

5.2. Council of Ministers (Amendment) Bill 2016 – Clauses considered

The Speaker: Hon. Members, we turn now to Item 5.2, the Council of Ministers (Amendment) Bill in the name of Mr Cannan.

To that, there are tabled amendments, one of which is an amendment to the long title. I would propose to take the amendment to the long title first – in the name of Mr Watterson – before the consideration of the rest of the clauses, as amendments 2, 3, 7 and 9 on the Order Paper are dependent on the long title amendment.

Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Thank you, Mr Speaker.

The amendment to the long title, in my view, is necessary in order to move some of the provisions that I believe would enhance the flexibility in this Bill.

In order to explain why, some explanation of the differences are required. The key change is that whilst still only allowing the House of Keys to elect a Chief Minister, if the House of Keys so wishes it would allow for a potential Chief Minister to come from Legislative Council, should that be the wish of the House of Keys. It would not allow Legislative Council a vote in that election, but would allow for any Member of Tynwald to be elected Chief Minister at the will of the Keys.

Hon. Members with long memories will recall that when Richard Corkill resigned in December 2004, Mr Gelling was the only candidate in the subsequent election and was elected with 31 out of 33 votes. It is therefore neither inconceivable nor unprecedented that Tynwald or, in future, the Keys would want to rally around a Member of another place in such a circumstance.

It would be the case in future, as it was in 2004, that Members of this House would have to justify that decision to their constituents. However, to deny themselves the opportunity to do that would not, in my view, leave us with the flexibility that might be needed *in extremis*.

I hope that sets out the reason for the change to the title and I beg to move, sir:

That the Long Title of the Bill be amended as follows:

Page 3, lines 1 to 4, for the long title substitute:

'A BILL to amend sections 2 and 4 of the Council of Ministers Act 1990 so as to provide that the Chief Minister shall be appointed by the Governor on the nomination of the members of the House of Keys; that the Speaker of the House of Keys may adjourn the House and call for fresh nominations if the Speaker considers that no nominee is likely to receive 13 votes; and that the House of Keys can pass a vote of no confidence in the Council of Ministers.'

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: I beg to second.

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

Mr Cannan: Thank you, Mr Speaker.

I will be opposing this move to amend the long title to the Bill. The whole purpose of bringing this Bill forward was to restore primacy back to the House of Keys and to remove the influence and opportunity for the Legislative Council, a publicly-unelected Chamber, to influence the policy and direction of the Government of the Isle of Man.

It is absolutely vital, in my view, Mr Speaker, that we maintain the intent and integrity of the proposals in the Council of Ministers (Amendment) Bill 2016 to ensure that the Chief Minister is nominated by and elected from the Members of the House of Keys and *solely* the Members of the House of Keys.

Do we have such little faith, Mr Speaker, that the Hon. Members in the House of Keys, elected by the public; that one single person from within the 24 is incapable of holding the position of Chief Minister? Do we have such little faith in the integrity of the House of Keys to be able to find resolution in that respect? Because if we have such little faith, then the answer is to go with these amendments and to allow somebody from the Legislative Council to hold the position of Chief Minister, not only someone from the Legislative Council but someone from within Tynwald, perhaps even the Bishop!

I would suggest to Hon. Members that the purpose of their support so far for this Bill was to see change in the legislative framework that we currently have; was to see a change in the constitution; was to go with what is, in my view, the wishes of the public at the moment, and that is to see the elected Members of the House of Keys, particularly the Chief Minister, conduct themselves and keep themselves accountable to the House of Keys, and that publicly-unelected individuals should not in any way be influencing the policies and procedure of the Isle of Man Government and particularly the Council of Ministers.

The Speaker: Hon. Member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker.

Full agreement with the last speaker, because I think it does deal with the primacy of the Keys, but I have mentioned this to Hon. Members before, having had the experience of – and Mr Gelling was mentioned – Mr Gelling being in the Legislative Council but being Chief Minister.

What he means is that one of the main functions of this House of Keys is to ask questions, particularly it is important to be able to ask questions of the Chief Minister, but what it will mean if the Chief Minister is in the Legislative Council, Members of this House will only have 10 chances in the year – 10 Tynwalds, 10 chances – to ask a question of the Chief Minister. That, to me, is totally inadequate. The Chief Minister has to be here in this House answering to elected Members.

