

**5. BILLS FOR SECOND READING**

**5.1. Communications Bill 2018 –  
Leave of the House granted; Second Reading approved**

Dr Allinson (with the leave of the House) to move:

*That the Communications Bill 2018 be read a second time.*

**The Speaker:** Item 5, Bills for Second Reading: Communications Bill 2018.

Under new – very new – Standing Order 3.11A, I am satisfied that it is in the public interest. It is, of course, still subject to the leave of the House. Is that agreed? (**Several Members:** Agreed.)

Mr Hooper.

825 **Mr Hooper:** Just one thing. I am quite concerned that we are debating this Bill before the  
Tynwald Committee has reported on public service broadcasting. I think it would be quite  
premature for us to debate Second Reading until we have a firm commitment that the clauses of  
this Bill will not be taken until Tynwald has decided on its policy in respect of public sector  
broadcasting. If we can get that assurance from the Hon. Member beforehand, that would be  
830 great.

**The Speaker:** The question is that Dr Allinson have the leave of the House to move the  
Second Reading of the Communications Bill. Those in favour, please say aye; those against, no.  
The ayes have it.

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

**FOR**

Dr Allinson  
Mr Ashford  
Mr Baker  
Miss Bettison  
Mr Boot  
Mrs Caine  
Mr Callister  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Ms Edge  
Mr Harmer  
Mr Moorhouse  
Mr Peake  
Mr Perkins  
Mr Quayle  
Mr Robertshaw  
Mr Skelly  
Mr Speaker  
Mr Thomas

**AGAINST**

Mrs Beecroft  
Mr Hooper  
Mr Shimmins

835 **The Speaker:** There are 20 votes for and 3 against. The ayes have it. The ayes have it.  
I therefore call on Dr Allinson to move the Second Reading of the Communications Bill.

**Dr Allinson:** Thank you, Mr Speaker, and thank you for giving me leave to move this Bill.

840 I rise today on behalf of the Chair of the Communications Commission to move the Second  
Reading of the Communications Bill 2018. I have been involved in the Government's

telecommunications and broadcasting policy as part of the Chief Minister's Telecoms Working Group and the Tynwald Select Committee on Public Service Broadcasting. I must also acknowledge my role as Chair of the MUA and e-Ilan. However, I stand before you today, due to unforeseen circumstances, as a Member of Tynwald to move this Bill at the request of a colleague and to reflect his views and sentiments, not necessarily my own.

845 The Bill began when Mr Speaker was Chair of the Commission and I would like to extend my thanks to the Hon. Member for the time and attention he gave this Bill.

Telecommunications are central to the daily lives of our citizens. Telecoms in all forms are at the core of modern life and enable an informed population, which lies at the heart of a functioning democracy. On the Island today the telecoms industry is one of the pillars which support a modern economy, and looking forward it will play an increasingly important role in attracting high-tech, high-value businesses to the Island.

850 Whilst the majority of the Commission's work is ensuring that there is a properly functioning and competitive telecoms market, it also has the responsibility for regulating broadcasting. In a world of social media and web-based content, having a transparent broadcasting sector with clear regulations in place is more important than ever.

855 This Bill brings together telecommunications and broadcasting, previously dealt with separately in the Telecommunications Act 1984 and the Broadcasting Act 1993, and ensures provisions in the legislation are appropriate from modern society. Whilst both the telecoms and broadcasting sectors are dealt with in this single Bill, they are still distinct and the Commission must position itself to best meet the needs of both sectors.

860 While the current legislation has largely stood the test of time, it is apparent that a new approach is required. In 1984 the telecoms sector was still in its infancy in comparison to what exists today. Furthermore, during the time in force the Island has moved from having a monopoly provider of voice services to having a sector which enjoys healthy competition for all services.

865 The Bill before you supports a new landscape of consumer choice and technological change that could not have been envisaged when the original legislation was enacted. In essence, this means that Government and the regulator can be more responsive to economic and technical changes as well as attract and foster developing sectors. The Bill also modernises the approach to regulation of existing sectors.

870 During the lifetime of this new legislation, technology will evolve even further and the nature of the business models that support the innovation and investment will change in tandem. In order to provide the regulatory and legislative certainty needed to help foster investment, the Bill has adopted a technology and service neutral approach. By not unduly prescribing or defining services and markets, the Bill's provisions do not inadvertently prevent innovation of services from being rolled out in the future. The flexibility inherent in the legislation provides the opportunity to cater for such developments and quickly respond to societal and industrial needs.

