

4. Law Officers Bill 2014 – First Reading approved

The Acting Attorney General to move:

That the Law Officers Bill 2014 be read a first time.

The President: We turn to Item 4, the Law Officers Bill 2014.
I call on Her Majesty's Acting Attorney General to take the First Reading.

The Acting Attorney General: Madam President, the Law Officers Bill 2014 seeks to make further provision about the discharge of the functions of the Attorney General, and for connected purposes. It follows on from the Law Officers Act 2013 which again, dealing with the functions of the Attorney General, in effect, then created the role which I currently occupy of Her Majesty's Acting Attorney General, under which I exercise the functions on a temporary basis of the Attorney General under Her Majesty's Royal Sign Manual.

With your leave, Madam President, in inviting Hon. Members of Council to take the First Reading of this Bill it is the start of the legislative process. Members of the public listening may be more familiar with Bills entering the legislative process in the House of Keys. From my very limited experience of such matters in recent years, it is where the Bills commence their passage through the two branches in Tynwald, originating the process in this Hon. Council.

It was considered with your leave, Madam President, that as in this case the Law Officers Bill 2014 aims to create the office of Her Majesty's Solicitor General for the Island, and addresses certain details as a consequence of the creation of what will become a second distinct Crown Officer for the Island. Bearing in mind that the Attorney General has as Crown Officer been a Member of this Council for many years, it was considered that, rather than commence the journey of the Bill in the other place, it was more appropriate to invite you to agree that the Bill's passage, with the scrutiny of this Hon. Members of Council, will give provisions of this Bill a better start to its journey through the two branches.

Madam President, as I mentioned, the Law Officers Bill 2014 seeks to create the office of Her Majesty's Solicitor General for the Island. This step is proposed following the recommendations made following the report on the operation of the Attorney General's Chambers conducted by Stephen Wooler CB, formerly Her Majesty's Chief Inspector of the Crown Prosecution Service in the United Kingdom.

His report, which became known as the Wooler Report, was published in July 2012 – that is the executive summary was, I understand, published and circulated to Tynwald Members. The Report recommended that, as is the case in all other jurisdictions in the British Isles, there should be a second Crown Officer in the Island capable of supporting the whole range of duties of the Attorney General.

I have made mention, Madam President, of the Law Officers Act 2013, which as I explained in effect created my own role as Acting Attorney General, and it was under the provisions of that Act I was appointed under Her Majesty's Royal Sign Manual to act as Attorney General in the absence from office of the current Attorney General. My appointment is limited and temporary to the extent and upon the Attorney General returning to office I immediately step down.

The creation of the second Crown Officer of Her Majesty's Solicitor General will ensure, going forward, that there are two separate Crown Officers and so provide support for any absence of either post holder.

The Law Officers Bill 2013 so seeks to make provision for the creation of the role of Her Majesty's Solicitor General, and makes some amendments to legislation in consequence of the creation of that second Crown Office. And so I would therefore move, Madam President, that the Law Officers Bill 2014 be read for the first time and be approved.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think all of us sitting round this table can see the dilemma that the office holds at the present time, and a lot of us have thought for a considerable number of years that there is perhaps too much responsibility put on to the one position. I know that historically the Council of Ministers has always been provided with a representative from the Attorney General's office when they met, when the Attorney General himself was not available. You can see now the sensible approach has been taken to do something similar for Tynwald, as it were.

One of the concerns I have about this, there is mention here of the Wooler Report: I have had sight of one or two of the recommendations in the Wooler Report but, to my knowledge, I do not think has been circulated –

Mr Braidwood: It has not: only the executive summary.

Mr Downie: Pardon? Yes, and quite rightly, if there are things in there that are private and confidential, I think they should remain private and confidential. But it seems to me that we are trying to hang our hat on recommendations from Wooler, and I think very few people in the other place will have had sight of Wooler, and it is going to be interesting to see when the Bill goes down there, what the reaction is going to be. And I think now is the time, perhaps before we have the Second Reading and clauses stage, that we do find out what the recommendation actually says.

I would be happy with that because I think there has been a lot of mystery about what happened with Wooler. I know there were other recommendations and other areas of the justice system looked at. One of the things I would have been much happier with is if that Report had gone to one of the scrutiny committees and they could have looked at that, and then I do not think there would have been a problem. But it still cast doubt over what the recommendations were and – if we are in this day and age, where we are transparent and open – I think we owe it to everybody to make the decisions for the right reasons. And if Wooler says in his Report a Solicitor General is required, and these are the reasons why, no problem supporting that.

I have thought for a long time that it must be very difficult for the same person to provide advice to Government about all legal matters and also deal with prosecutions and other things as well. The time has come now when the job has just become too onerous.

I support entirely the recommendation in the Bill about having a Solicitor General and all that goes with it. But I think if we are going to make the decision let's make it for the right reasons, let's clear the decks, let's get to know what is in Wooler, and then we will feel much happier about it at the end of the day.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Some interesting points raised by the Hon. Member, Mr Downie.

This is not really a new idea. I recall under the last administration I was sitting on the Constitution Committee under Chief Minister Brown, where there was discussion at that time, although it did not go any further, of looking at whether we needed a Deputy Attorney General and other such various titles were thrown around as to what that office-holder would be called. As I said, it did not appear to go any further at that stage.

Then of course we were in the position where we were, effectively, in limbo whilst we did not have the services of an Attorney General both here in this Council and in Tynwald Court. However,

we have had the legislation through which enabled the appointment of Her Majesty's Acting Attorney, and now we are presented with this.