Therefore, I think that this proposal is impractical on behalf of the people of the Isle of Man who wish to see the Chief Minister here and being answerable to this House.

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

Mr Watterson: Thank you.

Mr Speaker, I do not see that the change to the long title and the amendments that flow therefrom as being a threat to the primacy of the House of Keys, because it still leaves the House of Keys the only people able to vote in an election for the Chief Minister. It would not allow for anyone in Legislative Council to vote for the Chief Minister and it would still be a person nominated by the House of Keys.

This is not a question of faith, as has been put by some; it is a question of practicality and it is a question of not artificially closing down your options if the person that Tynwald is most likely to rally around is going to be a Member of another place rather than a Member of the House of Keys. That is a question and a decision for this place, but I am saying it is a question that we need to think about when that happens and not cut away our options at this stage.

There is provision in Standing Orders for Members of another place, Legislative Council, to be brought to the House of Keys, to be summoned to the House of Keys, for purposes. I would imagine that – to deal with Mr Singer's point – Standing Orders could be extended to allow for that. Now, that has not happened in the past; it did not happen last time but there is no reason why it could not happen in the future, if in the unusual circumstances that Members elected somebody from Legislative Council to be Chief Minister.

What I really caution against, Hon. Members, is about making your options so limited ... And that is the point that I would make when it comes to dealing with the long title.

So I hope Hon. Members will support the long title in as much as it just allows the House that extra flexibility when it comes to the election of the Chief Minister.

The Speaker: Hon. Members, I put the question that the amendment to the long title in the name of Mr Watterson be approved. Those in favour, please say aye; against, no. The noes have it.

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

In the Keys – Ayes 5, Noes 17

FOR

Mr Bell
Mr Quayle
Mr Teare
The Speaker
Mr Watterson

AGAINST

Mr Boot
Mr Cannan
Mr Cregeen
Mr Gawne
Mr Hall
Mr Harmer
Mr Houghton
Mr Joughin
Mr Malarkey
Mr Peake
Mr Quirk
Mr Robertshaw
Mr Ronan
Mr Shimmin
Mr Singer
Mr Skelly
Mr Thomas

The Speaker: There are 5 votes for, 17 against. The motion therefore fails to carry. We turn now to the clauses stage proper and clause 1. I call the mover, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

This clause is the short title of this Act, which is the Council of Ministers (Amendment) Act 2016.

The Speaker: Mr Singer.

Mr Singer: Mr Speaker, I beg to second.

The Speaker: Hon. Members, I put clause 1. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 2.

Mr Cannan: Thank you, Mr Speaker.

Clause 2 amends section 2 of the Council of Ministers Act so that the Chief Minister is appointed by the Governor on the nomination of and from amongst the Members of the House of Keys.

It details how such a nomination is made and also quite importantly it goes on to say that, having made such a nomination and approved such a nomination, a sitting at the House of Keys can also declare a vote of no confidence but with at least 16 Members of the House of Keys having so voted that they have no confidence in the Council of Ministers.

I beg to move.

The Speaker: Mr Singer.

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

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

Mr Watterson: Thank you, Mr Speaker.

Just for the clarity of Hon. Members, my numbers 2 and 3 will not be able to be moved due to the loss of the long title.

However, in moving amendment number 4 on the Order Paper, number 4 requires that at least 13 Members must approve the election of Chief Minister in a similar way as at present we have for our Legislative Council elections.

This ensures that an election gives a majority mandate to the Chief Minister irrespective of absences on the day. A majority of the House of Keys, as at present in the Bill, would mean a majority of those present and voting on the day. If there were absences, this majority could be reduced and a different result could ensue.

The mover has rightly recognised the need for a stable Government built on firm foundations and I believe that a key component of this is a requirement for an absolute majority of the House of Keys to support the successful candidate for Chief Minister.

I therefore beg to move amendment number 4 ... Will I be required to move all these together for clause 2?

The Speaker: Yes, move them altogether.

Mr Watterson: Mr Speaker.

