



LEGISLATIVE COUNCIL OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 6th May 2014

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Present:

The President of Tynwald (Hon. C M Christian)

The Acting Attorney General (Mr J L M Quinn),
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,
Mr E A Crowe, Mr A F Downie and Mr J R Turner
with Mr J D C King, Clerk of the Council.

Business transacted

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** In the absence of the Lord Bishop, the Chaplain will lead us in prayers.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: Hon. Members, the Lord Bishop and Mr Wild have leave of absence today.

Welcome to Hansard visitors from the House of Commons

10 **The President:** We are pleased to welcome this morning to this sitting three visitors from the House of Commons – Alex Newton, Jack Homer and Tim Youngs – who are on a study visit to the Isle of Man to look at the way in which we produce *Hansard*. Welcome.

Order of the Day

1. European Union (Amendment) Bill 2014 – Second Reading approved

The Acting Attorney General to move:

That the European Union (Amendment) Bill 2014 be read a second time.

The President: The first Item on our Order Paper is the European Union (Amendment) Bill. I call on Her Majesty's Acting Attorney General to take the Second Reading.

15 **The Acting Attorney General:** Thank you, Madam President.

As I advised at the First Reading, the primary purpose of this Bill is to amend the European Communities (Isle of Man) Act 1973, to implement in Manx law certain international obligations that

20 apply to the Island by virtue of its Protocol 3 relationship with the European Union. In particular as a result of this Bill, the 1973 Act will reflect the fact that Croatia became an EU member state last year, and it must be treated in the same way as the other member states.

The Bill also provides for any such straightforward amendments that may be required in the future to be made by an Order which will be subject to the approval of Tynwald, rather than a further amending Act.

25 Finally, the Bill streamlines the procedure for the voluntary application of certain EU legislation to the Island using the 1973 Act, whilst retaining the requirement for Tynwald approval. It provides some clarification in respect of EU legislation that is applied to the Island, as amended from time to time, as is in the case with the list of persons who are subject to EU sanctions, for example.

Madam President, before I move that the Bill be read for a second time I would like, if I may, to pick up on a couple of points that were made by Hon. Members during the First Reading.

30 One of these points concerns the recently announced EU legislation that has capped – and, as I understand, next year will *abolish* – roaming charges for mobile phone users within the European Union.

The Council of Ministers could invite Tynwald to apply that relevant EU legislation to the Island using the 1973 Act, and so require the Island's network operators not to impose roaming charges on visitors from any of the EU member states. What Tynwald could *not* do, however, is impose any obligation on the network operators in any of the EU member states in respect of visitors from the Isle of Man.

40 As I explained at the First Reading, the procedure of using the 1973 Act for the application of EU legislation to the Island, and so for it to become the law here, is perhaps more clearly described as a legal mechanism for a piece of EU legislation to be used as a template for making an equivalent or similar piece of Manx legislation. But as a Manx piece of legislation, the application order cannot impose obligations on any of the EU member states, or companies that are based in those states, or on any of the institutions of the EU.

45 Madam President, if I may put it this way: the abolition of roaming charges within the EU is a benefit that is available to the people of the EU member states. The fact is that if the Isle of Man had mirrored the EU legislation it would not make us part of the EU for this purpose, so the benefit would still not be available to the people of the Island.

The further point from the First Reading concerned countries that may become EU member states in the future. Assuming that the UK is still a member of the EU at that point and the Island's Protocol 3 relationship is still in place, the Isle of Man would be subject to the same international obligations in respect of a new member country as it is in respect of Croatia and the other member states, because this is a fundamental requirement of Protocol 3. However, as I have made it clear, the decision on whether the Island's international obligations will then implement the Manx law would rest *in* Tynwald and *with* Tynwald.

55 I would suggest, though, that any decision not to do so could not be taken lightly. It would have to take into account the potential implications for the Island's relationship with the EU as a whole and with the UK in particular, which has ultimate responsibility for the Island's international relations.

60 Madam President, I hope that this information is helpful to the understanding of Hon. Members, and I beg to move that the European Union (Amendment) Bill be read for a second time.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

65 **The President:** The Hon. Member, Mr Downie.

Mr Downie: Yes, thank you, Madam President.

