



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 25th November 2014

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
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 OBE, Mr J R Turner and Mr T P Wild
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:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Order of the Day

1.-2. Interpretation Bill 2014 and Legislation Bill 2014 – Third Readings approved

The Acting Attorney General to move:

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

10 **The President:** We start our business this morning with the Third Reading of the Interpretation Bill.

I call on HM Acting Attorney General.

The Acting Attorney General: Thank you, Madam President.

15 I am pleased to be able to move the Third Reading of the Interpretation Bill 2014 on behalf of the Council of Ministers.

I would again remind Hon. Members that the Interpretation Bill 2014, together with the Legislation Bill 2014, which I will move for its Third Reading today, are companion Bills, as they are inextricably and intentionally linked.

20 With your leave, Madam President, I will again ask for leave to speak briefly to both Bills at this Third Reading of the Interpretation Bill, and to move the Third Reading of both Bills at the same time.

The President: That will be fine.

25

The Acting Attorney General: Hon. Members, I am grateful for your consideration of the clauses of the Bills, which was a challenging task, considering the fact that both Bills are, by their very nature, technical.

I remind you briefly that the Bills are aiming to simplify the drafting of Manx legislation and improve its presentation; to provide a legal basis for the online publishing of up-to-date official reprints of legislation, both for Acts and for statutory documents; to enable minor corrections to legislation to be made administratively; to provide for a shortened procedure for the re-enactment of Bills that are purely consolidations; and to bring together provisions of our legislation or its interpretation or powers enabling the repeal of a number of different Acts. There was also the intention, and the opportunity is taken, to update and consolidate existing interpretation provisions.

I will again remind you briefly, Hon. Members, that the initial driver for the Bills was in part as a result of a move to establish an official Isle of Man primary legislation website. That move has already helped save three sets of costs: in reducing the cost to Government of having official reprints prepared by a commercial publisher, which you may recall was formerly Blackhall Publishing; to remove the cost to members of the public of purchasing copy legislation; and also to reduce the cost to individual Departments in preparing unofficial reprints of legislation.

Coupled with these cost savings, Hon. Members, I am sure you will appreciate that there is a continuing need to modernise our legislation and, in this instance, to update the current Interpretation Act 1976 and certain other Acts, and to make legislation easier to draft and to read and to improve access to it.

The changes which these Bills reflect follow detailed public consultation. The results of that consultation resulted in a large number of minor drafting or technical changes to the original draft of the Bills, which changes were uncontroversial and unremarkable.

I would like to briefly remind Hon. Members of some positive outcomes of the Bills.

Generally, they will streamline the statute book, so the Bills will contribute to the Government's strategic aim of reducing regulation and making access to legislation easier.

They will remove a great deal of dead wood from the statute book and consolidate 13 existing Acts and provide for the repeal of over 100 obsolete or spent amending Acts.

They clarify that only statutory documents, as opposed to public documents, need to be filed.

The reprints and consolidation provisions under the Legislation Bill will avoid the need for corrections or changes of a minor or totally uncontroversial nature to be made by an Act of Tynwald.

The reprint provisions will enable official electronic reprints to be prepared of both Acts and statutory documents, which the Reprints Act 1981 at present does not allow.

The Legislation Bill establishes an online electronic gazette, which is common in most other jurisdictions, and requires a notification of the making of legislation on it. These measures will facilitate acts as to legislation and provide greater certainty about what legislation has been made and when.

During the debate on the clauses of these Bills, a number of points were raised by Hon. Members, which I would like to address.

I was asked – in context of clause 12 of the Legislation Bill, which concerns the expiry of an Act which has been promulgated – whether an Act had ever fallen because of failure to promulgate. The answer to that is no, but the Tynwald ceremony was once postponed, from 5th July 1918 until 1st August, because of unrest on 3rd July resulting from the decision of Lord Raglan, who was the then Governor, to cancel a subsidy on the sale of bread. The postponement might have resulted in Acts lapsing had not the matter been resolved promptly and promulgation taken place shortly afterwards, on 1st August 1918.

Questions were then asked about the Public Record Office, which is referred to in the amended clause 42 of the Legislation Bill. This is a repository for public documents and other material maintained by the Chief Registrar in accordance with section 1 of the Public Records Act 1999. The reason for the amendment to clause 42 of the Legislation Bill is a reorganisation of work within the offices for which the Chief Registrar has responsibility.

I turn to the Legislation Consolidation Board and Mr Butt's concerns. The Board is constituted by section 82 of the Legislation Bill. I was asked about the quorum for the meetings of the Board, and the Bill actually sets that out – that decisions cannot be reached except by unanimity. The Board is not, however, a policymaking body. Its function is akin to that of the Law Commission in England, recommending technical changes to the arrangement and structure of the law, but without changing its effect. It should not therefore be seen as acting as a political body, but rather as a technical one, and with respect to Mr Butt's observation on the composition of the Board, its composition reflects the nature of its functions.

I was asked – in the context of clause 92 of the Legislation Bill, concerning existing reprints – about the contract for publication of Manx legislation in reprint form by Blackhall Publishing. The official contract for reprints was discontinued on the grounds of economy in 2011, although Blackhall continues to publish Manx legislation, albeit without my *imprimatur*. The intention is that the legislation website, www.legislation.gov.im, will become the authoritative source for all Manx legislation in the future.

I was also asked about the use of 'gazettal'. This is the process of publishing something in a gazette. This word appears in Webster, although I must tell you, my learned colleagues, that it is not in the *Shorter Oxford English Dictionary*. Should we therefore offer to substitute 'gazetting'? I think perhaps, Hon. Members, we could leave that to the Keys to decide.

It was suggested that 'Manx legislation' should be replaced by 'Isle of Man legislation', on the grounds that this would give the fact that the laws emanated here more prominence, and I see from the papers I have read this morning that the Hon. Member, Mr Downie, will move an amendment to that effect. If I could just say that the grammatical objection to this is that 'Manx' is the correct adjective for things emanating from the Island, whereas 'Isle of Man' is a noun, in the same way one talks about 'Great Britain' but 'British' legislation, 'Northern Ireland' and 'Northern Irish' legislation, 'Scotland' and 'Scots' legislation. I leave it to my learned colleagues to decide what to do with the motion later on.

I was asked about unincorporated bodies and the reason for dropping them from the concept of 'person'. There is a consensus in the drafting community that 'person' should be restricted to natural individuals and bodies corporate, the rationale being that an unincorporated body is something of a contradiction in terms and cannot normally hold property, sue or be sued, or be prosecuted in its own name, although action will lie against the individuals having control of the body's affairs – because there is not, if you think on it, a corporate veil to pierce in those circumstances. There are, however, some specific and rare circumstances in which it is appropriate to use 'person' as including an unincorporated body. Clause 69 of the Interpretation Bill provides an example of precisely the sort of rare situation where this approach is appropriately adopted. It is where two or more persons are acting in the place of an officeholder – sometimes referred to placing the office 'in commission', as has been the case in England with the office of the Lord High Treasurer since 1714 – or where powers are vested in a committee. On the Island, perhaps the best example is the Legal Aid Committee, which is not a corporation but does have powers to make regulations, and clearly clause 69 ought to apply to it. Section 23 of the Legal Aid Act 1986 constitutes the Committee but does not make it a statutory board or apply any of the provisions of the Statutory Boards Act 1986 to it.

I was asked whether foundations and trusts were included within the concept of 'person'. A foundation under the Foundations Act 2011 is, and I quote:

'a legal person with the name specified in respect of it in the register, capable of suing and being sued, of being prosecuted in its own name and holds its assets for its object.'

See section 35 of the Foundations Act 2011. On the other hand, assets, with reference to a trust, which is scheduled to the Recognition of Trusts Act 1988, does not have legal personality, and proceedings relating to trust property must accordingly be brought by or against the trustees. That is also reflected in the Rules of Court, which is chapters 5 and 6 of part 3 of the Rules of the High Court

125 of Justice 2009, specifically rule 3.27 and 3.30, which relates to proceedings against a trust being in a name and taken against the trustees, as opposed to in the name of the trust.

I hope, Hon. Members of Council, Madam President, that I have answered the queries which you raised with me.

130 At this stage, I would like now to move the Third Reading of the Interpretation Bill 2014, and with your leave, Madam President, also to move the Third Reading of the Legislation Bill 2014.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

135 I beg to second and reserve my remarks.

The President: Hon. Members, as the Bills have been moved together, are you content to discuss them both together? I will, obviously, be taking the vote on them separately. (*It was agreed.*) I will take any comment on both Bills at this point.

140 The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I listened quite closely to what HM Acting Attorney had to say and I have some sympathy with wanting to keep the age-old traditions and names in particular, being a proud Manxman myself, but I think what we are missing here is that these pieces of legislation, along with other pieces, are going to be looked at internationally.

145 The Isle of Man has moved on. There is still a lot of misunderstanding about 'Manx' and 'Isle of Man', and lots of the agencies and businesses in the Isle of Man, when they go out and promote themselves, do not promote themselves as 'Manx' anymore; they promote themselves as being 'the Isle of Man'.

As the Acting Attorney has said, we are going to have an Isle of Man legislative website specifically to deal with the international arena. Historically, if you wanted to look at anything, you would consult the *Statutes of the Isle of Man*; you would not consult the 'Statutes of Manx Law'. So the words 'Isle of Man' are already out there, and I think it is important that we continue.