875 To deliver on everything I have mentioned so far, all Members, the public and industry stakeholders have been invited to share their thoughts prior to the Bill going through the legislative Branches. The Commission has had useful discussions with Members and other stakeholders since the green Bill was published and has found this both insightful and helpful. I would urge any Members seeking to move amendments to discuss this with the Commission as the Bill is a large, complex and technical document and amendments could have unintended consequences.

885 Tynwald has made clear its commitment to a National Telecommunications Strategy and debated that subject at length in October. The Chief Minister has shown his own commitment to the issue by setting up the National Telecoms Infrastructure Subcommittee. The members of that body laid out an ambitious vision for telecoms on the Island and for a more responsive regulation. This has since been reinforced in the Programme for Government.

890 The National Telecoms Strategy, debated by Tynwald in October, identified that in addition to the social benefits our telecoms infrastructure brings it is also a key economic driver for the

majority of the businesses that contribute to our economy. As stated in this strategy, developments such as 5G and next-generation fibre networks have brought the issue of investment incentives to the fore for Government, regulators, and regulated entities alike. In the Isle of Man the Communications Commission, as the national regulatory authority, must strike a balance between fostering competition and fostering investment, and more often than not these are competing forces.

Being an Island economy, the importance of modern and reliable telecoms infrastructure cannot be understated. Investment in telecoms infrastructure begins with providing certainty around policy, regulation and legislation. The new Bill updates the definitions of telecommunications networks and services in a way that will be recognisable as international best practice by telecommunications operators and investors. It puts on the face of the Bill the *ex-ante* regulation principles found in the current telecommunications licences.

The Bill also gives the Commission new standalone competition powers which are more comprehensive than the current fair trading conditions in the operators' licences. There are more clearly defined enforcement measures, such as fines and other penalties, which will help the Commission to ensure that the market is a level playing field for all operators to compete. Such measures will provide certainty to would-be new entrants as well as bolstering consumer protection.

While the main emphasis of the Bill is to update the regulatory environment for telecoms, it also contains provisions for regulation of broadcast content providers. Whilst local radio stations will continue to be licensed as they are now, the Bill also provides for regulation of TV provided by satellite or distributed by an electronic communications network.

Like telecoms, the regulatory regime for broadcasting has a degree of built-in flexibility. It is important that there is flexibility in regulation in this area; for instance, the public's view as to what constitutes offensive language has evolved over time, and this has been reflected in the approach to regulation. Equally, in the Commission's decision-making process we are able to take account of contextual factors, such as the circumstances in which content is shown.

As with telecoms, the legislation will provide the framework upon which the detailed regulations can be built. Indeed, the ongoing work of the Tynwald Select Committee on Public Service Broadcasting demonstrates the continuing interest that exists in this space. It also emphasises the importance of the Bill having provisions to deal with issues in the broadcasting sector in a proactive way.

The Commission does not intend to go further in regulating online content than is required in neighbouring jurisdictions. However, it is very aware of the fact that the regulatory regime around online platforms is changing and that the legislation may need to be amended in the future. The Bill incorporates change provisions to allow for these changes to be made relatively easily after consultation.

Finally, I would like to draw my speech to a close by briefly discussing the future structure of the Commission. This Bill only provides the framework for the function of the Commission, not its structure. The composition of the Board is laid down under secondary legislation made under the Government Departments Act 1987 and the Statutory Boards Act 1987, legislation unaffected by the repeal of the Telecommunications Act 1984.

The Commission is aware that some Members and stakeholders wish to explore the structure of the Commission and potentially make changes. At the fore is the wish to see a non-political Chair of the Commission. It has been suggested in some quarters that having a political Chair may affect the independence of the Board. There is no evidence to support this view, only speculation on the part of some interest groups. A Statutory Board is a body corporate and all the Members share collective corporate responsibility for the decisions of the Board. Whilst the Chair does have a vote, all views from the Board have equal value and influence.

That is not to say that there is not room for improvement on the part of the Commission, particularly in respect of public engagement and regulatory reform. With that in mind, the Commission will continue to engage fully with all stakeholders in order to ensure that the work

945 of the Commission is in the best interests of the Island as a whole and not unduly influenced by  
vocal lobby groups. The Commission's primary role as an economic regulator for the telecoms  
industry is possibly being overlooked by those who started this debate and any changes made to  
the Commission must be evidence based and fully considered in the context of all of its  
stakeholders.

