

5.1. Public Services Commission Bill 2014

Mr Robertshaw to move.

The Speaker: We turn now to Item 5 – consideration of clauses, Public Services Commission Bill. We will move to the clauses –
Mr Karran.

Mr Karran: Vainstyr Loayreyder, I believe that the clauses of the Public Services Commission Bill should be referred to a committee of three Members with powers to take written and oral evidence in pursuance of sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to this House.

The reason why I wish to move the Public Services Commission Bill to a committee is that I am deeply concerned that there is a growing dispute which could affect the Island as far as the International Labour Organisation (ILO). I believe that, under international law, Whitley Council employees' side are recognised in their own right as a trade union and that there is an issue of us being in conflict as far as our international requirements.

I am not saying for one minute, as a former member of Whitley Council, that there is not a need for change as far as the Whitley Council structure is concerned, but I am concerned that there could be more damage done if we do not go about this the right way and I feel a committee of the House would be wise to take advice from the general public and from the interested parties as far as this Bill is concerned –

The Chief Minister: We have already done that.

Mr Karran: – and that is why I believe it should be supported to go to a committee.

It is interesting, Vainstyr Loayreyder, but the situation is that we might be starting the World Cup in the next week, but the fact is that we have created enough own goals for ourselves over recent years and I do not want to be in the situation where the Council of Ministers create another own goal as far as this Bill is concerned. That is why I feel it would be wise to support it to go to a select committee, because I fear that we are going to end up with a situation, if we do not handle this the right way, of disputes, which will be horrendous as far as the Island is concerned.

I am the first one to agree that things have got to change. The luxury of the boom days is not here now and we are going to have to cut our cloth as far as that is concerned, but what we need to do is to make sure that we do not end up with a situation with our labour relations going haywire in the near future as far as this issue is concerned.

We have got to agree that, over the years – in the last 30 years – there is no recognition of the tremendous advancements that have been made, as far as the working people of this Island are concerned, from the days when agriculture got more priority, and their animals, than the working people. I am concerned that if this Bill is not handled right, we will end up in a situation...

I am told that there has already been a dispute recognised and representation has been made with the International Labour Organisation, and I would be interested to know whether the mover, if he talks to the proposal for a select committee, can reassure us that there is not a conflict as far as our international obligations are concerned.

I think the bottom line is that I am concerned that whilst we all recognise there is a need for change within the public service, we need to be able to do it on the right basis, and I am concerned that there has not been the consultation that is needed with the unions on this Bill. So I do hope that the mover will reassure this House that we do not find ourselves in conflict with our international obligations if we support this proposal.

I hope Hon. Members will support this going to a select committee of three Members. Let's try and get it speedily resolved, let the unions and other parties put their input into this Bill, and then we will be on much more secure ground as far as proceeding with this piece of legislation.

I beg to move:

That the clauses of the Public Services Commission Bill be referred to a committee of three Members with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to the House.

The Speaker: Mrs Beecroft.

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

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

First of all, I declare that I am a member of Unite, which is on the Register of Members' Interests – as are other Members in this particular Chamber too.

I must say it surprised me a little bit, my colleague from Onchan there. I have not had any real concerns from any trade union organisations, but if my colleague has an element of right on this particular issue, maybe then I will be supporting him to go to a select committee for an examination and be given that opportunity.

Quite rightly, Mr Karran is saying the ILO, which is a good organisation, a powerful organisation... If there has been a complaint, maybe then the Minister could tell us that, because it may be an avenue where we could discuss that further and have that issue examined by ourselves rather than another jurisdiction in another country.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I would urge Hon. Members to resist this proposal. (**The Chief Minister:** Absolutely.) There has been considerable consultation already.

I think it is very important to state that the creation of the Public Services Commission Bill does not in any way impair the interests of those in Whitley Council or indeed those in the Civil Service. The point is that each group carries forward its own rights and entitlements into the new body and that any changes thereafter will be thoroughly negotiated; but if, at the end of the day, there is not an agreement achievable at that stage, then at that stage it comes back to Members of the House.

I think that all the covers and all the protection required are in place, Mr Speaker, so I would ask Members to resist this.

The Speaker: Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, I am a bit disappointed that the mover of the Bill, who is the Minister, could not clarify the point of whether there are any disputes as far as the International Labour Organisation is concerned –

The Chief Minister: You're making the allegation.

