

3.1 Public Services Commission Bill 2014 – Second Reading approved

The Speaker: We turn to Item 3 on the Order Paper. Bill for Second Reading: Public Services Commission Bill.

I call on the mover, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

As Hon. Members will be aware, the management of human resources, in its various guises within the Isle of Man Government, has been the subject of debate over a number of years.

Indeed, the matter was considered as part of the 2006 Review of the Scope and Structure of Government, and at that time the review team recommended that, amongst other things, Government should urgently initiate a root-and-branch review into the future aims for developing and delivering human resource policies across the entire public sector, encompassing structural, cultural and process change with the objective of establishing a more effective centralised and streamlined approach to pay and pensions, conditions of service, recruitment and retention, training and development, deployment and employees' representation.

Subsequent to this, in 2009 an independent review of the Whitley Council was commissioned by the Council of Ministers, the outcome of which – the Harris Report – while supporting the continuance of a centralised joint negotiating forum which promotes effective industrial relations and joint co-operation, proposed a number of measures for modernisation and reform of the Council.

Regrettably, at that time, as Hon. Members will recall, it was not possible to elicit support from the employees' side of the council to take these proposals forward. In addition, and as part of ongoing efforts to modernise and streamline Government's HR functions, the Council of Ministers established a subcommittee tasked with reviewing the function and structure of HR management and development across the central Government public service.

The subcommittee, which comprised public and private sector and union representatives, reported towards the end of 2010. The principal recommendation – that a single employment body should be established – became subject to a public consultation exercise in 2011. As a result of the consultation – which identified certain concerns about such a body encompassing Government entities with a significant regulatory role or those whose terms and conditions continue to be largely determined in the UK – it was decided, unsurprisingly, that a more limited approach should be taken going forward.

In support of change across Government in March 2012, the Review of the Scope of Government suggested that the development of new, more responsive and flexible employment structures would be helpful and that they would support the Chief Minister's intention to progress culture change within Government.

Modernising and introducing more flexible and responsive employment structures, coupled with culture change, are in my view fundamental to the development of more efficient ways of working and the reduction of bureaucracy – all of which contribute to the ongoing imperative to rebalance the Budget and achieve long-term financial sustainability.

Of course, over a number of years, important steps have already been taken to modernise and, in doing so, to take a more consistent approach to issues across employment groups and, where practicable, to move towards harmonisation of terms and conditions of employment.

These include the maintenance of pay restraint across central Government, coupled with a continuing downward pressure on the number of public service posts; the introduction of the Government Unified Pension Scheme (GUS) with modernised pension provision for the majority of central Government public servants; the introduction of a public sector compensation scheme, which modernised and amended provisions in relation to redundancy applicable to those covered by GUS; and the establishment of an HR shared service function in the form of the Office of Human Resources, which now forms part of the recently established Cabinet Office.

Individual terms and conditions of employment continue, of course, to be addressed through work being done, both centrally and by individual employers, to revise and update them and to work to revise those terms which are no longer sustainable.

In keeping with this work, which has been ongoing for a number of years, and the need to create a smaller, simpler Government with more efficient ways of working, in April 2013 the Council of Ministers agreed that a public consultation be undertaken in relation to the benefits which might be realised from the establishment of a Public Services Commission. As a result of this and consideration of consultation responses, Council determined that a Bill to establish such a commission be drafted.

The Bill before the House today, which is promoted by the Council of Ministers, is designed to establish a new commission, which would have a broader remit than the Civil Service Commission and would, if established, become the employer not only of civil servants but also other categories of employee.

Enabling provisions in the Bill provide that those public sector employees in an employment or office prescribed for the purpose by the Council of Ministers would become employees of the Commission.

Initially, it is intended that civil servants and Whitley workers employed in central Government would become employees of the Commission, but other employee groups could come within the purview of the Commission at a later date, as circumstances required.

A Public Services Commission would be a key employment body in central Government which would have a mandate to deliver consistent policies in respect of a workforce of more than 4,000 people, representing about 50% of central Government staff. It would facilitate simplification of employment structures, the harmonisation of terms and conditions, and enhance our ability to redeploy staff to relevant Departments, Boards and Offices in support of Government's priorities and changing circumstances.