950 As I have outlined today, both the telecoms industry and the Commission itself are entering a  
period of profound change, and I would caution against any hasty actions at this stage and  
instead give the Commission the time to work with all parties to evolve the regulatory  
environment to best meet our social and economic needs. To do otherwise would have far-  
reaching consequences that do not seem to be fully recognised or considered by many of those  
955 seeking change. This is especially true at a time when the Government is considering investing  
heavily in the Island's infrastructure.

To conclude, as the Bill is large and technical in nature, I would like to thank the House in  
advance for what I hope will be its patience as this Bill progresses. Once the Bill has passed,  
there will be some further months of work to put in place the secondary legislation that will  
960 provide the detail and clarity for regulated entities for the foreseeable future, much of which will  
require consultation with all interested parties.

Mr Speaker, I move the Communications Bill 2018 be read for a second time.

**The Speaker:** Hon. Member for Douglas East, Miss Bettison.

965 **Miss Bettison:** Thank you.  
I beg to second and reserve my remarks.

**The Speaker:** Hon. Member for Middle, Mr Shimmins.

970 **Mr Shimmins:** Thank you, Mr Speaker.

I am grateful for the speech that the Hon. Member has introduced this Bill with. I appreciate  
that he is stepping in to keep this legislation on track.

975 There is a degree of urgency, as we all know, because of the desire to crack on with the  
National Telecoms Strategy, which is a very important enabler for this Island to catch up, in  
many ways, with some of its peers in the Crown Dependencies and other competitors.

I do have a number of questions and I am hoping that the Hon. Member will be able to  
answer those in his response. The first of them, I guess, would be about the structure of the  
Commission. In some ways it is unfortunate that the structure is not being addressed. The Hon.  
980 Member explained that there is separate legislation which covers that, but this a very  
comprehensive piece of legislation and in many ways it would have been helpful if the structure  
was being addressed at the same time as all these other matters are being addressed.

Specifically, I would like to understand why the Communications Commission has a political  
Chair when the Financial Services Authority and the Gambling Supervision Commission do not.  
And, I guess building on this, what consideration was given at the time when this legislation was  
985 being shaped to adopting a similar board structure to the FSA and the GSC, which seems to work  
very well and has done for a number of years? Does the Hon. Member accept that this is an  
especially sensitive issue, given the Communications Commission's role in overseeing public  
sector broadcasting? Is it appropriate that there is a political Chair with this additional aspect in  
this particular regulator?

990 Moving on to some other points, the Hon. Member explained that previously there were  
separate pieces of legislation which covered the two broad arms which the Communications  
Commission looks after, public sector broadcasting and wider telecoms communications. Why is  
this Bill tackling both these arms, communications and public sector broadcasting, at the same  
time? What consideration was given to introducing separate legislation? It is two quite separate  
995 areas with different makeups and different considerations and each of these areas perhaps

would benefit from separate legislation. Would it not have been better to proceed with a Bill to support the National Telecoms Strategy, on which there is clear consensus and a strong desire to progress? That was debated in Tynwald last month, so it has a clear mandate. The position on public sector broadcasting is less clear and it would be helpful, I think, to understand why the  
1000 Department is not awaiting the outcome of the Tynwald Select Committee debate on public sector broadcasting prior to updating any legislation in this area. It seems a fairly sensible thing to do.

I have drawn my remarks to a close. I wish to stress I am absolutely supportive of the communications aspect and the need to overhaul outdated legislation. I just query the path that  
1005 is being chosen to include public service broadcasting on this occasion.

Thank you.

**The Speaker:** I call the Hon. Member for Garff, Mrs Caine.

1010 **Mrs Caine:** Thank you, Mr Speaker.

I rise to support the Second Reading of the Communications Bill but with certain reservations.

This legislation is long awaited and a positive move to give more teeth to the regulator. Only this weekend, at the regular political surgery in Garff, was the substandard telecoms service  
1015 available to parts of the constituency raised with me and my hon. colleague, Mr Perkins. The sooner modern legislation is enacted to provide a better structure for the regulator to work from, the sooner we will hope to see standards improved for customers who are at present frustrated and feeling ripped off by the lack of modern infrastructure available in rural areas.