Mr Karran: – because I think it is important. I am very proud of my non-achievements as part of this Hon. House over the years, when you think of (*Interjections*) –

The Speaker: Hon. Member, can you stick to winding up your motion on the setting up of a committee? We do not need to have any history lessons.

Two Members: Hear, hear.

Mr Karran: Vainstyr Loayreyder, the only thing is that if you do not learn from the past you make the same mistakes in the future.

My concern is that this Bill might find us putting ourselves into a worse situation as far as our labour relations situation with a large chunk of the public service. Also, I do believe that it is wrong if we end up with a situation where we end up undermining our international obligations as far as the International Labour Organisation is concerned.

I hope Hon. Members will support this proposal. People in this House need to look at the track record of some of us in this House when it comes to being proven right on these things.

I had a meeting with Unite only yesterday about this issue and their grave concerns as far as this piece of legislation is concerned.

The Chief Minister: They were consulted.

Mr Karran: I have also seen other documentation about flexible working agreements that are being floated around, and my concern is that this might manage to keep the Civil Service happy as far as this piece of legislation is concerned, but as far as the manual workers are concerned there could be great problems there.

I hope Hon. Members will support the proposal. We will have to wait and see what history dictates to see who is right and who is wrong; but if there is a mad rush that this has got to go places before the parliamentary recess, because it is not going anywhere, I really think that, to be fair, you will more likely be better being on the safe side by supporting a select committee so that we can prove whether what I am being told is right or whether you will find that the other side is wrong. I do think that we do need to be very wary about this.

The Speaker: I put the motion that the Bill be referred to a committee of the House. Those in favour, please say aye; against, no. The ayes have it.

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

FOR

Mrs Beecroft
Mrs Cannell
Mr Karran
Mr Quirk
Mr Robertshaw

AGAINST

Mr Anderson
Mr Bell
Mr Cannan
Mr Cregeen
Mr Cretney
Mr Crookall
Mr Gawne
Mr Henderson
Mr Houghton
Mr Quayle
Mr Shimmin
Mr Singer
Mr Skelly
Mr Teare
The Speaker
Mr Watterson

The Speaker: With 5 votes for and 16 votes against –

Mr Anderson: Five?

Mr Crookall: Mr Robertshaw. *(Laughter)*

Two Members: Oops!

Mr Quirk: We have a convert!

Mr Robertshaw: I have to record that it was a mistake.

The Speaker: We now turn to clause 1 of the Bill and I call on the mover, Mr Robertshaw. *(Interjections and laughter)*

Mr Robertshaw: Enjoy!

Mr Karran: Vote one way and speak another!

Mr Robertshaw: It is the first time I have done that – I hope it will be the last!

Mrs Cannell: It won't be the last.

Mr Robertshaw: Thank you, Mr Speaker, and thank you for the support of the House.

I would like to reassure Members that a great deal of hard work has gone into this so far, and with care, and that process will continue as the various bodies come together; and, to repeat, if things do start to get a little bit difficult in areas, then that is where the Members will be drawn back again. I think that is very important.

As Hon. Members will recall, the Public Services Commission Bill is intended to establish a new Commission, which will be the employer of more than 4,000 people, representing about 50% of central Government staff. It would have a clear mandate to deliver consistent policies in respect of its workforce and work towards the simplification of employment structures, the harmonisation of terms and conditions of employment, and would facilitate redeployment of staff across relevant Departments, Boards and Offices as necessary in support of Government priorities and changing circumstances.

The new 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.

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

The establishment of a Public Services Commission is a further step in modernising and introducing more flexible and responsive employment structures which, coupled with culture change, are fundamental to the development of more efficient ways of working and the reduction of bureaucracy – all of which, of course, contribute to the ongoing imperative to achieve long-term financial sustainability.

The Bill repeals the Civil Service Act 1990 and the Civil Service (Amendment) Act 2007. Amendments are made to a number of enactments to replace, for example, references to 'Civil Service Commission' and 'civil servants' etc with 'Public Services Commission' and 'employees of the Public Services Commission'. Other amendments are included in the Bill consequential upon the Public Sector Pensions Act 2011.

Should the branches of Tynwald support of the enactment of this Bill, its provisions would come into operation on such day or days as the Council of Ministers by order appoint.

