



PUBLIC SERVICES COMMISSION BILL 2014

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. C R Robertshaw MHK

INTRODUCTION

1. These explanatory notes relate to the Public Services Commission Bill 2014. They have been prepared by the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

BACKGROUND AND SUMMARY

3. In April, 2013, the Civil Service Commission, on behalf of the Council of Ministers, undertook a public consultation in relation to the benefits which might be realised from the establishment of a Public Services Commission, as successor to the Civil Service Commission. Following consideration of consultation responses the Council of Ministers determined that a Bill should be drafted to establish such a Commission.
4. The Bill establishes a Public Services Commission which would have a broader remit than the Civil Service Commission and it is intended that the Commission would become the employer not only of civil servants but also other categories of employee including manual and craft workers employed by Departments and Boards, under Whitley Council terms and conditions of employment. Enabling provisions in the Bill provide that those public sector employees in an employment or office prescribed for the purpose by the Council of Ministers would become employees of the Commission.
5. A Public Services Commission would have a mandate to deliver consistent policies, in respect of a workforce of more than 4,000 - representing about 50% of central Government's staff. It would facilitate simplification of employment structures, the harmonisation of terms and conditions and enhance the ability to redeploy staff to relevant Departments, Boards and Offices in support of Government's priorities and changing circumstances.
6. A Public Services Commission would also provide the opportunity to both streamline and modernise collective bargaining arrangements in respect of its staff and enable arrangements to be put in place that are modern, representative and focussed on agreed outcomes.

7. The Public Services Commission Bill 2014 repeals the Civil Service Act 1990 and an amendment to it, and amends other enactments, as necessary, to replace references to the Civil Service Commission and to civil servants etc. with references to the Public Services Commission and its employees or other public sector workers. Certain amendments consequential on the Public Sector Pensions Act 2011 are also included.

CLAUSES OF THE BILL

8. **Clause 1 - Short Title** - gives the Act resulting from the Bill its short title.
9. **Clause 2 - Commencement** - provides for the commencement of the resulting Act, apart from sections 1 and 2, to come into operation on a day or days appointed by order made by the Council of Ministers. The Clause also provides for the Council of Ministers by order to make such transitional and saving provisions as considered necessary or expedient.
10. **Clause 3 - Interpretation** - sets out various defined terms used in the Bill. It should be noted that, for the avoidance of doubt, the following are not public sector employees for the purpose of the Bill:
 - a) persons mentioned in Section 3(1) of the Public Sector Pensions Act 2011 (other than paragraph (c)) (judges, Crown Officers and Tynwald appointees);
 - b) Ministers and members of Departments;
 - c) officers and employees of a local authority;
 - d) members of the police force maintained under section 1 of the Police Act 1993.
11. **Clause 4 - Public Services Commission** – provides for the establishment of the Public Services Commission as a body corporate with perpetual succession and provides for its membership which shall comprise a chairperson and a vice-chair-person who must be members of Tynwald; and no more than 3 individuals who must not be members of Tynwald.

Members of the Commission are appointed by the Chief Minister and hold office at the Chief Minister's pleasure. An employee of the Commission cannot be a member of the Commission.

Provisions in relation to the resignation of members of the Commission and continuance in office until a successor is appointed are included in the clause.

It should be noted that:

- i) paragraph 9 (except for sub-paragraph (1) (a)), 10, 11, 11A, 11B and 12(2) of Schedule 2 to the Statutory Boards Act 1987 apply to the Commission as they apply to a Statutory Board. These 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;
- ii) the Commission does not have in respect of its employees any of the legal rights and privileges that the Crown has or had in respect of civil servants. With the establishment of the Public Services Commission civil servants, while retaining the same terms and conditions that applied immediately prior to the Commission coming into being would become employees of the

Commission and would no longer be members of the Civil Service (such terms and conditions are subject to revision following collective bargaining or other applicable arrangement);

- iii) the Civil Service Commission will cease to exist on repeal of its governing legislation and the new body will acquire its functions;
- iv) Clause 4 (10) has been included in the Bill for the avoidance of doubt, going forward, and is intended to reinforce the fact that the Public Services Commission will not have, in respect of its employees, 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 are, currently, when carrying out their duties deemed to be officers of the Crown and to hold office at the pleasure the Crown. In essence, the concept of civil servants as officers of the crown is now largely defunct and is a somewhat archaic concept overtaken by employment law. Going forward those in administrative, professional, technical and clerical roles engaged by the Public Services Commission would be employees of the Commission and not civil servants (this would be exactly the same position that manual and craft staff engaged by the Commission would be in).

12. Clause 5 - Functions of Commission – sets out the functions of the Commission which include, amongst other things, the authority to:

- i) determine policies relating to the employment and terms and conditions of employment of its employees;
- ii) recruit and employ persons and make promotions and transfers, as necessary;
- iii) organise training for its employees;
- iv) make arrangements for the assessment of performance and appraisal of its employees;
- v) as appropriate, discipline its employees and provide for the suspension or termination of employment;
- vi) make arrangements for securing the welfare of its employees (this does not limit the Commission's duties under health and safety legislation);
- vii) make arrangements for loss of office in relation to any public sector employee. This empowers the Commission to, for example, make schemes in respect of loss of office for persons employed by or holding office within a Department, Statutory Board, office of Government or other public sector entity (and not just employees of the Commission). This authority does not permit the Commission to make arrangements for loss of office in respect of persons as referred to in Clause 3 above who are not, for the purpose of the Bill, public sector employees;
- viii) make arrangements for the secondment of an employee to another employer, with the consent of said employee; and
- ix) determine such other matters that may be considered reasonably necessary for the proper administration and management of employees.