A Public Services Commission would also provide the opportunity to both streamline and modernise collective bargaining arrangements in respect of its staff and enable arrangements to be put in place that are modern, representative and focused on agreed outcomes. In this context, discussions have begun with employee representatives about the collective bargaining arrangements that will be utilised following the establishment of the Commission.

Hon. Members will want to be aware that, amongst other things, on establishment of the new Commission the Civil Service Commission would be dissolved and its functions subsumed within the remit of the Public Services Commission. All relevant staff would become employees of the new Commission and those who were civil servants when the Commission was established – while retaining the same terms and conditions that applied immediately prior to its coming into being – would no longer be members of the Civil Service. This step both modernises the employment relationship with those who were previously members of the Civil Service and puts them on the same footing as manual and craft workers as employees of the Commission.

The Civil Service Appeals Tribunal will be dissolved and employees of the new Commission would in effect be treated in the same way as other employees on the Island with the right to seek redress through the Employment Tribunal. Currently, civil servants have the right to appeal against dismissal to the Civil Service Appeals Tribunal, and if dissatisfied with the outcome of such appeal also have the facility to take a case before the Employment Tribunal for wrongful or unfair dismissal.

The chairperson, vice-chairperson and members of the new Commission would be appointed by the Chief Minister and hold office at his pleasure, as is the situation currently with the Civil Service Commission.

Existing collective bargaining arrangements in respect of the members of the Civil Service and employees engaged under Whitley Council terms and conditions of employment would be replaced by new arrangements which are to be agreed with representatives of the relevant employee groups. Should it not be possible to reach agreement with employee representatives in relation to the constitution and functions of negotiating and consultation committees to be established under the

auspices of the new Commission, then there is provision for a special committee of Tynwald to determine the collective bargaining and consultation arrangements that are to apply. This is intended to ensure that employees of the new Commission are not left without appropriate means for collective bargaining and consultation.

Local authority employees currently engaged under the Whitley Council terms and conditions of employment would not become employees of the new Commission. It would be a matter for the local authorities themselves, individually or collectively, to determine the most appropriate arrangements for their manual and craft workers, which is in essence the situation currently applicable in respect of their managerial, technical and clerical staff now.

A chief executive officer would not be appointed by the new Commission without the concurrence of the Department or Board concerned. The Public Services Commission would provide to the Chief Minister an annual report in respect of its functions, and any such report would be laid before Tynwald.

Mr Speaker, I commend the Bill to the House as an important further step in modernising and making more responsive and flexible employment arrangements applicable to a key element of central Government's workforce, and thus beg to move the Second Reading of the Public Services Commission Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and to reserve my remarks, please, sir.

The Speaker: Hon. Member, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Yes, I rise to support the Second Reading of this particular Bill.

Back in the days prior to this Election, I was asked to chair a committee to look into the whole structure of how we employ staff, and I was particularly pleased that we had representatives of the private sector and the public sector – senior HR people from across different areas in the Isle of Man – and it was very clear that the problem that we face in the public service... one of the biggest problems is the vastly complicated structures that exist in the way in which we employ people. So this is a very welcome step forward.

I know that the union representatives on the committee that I chaired were not actually representing their unions; they were there for their experience as union people, so whether they necessarily are fully behind this in terms of their union-agreed position I am not so sure, but I do know that both acknowledged that, yes indeed, the existing structures are overly complex – they make it much more difficult for both the staff to understand and for the management to manage. So, this is a breath of fresh air, it is very welcome, and simplifying the structures will, I am sure, assist us in provisioning better services for the people we represent.

Apologies to Members: the Hon. Member for Middle very kindly gave me some man-flu on Thursday, so I am struggling to... (*Interjections*) He coughed on me!

With that, I will be fully behind the Minister.

The Speaker: Mr Karran.

Mister Karran: Vainstyr Loayreyder, there are a couple of points that I would like to raise.

I think the point is that we are in a totally different environment to what we were in several years ago, as far as the Public Services Commission Bill is concerned. I think what would be interesting to know is what the Commission's views are going to be as far as the changing of conditions and practices.