Mr Speaker, turning to the clauses stage, clause 1 provides for the short title of the Act resulting from the Bill.

Mr Speaker, I beg to move that clause 1 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 2 provides for the Act to come into operation on a day or days appointed by the Council of Ministers. The clause also provides for the Council of Ministers by order to make such transitional and saving provisions considered necessary or expedient.

Mr Speaker, I beg to move that clause 2 do stand part of the Bill.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the question. Clause 2: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Robertshaw: Mr Speaker, clause 3 sets out various defined terms used in the Bill, including the term 'stationed employer', which means the Department, Statutory Board, Office of Government or the public entity to which an employee of the Public Services Commission is assigned.

For the avoidance of doubt, this clause also confirms that the following, for the purpose of the Bill, are not public sector employees: (a) judges, Crown officers and Tynwald appointees; (b) Ministers and Members of Departments; (c) officers and employees of a local authority; and (d) members of the Police Force. These exclusions are important and should be read in conjunction with clause 5(1)(k) of the Bill, which empowers the Commission to make arrangements for the loss of office in relation to any public sector employee, excluding those I have just referred to.

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

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Can I just ask the Minister regarding the exclusions which form part of that – officers and employees of local authorities: have the Minister or his Department had any representation from the local authorities, asking to see what will happen with them? Will they be just left floating about, or is it up to them to organise themselves into another local authority... Whitley Council? I just wonder whether the Minister has had any representation.

The Speaker: Minister to reply.

Mr Robertshaw: Mr Speaker, they are separate to this, but I am sure that the local authorities will progressively use this structure as guidance in the way they conduct themselves.

The Speaker: I put the question that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Robertshaw: Thank you, Mr Speaker.

With regard to clause 4, subsections (1) and (2) provide for the establishment of a Public Services Commission and provide that it shall be a body corporate with perpetual succession and shall exercise the functions as set out at clause 5 of the Bill.

Subsections (3) to (7) provide for the membership of the Public Services Commission and related matters.

Subclause (3) provides that the Commission shall comprise a chairperson and a vice-chairperson, who shall be Members of Tynwald; and no more than three individuals, who must not be Members of Tynwald. This is in line with the current structure of the Civil Service Commission.

Subclause (4) makes clear that an employee of the Public Services Commission cannot be a member of the Commission. Whilst this is for governance reasons, it does not, however, preclude an employee from representing the Commission on committees and working groups as necessary. They cannot, though, sit on the Commission itself.

The authority to appoint the members of the Commission is vested in the Chief Minister and members hold office at the pleasure of the Chief Minister, as set out in subclause (5). Given that it is for the Chief Minister to appoint members of the Commission, it is also for him to decide the basis upon which such appointments are made.

Subclauses (6) and (7) deal with the resignation of members of the Commission. Specifically, subclause (6) provides that a member can resign by giving notice to the Chief Minister.

Subclause (7) sets out what are, in effect, transitional arrangements to enable: firstly, a Member of Tynwald who was appointed under subclause (3)(a) as either chairperson or vice-chairperson and who then ceases to be a Member of Tynwald, to remain as a member of the Commission until a successor is appointed; and secondly, to enable a lay member appointed under subclause (3)(b) who subsequently becomes a Member of Tynwald also to remain as a member of the Commission until a successor is appointed. No such provisions apply in relation to members who resign for other reasons or whom the Chief Minister decides should not continue in their role as members of the Commission.

As can be seen, subclause (8) of the Bill applies paragraph 9, except for subparagraph (1)(a), and paragraphs 10, 11, 11A, 11B and 12(2) of schedule 2 to the Statutory Boards Act 1987, to the Commission as they apply to a Statutory Board. These provisions relate to the execution of a deed or making of a document, legal proceedings, liability and indemnification of members and officers, and the provision of information and assistance to the Chief Minister. These provisions currently apply in respect of the Civil Service Commission.

The facility for the Commission to regulate its own proceedings is set out in subclause (9). The Public Services Commission is not to be a Statutory Board, and beyond the requirements of subclause (8) – which, as explained, applies elements of schedule 2 of the Statutory Boards Act to the Commission – it has discretion in the way it operates within the overall parameters of its governing legislation. This is, in essence, the same situation as currently applies to the Civil Service Commission and I would expect that the new Commission would do what the Civil Service Commission has done, which is to set out its *modus operandi* in a governance framework document approved by the chairman and members.

