

**4. BILLS FOR THIRD READING**

**4.1. Communications Bill 2018 –  
Third Reading approved**

Mr Malarkey to move:

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

**The Speaker:** Bills for Third Reading.

550 First, I call on Mr Malarkey to move the Communications Bill 2018.

**Mr Malarkey:** Thank you, Mr Speaker.

Hopefully I will not keep you as long as I did last week! (*Laughter*) (**The Speaker:** Hear, hear.)

555 Mr Speaker, I am pleased as Chairman of the Communications Commission to move the Third Reading of the Communications Bill 2018.

To recap briefly on the Bill, it brings together telecommunications and broadcasting, previously dealt with separately in the Telecommunications Act 1984 and the Broadcasting Act 1993, and modernises the terminology in those Bills.

560 The Bill has largely adopted the technology and service neutral approach to allow flexibility in the future. The Bill gives the Commission new standalone competition powers and communications space. There are also 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 in.

565 Hon. Members, the Member for Ramsey, Mr Hooper, supported by this House, put forward an amendment to recognise the harm that can be caused by messaging and, thanks to a further amendment by Dr Allinson, images sent online. I support this and see it trying, with future legislation proposed by my Department, going forward. There will be a further slight amendment to this suggestion put in at clauses stage in LegCo which will eventually come back here, in a couple of weeks hopefully, just to be ratified.

570 There was a healthy debate about the issue of the Chair of the Commission. However, I think something that was lost in the debate is the fact that the Commission is not adverse to change. It simply wants the matter to be dealt with in an appropriate and evidence-based way. While there was a lot of discussion about the merits of the Chair being political or not, what was not considered at all was what the most suitable structure would be.

575 Any form has to be appropriate for the entire industry, not just for certain parties. The Commission feels that this is what has been missing from the debate and the consultation to date. It was mentioned several times that all or a majority of industry want to bring about this change to the regulations. That, in itself, should give us all pause for thought and ask the question: have the full implications of these proposals been considered? Would it be good for the consumer? Most importantly, would it effectively result in industry regulating itself? None of these questions have been explored and that is what the Commission wishes to do.

580 Mr Speaker, this part of the speech was put together by the Commission without my interference and these are the words and what came back from the Commission and a meeting that was held yesterday.

585 A suggestion from the mover was to have a chair from industry. This, in my opinion, would be very dangerous and undermine the Commission's independence even more. The National Telecoms Strategy recommended that the Commission consider and consult on its structure after the Bill has passed into law and that is what the Commission intends to do.

590 While the push for change is coming from interested parties in the broadcasting space, let us not forget that the Commission is a national regulator authority for the telecom sector on the Island and that sector is of vital importance to our economy. Can everybody in the House today

say with certainty that changing the current structure of the Commission without proper consultation on the activities would not have unintended consequences? The Commission is committed to getting to the bottom of these questions and is only asking for time to do so. At present, all we are getting is, 'Remove the political chair and we can figure out what happens afterwards.' This is not good enough for our telecommunications or its economy.

Before I finally move to the final Reading, I would just like to say on this matter that many of you are comparing different regulators. The FSA and Gambling Commission deal with financial sectors, the heads of marketing and well-regulated international markets which put money into the Treasury, into our economy and it is a very hi-tech oversight by these regulators. The Communications Commission – and without belittling them in any way – monitors fair competition, prices, new technology, complaints, all parts of the market.

Most importantly, and this was brought out by the operations executive of the Commission, it looks after the public; it makes sure that what the public are getting, the very people that we are in here representing, is getting value for money – the man in the street. They see that as their bottom line: to make sure that in all this competition, all this pricing, all this everything else, the man in the street is getting value for money – the very people that we represent.

So I see a marked difference between what they are regulating in the Communications Commission and what is being regulated up in e-gaming or financial services. I also throw in, I am sure that the Members of the Commission would love to have the same pay scale as those people sitting on the FSA – we could all double our wage; how much the new chair of the Commission would be getting if we are going to start classing everybody as the same?

I do not want to harp on about this, Mr Speaker, today. I just wanted to be clear, having had time to reflect on the discussion that was held last week. It was a good debate on the clause that was put by the Hon. Member. I hope we can move on from that today. I think we have made the Commission's views extremely clear.

So, with that, I am not going to go on, and do a few thank-yous, if I can find the right part of the page to move to now.

I would like to take the opportunity to thank, firstly, my officers for the work they have done in the Commission and also the board for the amount of times they have drawn up draft after draft after draft of this Bill – probably several boards have done it over the last five years as well, with the past Chair of the Commission.