One of the things I would be interested to know, as far as the Bill is concerned, is what is the mechanism as far as the changing of pay and conditions? Some of us tried to bring in five-year contracts when I was Chairman of the Water Authority, as far as the chief executives were concerned, and I just would like to know whether this Commission will actually give feet to the changes that are going to have to take place.

Whilst one was rather concerned about the issues of giving chief executives an exemption from work permits, I do feel that the present mechanism makes it very difficult, even allowing for the fact that the likes of Mr Cretney, myself and Mr Bell are the only ones left from the days when we had the disgraceful situation where employees were at the mercy of employers' abuse, because of the lack of any equality of arms.

So I would be interested to know, if there is a hit list, what is the hit list as far as this Public Service Commission Bill is concerned? Will it be starting to hold to account senior management as far as protecting... so that we can make sure that money... protecting the social advancements that we have had?

One of the concerns I have is... In one way, it is very good as far as the Whitley Council is concerned, because of the fact that we have seen vast improvements. We were talking about pensions in Question Time. I know of older Whitley Council workers who had to pay in for their own pension whilst others... *[Inaudible]* So there is some good argument for everybody being treated the same, but I would be interested to know what safeguards there are going to be to make sure that that becomes a reality.

The other issues that I would like to talk about are... There are a couple of points on the Bill that I would like you to... On clause 4, 'Public Services Commission', subclause (3):

'The Commission is to consist of the following members —
... (b) no more than 3 other individuals who must not be members of Tynwald.'

I just wonder what the rationale is behind that. Is it going to also have a debar on employees or any ex-employees of any Department or Statutory Board as far as its criteria is concerned?

It is interesting to see in clause 4, 'Public Services Commission', it does not mention who pays for the expenses of the Commission, which by extension means that whether these are paid or unpaid posts is not clear. So, if we could have a look at that.

Coming down to the likes of the annual report, one of the problems we have in Tynwald is we get information overload. I know it is a difficult problem for the Council of Ministers – we complain we want more information (**A Member:** You'll get two.) and we want the freedom of information – but what I am interested in is would the report have a section on each function listed in clause 5 to prevent the Commission from glossing over some areas?

We have only got to look at the problems that this administration has as far as the real liabilities for the future generations – the likes of the public sector debt. When some of us have raised it in the past it has just been rubbished – when we wanted to unilaterally make everyone have to go into a money purchase scheme, seven or eight years ago if I remember rightly. Just like further before that, on the National Insurance Fund, when we were trying to get them to deal with it and we were rubbished as far as that was concerned, about 10 or 12 years ago. What I am concerned about with that report is that you are not allowed to gloss over in your report, because you have 200 or 300 pages of information coming through on different things... so I think the report needs to be able to highlight all those points.

I must thank the Shirveishagh for such a detailed Second Reading as far as this Bill is concerned. I think he has obviously done his work. But there are a lot of issues that I had raised with Whitley Council, and it was blocked... and that was the whole compensation issue as far as the public service is concerned. I am led to believe by the professional people, and they say it is not the case, that we need a mechanism where we can have an independent tribunal when it comes to where Government is liable, instead of going down the costly process of bringing in a judicial function. Obviously, our workers should have that right to go down that line if they feel that it is right, but I do

think these are the sort of things that maybe the Public Service Commission should be looking at, where I am led to believe by professionals that we end up paying out more on legal costs than actually in the compensation that individuals are actually deriving. It might be an interesting idea for the Commission to look at when you get it set up – to look if there is a way of doing such a mechanism within the public sector, allowing that they will have a 5% or 10% increase by going down the road of a disputes resolution as part of the process.

This can be used to make more effective Government. I am concerned that I am led to believe by the unions that they feel they have not got the reassurances as far as Whitley Council is concerned, and I would be very interested if, in the reply, the Shirveishagh could possibly inform us what is the present state as far as the unions are concerned over this proposed legislation.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

I would echo the last sentiment by the Hon. Member, Mr Karran for Onchan, in terms of what are the unions saying about this particular Bill: have they had input into it, and what is their view? Of course, the question mark over whether or not they are accepting was raised by the Hon. Member for Rushen, Mr Gawne, because he said he is not sure. If he is not sure, that tells me that the unions are probably not sure, given his close working relationship with them over the years.