Subclause (10) is specifically for the avoidance of doubt and is intended to reinforce the fact that, in respect of its employees, the Public Services Commission will not have any of the legal rights and privileges that the Crown has in respect of civil servants. By way of context, the Civil Service

Commission, in exercising its functions, is currently deemed to act on behalf of the Crown, and civil servants, when carrying out their duties, are currently deemed to be officers of the Crown and to hold office at the pleasure of the Crown. In essence, the concept of civil servants as officers of the Crown is now largely defunct, having been overtaken by employment law. Going forward, those in administrative, professional, technical and clerical roles engaged by the Public Services Commission will be employees of the Commission and not civil servants. This, importantly, would put them in exactly the same position as manual and craft staff employed by the Commission would be in.

Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: Clause 4. I put the question: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 5 sets out the functions of the Public Services Commission.

To assist Hon. Members, it might be helpful if I refer you briefly to each of the subclauses.

Subclause 5(1)(a) provides for the Commission:

‘to determine policies relating to the employment, and the terms and conditions of employment, of its employees that are consistent with the Government’s human resources strategy and policies;’

This enables the Commission to determine, for example, a wide range of policies in relation to its employees which must be aligned with Government’s people and learning and development strategies; and, where impacting directly on terms and conditions of employment, would be subject to agreement through applicable collective bargaining arrangements.

Subclause 5(1)(b) provides for the Commission:

‘to employ such persons on such terms as it considers appropriate;’

On establishment of the Public Services Commission, existing terms and conditions would continue to apply until changes are agreed by way of collective bargaining or other arrangements applicable to the employee.

Subclause 5(1)(c) provides for the Commission:

‘by agreement with such bodies as it considers to represent the interests of its employees, to establish as necessary negotiating and consultation committees that include members of such bodies;’

This provision is intended to facilitate agreement between the relevant parties in relation to collective bargaining and consultation mechanisms to be adopted on establishment of the Public Services Commission. Agreement in this regard is, in my view, important; and to this end, discussions have already begun between representatives of Government and representatives of the employee’s side of the Whitley Council, who are appointed by Unite, and representatives of the Government Officers Association, Prospect. I am hopeful that these discussions will, in due course, lead to agreement and the adoption of new collective bargaining and consultation mechanisms for employees of the Public Services Commission.

I should, at this juncture, make reference to clause 5(2) of the Bill, which as Hon. Members will be aware makes provision for a special committee of Tynwald to be established should agreement in relation to collective bargaining and consultation arrangements not be reached. The intention to

take this approach is deliberate. A special committee comprising Members of Tynwald would bring a level of objectivity and independence to the issue should the establishment of such a committee be necessary, and I hope that it will not.

Subclause 5(1)(d) provides for the Commission:

‘where appropriate, to negotiate or consult with its employees or their representatives, whether via those committees’

– referred to in clause 5(1)(c) –

‘or otherwise, about the employees’ pay and other terms and conditions of employment;’

This empowers the Commission to negotiate or consult with staff or their representatives through collective bargaining or consultation mechanisms as in due course determined.

Subclause 5(1)(e) provides for the Commission:

‘to arrange for the recruitment of its future employees;’

Simply, this empowers the Commission to make arrangements it considers necessary regarding the recruitment of staff with the knowledge, skills and required experience to meet the needs of stationed employers.

Subclause 5(1)(f) provides for the Commission:

‘to organise the training of its employees;’

This empowers the Commission to train and develop staff not only to enhance effectiveness in their current roles, but also to develop them for future progression within the organisation.

Subclause 5(1)(g) provides for the Commission:

‘to make arrangements for the assessment of performance and appraisal of individual employees of the Commission;’

This empowers the Commission to develop and introduce performance assessment and appraisal schemes for all employees of the Commission. Currently, there is performance assessment and appraisal for members of the Civil Service, but there is no parallel mechanism in Whitley Council terms and conditions of employment. It is, in my view, important that there are modern outcome-focused performance assessment mechanisms in place for all staff of the Commission that not only encourage the delivery of effective performance but also support jobholders’ learning and development as a means of extending knowledge and skills and preparing them for progression in the organisation.