Number 5 removes the present anomaly that we have whereby in the event of an unsuccessful first ballot, we have to wait two weeks before a second ballot for Chief Minister can be held. Again, a key part of business is confidence and to go without a Chief Minister for a further two weeks is unnecessary and destabilising.

As all of the potential candidates are known – they have to be Members of the House of Keys – there is no reason to prolong this. They would still need to prepare a policy statement and to be properly elected but the adjournment should be from hour to hour or day by day, not fortnight by fortnight, as at present.

Recent history has given us a taste of this. In 2006, three candidates stood and none received an absolute majority; a fortnight later there was one candidate. One problem – that of instability – was averted and another – that of Tony Brown's leadership – was created. There is no reason that this decision should take so long, and amendment 5 solves this problem.

Amendment number 6 requires that a motion of no confidence must also be supported by a minimum of 13 votes. Sorry, motion of no confidence must be ... Yes, my motion is that it be supported by a minimum of 13 votes.

I consider that the two-thirds hurdle that the Hon. Member for Michael moves is too high, requiring all backbenchers, the Speaker and one Minister to vote to remove the Chief Minister. This is an extraordinarily high hurdle. It would, to my mind, make the Chief Minister effectively untouchable. Again, I have chosen to recommend to the House that 13 be the appropriate level. Thirteen Members would be enough to block any legislation and the Budget, making the role untenable anyway. As this is the practical hurdle a Chief Minister needs to effectively command the confidence of the House, it makes sense that this should be the legal requirement as well.

I beg to move that amendments 4, 5 and 6 of the Order Paper, standing in my name, be moved:

Amendment 4

Page 3, line 15 for 'of a majority of the', substitute 'supported by no fewer than 13'.

Amendment 5

At the end of line 9 of page 4, after the word 'appointment.', insert:

'(2D) Despite subsection (2A):

(a) in the event that the Speaker of the House of Keys considers that no candidate is likely to receive 13 votes, the Speaker shall adjourn the House to later in the same day and call for fresh nominations; and

(b) if the Speaker considers that there is no prospect of reaching agreement that day, the Speaker shall adjourn the House until the next day.'

Amendment 6

Page 4, line 12 for '16', substitute '13'.

The Speaker: Mr Bell.

Mr Bell: I beg to second.

The Speaker: Mr Cannan.

Mr Cannan: Mr Speaker, I am happy to support the majority of what the Hon. Member has just moved there, particularly 4 and 5.

However, the amendment 6 which he proposes, which is to put in place 13 votes instead of the 16 that we contain in the Bill for a vote of no confidence, I think, still needs very careful thought. My natural inclination is to retain the 16 votes, given the seriousness of the vote of no confidence.

The Hon. Minister who is moving these amendments, the Minister for Home Affairs, is telling us that basically all the backbenchers, plus the Speaker, plus one Minister ... But that is only one possible combination. It could be two or three Ministers involved in a vote of no confidence in the Council of Ministers. Indeed, I would expect there to be at least one Minister, if not two or three, involved in such a move, given the seriousness of a situation.

The other point is, were a Chief Minister to come in with a narrow majority of support, then as I said last time when I brought forward the Second Reading, we do not want to be exposed into a position whereby any move or a move that is deemed unpopular by itself – a single item, a single order or a single motion – may result then in the Chief Minister being subject, or the Council of Ministers, being subject to a vote of no confidence.

I would ask that these amendments are taken separately, Mr Speaker. I will be supporting amendments 4 and 5 in respect of the majority requirement for the election of the Chief Minister, the administrative requirements relating to how the election is conducted, but I will not be supporting the 13 required for no confidence. I maintain that two-thirds majority is a sensible majority to have in that instance.

The Speaker: Hon. Member, Mr Thomas.

Mr Thomas: Just a small observation in respect of amendment number 5, which is that obviously at that moment the crucial thing is a programme for Government and a stable programme of Government for five years. My understanding is the meaning is that it would not necessarily happen the next day or even the next day. The election would happen when the timing is right.

The Speaker: I call on Mr Watterson to reply.

Mr Watterson: Firstly, to agree with the point made by Mr Thomas there, there does still need to be a programme for Government and that is laid before, presumably, the House rather than the Court going forward. As soon as that would be ready then that would be an appropriate time for the House to convene to consider it.