Am I correct, looking at the actual Bill, in terms of the make-up of this Commission, that those people, individuals, who are not deemed to be public sector employees are judges, Crown officers, Tynwald appointees, Ministers and Members of Departments, officers and employees of a local authority and members of the Police Force? Is it the intention of the mover of the Bill that the three individuals to make up the rest of the Commission will come from that particular area? Taking on board the views expressed by the previous speaker in terms of costly legal contests, it might be appropriate, I would suggest, to have someone who is legally qualified at the onset to actually sit on the Commission.

I am just wondering... Under clause 4 (6) it says:

‘A member of the Commission may resign by giving notice to the Chief Minister.’

but there is no detail about that. Normally, if someone is going to resign, they are required to get a certain amount of notice. So my question to the mover is: is he planning on bringing regulations forward to put the meat on the bone in terms of process under this piece of legislation? (**Mr Watterson:** Principle, not process.)

Under clause 4 (9), it says:

‘Subject to this Act the Commission may regulate its own proceedings.’

and I thought, ‘That’s a bit odd, they can regulate their own proceedings.’ So will those proceedings be laid down in regulation or can the Commission make them up as they go along? I ask the question because there is no clarification contained within the Bill. Or does the Civil Service Commission regulate its own proceedings now? I would have thought somewhere it is laid down what the process is and should be to be followed.

Functions of the committee are quite interesting, under clause 5(1)(i):

‘where appropriate to discipline its employees and provide for the suspension or termination of their employment;’

Again, it is all without detail. I know that, with primary legislation, the simpler the better and the meat comes by way of regulation, but a bit disturbed to see that they will have the power to discipline and suspend or terminate. I just wonder if that would be on the same basis now, which

can be lengthy and problematic; or is this going to assume some sort of additional power to be able to deal with these things a little bit quicker?

The measure of fairness is obviously important in Bills of this nature, and so I am asking the mover to give me some comfort that there is some fairness in this new system to be set up, more fair than perhaps we have now.

Also, under subsection 5(1)(k), it says:

‘to make arrangements for loss of office in relation to any public sector employee;’

Again, I would ask him is there going to be a formula or is there already a formula laid down? I thought there was, in terms of assessing, if someone is to lose office because the job is going, what they can expect by way of compensation, but again it just says ‘to make arrangements’, so it sounds like they are going to have the power to write out a blank cheque. I ask it. I am not involved in this area in Government and never have been, so excuse my ignorance, but it is a fair question and it needs to be asked.

The other matter, of course, in terms of making arrangements for the loss of office... The mover will be aware that he and I, and possibly one other Member of Tynwald Court, have received an e-mail recently asking us a question: in terms of public sector employees, why it is that in the early retirement packages managers are being offered two years’ worth of benefit, but those who are non-managerial are getting less? So again, it reinforces my question about (**A Member:** Fairness.) having the powers to make arrangements and also the fairness across the board, and we have to be fair.

I think that is probably it for me for now, but I would be more inclined to give it approval if I know that there are going to be regulations coming forward to regulate the activity of this new Commission.

Finally, can I just remind the hon. mover, when you next speak to the legal draftsman, that on the (**A Member:** Green.) explanatory memorandum, on the back page it makes the reference again... It says:

‘The Bill has no implication for manpower or resources.’

That should be changed to ‘human resource’. If we are modernising Government, then we ought to also modernise our language in this place (**A Member:** Hear, hear.) and in law.

Mr Watterson: Chris is the man to do that.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

In my former role, of course, I spent quite a lot of time involved with this piece of legislation and bringing it through to fruition today, so I am very pleased to add my full weight of support to this piece of legislation, which I think will go a long way to helping us get more consistency amongst the workforce in terms of our terms and conditions that apply.

At the moment, there is far too much leverage being applied from one section of the workforce against another section of the workforce to enhance their own terms and conditions, and I think that bringing things together under a Public Services Commission will be strongly advantageous to ensuring that the taxpayer and indeed the workers get a much more consistent approach across the workforce.