Subclause 5(1)(h) provides for the Commission:

‘to make promotions and arrange for the transfer of its employees between the various stationed employers;’

In practice, I would expect that many of these activities would be delegated to managers on the staff of stationed employers. The Commission would, though, retain direct responsibility for appointments to chief executive officer posts. With regard to the facility to transfer employees between stationed employers, this is important as it would enhance our ability to reallocate staff to support Government’s priorities and changing circumstances and potentially reduce the need for redundancies.

Subclause 5(1)(i) provides for the Commission:

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

It is necessary for any employer to have authority in relation to discipline, suspension and termination of employment. With regard to the Civil Service and Whitley Council staff, such provisions already exist in terms and conditions of service; and on establishment of the Public Services Commission, those existing terms and conditions would continue to apply until such time as they are changed by agreement between the parties.

Subclause 5(1)(j) provides for the Commission:

‘without limiting any duties it has under health and safety legislation, to make arrangements for securing the welfare of its employees;’

This simply reinforces the Commission’s duty, which is already enshrined in health and safety legislation. In this context, Government has a long-established staff welfare service available to all central Government staff.

Subclause 5(1)(k) provides for the Commission:

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

This empowers the Commission to put in place appropriate arrangements for loss of office in respect of persons employed by or holding office within a Department, Statutory Board, Office of Government or other public sector entity, and not only employees of the Commission. Currently, the Public Sector Pensions Authority is empowered to make such arrangements which deal with compensation for voluntary or compulsory redundancy. This is the case because previously such arrangements included an element relating to pensions provision following loss of office. However, under the relatively new Public Sector Compensation Scheme, as approved by Tynwald in 2014, the linkage to pensions was broken and thus it is no longer appropriate or necessary for the Pensions Authority to have any role in the making of such arrangements going forward. This responsibility is now being transferred to the Public Services Commission as compensation for loss of office directly related to employment, rather than pensions. This authority, however, does not permit the Commission to make arrangements for loss of office in respect of persons – as already referred to in clause 3(3)(a), (b), (c) and (d) – who are not, for the purpose of this Bill, public sector employees.

Subclause 5(1)(l) provides for the Commission:

‘to make arrangements, with the consent of the employee concerned, for its employees to be seconded to another employer;’

This facilitates secondment of Public Services Commission employees to other employers, whether public or private sector, for example as a means of enhancing the knowledge, skills or experience of the employee or employees concerned. Secondment cannot take place without the consent of those employees.

Subclause 5(1)(m) provides for the Commission:

‘to determine such other matters that may be considered reasonably necessary for the proper administration and management of its employees;’

This is simply a provision enabling the Commission to address unforeseen circumstances should they arise in relation to the administration and management of employees and could only be used within the overall parameters of the functions of the Commission as set out in the Bill.

Subclause 5(1)(n) provides for the Commission:

‘to perform such other functions as directed by the Council of Ministers.’

This enables the Council of Ministers to allocate such other functions to the Commission as it sees fit. There is similar provision in the current Civil Service Commission Act. This provision should not,

though, be confused with the provision in subclause 5(3) of the Bill, which enables the Chief Minister, after consultation with the Commission, to give directions to the Commission as to the exercise of its functions. Thus, for clarity, subclause 5(1)(n) empowers the Council of Ministers to allocate additional functions to the Commission's remit, whilst subclause 5(3) enables the Chief Minister to give directions regarding the exercise of the functions themselves.

I have referred already to subclause 5(2) regarding the facility to establish a special committee of Tynwald, and to subclause 5(3) regarding the Chief Minister's power to direct the Commission.

Mr Speaker, you will be relieved to hear that I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Just a few points there. If I can ask about the special committee of Tynwald Members, I presume that would exclude any Ministers who hold office at the time. It will presumably exclude the Chief Minister because he can give direction anyway, and also those who have any conflicts of interest in that.

With reference to disputes or if a special committee... if the Minister would give an example of what would go to that special committee, the extreme of that. We used to, in the olden days, have the Industrial Relations Service down the hill here, and we also have an opportunity to... a special court or industrial disputes resolution.

I wonder, regarding the costs of the committee – it may sound petty, but I presume we will not be able to claim, or those who are on it claim vast expenses from this, because sometimes they are £60 a meeting and meetings usually go on into the afternoons and whatever. So I am just wanting clarification on that while we are constructing a new Commission.