I would like to put a personal thanks out to Dr Allinson, for not just seconding the Bill but for stepping in at a very late stage for the Second Reading in my absence and taking that forward. I do appreciate that as well.

Finally, Hon. Members, I would like to thank all of you who took the time, talked with the Commission, to help the clauses to go through, what I considered to be, quite quickly and smoothly last week. It surprised everybody how we managed to get through it in a day. I hope we can do exactly the same today with the Third Reading.

Mr Speaker, I would like to move that the Communications Bill 2018 be read for the third time today.

**The Speaker:** Dr Allinson.

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

I would like to second the motion that this Bill gets Third Reading.

I think we need to remember how long this Bill has been in the making and how important it is. But I would also like to thank the Minister and the Chair of the Communications Commission for his commitment that now that we have got the Bill, as the communications sector evolves so the Communications Commission will evolve to match that (**A Member:** Hear, hear.) in the best interests of the people of this Island.

Thank you, Mr Speaker.

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

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

I had not intended to speak today but I think in response to the Minister's introductory comments that I should just clarify a couple of points and the reasons again why I think that having a non-political Chair of the Communications Commission is something that we should feel is desirable for the future.

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I concur there are many laws coming in under the new amalgamation of the Telecoms and the Communications Bills that are very much wanted. However, I think it was a slip of the tongue if I said the independent chair; I had always intended it would be ... not an *industry* chair, rather, it should be an *independent* chair. I do not see how having a chair appointed in the normal way through the Government selection process and then ratified by Tynwald would undermine the Communication Commission's independence at all.

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The Communication Commission, yes, it is a regulator and, most importantly, one of the aspects it regulates is the public service broadcaster and there is a very important principle that there should be and there should be seen to be a separation between regulator and media and also the industries. I cannot see why an *independent* chair, rather than a political chair would not be an improvement and be seen to be better for the Isle of Man in the long term.

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Indeed, the Minister said in response to my moving that amendment that I could bring it again in two years and perhaps in two years it would be appropriate. I cannot myself imagine why, when we are bringing primary legislation and when we heard from the legislative drafter that it was possible to stagger the Appointed Day Orders for different aspects of the Bill, if it is considered so important to have the political link with one foot in Council of Ministers and one foot in the regulator, we need to have that while the regulations, the secondary legislation and this primary legislation are going through. I cannot see why it would not be considered appropriate that an Appointed Day Order would establish the principle to separate the regulator from Government at the point in the future when all that legislation had been concluded.

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However, I am happy to support today because I recognise there are many positives in the legislation we are bringing today. But I think it is a shame for the Isle of Man that we did not support having a non-political chair at an appropriate time in the near future of the Communications Commission.

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Thank you, Mr Speaker

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

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

I recognise the progress that this Bill makes and I will be happy to support on that basis. I also welcome that the Commission is open to change and I understand that it wishes to consider the make-up on how it proceeds in a considered way.

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Would the Minister commit to introducing a public consultation on the make-up of the Commission within the next 12 months? Given the concerns raised by many organisations in this sector, the concerns raised by many Hon. Members in this House and indeed the concerns raised by the digital agency which was set up by this Government to guide us in digital manners, this would seem a sensible and measured approach which would enable our community to consider the make-up of the Commission and the points raised by my hon. friend for Garff in this important area, and perhaps enable us to move forward in a modern and cohesive manner.

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

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

I was not going to rise to say anything today but I was very concerned by the comments from the hon. mover talking about how there had not been proper consultation around some of these points.

The 2015 consultation asked very clearly about the constitution of the Communications Commission, asked very clearly about the political chair, the independent chair. The consultation response provided by the Communications Commission made very clear there were several alternatives the Communications Commission had considered and ruled out.

So this idea that it is kind of off the hoof, out of the blue, it is just nonsense. It was properly consulted on back then.

The Minister did say when he moved it there had not been a proper consultation, so I would just like him to confirm to this House that he is satisfied that the 2015 consultation and the 2017 update to that were in fact proper consultations that undertook around this Bill.

**The Speaker:** Hon. Member for Garff, Mr Perkins.

**Mr Perkins:** Thank you, Mr Speaker.

I will be supporting the Bill because I think it is long overdue and a necessary addition to our legislative armoury.