155 The other examples I can give... We have a meat industry in the Isle of Man. It does not promote itself as 'Manx Meats', and that is using a product that emanates from the Isle of Man; it is Isle of Man Meats. The Creamery is the same: Isle of Man Creamery. We have the Isle of Man Government.

I think it is important that we not only use the legislation that is before us to the best endeavours of the legal framework of the Isle of Man, but we also try and retain the words 'Isle of Man' in it as a part of marketing and recognition potential, so that people worldwide will know that that piece of legislation comes from the Isle of Man.

160 The Acting Attorney has moved the two Bills this morning, and I just want to slightly amend the amendment, so it would read now, for the two Bills:

'Throughout the Bill, delete "Manx" wherever it appears and substitute "Isle of Man"'

And, for the Interpretation Bill:

'2. On page 68, after line 2, insert:

"Isle of Man", when used adjectivally, means Manx'

165 So, if you want to keep your connections with 'the Isle of Man' and 'Manx', it is there in the relative parts of the schedule. So we are actually catering for both views here.

At the end of the day, we have got to make sure that we get the name of the Isle of Man recognised throughout the length and breadth of the legal world.

I understand there is no requirement to suspend Standing Orders, Madam President; all I require is six votes for this to go through, and I beg to move.

170 **The President:** Thank you, Hon. Member.

I would just make the point that, because I am moving the Bills separately, I would prefer that you have two amendments – one for each Bill – in respect of the first part. I have asked the Clerk if he can bear that in mind. So I will be putting to you an amendment in respect, first of all, of the Interpretation Bill, which says:

‘Throughout the Bill, delete “Manx” wherever it appears...

and I will do the same again with the Legislation Bill, and of course move the other amendment in respect of the Interpretation Bill.

175 **Mr Crowe:** I beg to second.

The President: Can I just clarify another point in your amendment here?

Mr Downie: Yes.

180

The President: If you are saying, in the Legislation Bill, as well as in the Interpretation Bill, ‘delete “Manx” wherever it appears and substitute “Isle of Man”’, will you not require the second amendment in *both* Bills?

185 **Mr Downie:** I think the definition is in schedule 2 of the Interpretation Bill.

The President: The Interpretation Bill?

190 **The Clerk:** In the hard copy as printed at 9.30 this morning – and that has been circulated – that is drafted to apply only to the Interpretation Bill. (**The President and Mr Downie:** Yes.)

I think if you wish to handle it as the two Bills separately, then that is clear; and when you come to the Legislation Bill, (**Mr Braidwood:** Similar.) you will just put the first part of that – in other words, ‘Throughout the Bill...’ – and it will work.

195 **The President:** It will work through both, but...

The Clerk: Let me put it another way. You said that you want to handle this as –

200 **The President:** I do want it voted on as two separate Bills. They are two Items on the Order Paper.

The Clerk: I think, in that case, Madam President, you should treat the Interpretation Bill using the printed version of the amendment, and ignore the... [*Inaudible*]

205 **The President:** Indeed.

The Clerk: And then, when it comes to the Legislation Bill, you should simply put the question throughout the Legislation Bill ‘delete “Manx” wherever it appears and substitute “Isle of Man”’.

210 **The President:** And without the second amendment?

The Clerk: That is correct, Madam President. That second... [*Inaudible*] of the printed sheet will not apply to the Legislation Bill.

215 **The President:** Right.

The Acting Attorney General: Madam President, could I say something?

The President: Indeed.

220 **The Acting Attorney General:** Hon. Members, Madam President, if it is the view of Council that this change should be made, I do not know if this is the correct procedure, but what I would be concerned about is rushing to try and find an amendment which actually suits the purpose.

225 Would Council Members – if it is your view the changes be made – be satisfied with me saying that I will arrange for it to be amended in the House of Keys? Is that something that I can do, Madam President? I do not know if I can arrange for that –

The President: It will not go back to the House of Keys if it is not amended here.

230 **The Clerk:** Madam President, it has not been to the House of Keys yet.

The President: Oh, sorry, it started here.

Mr Braidwood: It has not been to the Keys. I would prefer to see it amended here.

235 **The President:** I have a concern that they may not want to amend it, (**Mr Braidwood:** That's right.) but if you have a concern about the way in which the amendment is drafted, I think we need to clear that up before I put it to Members. Could we have a properly printed version, Jonathan?

240 **The Clerk:** Madam President, what Members have in front of them is the best I can do in the time available in relation to the Interpretation Bill.

The President: Right, without your script amendments.

245 **The Clerk:** I will give you back the clean copy.

The President: Right, thank you.

Hon. Members, I will make absolutely sure we know what we are voting on when we come to that point.

250 We have had the amendment moved. The Hon. Member, Mr Corkish –

Mr Braidwood: Mr Crowe seconded.

Mr Downie: Mr Crowe seconded it.

255 **The President:** Well, Mr Corkish caught my eye first.

Mr Crowe: Sorry, Mr Corkish, you...

Mr Corkish: Thank you, Madam President.

260 Whilst supporting in principle what Mr Downie is saying, could I seek clarification from the learned Acting Attorney that the alteration of 'Manx' to 'Isle of Man' will not cause confusion in past and future Bills in any way?

265 **A Member:** Well, they will all obviously –

Mr Braidwood: Be on the website.

A Member: – in the future.

270 **The President:** Would you care to respond to that, Mr Attorney, because it had not had a seconding yet, so I do not know whether the Hon. Member wished to second.

Mr Corkish: Before we go to a seconding.

275 **The President:** Yes, okay.

The Acting Attorney General: Yes. Mr Corkish, I cannot answer that with any certainty, which is one of the difficulties I have not knowing that the amendment was going to be moved. However, if I can remind you of the intention of what these Bills are trying to do, which is to tidy up things – and this is, with the greatest respect to Mr Downie, not about marketing; this is about legislation – what we are trying to do is to have clear-cut rules, definitions and structure to the legislation going forward. This will tidy it up, certainly. Past legislation from this point on will have some certainty about it, and going forwards, but I do not know what confusion there might be if it is not amended.

285 **Mr Corkish:** Thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: I beg to second the amendment. I am just seconding the amendment on the Interpretation Bill – or am I seconding both, Madam President?

The President: It is entirely up to you, sir, if you want to second both.

295 **Mr Crowe:** I will second both amendments, Madam President.

The President: Lord Bishop.

The Lord Bishop: Madam President, I support the principle of this amendment, but I am just aware that you can do some things by generally using, in any language... generally translating something from one to another, particularly something that is a noun that can be used adjectivally for a clear adjective. You may find that through most of these Bills this works fine, and then, all of a sudden, you come across something that we have not noticed, that is deep inside the Bill, where it does not work.

305 I am really very concerned that, until somebody has done a 'find and change' on a computer and run through it all to see whether it works everywhere, I am hesitant about supporting it – even though I agree with it.

The President: The Hon. Member, Mr Braidwood.

310 **Mr Braidwood:** Thank you, Madam President.

Following on from what the Lord Bishop has said, if there was a problem and we amend it, then the Keys can look at it, so at least we are amending; and if it does come up – where it has happened on previous occasions – it can be amended, as we have amended legislation ourselves after it has been in the Keys.

315 But we are talking about an Interpretation Bill. To me, an interpretation of 'Manx' is, you could say, 'Isle of Man'. The Acting Attorney General mentioned examples – Northern Ireland, Irish; Scotland, Scots; Great Britain, British – and I think that does follow more than 'Manx' from 'Isle of Man'.

320 I think, as Mr Downie has quite clearly stated, we are on the international scene more and more from what we were years ago, and I feel a lot of people do not think of Manx/Isle of Man. If they saw 'Isle of Man' and went for the legislation, then at least they could look... they know the Isle of Man. If you say to people, if you are on holiday, you are Manx – 'What's that?' – they do not know; but if you say, 'I'm from the Isle of Man,' –

325 **A Member:** They say, 'Where's that?'

Mr Braidwood: Yes, but at least you can talk to them, and I think it is because we are a finance centre – and Mr Downie has explained where, on other avenues that the Isle of Man is famous for, it is fine.

330 I am quite happy to support the amendment in the name of Mr Downie.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

335 I was intending on supporting the amendment, but I am not entirely sure now, given the way the points have been made so far. I think we are actually in danger of eroding some of our heritage here if we are trying to effectively do away with the word 'Manx'.

Mr Braidwood: It's in the schedule.

340

Mr Turner: I know a number of years ago the Tourism Department were actually saying to events that were called 'Manx' something or other... they were wanting it changing to 'Isle of Man', and there was this push to get rid of the word 'Manx', which I think would be a great shame.

345 I really take the point the Acting Attorney made: the difference between adjective and noun. I think what would be more appropriate, if we are concerned about the title, is that... and it comes back to... the crest heading up the Bill only says 'Ellan Vannin', whereas it should surely say 'Isle of Man *and* Ellan Vannin Interpretation Bill 2014'. I think that would give you the identity, for anybody reading the official versions of the Bill – that it is the Isle of Man Interpretation Bill 2014. I know it is on the front cover page, but then, when you get into the actual nitty-gritty of the Bill, the words 'Isle of Man' do not appear.

350

So, at the moment, I am undecided as to whether we should support amendment, for that reason. The Acting Attorney is right, in that these are not for marketing purposes; these are the *Statutes of the Isle of Man*, and therefore –

355 **Mr Downie:** We are clear who we are.