The other one was with reference to the terms and conditions, where an employee has a dispute on the terms and conditions. We have the scenario here where the Chief Minister can give directions. I just wonder when the Minister would see there were directions actually given and on what basis that would be. If we are to have an impartial Commission, one would hope that it would be by negotiation and some arbitration. I am hopeful that he would see that.

They are the small points that I have got, but I am sure there are others when I go on.

Mr Crookall: For now.

The Speaker: The mover to reply.

Mr Robertshaw: Thank you, Mr Speaker.

I am happy to try to clarify the points for the Hon. Member. Items would only come to a special committee of Tynwald if all other routes had been exhausted, and the Hon. Member can be reassured that the Public Services Commission would do everything possible to try to arrive at a negotiated agreement. It is only in the absence of that finally – a negotiated agreement – that a matter could then be referred to a committee of Tynwald, and it would not be for the Chief Minister or myself or anybody else to decide – it would be for Tynwald to decide – who sat on that committee. Just in the normal course of business, there would not be any funding available to committee members to carry out their duties in that regard.

His point about terms and conditions: that is all part of the negotiating process that would go on in the normal course of business. It would be unfortunate and regrettable if it had to go as far as coming to a committee of Tynwald, but that opportunity is there should it be absolutely necessary.

Mr Speaker, I think that answers the question.

The Speaker: I put the question that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 6 provides for the delegation of the Commission's functions as appropriate. In this context, the Commission have the facility to authorise any Member or officer of the Commission or any other person to exercise any function of the Commission either alone or jointly with the Commission or with any other person.

In turn, any person authorised to exercise any function of the Commission may authorise any employee of the Commission to exercise that function in their stead.

This authority is important as it can be utilised to delegate performance of certain functions of the Commission to Departments, Boards and Offices to enable them to manage their staff directly.

Mr Speaker, I beg to move that clause 6 do stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, please.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 7(1) provides that an employee of the Public Services Commission has entered into a contract of employment with the Commission or is in employment or office prescribed by order of the Council of Ministers. In this context, it is intended that, on establishment of the Public Services Commission, the Council of Ministers would make orders prescribing members of the Civil Service and those who are Whitley workers employed in central Government as employees of the Commission.

Any such order would be subject to the approval of Tynwald, as set out in subclause 7(2).

Subclause 7(3) provides for the organisation of employees into such categories as the Commission considers appropriate and to apply such terms and conditions of employment as necessary, depending on such categorisation. This enables the Commission to apply differences in terms and conditions between categories as necessary to meet the needs of stationed employers. While every effort will be made to harmonise terms and conditions of employment across all employees, there may be operational reasons for differences where differences may be required.

Subclause 7(4) provides that where a person is to be appointed as the chief executive officer of a Department or Board, the concurrence of that Department or Board would be required.

In the case of the appointment to the role of Chief Secretary, then the concurrence of the Chief Minister would be required in accordance with subclause 7(5), the Chief Minister having consulted with the Governor before giving such concurrence.

With regard to appointments more generally, subclause 7(6) empowers the new Commission to make appointments in circumstances where any statutory provision provides for a person to be appointed to a role that undertakes functions performed by a public sector employee but does not stipulate who shall make the appointment. This is a simple catch-all provision which parallels a provision in the current Civil Service Act and is used only in a limited number of situations.

Subclause 7(7) is for the avoidance of doubt and makes clear that an individual can have more than one employment at the same time – for example, in the case of part-time working.

Mr Speaker, I beg to move that clause 7 do stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

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

The Speaker: Mr Quirk.

Mr Quirk: Just on the employment of a particular person, if the Minister could clarify there... Normally, you would have a contract and terms and conditions with a certain Department you were in – say the old term was the DoT, or whatever. So, the employee would have a contract with the Commission, and I am just wondering if that is particularly right. So then, if any dispute arose with the employee, the Commission would resolve the issue, so the Department does not have an input. What is the benefit of having a human resources department, within say the DoI – using them as an example – if the Commission is the employer?

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

I just wonder, on subsection (4)(a) and also subsection (5)... In the first one, it says:

‘a Department or Statutory Board, the appointment may not have effect without the concurrence of that Department or Statutory Board;’

So I just wonder, will there be any involvement at the interview stage from the Statutory Board or the Department?