So it was just some comments, really, that there is a bit of history behind such appointment, whether it is in the same guise as what the Wooler Report is recommending as to what we were discussing back in 2008 – somewhere around that period – I do not know because, as has been said before, the details of the Wooler Report have not been circulated. It would be interesting to know a bit more about it.

Thank you.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

As the Hon. Member of Council Mr Turner said, it is not a new thing, a Solicitor General. I know the other Crown dependencies have Solicitor Generals.

I have no problem actually with the Bill, with the creation of a Solicitor General, because we are abolishing the position of Government Advocate so we are not increasing any additional personnel there. But I have to totally agree with the Hon. Member of Council, Mr Downie. We have only had a synopsis of the Wooler Report, it has only been the executive summary, which the Acting Attorney General mentioned and I feel, personally, that before we go down to Second Reading that we should see more of the Wooler Report.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I was just going to agree with Mr Downie about the separation of powers of the Attorney General from the prosecution system. At the moment he has to oversee both prosecution and giving advice, which may be sometimes in conflict. Previously there was – or even now – there was a Government Advocate who used to concentrate on prosecuting, and the Attorney oversaw that but still had to be separate as well.

I just make a comment from Mr Braidwood's point view, that this Bill does disestablish the role of the Government Advocate. I just record that I have had the privilege and sometimes exciting experience of working with Government Advocates in the past, from Mr Johnny Green through to Mr Moyle, and they were always interesting characters. And in a way it is a historic post that is now being lost, though I hope the new Solicitor General may be of equal calibre to those gentlemen. Thank you, Madam President. (*Interjections*)

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I just have a simple query on the mechanics of the Bill and it is to do with on page 6, clause 4, and if we look at subsection (4)(b) where we talk about, if 'the Attorney General is for any reason unable to attend a sitting of Tynwald or the Council'.

And then we go on to subsection (5): 'If this subsection applies the President may authorise... Her Majesty's Solicitor General... or a person...' etc 'to attend the sitting'.

Will this be a one-off every time a situation occurs, that is the question I was asking. Or will it give a blanket authority to attend in future occasions?

That was the only point, the issue of the mechanics of that part of the Bill, Madam President.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

Quite frankly, until I read this Report, I was not even aware of the Wooler Report, and I would be grateful to see even the executive summary.

Secondly, I fully accept the need for second law officer. I think what has gone on in the last couple of years has indicated the necessity for that position to be created.

Now I am going to ask a question out of pure ignorance: why 'Solicitor General' when it is an anathema in the Isle of Man? Why not 'Advocate General'?

Thank you.

The President: The mover to reply.

Mr Downie: Oliver Cromwell had a Witchfinder General! (*Laughter and interjections*)

The Lord Bishop: We may need one or two of those around here!

The Acting Attorney General: Madam President.

Firstly I would like to thank Mr Butt, for kindly seconding the motion – at the last minute, I might add. Thank you very much.

Turning then to Hon. Member, Mr Downie, to thank him for his support for the principle of the Bill and to make a few comments concerning the Wooler Report. That Report was commissioned by the Chief Minister and my understanding is that it was the Chief Minister who authorised the publication to all Tynwald Members of the executive summary.

I will certainly take back to the Chief Minister the request that the full Report or further details of the Report be circulated to Hon. Members and I will certainly come back at the Second Reading stage and let you know the position there.

Just by way of reminder, also there was a follow-up Report last year – I think it was in April/May time – by Mr Wooler, which was his 'stock take' report as he called it, and that was also circulated to all Tynwald Members and I will ensure that is again sent out. I am very sorry if it did not get to you but certainly the instruction was to circulate it, so I will certainly look into that by the Second Reading as well if I may.

Then the question raised by Mr Turner: again I thank him for his comments by way of support and for his helpful historic recollection of the position as it used to be, clearly before my time. Again, you will receive, hopefully, further details of the Wooler reports before the Second Reading.

My thanks to the Hon. Member, Mr Braidwood, for his indication of support and, again, his comments with relation to the Wooler Report will be addressed hopefully when further details are provided. And similarly to Mr Butt.

Like Mr Butt I am a bit old in the tooth as well, and I have fond memories of Johnny Green and Mr Moyle, and having good sport with them in their role as the Government Advocate.

I thank Mr Crowe for his support. As far as his comment on the mechanics is concerned of clause 4 of the Bill, it is intended that Madam President will have complete control be it for one sitting or a number of sittings. Madam President will have to be consulted and her specific consent given to the Solicitor General taking the role of the Attorney General for any sitting of Tynwald. So it is not a carte blanche proposal.

Then it is to Mr Coleman, again, to thank him for his indication of support and hopefully his concerns with reference to the Wooler Report will be addressed when he considers it.

The name 'Solicitor General' did cause a lot of debate. My commission and every Advocate's submission is actually as 'Advocate, Solicitor and Attorney'. Our concern was in having an Advocate General and an Attorney General we would have two AGs – and it was as simple as that. (*Interjections*)

So we preferred to take the second route using the second title of the appointment which we all as Advocates hold.

A Member: Good point.

The Acting Attorney General: And with that, Madam President, I would beg to move the First Reading of the Law Officers Bill 2014.

The President: The motion is that the Law Officers Bill 2014 be read for a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

That concludes our business for this morning, Hon. Members. Council will adjourn until 25th March in this Chamber, but of course before that we have our sitting of Tynwald.