Mr Turner: – 'Manx' is the technically correct word to be in there, and I think the Bishop is right that we do not know.

360 Where I will disagree is with my colleague, Mr Braidwood, in that we should not be having a view that 'It's alright, the Keys will amend it.' We should make sure it leaves here how we want it to leave here.

Mr Braidwood: And we are doing, if the amendment is passed.

365 **Mr Turner:** That is the whole purpose of the Council. So, for us to say, 'Well, we'll change it, and if it's not right then the Keys can change it back,' I do not think is the appropriate way that we should be dealing with the legislation.

Mr Braidwood: I am not saying it is wrong; I am saying it is right.

370

The President: Perhaps we should interpret 'Manx'. (**Mr Braidwood:** Yes.)

The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

375 I entirely support what Mr Downie is trying to achieve, and I understand why he has brought the amendment in the way he has, but I think the Bishop has a good point as well.

The definitions in the Interpretation Act, in the schedule, are in effect the keystone of our legislation. Once things are defined in there, they are set in stone, in effect, and may become the go-to when you are trying to find out what things mean.

380 Madam President, as the legal draftsman is present in the Chamber here today – he has obviously been deeply embedded in the formation of both these Bills, which are quite technical – I wonder, would he have a view for us on how this may complicate past legislation and future legislation, if we do make this change?

385 **The President:** Mr Gumbley, would you comment?

Mr Braidwood: Mr Connell! (*Laughter*)

390 **The President:** [*Inaudible*] I'm rooted in the past!

A Member: It's his *alter ego*!

The President: Announce yourself, please.

395 **Mr Connell:** Howard Connell, legislative draftsman, Attorney General's Chambers.

Madam President, I have often been called Ken – I can cope with it!

The answer is I am actually, frankly, agnostic on the advertising point, but my concern is that 'Isle of Man' is not an adjective. Even if you say, 'Well, we're treating it as if it were an adjective,' it is not an adjective. It would not cause complications, because the term 'Manx Act' does not appear yet in
400 any other statute, nor does 'Manx enactment'; but as a linguist, I would prefer to use an adjective rather than treat a noun as if it were an adjective. We have got a perfectly good adjective. This is actually very technical law; it is not advertising.

The President: Thank you.

405 The Hon. Mr Coleman.

Mr Coleman: Thank you, Madam President.

I think I am –

410 **Mr Braidwood:** When is a noun an adjective?

Mr Coleman: – in a strange position here, as a non-Manxman, trying to preserve Manx culture in using the word 'Manx'. It looks like, apart from the Bishop, I am the only one.

415 When I go to England on a business trip and I look at the menu in the morning, am I going to see 'Isle of Man kippers', or do I see 'Manx kippers'? When I see a cat with no tail, what do I see: an Isle of Man cat or a Manx cat?

I also think that the complications that could (**Mr Braidwood:** Different interpretation.) follow from this within legislation at the moment probably are not calculable, unless you actually go away and do a full study. You cannot just do a scan and replace, because that will not help you with the context, and I will be opposing the motion for that reason. I think that you could cause problems in
420 the future and I would like to preserve the word 'Manx' in the legislation.

Thank you, Madam President.

The President: The learned Acting Attorney General to reply.

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

If I could firstly thank my seconder, Mr Coleman, throughout all the various stages of the Bill, with particular reference to the clauses stage when he was kept extremely busy – I thank him for his support.

430 I think, from the point of view of the motions, Madam President, I am really taking a neutral stance, because if it is the view of Members of Council that the change ought to be made, then so bit it. It is not something that causes us any grave concern, but I do really need to simply reiterate that it is setting the framework – or ‘keystones’, which is the word that has been used – for legislation. That is the issue here. It is certainly not going to stop people in their ordinary parlance referring to things as Manx, British, Irish, Isle of Man or whatever; it is just simply from a legislative framework
435 point of view.

I have listened very carefully to the comments which Hon. Members have made, some supporting the motion and some against, and I think all of the issues have been addressed.

440 If I could just turn to Mr Turner’s point, with reference to the crest on the Bill itself, I think, as has already been mentioned, the Isle of Man will appear on Acts, so that issue will be addressed going forward.

I do not think there is anything else that I can usefully add. I just leave the motions to Hon. Members to consider.

445 **The President:** Hon. Members, we have before us first the Interpretation Bill, and the motion is that the Bill be read a third time and do pass; but to that Bill we have an amendment in the name of Mr Downie – two amendments in the name of Mr Downie.

The first amendment reads as follows:

‘Throughout the Bill, delete “Manx” wherever it appears and substitute “Isle of Man”’

And the second amendment... and I propose to put them together as one, unless the Hon. Member disagrees:

‘On page 68, after line 2, insert:

‘Isle of Man’, when used adjectivally, means Manx’

Interpretation Bill 2014

1. *Throughout the Bill, delete ‘Manx’ wherever it appears and substitute ‘Isle of Man’*

2. *On page 68, after line 2, insert:*

‘Isle of Man’, when used adjectivally, means Manx

450 Hon. Members, it requires six votes in favour of this amendment for it to carry. I propose then to take a called vote.

Voting resulted as follows:

FOR

Mr Braidwood

Mr Downie

Mr Crowe

AGAINST

The Lord Bishop

Mr Butt

Mr Turner

Mr Coleman

Mr Corkish

The President: With 3 votes for and 5 votes against, Hon. Members, the amendment fails to carry.

455 I now put to you 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.

We now come to the Legislation Bill. The motion is that the Bill be read a third time and do pass, and to that we have an amendment in the name of Mr Downie, which reads as follows:

‘Throughout the Bill, delete “Manx” wherever it appears and substitute “Isle of Man”’

Legislation Bill 2014

Throughout the Bill, delete ‘Manx’ wherever it appears and substitute ‘Isle of Man’

Again, I will go straight to a called vote for simplicity, Hon. Members.

460 **Mr Braidwood:** Madam President, because the first amendment has failed, does it not automatically mean, because the Bills are intertwined, that it would automatically fail for this Bill?

The President: Hon. Member, the two Bills are on the agenda as two separate Items, and therefore I consider it appropriate to take the amendments and the Bills, as I have done, as separate
465 Items.

That knowledge, Hon. Members, and knowing that they are linked, may persuade you in which direction you wish to vote.

Do a called vote, please, Jonathan.

Voting resulted as follows:

FOR

Mr Downie

Mr Crowe

AGAINST

The Lord Bishop

Mr Butt

Mr Turner

Mr Braidwood

Mr Coleman

Mr Corkish

470 **The President:** Hon. Members, 2 votes for and 6 votes against. The amendment therefore fails to carry.

I now put to you that the Legislation Bill 2014 be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**3. Public Services Commission Bill 2014 –
Second Reading approved**

Mr Turner to move:

That the Public Services Commission Bill 2014 be a read a second time.

The President: We turn now to the Public Services Commission Bill 2014.

475 I call on Mr Turner to take the Second Reading.

Mr Turner: Thank you, Madam President.

480 As Hon. Members may recall from the First Reading, which we had on 11th November, the Public Services Commission Bill is intended to establish a new Commission, which would be the employer of more than 4,000 people, representing about half of central Government’s staff. It would have a clear mandate to deliver consistent policies in respect of its workforce; work towards simplification of employment structures and the harmonisation of terms and conditions of employment; and would facilitate redeployment of staff across relevant Departments, Boards and Offices, as necessary, in support of Government’s priorities and changing circumstances.

485 The new 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 focused on agreed outcomes.

Initially, it is intended that civil servants and Whitley Council workers employed in central Government would become employees of the Commission, but other employment groups could
490 come within the scope of the Commission at a later date.

The establishment of a Public Services Commission is a further step in modernising and introducing a more flexible and responsive employment structure, which, coupled with culture change, is fundamental to the development of more efficient ways of working and the reduction of bureaucracy – all of which, of course, contribute to the ongoing imperative to achieve long-term
495 financial stability.

Hon. Members will want to be aware that, amongst other things, on establishment of the new Commission, the Civil Service Commission would be dissolved and the functions subsumed within the remit of the Public Services Commission.

As mentioned earlier, all relevant staff would become employees of the new Commission, and
500 those who were civil servants when the Commission was established, while retaining the same terms and conditions that applied immediately prior to its coming into being, would no longer be members of the Civil Service. This step both modernises the employment relationship with those who were previously members of the Civil Service and puts them on the same footing as manual and craft workers as employees of the Commission.

The Civil Service Appeals Tribunal would be dissolved and employees of the new Commission
505 would, in effect, be treated in the same way as other employees on the Island, with a right to seek redress through the Employment Tribunal. Currently, civil servants have the right of appeal against dismissal to the Civil Service Appeals Tribunal; and, if dissatisfied with the outcomes of such appeal, also will have the facility to take a case before the Employment Tribunal for wrongful or unfair
510 dismissal.

The chairperson, vice-chairperson, and members of the new Commission would be appointed by the Chief Minister and hold office at his pleasure, as is the situation currently with the Civil Service Commission.

Existing collective bargaining arrangements, in respect of members of the Civil Service and
515 employees engaged under Whitley Council terms and conditions of employment, would be replaced by new arrangements, which are to be agreed with representatives of the relevant employee groups. Should it not prove to be possible to reach agreement with employee representatives in relation to the constitution and functions of negotiating and consultation committees to be established under the new Commission, then there is a provision for a special committee of Tynwald
520 to determine the collective bargaining and consultation arrangements that are to apply. This is intended to ensure that employees of the new Commission are not left without appropriate means for collective bargaining and consultation.