Thanking the Hon. Member for his support for the first two amendments, numbers 4 and 5.

Just to return to the theme of number 6, I think the danger we face with number 6 is we end up with a gap, a constitutional gap, between the number of votes that are required to grind the system of Government to a halt. So, if 13 Members are against the Chief Minister and Council of Ministers, they can effectively grind the business of Government to a halt. They can stop legislation; they can stop the Budget; they have an awful lot of power. However, you cannot then get rid of a Chief Minister until there are 16, and we end up with this gap where there could be 13, 14 or 15 Members who are against the Government, who have no confidence in the Chief Minister and Council of Ministers, and yet they cannot actually get rid of them.

I think there needs to be an alignment there. I think that is the reason that I have suggested that it also be 13; again, not a majority, but a clear 13, which being an absolute majority of the House and is something that would have to be very weightily considered, knowing that they would be leaving the country without leadership for that period.

I do not want to leave that circumstance, where there is a gap between effectively rendering a Government powerless and not being able to get rid of them, and that is why I think the threshold needs to be slightly lower in order to align those two aspects.

So, with that, I beg to move that amendments 4, 5 and 6 stand part of the Bill.

The Speaker: Mr Cannan, you have the right of reply.

In that case, we will go to a vote. The amendments 4, 5 and 6 will be voted on separately.

Amendment number 4 in the name of Mr Watterson. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendment number 5 in the name of Mr Watterson. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendment number 6. Those in favour, please say aye; against, no. The noes have it.

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

In the Keys – Ayes 4, Noes 19

FOR

Mr Bell
Mr Quirk
Mr Thomas
Mr Watterson

AGAINST

Mr Boot
Mr Cannan
Mr Cregeen
Mr Gawne
Mr Hall
Mr Harmer
Mr Houghton
Mr Joughin
Mr Karran
Mr Malarkey
Mr Peake
Mr Quayle
Mr Robertshaw
Mr Ronan
Mr Shimmin
Mr Singer
Mr Skelly
Mr Teare
The Speaker

The Speaker: There are 4 votes for, 19 against.

Amendment number 6 to clause 2 therefore does not carry.

Clause 2, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

This clause amends section 4 of the Council of Ministers Act 1990 so as to say that, if the Chief Minister ceases to be a Member of the House of Keys, he or she shall go out of office. In other words, were an Hon. Member to be elected Chief Minister and decide particularly to go for office at the Legislative Council and be successful, they would no longer be able to hold the position. That is effectively the purpose of this clause.

The Speaker: Mr Singer.

Mr Singer: Mr Speaker, I beg to second and reserve my remarks.

The Speaker: Mr Watterson.

Mr Watterson: Thank you, Mr Speaker.

The amendment that is standing in my name for clause 3 that survives to this stage is amendment number 8 on the Order Paper.

In dealing with amendment 8, currently section 4(2) of the Council of Ministers Act requires the Governor to notify the President of Tynwald if the Chief Minister resigns. As in future the House of Keys will be responsible for the election of the Chief Minister, it necessarily follows that the Governor should inform the Speaker of the House of Keys as well as the President as it is the Speaker who will be co-ordinating the arrangements for the election of a replacement.

Amendment 8 therefore adds the Speaker of the House to the people who should be informed of the resignation of the Chief Minister.

I beg to move that this amendment stand part of the Bill:

Page 4, line 17, insert a new subsection (2):

'(2) In subsection (2), after the words "President of Tynwald", insert "and the Speaker of the House of Keys."

The Speaker: Mr Quayle

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

The Speaker: Mr Cannan.

Mr Cannan: I can accept that amendment.

The Speaker: In that case, I put the question that the amendment number 8 to clause 3 in the name of Mr Watterson do form part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, sir.

Mr Cannan: Thank you, Mr Speaker.

Clause 4 simply details some enabling changes that will be affected by the support that is received for the Council of Ministers (Amendment) Bill 2016 and shows the enactments that are to be repealed if this clause and Bill are to be accepted.

The Speaker: Mr Singer.

Mr Singer: Mr Speaker, I beg to second.

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

Thank you, Hon. Members that concludes ...