The unions may not agree with this. Of course, it is in many ways potentially going to dilute their influence across certain sections of the workforce, but I think the employees will realise that it is much more beneficial to have a consistent approach when it comes to core terms and conditions, although of course there will always be variances depending on people’s specialism.

So this is not a simple task, but this does go a long way down the road to making sure that the Government is better placed to ensuring in the future fairness and consistency from both sides of the equation, will go a long way down the road to ensuring more consistency and fairness when evaluating core terms and conditions, and I think will be a positive step forward.

There are many hurdles, I am sure, to be faced in terms of getting this right – there has been a lot done over the years which needs to be undone – but this is certainly, I think, a step that will be positive. Again, in terms of the opposition that will inevitably come from the union side, I think they should think carefully about how they approach this, in that really I think if they come forward along this journey in a positive manner they will find that the benefits for the workforce will be greater and actually will help the workforce in the long term, in terms of protecting jobs and ensuring that people are looked after in a fair and appropriate manner.

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

Mr Quirk: Thank you, Mr Speaker.

Just to echo some of the thoughts from the other Members, but I wanted to find out too... and I declare at this particular point that in my Member's interests list I am a member of Unite, as other Members are in the Chamber – but my thoughts are my own.

Mr Watterson: Unite will be pleased to hear that!

Mr Quirk: On this particular Bill... [*Inaudible*] I would hope that the consultation exercise that was done... I have not received any of the information, looking at the research, to see what actually all the unions have said which are involved in this. So it would be most helpful, if there is any information that is about, if it could be maybe circulated.

My small concerns are that – I suppose it is like other Members have said – the devil is in that particular detail, as they say, and it is regarding the other three individual members who will form the Commission: where they will be drawn from and how independently they will be drawn in and what sort of background and information they will have to give to the Commission.

The other concern I do have is in clause 5, the functions of the Commission. It is the same one, (k):

'to make arrangements for loss of office in relation to any public sector employee;'

It would be nice to see what the background is on that, what I would say are the terms and conditions within that – or do we have standing orders for this Commission to work from? Which brings me then to (2) at the bottom, where it says if there is any concern, to reach agreement... membership... a special committee will be established by Tynwald. No real detail there. It does not say to me whether it will only be left to backbenchers, or those who may not be in a Government Department – and there are a few now, so I wonder what the likelihood of the terms of reference is to drag those Members together. I am sure they will not be Ministers – or I hope they will not be Ministers, anyway.

The final one, and it is no thing to our current Chief Minister – in 5(3) the Chief Minister *may* give direction. So it begs the question: if the Council are putting this Commission together and the body could be Ministers, although I am sure it will not be, but then the Chief Minister or the Council of Ministers actually gives direction – what is the point of having this? That is my particular issue. Others will probably say something different, but I would like to see... I would think there are probably about four unions involved.

On the back of this, I do have some concern regarding the local authorities and how they will drift off into what is going to happen there, because it was always led, from the Whitley side anyway, that there would follow on the back of that the terms and conditions of employment, some of the benefits. Some of the pensions rights as well are engaged or blended into Government as well,

which others have enjoyed. There may have been some, in years past... that terms and conditions outside the Whitley agreement were negotiated, but that is not the fault of the unions – it is the fault of management as well. Management accepted those, or wanted some issues to be done and accepted those terms and conditions and had negotiations with the staff at the same time, and they are inherent. Whether they are valid now in a modern world needs to be looked at, and I am sure the unions themselves would look at some of them.

I hope that if the Commission – I am sure the Commission will be established... some of those views will be taken on board and I hope the Minister or the forums that are established listen to the unions, because they will have a point of view and they do represent a large population of the Isle of Man. One would hope that you would listen – and I am going to be chastised for this – to the local unions, (**A Member:** Hear, hear.) because at the moment there is an odd hiatus in the Isle of Man regarding our own union.

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

Mr Robertshaw: Thank you, Mr Speaker.

I thank Mr Teare, the Member for Ayre, for seconding me.