Local authority employees currently engaged under Whitley Council terms and conditions of
525 employment would not become employees of the new Commission. It will be a matter for the local authorities themselves, individually or collectively, to determine the most appropriate arrangements for their manual and craft workers, which is in essence the situation currently applicable in respect of their managerial, technical and clerical staff.

A chief executive officer would not be appointed by the new Commission without the concurrence of the Department or Board concerned.

The Public Services Commission would provide to the Chief Minister an annual report in respect
530 of its functions and any such report would be laid before Tynwald.

The Bill repeals the Civil Service Act 1990 and the Civil Service (Amendment) Act 2007.

Amendments are made to a number of enactments to replace, for example, references to 'Civil Service Commission' and 'civil servants' etc with 'Public Services Commission' and 'employees of the
535 Public Services Commission'. Other amendments are included in the Bill consequential upon the Public Sector Pensions Act 2011.

Should the Branches support the enactment of this Bill, its provisions would come into operation on such day or days as the Council of Ministers, by order, appoints.

I do not think it is inappropriate for me to mention that, if successful, the aim for this to come into being... Providing the legislation goes through and the Royal Assent is received, the target for this is April 2015.

Madam President, I do commend the Bill to the Legislative Council as it is an important further step in modernising and making more responsive and flexible employment arrangements applicable to a key area and element of central Government's workforce.

I beg to move the Second Reading of the Public Services Commission Bill 2014 and look forward to Hon. Members' comments. I beg to move.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.
I beg to second.

I just have a query for the mover. The local authorities, if they chose to do so, could they opt their employees into being members of the Public Services Commission? Do they have the option to do so?

The President: The mover to reply.

Mr Turner: Madam President, I thank the Hon. Member, Mr Butt, for his query, because Mr Butt is a past Member of the Civil Service Commission and Whitley Council.

As I understand it, this is for employees of Government and associated Boards and Offices. Local authorities do, as Hon. Members know, have certain terms and conditions and payment structures that have analogy to the likes of Whitley Council, and they would be free to do that; but the employees... the legal identity of those bodies is separate, and therefore they could certainly adopt the terms but they would not become employees of the Commission per se. I think I am right in saying that.

Thank you.

The President: The motion is that the Public Services Commission Bill 2014 be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Public Services Commission Bill 2014 – Consideration of clauses

The President: We turn to the clauses.
Clause 1.

Mr Turner: Thank you, Madam President.
Clause 1 provides for the short title of the Act resulting from the Bill.
I beg to move that clause 1 stand part of the Bill.

Mr Butt: I beg to second, Madam President.

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.

Mr Turner: Clause 2 provides for the Act to come into operation on a day or days appointed by the Council of Ministers.

585 The clause also provides for the Council of Ministers, by order, to make such transitional and saving provisions considered necessary or expedient.

Madam President, I beg to move that clause 2 stand part of the Bill.

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

590

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.

595 **Mr Turner:** Clause 3 sets out various defined terms used in the Bill, including the term ‘stationed employer’, which means the Department, Statutory Board, Office of Government or other public entity to which an employee of the Public Services Commission is assigned.

For the avoidance of doubt, this clause also confirms that the following, for the purposes of the Bill, are not public sector employees. Those are judges, Crown officers and Tynwald appointees; Ministers and Members of Departments; officers and employees of a local authority; and members of the Police Force. These exclusions are important and should be read in conjunction with clause 5(1)(k) of the Bill, which empowers the Commission to make arrangements for loss of office in relation to any public sector employee, excluding those I have just referred to.

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

605

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

The President: The Hon. Member, Mr Crowe.

610 **Mr Crowe:** Thank you, Madam President.

Moving amendment 1 on the Order Paper, the purpose of this amendment is to remove an inconsistency between two of the subsections of clause 3, one of which talks about a ‘public entity’, the other a ‘public sector entity’.

Madam President, I beg to move the amendment standing in my name:

Amendment 1

Amendment to clause 3

Page 5, line 19 for ‘public entity’ substitute ‘public sector entity’.

615 **The President:** Hon. Member, Mr Coleman.

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

The President: Hon. Member, Mr Corkish.

620 Mr Crowe, do you not want to move your second amendment to this clause?

Mr Crowe: Oh, sorry, Madam President, yes.

Amendment 2 is simply a drafting refinement to eliminate a rather inelegant double negative.

Madam President, I beg to move the amendment standing in my name:

Amendment 2

Amendment to clause 3

Page 6, for lines 1 to 3 substitute —

‘(a) persons mentioned in paragraphs (a), (b), (d), (e) and (f) of section 3(1) of the Public Sector Pensions Act 2011 (judges and persons appointed by the Crown or by Tynwald);’.

625 **Mr Coleman:** Madam President, I beg to second and reserve my remarks.

Mr Braidwood: You cannot reserve your remarks.

The President: Hon. Member, Mr Corkish.

630

Mr Corkish: Thank you, Madam President.

I may have misheard, or perhaps misunderstand, but in the interpretation of the 'public services', was mention made, or should mention be made, of the fire services... which I did not hear? *(Interjection by an officer)* Sorry, in the description of public services I did not hear 'fire services'... *[Inaudible]* should it be, or not. *(Interjection by an officer)*

635

The President: Just hold on a moment, please.

Does the mover wish for the officer to reply, or will you reply, sir, when we come to the end of the consideration?

640

Mr Turner: Yes, obviously, it is important that we have the technical views, so I am content for officers to contribute with technical answers to these if I do not have the answers.

The President: I will deal with the technical answers when we have had all the questions on the floor, I think, in case there are any more.

645

Does any other Member wish to speak to this clause or to the amendments? Lord Bishop.

The Lord Bishop: Madam President, I am fairly certain, by looking up the Public Sector Pensions Act and the Act to which it refers, that I am not included in this, but I am a person appointed by the Crown and I just wonder why the term 'Crown officers' has been... why the proposal is persons appointed by the Crown, rather than Crown officers, because I am not a Crown officer but I am a person appointed by the Crown.

650

The President: That may be something for amendment.

655

Mr Crowe: I think amendment 3, for clause 4, covers that.

The Lord Bishop: Yes, it was your amendment that I was particularly referring to there, but it does not... I am fairly certain we are clear.

660

The President: The amendment proposed by Mr Crowe refers to 'persons appointed by the Crown', which would include you if it is accepted.

The Lord Bishop: Which would include me, but I think, looking at the earlier part, persons mentioned in those clauses of section 3(1) of the Public Sector Pensions Act, other than paragraph (c)... I have looked those up and I do not think they apply to me. But on the other hand, I am a person appointed by the Crown.

665

The President: But we are proposing to amend this so that it will cover you, depending on whether the amendment is accepted or not.

670

The Lord Bishop: Does that mean I get a pension, Madam President? *(Laughter)*

The President: I hope so!

675

If there are no further comments, Hon. Members, I call on the mover to reply – and if you wish to refer to your officer, we can do so.

Mr Turner: Thank you, Madam President.

I should point out – I think I did at the First Reading – that the Commission, who I am promoting the Bill on behalf of, have agreed these amendments with Mr Crowe, and I did, I think, flag up at the
680 First Reading that these are endorsed amendments that need to be applied to the Bill because of the technical nature. So, going forward, we fully support the amendments that Mr Crowe is about to move.

The query with regard to the fire service... If I, first of all, mention the Police Force, of course... law enforcement agency... there is an arm's-length Chinese wall usually between them. They have
685 their own system of employment terms and conditions, and there is quite a bit of analogy with the United Kingdom. With regard to the fire service, as I understand it, they are not a part of the Public Services Commission, so they are not covered by this particular legislation.

Hopefully, that answers the queries; and again, we do support the amendment moved in the name of Mr Crowe.
690

The President: The motion is, Hon. Members, that clause 3 do stand part of the Bill. To that, we have two amendments in the name of Mr Crowe.

I will take the first amendment, amendment 1 on your Order Paper. Those in favour of amendment 1, please say aye; against, no. The ayes have it. The ayes have it.

695 Amendment 2: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will now put to you the clause as amended. Those in favour of clause 3 as amended, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

700 **Mr Turner:** Thank you, Madam President.

Clause 4 is not particularly a long clause, but I am going to give some quite important detail as to the provisions in this.

With regard to clause 4, subclauses (1) and (2) provide for the establishment of the Public Services Commission and provide that it shall be a body corporate with perpetual succession and shall exercise the functions as set out at clause 5 of the Bill.
705

Subclauses (3) to (7) provide for the membership of the Public Services Commission and related matters.

Subclause (3) provides that the Commission shall comprise a chairperson and a vice-chairperson, who shall be Members of Tynwald, and no more than three individuals who must not be Members
710 of Tynwald. This is in line with the current structure of the Civil Service Commission.

Subclause (4) makes clear that an employee of the Public Services Commission cannot be a member of the Commission. While this is for governance reasons, it does not, however, preclude an employee from representing the Commission on committees and working groups as necessary. They cannot, though, sit on the Commission itself.

715 The authority to appoint members of the Commission is vested in the Chief Minister, and members hold office at the pleasure of the Chief Minister, as set out in subclause (5). Given that it is for the Chief Minister to appoint members of the Commission, it is also for him to decide the basis upon which appointments are made.