I would just like to ask Her Majesty's Attorney: one of the main planks of the Bill is to provide a mechanism so that if there are countries in the future joining the European Union there will not be a requirement to have a Bill; we will be able to deal with this by Order in Tynwald.

70 But the question I would like to ask is: will this Order, if so approved, also deal with countries who may wish to withdraw from the European Union? As I understand it at the moment under the present regime, not only do we need a Bill if another country joins but if another country were to withdraw we would need a similar piece of legislation.

75 Given all the discussion going on about the European Union at the moment, surely it would make sense to have provisions now in our legislation so that if there are countries withdrawing, that can be dealt with without requiring us to go and draft a new piece of legislation.

The President: The Hon. Member, Mr Butt.

80 **Mr Butt:** Thank you, Madam President.

I would just like to support the Second Reading of this Bill. This seems to be a pragmatic way of dealing with what could be a bureaucratic problem in terms of new legislation coming before us every so often when a new country joins. Also the application of EU instruments will be more simply achieved, always with the safeguard that Tynwald will have to approve these measures.

85 So I think this is a sensible piece of legislation and I support it.

The President: The mover to reply.

The Acting Attorney General: Yes, thank you, Madam President.

90 Firstly, if I could thank Mr Butt for his support, and also to you, Mr Downie, for your similar support and if I could address the issue you have raised for clarification.

One of the purposes of this Bill, as you quite rightly said, is to streamline the legislative process in the Isle of Man to enable, for example, the example you have quoted and that I have referred to, a new EU member state joining, that we would not have to actually introduce new legislation.

95 The same streamlined provision would apply for an existing EU member leaving, if there was an enactment or an order out of the EU under which an existing member was to step out of membership or step down, then a similar procedure would be followed here, just simply by introducing an Order to reflect that.

100 **The President:** The motion is, Hon. Members, that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

European Union (Amendment) Bill 2014 – Clauses considered

The President: We turn now to clauses.

Clause 1.

105 **The Acting Attorney General:** Thank you, Madam President.

Clause 1 states the short title of the Act resulting from this Bill, if it is passed, and I beg to move that it stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

110

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

Clause 2.

115 **The Acting Attorney General:** Clause 2, Madam President, amends section 1 of the European Communities (Isle of Man) Act 1973 to add the Accession Treaty of the Republic of Croatia, and the protocol on the concerns of the Irish people on the Treaty of Lisbon, to the defined list of EU treaties set out in that section.

120 This clause also amends section 1 of the 1973 Act to enable the Council of Ministers, with Tynwald approval, to amend the defined lists of EU treaties by Order so as to keep it up to date in a more timely and effective manner. However, Madam President, this power is quite limited as Protocol 3 is required to, in the 1973 Act, separately from the definition of the EU treaties. Any substantive change to the Island's relationship with the EU would still involve full public consultation and an amending Act of Tynwald.

125 I beg to move that clause 2 stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

130 **The President:** The motion is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 3.

135 **The Acting Attorney General:** Madam President, clause 3 amends section 2A of the 1973 Act to change the Tynwald procedure required for an Order to voluntarily apply EU legislation to the standard Tynwald affirmative procedure. This will streamline the procedure and it is in line with the other Acts of Tynwald that may apply EU or UK legislation to the Island with any necessary modifications.

140 The current Tynwald procedure for the application of European Union sanctions legislation will, however, remain unchanged. As Hon. Members will be aware, when any EU legislation is applied to the Isle of Man by an Order made under the 1973 Act, a copy of the text of the EU legislation as modified in its application to the Island must be attached as an annex to the Order.

145 This clause amends section 2A of the 1973 Act to provide legal certainty and for updates to the attachment where part of a piece of EU legislation is applied to the Island, as amended by the European Union from time to time as is the case, for example, with the lists of persons and bodies that are subject to EU sanctions measures.

Madam President, I beg to move that clause 3 stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

150 **The President:** The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

155 **The Acting Attorney General:** Madam President, clause 4 provides for the automatic repeal of the Act resulting from the Bill, but not the amendments to the 1973 Act made by it upon its promulgation. As Hon. Members will be aware, this is now standard drafting practice for purely amending Acts so as to reduce unnecessary clutter on the Island's statute book.