However, I would like to sound a note of caution over the bringing together of both the  
1020 broadcasting and telecoms legislation. I acknowledge that there are some advantages but my concern centres around the haste with which the hon. mover, Dr Allinson, is progressing legislation ahead of any debate of the report and recommendations of the Select Committee on Public Service Media. Can I ask him to confirm if it is his intention to delay consideration of the clauses until after debate of that report and recommendations?

I also wish to convey the concerns of the Digital Agency of the Department for Enterprise. These are the representatives from the media and information and communications technology (ICT) sector. Their concerns centre over the continuation of having a political Chair of this  
1025 regulator. That seems out of step in the 21st century and would be something, along with other minor amendments, that I should seek to bring forward at the clauses stage on behalf of the Digital Agency.

We agree better regulation in this space will play a part in attracting high-tech, high-value businesses to the Island, we do want the National Telecom Strategy to realise its ambitions, but we do not see the necessity of retaining a political Chair of this regulator. The other regulators have huge respect. They seem to manage without having a member of the board inside the  
1035 Council of Ministers – and it is a matter of perception, particularly as highlighted by the Hon. Member for middle when it comes to media and public service broadcasting.

So I would like to stress that the Digital Agency board members and I are broadly supportive of the Communications Bill and we hope to work with the mover to ensure regulation of these two important areas is modernised.

1040 Thank you, Mr Speaker.

**The Speaker:** Hon. Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

1045 Just two very short comments. I am actually very supportive of this Bill. I think it is well past due. I am quite looking forward to taking it through clauses here – it should be quite interesting.

Two questions for the hon. mover, though. The first is: under the current structure, how do they assess and address the risk of regulatory capture? And the second question is: there appear to be no provisions in respect of harmful or malicious communications built into the Bill and I am wondering if that is part of the thought process and if any amendments are proposed to be forthcoming from the Commission, from the Department, in respect of that at clauses stage?

**The Speaker:** I call on Dr Allinson to reply.

**Dr Allinson:** Thank you, Mr Speaker.

I would like to thank the Hon. Members for their input with this Bill and again thank the House for the ability to bring forward this Bill for Second Reading in the absence of the Minister who put it through First Reading.

To address one of the questions initially, which was about the timing of bringing this through to clauses stage after the Second Reading, obviously I am more than aware of the Select Committee on Public Service Broadcasting, which is due to bring its second and final report to the House in the November sitting of another place, and it is the Committee's wish to then debate that in December. Some of the recommendations the Committee has already suggested do deal with the regulation of public service broadcasting and in fact the very definition of public service broadcasting. It is certainly my wish to delay the closer scrutiny during the clauses stage until after that Tynwald debate has taken place, so that Members have all the information at their fingertips before they discuss the clauses stage. So it is certainly my intention and certainly my recommendation to the Minister that the clauses stage of this Bill should happen after we have had a full and frank discussion of the Committee report.

Coming on to some of the specific questions, I would like to thank Mr Shimmins for his comments. One of the comments was really why the structure of the Commission should not be assessed now and why there was a political Chair. The structure of the Commission is very much, I suppose, a historical remnant of previous ages where the ability to control communication was seen as inherently a job for the Home Office – or the Department of Home Affairs on this Island – and the ability to protect that communication was seen as an intrinsic aspect of Government. That is why many jurisdictions have always seen it as very important to control and have that protection of communication systems. What I would say is that, certainly in response to previous committee reports, back in 2012 CoMin made a recommendation on the report of the Select Committee on Television Licence Fees that:

The Minister for Home Affairs should continue to hold the position of Chair of the Commission at this time, with the legislative options in relation to the impartiality and autonomy of the Commission to be examined further by the Commission in consultation with the Attorney General's Chambers.

What I would like Hon. Members to see is that the passage of this Bill is part of a wider passage as we move into the future both for telecommunication services and broadcasting. The Commission certainly is not ruling out any re-examination of the structure, any re-examination of having a political Chair or actually any re-examination of where it sits within the great realms of Government and society. What the Commission is very keen on doing, though, is having a step-by-step approach, so this Bill is about very much the function of the Commission and hopefully we can dovetail that into the Government's strategy on telecommunications and to the industry needs to have a strong, firm but fair regulator. Once that is established, then the Commission have the chance to look more at the structure of the Commission itself and make sure it meets those needs.