Subclauses (6) and (7) deal with the resignation of members of the Commission. Specifically, subclause (6) provides that any member can resign by giving notice to the Chief Minister.
720

Subclause (7) sets out what are, in effect, transitional arrangements to enable, firstly, a Member of Tynwald who was appointed under subclause (3)(a) either as chairperson or vice-chairperson, and who then ceases to be a Member of Tynwald, to remain as a member of the Commission until a successor is appointed; and secondly, to enable a lay member appointed under subclause (3)(b),
725 who subsequently becomes a Member of Tynwald, also to remain as a member of the Commission until a successor is appointed. No such provisions apply in relation to members who resign for other reasons or who the Chief Minister decides should not continue in their role as members of the Commission.

730 As can be seen, subclause (8) of the Bill applies paragraph 9, except for sub-paragraph (1)(a), and paragraphs 10, 11, 11A 11B and 12(2) of schedule 2 to the Statutory Boards Act 1987 to the Commission as they apply to a Statutory Board. These provisions 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. These provisions currently apply in respect of the Civil Service Commission.

735 The facility for the Commission to regulate its own proceedings is set out in subclause (9). The Public Services Commission is not to be a Statutory Board, and beyond the requirements of subclause (8) – which, as explained, applies elements of schedule 2 of the Statutory Boards Act to the Commission – it has discretion in relation to the way it operates within the overall parameters of its governing legislation. This is, in essence, the same situation as currently applies to the Civil Service Commission and I would expect that the new Commission would do what the Civil Service Commission has done, which is to set out its *modus operandi* in a governance framework document, approved by the chairman and its members.

745 Subclause (10) is specifically for the avoidance of doubt and is intended to reinforce the fact that, in respect of its employees, the Public Services Commission will not have 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, when carrying out their duties, are currently 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, having been 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, importantly, would put them in exactly the same position as manual and craft staff employed by the Commission.

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

755 **The President:** The Hon. Member, Mr Butt.

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

The President: The Hon. Member, Mr Crowe.

760

Mr Crowe: Thank you, Madam President.

If you are in agreement, I would like to talk about amendment 3, which relates to clause 4, and amendment 4, which relates to clause 8 together in the debate on clause 4, as they are interrelated.

765 Amendment 3 makes it clear that neither the Commission nor its employees or officers are to be regarded as officers or servants of the Crown. This might have been inferred from the previous version of the subsection, but it is worth articulating the point expressly.

I beg to move the amendment to clause 4 in my name:

Amendment 3

Amendment to clause 4

Page 6, for lines 36 to 38 substitute —

'(10) To avoid doubt —

(a) the Commission does not have, in respect of its officers or employees, any of the rights or privileges which the Crown has or had in respect of civil servants; and

(b) an officer or employee of the Commission does not, in his or her capacity as such, have any right or privilege as an officer or servant of the Crown.'

Mr Coleman: I beg to second, Madam President.

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

Mr Downie: Thank you, Madam President.

We seem to be having the same situation here as the one that really has not worked over the last few weeks, and I will elaborate on that. We are replacing the Public Services Commission with what has been Whitley Council, which, in my opinion, is an anachronism now. It has gone in the UK, and long gone. We seem to be in a situation again where we are putting two Tynwald Members onto a body which really is the main employing body and negotiating body for Civil Service and manual workers. That gives me concern.

The other thing that worries me is that, if there was ever an opportunity to have a more professional body of properly qualified people to deliver this service, I think it is now, because it is obvious that over the years the system really has not been working. I would say that is to anybody's advantage.

What I cannot understand is that the members of the Commission are appointed by the Chief Minister to hold office at the Chief Minister's pleasure. We have an Appointments Commission now, and recently more of these appointments have been taken by the Commission. There is nowhere in this clause that says that the appointees are also to be approved by Tynwald, or even brought to Tynwald, which I think is a pity really, because there are lots of people appointed to different things in Government now whom you do not hear about until something goes wrong or there is an issue, and that too gives me concern.

I would like to be convinced by the mover that we are going to see another body here which is going to be unfettered and have some independence to be able to negotiate and deal with all the HR issues and employment issues, rather than be appointed at the Chief Minister's pleasure.

As I said, we had started to move away from this particular area, but we seem to be coming back to the old warts-and-all situation that we had with Whitley Council, which I think was an anachronism.

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

I think the construction of what is, in effect, the executive's employing body is quite different to the other bodies that are established and appointed by the Appointments Commission. The new Public Services Commission, in terms of the way that its members are appointed, is the same as the current Civil Service Commission. Under the Public Services Commission, Whitley Council will no longer exist. I understand that there is a lot of work going on between employees' representatives as to how new negotiating subcommittees are going to be formed.

So I think, in effect, this Bill actually answers some of the problems that the Hon. Member, Mr Downie, is flagging up; because under this Bill, when it becomes in force, both the Civil Service Commission and Whitley Council will effectively be abolished and this new body, this single body, will come into place.

I think if you have got a body which is operating the entire framework of staff in Government, then it is right that the Chief Minister of the time is able to appoint somebody as head of that organisation, as that organisation will be carrying out the policies.

The other bodies that Mr Downie refers to are mainly tribunal-type bodies that need to be separate because they are possibly adjudicating on issues which may be through the conduct of Government Departments, so it is right that a separate body appoints the individuals who hold office on those various tribunals.

So I think, in this case, the system is right. We vest our trust when Tynwald elects the Chief Minister to get on with the job, and part of his role is to appoint somebody to chair the Commission that is, in effect, employing the various people who are going to operate the policies.

I hope it gives the Hon. Member some comfort. I think the anachronism, as he said, of Whitley Council will finally come to an end and this will be a fresh way of dealing with matters and give some equality across the various employment groups.

I hope that answers the question and I beg to move that clause 4 – and I support, obviously, the amendment – stand part of the Bill.

825 **The President:** The motion is that clause 4 do stand part of the Bill. To that clause we have an amendment in the name of Mr Crowe.

I will put to you the amendment. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

830 I now put to you the clause as amended. Those in favour of clause 4 as amended, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Turner: Clause 5 sets out the functions of the Public Services Commission.

To assist Hon. Members, it might be helpful if I refer to each of the subclauses.

835 Subclause 5(1)(a) provides for the Commission to determine policies relating to the employment, and the terms and conditions of employment, of its employees that are consistent with Government's human resources strategy and policies. This enables the Commission to determine, for example, a wide range of policies in relation to its employees, which must be aligned with Government's people and learning and development strategies and, where impacting directly on
840 terms and conditions of employment, would be subject to agreement through applicable collective bargaining arrangements.

Subclause 5(1)(b) provides for the Commission to employ such persons on such terms as it considers appropriate. On establishment of the Public Services Commission, the existing terms and conditions would continue to apply until changes are agreed by way of collective bargaining or other
845 arrangements applicable to the employee.

Subclause 5(1)(c) provides for the Commission, by agreement with such bodies as it considers to represent the interests of its employees, to establish as necessary negotiating and consultation committees that include members of such bodies. This provision is intended to facilitate agreement between the relevant parties in relation to collective bargaining and consultation mechanisms to be
850 adopted on the establishment of the Public Services Commission. Agreement in this regard is, in my view, important; and to this end, discussions have already begun between representatives of Government and representatives of the employees' side of the Whitley Council, who are appointed by Unite, and representatives of the Government Officers' Association, Prospect. I am hopeful that these discussions will, in due course, lead to agreement and the adoption of new collective
855 bargaining and consultation mechanisms for employees of the Public Services Commission.

I should, at this juncture, make reference to clause 5(2) of the Bill, which, as Hon. Members will be aware, makes provision for a special committee of Tynwald to be established should agreement in relation to collective bargaining and consultation arrangements not be reached. The intention to take this approach is deliberate. A special committee, comprising Members of Tynwald, would bring
860 a level of objectivity and independence to the issue should the establishment of a such a committee be necessary. I hope in practice that it will not be necessary, but the provision is there.

Subclause 5(1)(d) provides for the Commission, where appropriate, to negotiate or consult with its employees or their representatives, whether via those committees – the ones referred in clause 5(1)(c) or otherwise, about employees' pay and other terms and conditions of employment. This
865 empowers the Commission to negotiate or consult with staff or their representatives through collective bargaining or consultation mechanisms as in due course determined.

Subclause 5(1)(e) simply empowers the Commission to make arrangements it considers necessary regarding the recruitment of staff with the knowledge, skills and required experience to meet the needs of the stationed employers. We had the definition of 'stationed employers' earlier
870 on.

Subclause 5(1)(f) empowers the Commission to train and develop staff, not only to enhance effectiveness in their current roles but also to develop them for future progression within the organisation.

875 Subclause 5(1)(g) empowers the Commission to develop and introduce performance assessment
and appraisal schemes for all employees of the Commission. Currently, there is performance
assessment and appraisal for members of the Civil Service, but there is no parallel mechanism in
Whitley Council terms and conditions of employment. It is, in my view, important that there are
880 modern outcome-focused performance assessment mechanisms in place for all staff of the
Commission, which not only encourage the delivery of effective performance but also support the
job holder's learning and development as a means of extending their knowledge and skills in
preparing them for progression through the organisation.