I beg to move that clause 4 stand part of the Bill.

160 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

165

**2. Law Officers Bill 2014 –
Debate resumed –
Second Reading approved**

The President: Hon. Members, that brings us to the end of the business on the Order Paper; however, I understand that following our adjournment of the Law Officers Bill at our last sitting the conditions of that adjournment have been met and if you are satisfied that that is the case, we can proceed with consideration of that Bill, Hon. Members. Is that agreed? (**Members:** Agreed.) The confidential document which Members required had been circulated. However, I do not think the Clerk was aware so it has not appeared on the Order Paper.

We will continue then with the Law Officers Bill. The adjournment was moved by the Hon. Member, Mr Braidwood, so I invite him to continue the debate.

Mr Braidwood: Thank you, Madam President.

Madam President, I do thank the Chief Minister for circulating the redacted version of the full Wooler Report. What I did find extraordinary, Madam President, was that there was either an over-zealous officer in the Chief Minister's Office, or the Attorney General's Chambers, because in actual fact some of the redacted wording of the full Wooler Report was in the executive summary which had already been circulated.

So there are quite a few points in the executive summary which we could read and which were redacted enough in the Wooler Report which was circulated to Members.

Madam President, I have looked through the executive summary, the full Wooler Report as well, and some of the redactions – and I know Hon. Members know the people involved. However, I am quite happy for the Second Reading to progress and also the clauses stage, and I will make some of my views known then, Madam President.

The President: Does any Hon. Member wish to speak?

In that case the motion before Council is that this Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Law Officers Bill 2014 –
Clauses considered**

The President: We turn now to the clauses, Hon. Members.
Clause 1.

The Acting Attorney General: Madam President, with your permission I will speak to clauses 1 and 2 at the same time. Both are formal: clause 1 providing for the short title of the resulting Act; clause 2 for the commencement of the Act.

Madam President, that being the case, I beg to move clauses 1 and 2 stand part of the Bill.

Mr Butt: I beg to second, Madam President.

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

The Acting Attorney General: Madam President, the effect of clause 3 of the Bill is to amend section 3(1) of the Interpretation Act 1976 to provide an extended meaning for the expression 'Attorney General' so that, in addition to the holder of that office, it will include HM Solicitor General

210 when that other officer is appointed, and also any person discharging the functions of HM Attorney General in pursuance of a warrant under Her Majesty's Royal Sign Manual.

For the sake of clarity it is anticipated that there will only be two persons entitled to discharge the Attorney General's functions in this way at any one time.

Madam President, I beg to move clause 3 stand part of the Bill.

215

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Downie.

220

Mr Downie: Yes, thank you, Madam President.

I think we know in this Chamber what pressures that the Attorney General's office is under, and there will be times when unforeseen circumstances or illness requires the office to provide a substitute – and I think really that is what the nub of this Bill is all about.

225

I think the way that the Attorney General's office has actually gone about it is admirable, and we are actually seeing the duties and the responsibilities set out here and the way everything will actually function, should the Bill become law.

So I am very supportive of this.

The President: Do you wish to reply, sir?

230

The Acting Attorney General: No, Madam President, thank you.

The President: The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

235

Clause 4.

The Acting Attorney General: Madam President, clause 4 deals specifically with the role of the Law Officers in relation to Tynwald and the Council. In contrast with the general rule of interpretation created by the amendments made in clause 3, the Solicitor General or an Acting Attorney General will be permitted to deputise for the Attorney General in those bodies *only* with the consent of the President.

240

Rather than amending section 7 of the Isle of Man Constitution Amendment Act 1919, the draft replaces the whole of that section of the 1919 Act. This is because the existing structure was becoming far too complex in drafting terms. The replacement permitted the substitution of the propositions in a more logical order.

245

Subsections (1) to (3) therefore articulate the existing rules in that section but in a more appropriate order; the key provisions in relation to the new Crown Officer are subsections (4) to (6).

250

Subsection (4) disapplies the general rule of interpretation mentioned above, but then provides that subsection (5) applies if the office of the Attorney General is vacant or the Attorney General is unable for any reason to attend the sitting of Tynwald or the Council.

Subsection (5) then provides that if it is applied, the President has a discretion whether to authorise the Solicitor General or an Acting Attorney General to attend the sitting.