In addition, further functions of the Public Services Commission include:

- a) the establishment of, as necessary, negotiating and consultation committees that include members of such bodies considered by the Commission to represent the interest of its employees. If it does not prove possible for the Commission to reach agreement with such bodies in relation to the establishment and membership of negotiating and consultation committees the Bill provides for a special committee of Tynwald to be established to determine the collective bargaining and consultation arrangements to apply;

- b) to negotiate or consult with its employees or their representatives whether via negotiating or consultation committees, or by other means, about employees' pay and terms and conditions of employment.

The Bill provides for the Chief Minister, after consultation with the Commission, to direct the Commission as to the exercise of its functions and the Commission is required to comply with any such direction.

- 13. **Clause 6 - Delegation of functions** - provides for the Commission to delegate any function of the Commission to any member or officer of the Commission, or any other person, either alone or jointly with it or any other person. Any person so authorised may, in turn, authorise any employee of the Commission to exercise said function in their place. This authority 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, with local arrangements being put in place to meet operational needs, where appropriate.
- 14. **Clause 7 – Employees of the Commission** - defines an employee of the Commission as a public sector employee who is:
 - a) employed by the Commission under a contract of employment made between the individual and the Commission; or
 - b) in employment or an office prescribed for the purpose by order made by the Council of Ministers. Any such order cannot come into operation unless it is approved by Tynwald. While it must be a matter for the Council of Ministers to determine it is expected that in the first instance this would be limited to civil servants and those members of staff employed by Departments and Boards under Whitley Council Terms and conditions of employment. Once a Public Services Commission is established the Council of Ministers would give consideration to extending the remit of the Commission to other relevant groups, as and when appropriate.

It should be noted that local authority employees do not fall within the ambit of the Commission. It will be for local authorities, individually or collectively, to determine the most appropriate arrangements for determining terms and conditions of employment applicable to their manual and craft workers. Having said that, local authorities could adopt central government terms and conditions of employment for manual and craft workers on a 'by analogy basis'. (Discussions are ongoing with representatives of local authorities in relation to possible approaches in this regard).

The Bill provides for the Commission to organise its employees into such categories as it considers appropriate and to apply terms and conditions of employment according to that categorisation.

In the case of the appointment of a chief executive the appointment cannot have effect without the concurrence of the Department or Board concerned. With regard to the appointment of the Chief Secretary the appointment cannot have effect without the concurrence of the Chief Minister who must, before giving concurrence, consult with the Governor.

The Bill provides for the Commission to be the appointing body for statutory public sector appointments where the relevant statutory provision does not stipulate the person or body responsible for making such appointment.

15. **Clause 8 - Protection of rights of public sector employees who become employees of the Commission** – provides that a public sector employee who becomes an employee of the Commission by way of an order, made under section 7 by the Council of Ministers, will be employed on the same terms and conditions that applied immediately before becoming an employee of the Commission. Clause 8 also provides that this does not prevent the Commission from implementing any change to terms and conditions of employment following any collective bargaining or other applicable arrangements.
16. **Clause 9 - Terms of employment of employees** - provides that an employee of the Commission is required to perform such duties and observe and comply with such reasonable instruction as the Department, Statutory Board, office of Government or other public sector entity to which the employee is assigned, shall give. In addition, the clause provides that the Department, Statutory Board, office of Government or other public sector entity can authorise any person to exercise these functions on its behalf.
17. **Clause 10- Liability in tort** - provides for vicarious liability in the law of tort for a Commission employee's acts in the course of carrying out their functions. Liability falls on the Department or Board to which the employee is assigned or, in other cases, the Treasury.
18. **Clause 11 – Annual report** - provides for the Public Services Commission to make an annual report to the Chief Minister in respect of its functions and for such report to be laid before Tynwald. This clause also provides for reports to be made more frequently if so directed by the Chief Minister.
19. **Clause 12 – Consequential amendments and repeals** – introduces the Schedule of amendments to existing enactments.

The Schedule is concerned with:

- i) replacing references to the Civil Service Commission and to civil servants etc. with references to the Public Services Commission and its employees or other public sector workers;
- ii) a number of missed amendments consequential on the Public Sector Pensions Act 2011.

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 a Public Services Commission. It will be for the Public Services Commission, as referred to in Clause 5 (i) of the Bill to, amongst other things, provide for the termination of employment of its employees and within such provision to ensure that the requirements of employment legislation are properly addressed including, as part of an internal process the right of appeal against dismissal. Employees of a 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/or unfair dismissal.

The following are repealed:

- a) Civil Service Act 1990; and
- b) Civil Service (Amendment) Act 2007.

FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES

20. The Bill has no implication for manpower or resources.

HUMAN RIGHTS

21. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

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