Subclause 5(1)(h): in practice, I would expect that many of these activities would be delegated to
managers on the staff of the stationed employers. The Commission would, though, retain direct
responsibility for appointments to chief executive officer posts. With regard to the facility to transfer
885 employees between stationed employers, this is important as it would enhance our ability to
relocate staff to support Government's priorities and changing circumstances, and potentially
reduce the need for redundancies.

Subclause 5(1)(i) provides for the Commission, where appropriate, to discipline its employees and
provide for the suspension or termination of their employment. It is necessary for any employer to
890 have authority in relation to discipline, suspension and termination of employment. With regard
to the Civil Service and Whitley staff, such provisions already exist in terms and conditions of service,
and on establishment of the Public Services Commission, those existing terms and conditions would
continue to apply until such time as they are changed by agreement between the parties.

Subclause 5(1)(j) simply reinforces the Commission's duty, which is already enshrined in health
and safety legislation. In this context, Government has a long-established staff welfare service
895 available to all central Government staff.

Subclause 5(1)(k) provides for the Commission to make arrangements for loss of office in relation
to any public sector employee. This empowers the Commission to put in place appropriate
arrangements for loss of office in respect of persons employed by, or holding office, within a
900 Department, Statutory Board, Office of Government or other public service entity, and not only
employees of the Commission. Currently, the Public Sector Pensions Authority is empowered to
make such arrangements, which deal with compensation for voluntary or compulsory redundancy.
This is the case because previously such arrangements included an element relating to pensions
provision following the loss of office. However, under the relatively new Public Sector Compensation
905 Scheme, as approved by Tynwald in 2014, the linkage to pensions was broken, and thus it is no
longer appropriate or necessary for the Pensions Authority to have any role in the making of such
arrangements going forward. Responsibility is now being transferred to the Public Services
Commission, as compensation for loss of office is directly related to employment rather than
pensions. This authority, however, does not permit the Commission to make arrangements for loss
910 of office in respect of persons – as already referred to in clause 3(3)(a), (b), (c) and (d) – who are not,
for the purpose of the Bill, public sector employees.

Subclause 5(1)(l): this facilitates secondment of Public Services Commission employees to other
employers – whether public or private sector – as, for example, a means of enhancing the
knowledge, skills or experience of the employee or employees concerned. Secondment cannot take
915 place without the consent of those employees.

Subclause 5(1)(m) is simply a provision enabling the Commission to address unforeseen
circumstances, should they arise, in relation to the administration and management of employees,
and could only be used within the overall parameters of the functions of the Commission as set out
in the Bill.

920 Subclause 5(1)(n) enables the Council of Ministers to allocate such other functions to the
Commission as it sees fit. There is a similar provision in the current Civil Service Commission Act. This
provision should not, though, be confused with the provision in subclause 5(3) of the Bill, which
enables the Chief Minister, after consultation with the Commission, to give directions to the
Commission as to the exercise of its functions. So, for clarity, subclause 5(1)(n) empowers the

925 Council of Ministers to allocate additional functions to the Commission's remit, while subclause 5(3) enables the Chief Minister to give directions regarding the exercise of the functions themselves.

I have already referred to subclause 5(2), regarding the facility to establish a special committee of Tynwald, and to subclause 5(3), regarding the Chief Minister's power to direct the Commission.

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

930

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

The President: The Hon. Member, Mr Downie.

935 **Mr Downie:** Thank you.

There seems to be a two-tier system in operation here, if you look at (n):

'to perform such other functions as directed by the Council of Ministers.'

– and then you move on to subsection (3) –

'The Chief Minister may, after consultation with the Commission, direct the Commission as to the exercise of its functions and the Commission must comply with the direction.'

What I would like to know is does the Chief Minister have the ultimate power, as it states in the Bill? Also, is he acting on behalf of the Council of Ministers, or is it within his gift entirely? And, if the Chief Minister does issue a direction, where will that direction be recorded and logged, so people outside can actually find out what has happened, should there be a big industrial dispute or something like that?

940

Thank you.

The President: The Hon. Member, Mr Braidwood.

945

Mr Braidwood: Thank you, Madam President.

Basically – again, following from Mr Downie, particularly under clause 5(1)(c) – with the negotiating body, does this mean... because normally what would happen is, if agreement could not be reached, an arbitrator would come in, particularly as it used to, Whitley Council and the Civil Service Commission, and if they could not meet, the arbitrator would come in and he would say, 'Yes, we will go for this percentage increase, or that, and the sides would agree.' I know it is slightly different with such as, as it was, the MEA, where the arbitrator would come in and say, 'This is what the employer has offered, this is the employees'...' and he either takes one or the other. So would it be the arbitration? Because, if we go to what Mr Downie has said and we look at clause 5(3), does the Chief Minister say, 'Settle at this percentage', or is it an arbitrator who comes in?

950

955

Secondly, on clause 5(1)(g), which is:

'to make arrangements for the assessment of performance and appraisal...'

we are talking about capability. I cannot remember the last time anybody in the Civil Service Commission or Whitley was dismissed on capability.

Thirdly, particularly on clause 5(1)(i), on discipline, I have known previously where Departments have not followed a proper code of practice and have not gone down the correct disciplinary procedure, and of course have not then been able to get rid of the employee. So I hope... *[Inaudible]* this is in, that people and Departments are completely well aware of the codes of practice for when they discipline employees.

960

The President: The mover to reply.

965 **Mr Turner:** Thank you, Madam President.

If I may, first of all, speak to Mr Downie's points... I think there was quite a lot of detail I went through for this clause and it is important that we get this right.

The direction from the Council of Ministers is to the Commission to perform other such functions. The Chief Minister may direct with regard to the exercising of those functions, and that is after
970 consultation with the Commission. So they are linked. The first stage would be... if the Council of Ministers required additional functions to be performed, they would grant the Commission those functions. Then the Chief Minister can direct the Commission as to the exercising, which is similar to what it is now: the Chief Minister could direct with regard to existing functions, but the Council of Ministers' involvement is to deal with additional functions. I think that is right.

975 Turning to Mr Braidwood's issue that he raised on capability, I can assure –

Mr Braidwood: Arbitration.

Mr Turner: I will come to that. Well, we will deal with arbitration first, then.

980 I understand the committee of Tynwald would be the first place for that... Well, there is the negotiating committee which would be established, and if that fails, then that is where the provision for the committee of Tynwald would be formed. That appears to be, I suppose, the final option. With regard to arbitration, I would have to take some advice as to whether this is changing, but I understand it was that the committee of Tynwald would be the independent way of dealing with it,
985 because it would not be the Commission themselves – but I will check on that.

If I can assure him about the personal development issues of staff, that takes place at the moment. All staff go through PDRs, as they call them, with their reviews. Also, as part of my role as Vice-Chairman of the Civil Service Commission, I sit on quite a few of the panels dealing with disciplinary, and the popular belief that nobody is ever dismissed for capability is simply not true. I
990 am pleased to say there are not dozens of these coming through every week, but they do happen. There is a procedure in place. The procedure is quite thorough. Indeed, some of the cases that we have dealt with have taken quite a considerable time to deal with, because the process needs to be carried out correctly: if you are looking at somebody's future, you have to be certain that the right decision is being made. That said, it is not unusual in the private sector and indeed the public sector,
995 where people have not followed correct procedures... and there are methods of dealing with that. At the centre, they work very hard, through Human Resources, where Departments do have issues with staff, to give them the right advice to ensure that they do follow the correct procedures. So I can assure Mr Braidwood that it is not actually true that people are not dismissed for capability. The PDRs are used for development – they are separate from the capability procedures – and of course
1000 the PDRs are important to track staff members' progress through their job. Certainly on the current Commission, we want people to be able to progress. They come in at their entry level and we want them to improve their skills and have opportunities, so the PDRs are very important for that. But I would just say that, where there is capability, there is a process in place and it is used.

1005 I will have to try and get some feedback on the issue of an arbitrator, because I must admit I am not quite sure on that particular –

Mr Downie: Madam President, could I just ask the mover... I think it is an important point that there is nothing in the legislation that says anything about Tynwald's involvement in this. I think it is a very important point and we must be absolutely clear that if there is a dispute, in my opinion the
1010 last place we want to be taking it is to the Members of Tynwald. So we need to be clear about that before we go through the Third Reading.

The President: Hon. Members, we should have had all this debate before the mover replied; however, it is important. I would have thought that clause 5(2) sets out Tynwald's involvement.
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Mr Turner: Yes, it does.

The President: It is a limited involvement to determine the bargaining and consultation arrangements only; not to make decisions.

1020 **Mr Butt:** Madam President, could I come in on the question of arbitration, if I may?

The President: You should have done before, but go on.

Mr Butt: Just, really, to help the mover – I hope!

1025 Clause 5(1)(c) talks about agreements being established as necessary regarding the committees etc and the consultation. At the present time, I understand – if the mover can confirm – that within in those committees there is independent arbitration in place to resolve issues, and I am sure that if they are negotiating now to set up future committees, that will be part of the process. Just seeking confirmation from the mover there that the negotiations presently going on will probably include
1030 arbitration as part of their committees and negotiation.

Mr Turner: Yes.

The President: The mover to reply.

1035 **Mr Turner:** That is the case, as I understand it, Madam President. I think many of the current systems in these negotiating bodies will continue. There certainly will not be any erosion of the work of the subcommittees, and indeed both sides – employer and employee representatives – have an important part to play in finalising what the ultimate decisions will be. Certainly we also have to
1040 remember that the Employment Act overarches much of this, and that is part of the reason why the changes were from the old servants of the Crown, which I explained as well, because the Employment Act does encompass a lot of the rights that employees have, and that obviously will take precedence.