Particularly, I would like to thank Mr Gawne for his contribution and his support. I know that he put a tremendous amount of work in in the early days to bringing this Bill forward, and I am very much reminded of and wish to just read out a foreword by Mr Gawne back in 2010 to the then Report on HR Functions Review. He said:

'It is clear from the committee's deliberations that the current system is not delivering the services which all sides wish it to deliver. Staff are confused by the current system, unions are frustrated by it, managers are discouraged by it, Departments feel thwarted by it and the various bodies responsible for delivering HR services [at that time] struggle under the overly elaborate structure which history has imposed on them.'

I think that brilliantly captures the need and the importance of the work; so, Mr Gawne, I thank you for that.

To try to address the underlying current – and I thank all Members for their contributions – the question hung in the air on almost every speaker's comments: are we embracing the unions in this? The answer is yes. And are we going to protect terms and conditions? I think, just dealing with terms and conditions and pay etc first, I think it is important to say that as we move forward through, once the Appointed Day Order occurs the existing terms and conditions for all Whitley Council employees and the Civil Service members remain as they are now, except with the somewhat slight adjustment of what the definition of a civil servant is and what his or her opportunities are to go through an appeals procedure.

So it has been done in an inclusive way, it will continue to be done in a completely inclusive way, and I would like to assure Members that the work has already started – engagement with the unions to establish with them appropriate means after the introduction of the Commission that the engagement processes are open and fair and reasonable to both parties. I hope that, in general terms, covers the main concern expressed by Members. They should be reassured by that.

Just picking up on one particular point by the Member for Onchan, Mr Karran, there would be no intention at all to gloss over anything – oh, he has gone – in any report that we make. We have not got any hit list. This is a process of employers and employees coming together and finding a level playing field upon which we can engage, going forward, to make it efficient and appropriate for all parties.

There were one or two other comments that Mr Karran made which were outwith this Bill, but I will take those into account in due course.

I thank Mr Cannan for his comments. I do not quite agree with the point that he made that this is all diluting union involvement. No, it is not. It is stabilising it and bringing it together, so I could not

just support that particular point that he made, although I do thank him for his significant contribution.

Mrs Cannell mentioned issues related to resignations. The resignation processes will not change and will be effectively the same as they are now for the Civil Service Commission. She made a particular point, off piste really, about a point made to the Hon. Member and myself questioning the MARS scheme, and I have already replied to that particular person and would be happy to send my reply to her in due course if she is concerned about that, but that is outwith this whole matter.

Let me see if there are any other points that I have missed. (**Mrs Cannell:** Regulations.) Regulations will come forward in due course as appropriate.

Mrs Cannell, the fellow Member for Douglas East, made a few points about membership of the Commission. Just to refresh her memory – or refresh Members’ memories – employees of the Public Services Commission cannot be members of the Commission, and I think that is self-evidently necessary and appropriate; and there is also a need for a mix of lay members and Members of Tynwald. Lay members bring outside experience to the process and are very important to the work that will go on.

An independent tribunal to look at the liabilities is not within the remit and purview of the Bill.

Just to reiterate again the point made by a number of Members about union engagement, I do want to assure Hon. Members that that is ongoing and will continue, and is very important as we move towards eventually, hopefully, the Appointed Day Order.

I think that pretty well covers the points that I wanted to make.

Mrs Cannell: [*Inaudible*] ... for loss of office.

Mr Robertshaw: I will answer that point in a note to Members, Mr Speaker.
Thank you very much. I beg to move.

The Speaker: Hon. Members, I put the question that the Public Services Commission Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it.

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

For	Against
Mr Anderson	None
Mr Bell	
Mr Cannan	
Mrs Cannell	
Mr Cregeen	
Mr Cretney	
Mr Crookall	
Mr Gawne	
Mr Hall	
Mr Henderson	
Mr Houghton	
Mr Karran	
Mr Quayle	
Mr Quirk	
Mr Robertshaw	
Mr Ronan	
Mr Shimmin	
Mr Singer	
Mr Skelly	
Mr Teare	
Mr Thomas	
Mr Watterson	
The Speaker	

The Speaker: With 23 vote for and no votes against, the motion carries unanimously.

Hon. Members, that concludes the business of the House today. The House will stand adjourned until the next sitting, which will take place at 10.30 a.m. on 20th May in Tynwald Court.