Subsection (6) then provides that a person attending in pursuance of subsection (5) has the same rights and privileges in relation to that sitting as the Attorney General would have had if he had attended.

255

For the sake of the record, subsection (7) rearticulates a provision contained in the 1919 Act. It prevents any argument that the substitution of section (7) of that Act by this Bill might entitle any of the officers formally entitled to attend Tynwald i.e. the Deemsters, the Clerk of the Rolls, the Archdeacon and the Vicar General, to do so again.

260

Madam President, I beg to move that clause 4 stand part of the Bill.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

265

Mr Crowe: Thank you, Madam President.

270

Yes, this seems to be an eminently suitable provision to allow a Solicitor General to attend Tynwald in place of the Attorney General. I should imagine in practice the Attorney General will attend Tynwald and Legislative Council as the main person, and the Solicitor General will only attend if for any reason the Attorney General will not be able to attend, but he will have the equivalent rights... I would imagine, Mr Attorney?

The President: The Hon. Member, Mr Coleman.

275

Mr Coleman: Thank you, Madam President.

In the hiatus period since we last spoke on this matter, I took the opportunity of contacting the Acting Attorney General for an explanation as to where the role would fit within the Wooler organogram that was provided – I think it was on page 38.

280

I think that it is more than just the deputisation within the Attorney General's office, and I stand to be corrected by the Acting Attorney General here. But it is also the Solicitor General will take a more 'management of the chambers' role under the Attorney General where, if you read Wooler, I think it is the administration and the management which is in many cases found to be lacking.

So, again, I am fully in favour of this particular very important clause 4, and will be supporting it. Thank you, Madam President.

285

The President: The Attorney General to reply.

The Acting Attorney General: Yes, Madam President, I thank both Mr Crowe and Mr Coleman for their support, and if I could just speak by way of clarification.

290

The intention is, as Mr Crowe has alluded to, that Her Majesty's Solicitor General would be of equal rank and share powers with an Attorney General, so they have equal rights as far as their office is concerned.

295

As Mr Coleman has indicated, he kindly contacted me following the last sitting and I was able to explain to him the difference between Mr Wooler's organogram and that of what is being proposed now.

300

Mr Wooler in his recommendations and his Report did look to there being a need for an Assistant Attorney General, with very much the role of being an assistant in management terms, as Mr Coleman has referred to, as being what is required following his review. However, the view was taken that what was actually needed was somebody a bit more than that: it was that somebody was not just simply there to *assist*, but there really to share the duties of the Attorney General in acting as the Solicitor General, and in all cases other than when attending Tynwald and/or Legislative Council the Solicitor General would be automatically able to deputise for the Attorney General – so that is why the distinction was drawn.

I hope that is of some assistance to Members.

305

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

310

The Acting Attorney General: Madam President, clause 5, as the explanatory memorandum accompanying the Bill makes clear, refers to one of the changes flowing from Mr Wooler's recommendations, which is the abolition of the post of Government Advocate.

Subsections (1), (3) and (4) of clause 5 therefore make consequential amendments to delete statutory references to that post.

315 Subsection (2) of that clause amends the Interpretation Act 1976 to abolish the Chief Minister's power to appoint a person to discharge the Attorney's functions; with the appointment of a Solicitor General that power becomes unnecessary.

Finally subsection (5) of clause 5 makes it explicit that the Solicitor General is in the same position insofar as pension entitlement is concerned as the Attorney General.

320 Madam President, I beg to move that clause 5 stand part of the Bill.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

Mr Braidwood: Madam President, it was just if we look even on the memorandum, the post of Government Advocate will be abolished as part of the restructuring of Chambers recommended by the Wooler Report, but when we look at the proposed structure, the Government Advocate is still in the structure.

I am just wondering if the Acting Attorney General would be able to clarify please?

330 **The President:** Mover to reply.

The Acting Attorney General: Yes, Madam President.

I thank Mr Braidwood for his question: the answer is very simply that the current post-holder Government Advocate is in a protected position, so the structure at the moment has to reflect that protected position until such time as the legislation is in place. So it is simply for publication purposes.

The President: The motion is 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.