1045 **The President:** Would you care to answer about the Tynwald involvement, just for Mr Downie's purposes?

Mr Downie: How they are appointed and who appoints them.

1050 **Mr Turner:** I think this, from what I gather from the discussions I have had, is an enabling provision for the establishment of a special committee of Tynwald for the purpose. As it says in clause 5(2):

'If it is not possible for the Commission to reach agreement with the bodies mentioned in subsection (1)(c) as to the establishment and membership of the committees there mentioned, a special committee of Tynwald established for the purpose must determine the collective bargaining and consultation arrangements...'

It would be for Tynwald to appoint that committee.

1055 **The President:** Hon. Members, 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.
Clause 6.

1060 **Mr Turner:** Madam President, clause 6 provides for the delegation of the Commission's functions, as appropriate. In this context, the Commission has the facility to authorise any member or officer of the Commission, or any other person, to exercise any function of the Commission, either alone or jointly with the Commission or with any other person. In turn, any person authorised to exercise any function of the Commission may authorise any employee of the Commission to exercise that function in their stead. This authority is important as it can be utilised to delegate

1065 performance of certain functions of the Commission to Departments, Boards and Offices to enable them to manage their staff directly.

Madam President, I beg to move that clause 6 stand part of the Bill.

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

1070 **The President:** The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

1075 I was just wondering whether there was going to be a mechanism put in place where delegations are officially recorded. I am especially conscious of clause 10, which really covers vicarious liability, and I think it is vital to have recorded any delegation simply so you have the proof of the escalation of liability.

The President: The Hon. Member, Mr Downie.

1080 **Mr Downie:** Madam President, the point Mr Coleman raises is a very good one, and that is why I asked the question regarding the Chief Minister under the previous clause. When he issues a direction, is that properly recorded somewhere and is there a facility for doing that? It must be a very important issue when he has to issue a direction, and it would be useful to see if the committee that is going to arbitrate in Tynwald is actually aware that a direction has been issued.

1085

The President: The Hon. Member to reply.

Mr Turner: Thank you, Madam President.

1090 Delegations are recorded. In effect, this is the same as what happens now with certain functions. It is not unique to the Civil Service Commission; it happens in Departments, where functions are delegated to officers to actually exercise the specific functions we have in Planning, Highways and so forth. It is the same in many Departments. Delegations are recorded in job descriptions in respect of discipline, and other delegations are recorded in formal documents and signed.

1095 Mr Downie mentions – which is linked to that – a direction possibly by the Chief Minister. If this happens now in other legislation, there would be a formal direction note issued through his office, which would be titled up with the relevant legislation he is issuing the direction under. That would go to the Department – in this case, the Public Services Commission, and the Commission, one would imagine, would receive that direction and it would be tabled in their formal meeting, just as any other decision would be recorded. So I think it is highly unlikely that, if a direction is given from
1100 the Chief Minister, it would not be noted on the minutes of the Commission, just as it would in any other Department where the Chief Minister has power to issue directions. This is not a unique power.

1105 **The President:** The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Turner: Clause 7 relates to employees of the Commission.

1110 Subclause 7(1) provides that an employee of the Public Services Commission is a public sector employee who has entered into a contract of employment with the Commission or is in an employment or office prescribed by order of the Council of Ministers. In this context, it is intended that on establishment of the Public Services Commission the Council of Ministers would make Orders prescribing members of the Civil Service and those who are Whitley workers employed in central Government as employees of the Commission.

1115 Any such Order would be subject to the approval of Tynwald, as set out in subclause 7(2).

Subclause 7(3) provides for the organisation of employees into such categories as the Commission considers appropriate and to apply such terms and conditions of employment as necessary, depending on such categorisation. This enables the Commission to apply differences in terms and conditions between categories as necessary to meet the needs of stationed employers. While every effort will be made to harmonise terms and conditions of employment across all employees, there may be operational reasons where differences may be required.

Subclause 7(4) provides that where a person is to be appointed as the chief executive officer of a Department or Board, the concurrence of that Department or Board would be required.

In the case of the appointment to the role of Chief Secretary, then the concurrence of the Chief Minister would be required, in accordance with subclause 7(5), the Chief Minister having consulted with the Governor before giving such concurrence.

With regard to appointments more generally, subclause 7(6) empowers the new Commission to make appointments in circumstances where any statutory provision provides for a person to be appointed to a role that undertakes functions performed by a public sector employee but does not stipulate who shall make the appointment. This is simply a catch-all provision, which parallels a provision in the current Civil Service Act, and is used only in a limited number of situations.

Subclause 7(7) is for the avoidance of doubt and makes clear that an individual can have more than one employment at the same time – for example, in the case of part-time working.

Madam President, I beg to move that clause 7 stand part of the Bill.

The President: Mr Butt.

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

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Subclause 7(5), yes, I can understand that:

‘Where a person is to be appointed as the Chief Secretary, the appointment may not have effect without the concurrence of the Chief Minister who must, before giving such concurrence, consult the Governor.’

Why? It is not a Crown appointment.

There are some members of this Council who can remember in 1998 the Edwards Report, (Mr Downie: Yes.) when the Chief Secretary knew that there was going to be an investigation into the Isle of Man and the finances, which was of course commissioned by Gordon Brown, the Chancellor at the time. The Chief Secretary knew – the Chief Minister did not, and neither did any other Members of Tynwald – that there was going to be an investigation.

So I cannot understand – because it is not a Crown appointment, why should we consult the Governor?

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, Madam President. In a similar vein, following the furore in Tynwald about Edwards, we were given a categoric assurance at that time that the role – which was joint at that time, where the Chief Secretary was the adviser to the Governor and also the Chief Secretary to the Council of Ministers... there was to be a quite clear distinction, (A Member: Demarcation.) a demarcation drawn there, a distinction drawn to prevent any further embarrassment.

I would suggest that if the Chief Minister – or the Chief Secretary, I should say – has a role with the Governor, that must be quite clearly defined somewhere, and I do not see how he can be in the situation here where he is put in a position where he has two masters to satisfy. There will be issues – some will be constitutional issues, and issues like Edwards – where there will be a differing of

1165 opinions, and I think this particular clause here is unfortunate and could be read lots of ways if it is picked up outside.

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

1170 I think, as Mr Braidwood and Mr Downie have mentioned... and I think we were all here in 1998 when the Edwards Report was discussed and the Chief Secretary had a particular role, a special role, advising the Governor as well as advising the Chief Minister, and I think we need clarification as to whether that role, that special advisory role, still continues or whether it has been superseded by other procedures.

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The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

1180 I would just like confirmation about clause 7(3) in that, when the Commission organises its employees in such categories as it wishes, there would be a similar appeal mechanism as to what seems to exist at the moment.

The President: The mover to reply.

1185 **Mr Turner:** Thank you, Madam President.

With regard to clause 7(3) first of all, which Mr Coleman has raised, it is an enabling provision which allows the Commission to subdivide employees into separate categories and apply different terms or conditions of employment to these categories as dictated by operational requirements. It is intended to harmonise the terms and conditions, so there may be variations in terms of shift working – that is specifically what this clause is about; there could be bad-weather working – but the aim is to get some core terms and conditions that are common to all – for example, sickness absence and so forth. He is talking about the appeal mechanisms. That would, as I understand, not change under the new provisions.

1190 If we come to what appears to be the thorny subject of the relationship between the Chief Secretary and the Governor, the Chief Secretary does have split duties. This is in reference to clause 7(5)... the appointment in concurrence with the Chief Minister, but also the proviso that before giving concurrence, the Chief Minister must consult the Governor. It is because the Chief Secretary's role includes duties in relation to the Governor and indeed the relationship with the Crown. I think Mr Downie mentioned about the separating of that. I do not think that has happened, and that continues. The Chief Secretary –

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Mr Braidwood: It is Chief Secretary to the Isle of Man Government.

Mr Turner: The Chief Secretary does have duty in relation to the Crown.

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Mr Braidwood: He gets paid by the Isle of Man Government.

The President: The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 8.

Mr Turner: Madam President, clause 8 provides a level of protection for members of staff who are in existing central Government employment or office and, by order of the Council of Ministers, become employees of the Public Services Commission. In such circumstances, they would be employed on the same terms and conditions of employment that applied immediately prior to them

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becoming employees of the Commission. This, though, does not preclude the Public Services Commission from subsequently implementing changes to applicable terms and conditions following a collective bargaining agreement or other arrangement applicable to the employees concerned.

Madam President, I beg to move that clause 8 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

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Mr Crowe: Thank you, Madam President.

Turning now to amendment 4, which amends clause 8, amendment 4 is a consequential change from amendment 3, which was referred to at our debate on clause 4.

Madam President, I beg to move the amendment standing in my name:

Amendment 4

Amendment to clause 8

Page 9, after line 10 insert —

'(2) Subsection (1) is subject to section 4 (10)(b).'

Renumber the existing subsection (2) of Clause 8 and adjust cross-references accordingly.

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Mr Coleman: I beg to second, Madam President.

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, Madam President.

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I wonder if the mover could just explain to me, if a job in Government no longer exists and the person who is doing that job is moved somewhere else, to perhaps a lesser position – and I can give plenty of examples; I do not want to do it at the present time, but there are examples I can give the mover privately – why is there not an opportunity then to renegotiate terms? We are in a situation where a person could be in quite a senior position – that position no longer exists, they move somewhere else, and yet their salary is protected, and yet the job they were doing originally has gone.