However, I do take issue with the Minister on the issue of an independent chair. Being the Chair of the Office of Fair Trading, I, from time to time, get calls in the evening complaining about the outcome of certain decisions that my officers have made, and because we are in the phone book we are very accessible and the conversation goes something like this, 'Yes, your officers looked at it all and I am still not happy with the outcome, I am phoning you at home telling you what I think and, by the way, I am not going to vote for you.'

Now, let's just transmit that into telecoms: Maughold is very bad at receiving broadband to the level at which they purchased it. And there is a massive movement out there, and I can just see it, if a political head gets into the chair of the telecoms you are going to have the whole of Maughold saying, 'We ain't going to vote for you next time round', and I feel that is where the danger is.

It is a complex issue, telecoms and, as the Hon. Member said, it goes to broadcasting and all the rest of it. I believe it needs some technical expertise and we will probably have to pay for it, but that is my position.

I will be supporting the Bill, but the reason I did not vote for it the last time was exactly that.

**The Speaker:** Mr Baker, Hon. Member for Ayre and Michael.

**Mr Baker:** Thank you, Mr Speaker.

I was not intending whatsoever to speak on this but I have just listened to the words of my hon. friend, Mr Perkins, and as the politically elected Chair of the Planning Committee, *(Laughter)* whatever Mr Perkins is alluding to there is magnified about 100 times, and every two weeks, and in public. I think we had the debate last week about political chair and it was voted on and this Hon. House, rightly or wrongly, decided that it was going to with a political chair so, for me, we have had the debate, we need to move on.

I think we have got a mixed economy within the various different supervisory organisations. We have got some which are independently chaired; we have got some that are politically chaired, there is no standard model. I can see benefits on both sides. Clearly, a political chair allows political accountability and that is something which is of great value, I think, within this Hon. House and within the Court of Tynwald so I think we need to be very mindful of looking at this all in the round and actually considering what the right solution is for the right situation. And with that, I will close my remarks.

**The Speaker:** Is anyone else not planning to speak but going to anyway? *(Laughter)*

745 In which case, I will call on the mover to reply.

**Mr Malarkey:** Thank you, Mr Speaker.

I knew when I read this it was going to start something!

750 Can I start by just addressing the movers – I am not turning this into another debate, Mr Speaker, I certainly did not intend to today, I think enough was said last week, views were made quite clearly.

755 I will briefly go through: I am glad that Mrs Caine has clarified the word ‘industry’ and rather ‘independent’ because there was a marked difference and alarm bells did go ringing around the Commission when that was mentioned yesterday about putting somebody from the industry into it, so I am glad for that clarification.

760 As regard to consultation, yes, there was consultation and, as the Member for Ramsey says, there was much in that consultation about having an independent chair. The consultation was some time ago, and I have just had a note from the Commission, things have moved on quite considerably since that consultation and what did not come out of the consultation, and he said in his own words, the Commission did not find any solution within the consultation something that they could actually go with, that they could actually accept. There were plenty of ideas – it did not actually mean there were all the correct ideas. The Commission at this stage does not believe that the correct way forward has yet to be found.

765 Will I commit to a consultation in the future? I am the Chair; I do not run the Commission. I will be guided by what the Commission wants to do. If they want to do a consultation in the future it will be their decision, not mine. But I have also had a note from the Commission saying that they are prepared in the future to have a consultation, but it is not my commitment, that is the commitment that is coming from the board or certainly the Commission itself.

770 I do not really know what to say about Mr Perkins. All I can suggest is if you ever get a chance to be Chair of the Commission, turn it down. *(Laughter)* That seems to be the problem. Politics is not easy. In life we have jobs and certainly if I was offered one today, ‘would I be OFT or would I be planning?’, I would be rushing out to the OFT as fast as possible. *(Laughter)*

775 I could go on and on, Mr Speaker, I think the debate has been well and truly heard. You know the options are there for the future. This is not the last we have heard of it. Really, I want to see the last of the Bills, not what is coming in the future. I am delighted to be moving the Third Reading today and I hope you will all support it and help this Bill, which has taken so long to make, to move on.

I beg to move, Mr Speaker.

780 **The Speaker:** I put the question that the Communications Bill 2018 be read for a third time. Those in favour, please say aye; those against, no.

*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  
Mr Cregeen  
Ms Edge  
Mr Harmer  
Mr Hooper  
Mr Malarkey  
Mr Moorhouse

**AGAINST**

None

Mr Peake  
Mr Perkins  
Mr Quayle  
Mr Robertshaw  
Mr Shimmins  
Mr Skelly  
The Speaker  
Mr Thomas

**The Speaker:** With 22 for, none against, the ayes have it. The ayes have it.