**Law Officers Bill 2014 –
Standing Order 4.3(2) suspended to take Third Reading**

340 **The President:** Now, Mr Acting Attorney, do you wish to seek to suspend Standing Orders?

The Acting Attorney General: If I may, Madam President.

Madam President, as Members of Council are aware, the progress of the Law Officers Bill 2014 has been delayed. I ask Members to consider that it is in the interests of the Island to now move forward and consider suspension of Standing Orders to enable the Third Reading of the Bill to be taken today.

The difficulties that the Island has faced with the absence of the Attorney General necessitating my own appointment as Acting Attorney General, and then the temporary term of my own appointment in turn having to be extended, and the void created by the delay in dealing with that extension process has proved, if nothing else, that Mr Wooler was right in identifying the urgent need for the Island to have its own second Crown Officer.

350 Madam President, I would move the suspension of Standing Orders to enable the Third Reading of the Law Officers Bill 2014 to be taken today.

That Standing Order 4.3(2) be suspended to allow the Third Reading of this Bill to be taken today.

355

Mr Butt: I second that, Madam President.

The President: The motion is that Standing Orders be suspended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Law Officers Bill 2014 –
Third Reading approved**

The Acting Attorney General to move:

That the Law Officers Bill 2014 be read a third time and do pass.

360 **The President:** We will proceed with the Third Reading.

The Acting Attorney General: Thank you, Madam President.

365 The Law Officers Bill 2014 creates the office of Her Majesty's Solicitor General for the Island. It amends the definition of the Attorney General in the Interpretation Act 1976, so that the expression 'the Attorney General' will include Her Majesty's Solicitor General for the Island, and a person discharging the functions of the Attorney General under a warrant under the Royal Sign Manual which is currently the position of the Acting Attorney General.

370 The Bill provides a mechanism by which if the office of the Attorney General is vacant or the holder of that office is unable to attend a sitting of Tynwald or a sitting of Council, then you, Madam President, may authorise the Solicitor General or a person discharging the functions of the Attorney General under her Majesty's Royal Sign Manual to attend in his stead.

The Bill also abolishes the role of Government Advocate.

Madam President, I beg to move that this Bill be now read a third time.

375 **Mr Butt:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Crowe

Mr Crowe: Thank you, Madam President.

380 Yes, while supporting the Third Reading could the Acting Attorney General just give Council a provisional timetable as to how he would see this going forward in legislation terms and the appointment of a person. What timeframe are we looking at here, Madam President?

The President: The Hon. Member, Mr Butt.

385

Mr Butt: Thank you, Madam President.

390 I will support the Third Reading of this Bill. I think we have all seen over the last two years some evidence when the Attorney General has not been present in either this Council or in Tynwald, where there has been some uncertainty on occasions and some confusion occasionally. It is important that we have an Attorney General sitting with us as often as possible.

I would like to comment on the abolition of the post of Government Advocate. I am not sure how ancient that post is, but it certainly has had some interesting incumbents over the years – in recent years, that I have known personally. We mentioned at the previous Reading I think, it is a historic post that it no longer exists, but I do hope the Attorney General's Chambers has as interesting characters in the future fulfilling the new role. *(Laughter)*

395

The President: The Acting Attorney General to reply

400 **The Acting Attorney General:** Yes, Madam President, if I thank both Mr Crowe and Mr Butt for their words of support, and I will not rise to the bait, Mr Butt, with talking about previous Government Advocates – and I am sure we can both think of many examples of the true characters that were there. I can only make the general comment that I hope the Manx Bar *in general* provides us with the characters which we deserve here on the Island going forward. (**A Member:** Hear, hear.)

405 As far as the progress of the appointment of a Solicitor General is concerned, Mr Crowe, I cannot speak to the legislative timeframe because it has been somewhat delayed for reasons which we are well aware. The intention, I can say, is to progress as soon as possible. The basic work of preparing the job description and everything else is on the way, and it is certainly hoped that the recruitment process can start in the very near future and to await hopefully, as in my own case, the legislation to catch up. So we do recognise from the point of view of Chambers the urgent need to progress with
410 this as soon as possible.

The President: The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

415 Hon. Members that concludes our business for this morning; Council will now adjourn until Tuesday 13th May.

The Council adjourned at 11.04 a.m.