He also draws comparisons with the Gambling Supervision Commission and the Financial Services Authority and says, 'Why isn't the Communications Commission on the same basis?' Again, the Communications Commission is not ruling that out in the future, and what we may see over the coming years is migration, particularly with DoI's efforts to have a regulatory hub, that we can bring some of these disparate regulatory authorities under one umbrella.

1095 He certainly also brings up the issue of public service broadcasting and the position of that  
within this document. It has always been the Commission's wish to have an oversight of public  
service broadcasting and fulfil the will of this House in protecting that from both industrial and  
political interference. But, in the same way, there was a Tynwald resolution in terms of setting  
up Manx Radio as a designated body for public service broadcasting, and that is why this is being  
1100 brought in as part of this Bill.

One of the other comments made is why we have two separate bits of legislation, why we  
are bringing two different Bills into a combined Bill which is updated and will be able to be  
updated in the future. One of the reasons for that is that 90% of the work that the  
Communications Commission does is about telecommunications, only a relatively small part at  
1105 the moment is about broadcasting; but the two sit well together, particularly with the  
convergence of technologies whereby people will be listening to radio through the internet on  
their phones rather than through a normal radio or what used to be called a wireless. So this  
ability to bring these technologies together, to regulate them together without arbitrary  
distinctions, could only help bring innovative solutions to communications problems and actually  
1110 encourage investment in the Island.

I would like to thank Mrs Caine for her comments. She made the main point that she hopes  
that this would give more teeth to the regulator. That is certainly one of the Commission's main  
aims, particularly in terms of telecommunications. At the moment, the only sanction available to  
them is to withdraw a licence. What this bit of legislation gives is a clear ability to fine those  
1115 industries that are not providing a decent service to the consumer. So it enhances that consumer  
protection by giving a greater range of sanctions.

She talks about a haste to progress legislation. I am afraid that there is a rather embarrassing  
history to this Bill and I do not think anyone could say that its arrival in the House has been hasty  
in any way, particularly not Mr Speaker. There have been problems with bringing this legislation  
1120 to the House both in terms of a General Election and also a change in the composition of the  
Communications Commission, but I hope that now we can actually go forward with this bit of  
important regulation and enhancement to investment on the Island.

I think one of her other issues was asking me to confirm a delay in consideration of the  
clauses until after the Committee on Public Service Broadcasting has reported, and I am happy  
1125 to give that today as my intention on behalf of the Minister.

She commented from her position in terms of the Digital Agency – concerns about, again, the  
role of the political Chair and that this is out of step with other jurisdictions. Whilst I would agree  
with her on that, I think the ability to have a political Chair might well suit the Isle of Man. We do  
not have to do the same as every other jurisdiction, particularly when as a Government we are  
1130 trying to make sure that there is a level playing field in terms of industry. But as I have said, the  
role of the political Chair is quite strongly regulated through the Government Code, and  
although the political Chair has a vote it is not seen as being above and beyond any other vote of  
any other member of the Commission. It is certainly the intention of the Commission, after it has  
managed to put the Bill into practice and bring forward those further regulations that are  
1135 inherent for its function, that it will then look at the structure of the Commission itself; but,  
without being coarse, I think the time for navel-gazing for the Commission is over. What we  
need to do now is bring forward positive legislation that will regulate a rapidly expanding and  
changing market, and then, when we have a chance to look at the structure, do that in an  
organised way, consulting both with industry and with this Hon. House.

1140 Mr Hooper mentioned regulatory capture and his concerns about that. I do not think this Bill  
will give that, in that it has a very clear appeals process for any regulations that various members  
of society or the business community may be concerned about.

He also talked about the lack of any sanctions for malicious communication in the Bill, and  
yet there are quite clear and updated parts of the Bill that look at the use of telecommunications  
1145 or broadcasting which may be seen as being either obscene or actually may upset people, and

gives clear guidance to the Communications Commission about how they can then deal with those sort of complaints.

1150 In summary, what I would like to say is that the Communications Commission is not working *for* the industry, it is an independent Commission, but what it will do is work with the telecoms and broadcasting industry on this Island both for their benefit in terms of investment and expanding services and also the benefit of the people who live and work here. This bit of legislation gives clear separation of the roles and responsibilities that are required by the Commission.

1155 With your leave, Mr Speaker, I would like to move that the Second Reading is now taking place.

**The Speaker:** Hon. Members, the question is that the Communications Bill 2018 be read for a second time. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.