Also, in terms of subsection (5), it says that if there is an appointment of a new Chief Secretary, the Chief Minister has to concur with it and consult with the Governor about it. Again, will the Chief Minister have any influence, in terms of will he – or she, in the future, possibly – be able to sit on the interview panel at the time, when going through the screening process for the next Chief Secretary, which is an *extremely* important position in terms of of Isle of Man Government?

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

Mr Robertshaw: Thank you, Mr Speaker.

I think that the simple answer to both questions posed really is that what I have articulated here effectively simply replicates what is happening now, other than it is under one jurisdiction rather than two.

So, in terms of disputes, the same... similar process that applies now would apply afterwards, except in relation to the Public Services Commission and not, as it is now, Whitley Council.

Again, with regard to appointments and the importance of the involvement of Departments and Boards, and the Chief Minister with regard to the Chief Secretary, the same process would apply in future as applies now.

With that, Mr Speaker, I beg to move.

The Speaker: I put the question that clause 7 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 8 provides a level of protection for members of staff who are in an existing central Government employment or office and, by order of the Council of Ministers, become employees of the Public Services Commission. In such circumstances, they would be employed on the same terms and conditions of employment that applied immediately prior to them becoming employees of the Commission. This, though, does not preclude the Public Services Commission from subsequently implementing changes to applicable terms and conditions following collective bargaining agreement or other arrangement applicable to the employees concerned.

Mr Speaker, I beg to move that clause 8 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 9 provides that an employee of the Commission must perform such duties and observe and comply with such reasonable instructions as given by the Department, Board or Office to which they are assigned – referred to in the Bill as the ‘stationed employer’ – or any person duly authorised by the said stationed employer for that purpose. This empowers the stationed employer to manage those employees of the Commission assigned to them and to delegate to relevant levels of authority through their respective management chains.

Subclause 9(2) confirms that terms and conditions are governed by the employee’s contract of employment and instructions given cannot go beyond the boundaries of that contract.

Mr Speaker, I beg to move that clause 9 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 9 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 10 addresses matters relating to liability in tort. A tort is a civil wrong, rather than a criminal act and includes, for example, defamation, negligence, nuisance, restraint of trade; and specifically provides that where an employee of the Commission, in the performance or purported performance of their functions, commits a tort, then the stationed employer, where it is a Department or Board, would be treated as joint tortfeasor, or wrongdoer, along with the employee concerned, and may therefore become subject of civil action. Where the stationed employer is not a Department or board, then it is the Treasury that will be treated as the joint tortfeasor.

Mr Speaker, I beg to move that clause 10 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 11 places an obligation on the Public Services Commission to provide a report to the Chief Minister with respect to the carrying out of its functions. Such a report must be provided at least at the end of each financial year, or more frequently if required so by the Chief Minister.

It is a requirement that any such reports must be laid before Tynwald, as is currently the case with the reports submitted by the Civil Service Commission to the Chief Minister.

Mr Speaker, I beg to move that clause 11 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the question. Clause 11: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 12 and schedule 1.

Mr Robertshaw: Thank you, Mr Speaker.

Clause 12 deals with consequential amendments and repeals and includes specifically the repeal of the Civil Service Act 1990 and the Civil Service (Amendment) Act 2007.

As can be seen, a number of amendments are dealt with and set out in the schedule to the Bill. These deal primarily with the necessary changes brought about by the creation of the Public Services Commission. Also included are a number of missed amendments consequential on the Public Sector Pensions Act 2011.

It will be noted that within the schedule reference is made to the deletion of the entry:

'The Civil Service Appeals Tribunal.'

from part 1 of schedule 2 to the Tribunals Act 2006. While the tribunal was established as a consequence of the Civil Service Act 1990, there is no provision contained within the Public Services Commission Bill for a parallel body to consider appeals against dismissal from employees of the Public Services Commission.

It will be for the Public Services Commission, as referred to in clause 5(1)(l) of the Bill, to amongst other things provide for the termination of employment of its employees, and within such provisions to ensure that the requirements of employment legislation are properly adhered to, including, as part of an internal process, the right of appeal against dismissal. Employees of the Public Services Commission would, as is the case with other employees, have the right to make a claim to the employment tribunal with regard to wrongful and unfair dismissal.

Mr Speaker, I beg to move that clause 12 do stand part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 12 and the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.