we are going to be replaced with, as far as the Acting Attorney General is concerned.

I think this needs to be down. It needs to be a marker, and yes, I know it is difficult. It is great to see this function not being just going by colonial power. They have had to come back here – I thought they had to come back here, because of my Question on 4th December.

I hope Hon. Members will support the amendment by myself to this Bill because I think it needs to happen. I beg to move.

The Speaker: Hon. Members, the new clause having been moved and debated in principle, I put the question that the new clause form part of the Bill. Those in favour, please say aye; against no. The noes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mr Karran
Mrs Beecroft
Mr Gawne

AGAINST

Mr Quirk
Mr Hall
Mr Ronan
Mr Crookall
Mr Anderson
Mr Bell
Mr Singer
Mr Quayle
Mr Teare
Mr Cannan
Mr Cregeen
Mr Houghton
Mr Henderson
Mrs Cannell
Mr Robertshaw
Mr Shimmin

Mr Corkish
Mr Cretney
Mr Watterson
Mr Skelly
The Speaker

The Speaker: With 3 votes for, 21 votes against, the motion fails to carry.
That concludes the clauses stage of the Bill.