1240

I think perhaps we are being overgenerous with the way that we go about things. I would just like a view on that. I know it is the protection of rights of employees, but I would be happy if he could give me some advice on that.

1245

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

1250

I think Mr Downie makes a very good point. I would first say that, really, people are free to try and start negotiating at any point. If it is mutually agreed, then I do not see the problem in it. Obviously, I am not aware of the cases that Mr Downie has raised – he says there are some examples – but I imagine, going forward, it clearly is not acceptable to falsely protect a pay scale which is outwith the post that is being performed. There may be factors such as the cost of redundancy that may be factored... If that person's job is redundant and there is another job, they may have been offered another job, but of course it may be that the move was for another reason and therefore the pay protection may be in the terms and conditions.

1255

The whole idea of getting this new Public Services Commission is to try and bring some rick back on the terms and conditions. I heard of an alarming number of different pay scales, terms and conditions, splinter agreements, local agreements. Over the years, things have just escalated and got out of hand. This is the opportunity, under the correct negotiating forums with the employees' representatives, to negotiate bringing the system back to a more manageable level, and this is

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obviously something that will be part of the work of those negotiating bodies. So the point Mr Downie makes is exactly what this new Commission is designed to tackle, and negotiate changes.

1265 As I have reiterated in several of these clauses now, the day this new Commission comes into being, if this legislation is passed, the terms and conditions will remain the same as people have now, but there will be negotiations to look at all that and nothing will change unless it has been negotiated through those bodies.

I hope that has answered Mr Downie's question and I beg to move clause 8.

1270 **The President:** The motion is that clause 8 do stand part of the Bill, and to that we have an amendment in the name of Mr Crowe.

I put the amendment to you, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

1275 I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

1280 **Mr Turner:** Clause 9 provides that an employee of the Commission must perform such duties and observe and comply with such reasonable instructions as given by the Department, Board or Office to which they are assigned, referred to in the Bill as the 'stationed employer', or any person duly authorised by said stationed employer for the purpose. This empowers a stationed employer to manage those employees of the Commission assigned to them and to delegate relevant levels of authority through their respective management chains.

1285 Subclause 9(2) confirms that terms and conditions are governed by the employee's contract of employment and instructions given cannot go beyond the boundaries of the contract.

Madam President, I beg to move that clause 9 stand part of the Bill.

The President: Hon. Member, Mr Butt.

1290 **Mr Butt:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

1295 **Mr Turner:** Thank you, Madam President.

1300 Clause 10: a tort is a civil wrong rather than a criminal act, and includes, for example, defamation, negligence, nuisance, restraint of trade, and specifically provides that where an employee of the Commission, in the performance or purported performance of their functions, commits a tort, then the stationed employer, where it is a Department or Board, will be treated as a joint tortfeasor, or wrongdoer, along with the employee concerned, and may therefore become the subject of civil action. Where the stationed employer is not a Department or Board, then it is the Treasury that will be treated as the joint tortfeasor.

1305 Madam President, I beg to move that clause 10 stand part of the Bill.

The President: The Hon. Member, Mr Butt.

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

1310 **The President:** The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Turner: Thank you, Madam President.

1315 Clause 11 places an obligation on the Public Services Commission to provide a report to the Chief Minister with respect to the carrying out of its functions. Such a report must be provided at least at the end of each financial year, or more frequently if required by the Chief Minister.

It is a requirement that any such report must be laid before Tynwald, as is currently the case with the reports submitted by the Civil Service Commission to the Chief Minister.

1320 Madam President, I beg to move that clause 11 stand part of the Bill.

The President: The Hon. Member, Mr Butt.

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

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The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, introducing the schedule.

1330 **Mr Turner:** Thank you, Madam President.

Clause 12 deals with consequential amendments and repeals, and includes specifically the repeal of the Civil Service Act 1990 and the Civil Service (Amendment) Act 2007.

As can be seen, a number of amendments are dealt with, as set out in the schedule to the Bill. These deal primarily with the necessary changes brought about by the creation of the Public Services Commission.

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Also included are a number of missed amendments consequential on the Public Sector Pensions Act 2011.

It will be noted that, 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 the Public Services Commission. It will be for the Public Services Commission, as referred to in clause 5(1)(i) of the Bill to, amongst other things, provide for the termination of employment of its employees and within such provisions to ensure that the requirements of employment legislation are properly adhered to, including, as part of an internal process, the right of appeal against dismissal.

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Employees of the 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 unfair dismissal.

Madam President, I beg to move that clause 12, including the schedule, stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

1355 **Mr Crowe:** Thank you, Madam President.

There is one amendment to clause 12 and four amendments to the schedule. Can I take them all... take them as one? I mean vote on them –

The President: If you would like to present them as one, but I will take the vote on each one separately.

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Mr Crowe: Thank you, Madam President.

Firstly, the amendment to clause 12, amendment 5, is an expansion of the idea in the earlier version of the subsection but is designed to put matters beyond doubt.

1365

Madam President, I beg to move the amendment standing in my name:

Amendment 5

Amendment to clause 12

Page 10, for lines 13 and 14 substitute —

‘(4) Subsection (3) does not —

(a) revive the enactments repealed by subsection (2); or

(b) affect the continuing effect of the amendments made by the Schedule.’.

Madam President, if —

Mr Coleman: Madam President —

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Mr Crowe: Oh, sorry.

The President: Mr Coleman.

If you are moving them separately, I will take the seconder now.

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Mr Coleman: Thank you, Madam President.

I beg to second.

Mr Crowe: Sorry, Madam President.

1380

If agreeable, I would like to move the amendments numbered 6 and 9 together.

Amendments 6 and 9 both flow from the fact that by the time the Public Services Commission Act 2015 comes into operation, the Control of Employment Act 1976 will have gone, because the 2014 Act will have replaced it.

Madam President, I beg to move the amendments standing in my name:

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Amendment 6

Amendment to the schedule

Page 12, omit lines 4 to 11, and renumber the following paragraphs.

Amendment 9

Amendment to the schedule

Page 17, after line 30, add as the next numbered paragraph—

‘XX Control of Employment Act 2014

For section 20 substitute —

“20 Application to Government

(1) Except as otherwise provided by or under this Act, this Act applies to public sector employees as if the Public Services Commission were a private person.

(2) Nothing in this Act makes the Public Services Commission or any stationed employer (within the meaning of section 3 of the Public Services Commission Act 2014) guilty of an offence under this Act.”.

Mr Coleman: I beg to second, Madam President.

Mr Crowe: Madam President, in respect of amendment 7, this is intended to tidy up the replacement for ‘civil servant’. Placing a definition in the Interpretation Act 1976 and also in the Interpretation Bill shortens the substitution in each of the other Acts listed in the schedule of consequential amendments by omitting ‘(within the meaning of section 7(1) of the Public Services Commission Act 2014)’.

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Madam President, I beg to move the amendment standing in my name:

Amendment 7

Amendment to the schedule

Page 12, after line 12 insert —

'(1) The Interpretation Act 1976 is amended as follows.

(2) In section 3(1) after the definition of "document" insert—

"employee of the Public Services Commission" is to be construed in accordance with section 7(1) of the Public Services Commission Act 2014.'

Renumber the existing text of paragraph 4 of the Schedule (page 12, lines 13 to 17) as subparagraph (3) of that paragraph.

In consequence of this amendment—

(a) omit '(within the meaning of section 7(1) of the Public Services Commission Act 2014)' in the amendments contained in paragraphs 6, 8, 9, 12, 13(a), 14(a) (in the inserted paragraph (b) of section 17(1) of the Employment Act 2006), 18(b), 21, 22, 23(4) and 28(a); and

(b) omit paragraph 23(3)(b).

Here, references to paragraphs of the Schedule are to the paragraphs as printed in the Bill on introduction.

1395 **Mr Coleman:** I beg to second, Madam President.

Mr Crowe: Madam President, amendment 8 is intended to correct some technical deficiencies in the admission regulations that can be dealt with by an amendment to the Public Services Commission Bill schedule, which contains consequential and minor amendments to other Acts, including the Public Sector Pensions Act 2011.

Madam President, I beg to move the amendment standing in my name:

Amendment 8

Amendment to the schedule

Page 16 for lines 27 and 28 (paragraph 25(2)(b) of the Schedule) substitute —

'(b) in subsection (3) —

(i) for "being employed by a Department" substitute "falling within subsection (1)(c)"; and

(ii) at the end insert the following paragraph —

"(i) persons —

(i) who have been transferred from a relevant employing authority to an employer not falling within subsection (1) or any of the preceding paragraphs of this section; and

(ii) in respect of whose transfer an admission agreement has been made.";

(c) after that subsection insert —

(3A) In this section —

"admission agreement" means an agreement permitting a public sector employee whose employment is transferred to an external provider of the services for the purposes of which the public sector employee served (before the transfer) with the relevant employing authority;

"relevant employing authority" means a Department or Statutory Board or any of the bodies referred to in subsection (3)(a), (e) or (f).'

Mr Coleman: I beg to second, Madam President.

The President: Finally?

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Mr Crowe: No, we did it. I have moved amendments 7 and 9.

The President: Oh, you moved 9, I am sorry, yes.

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Mr Crowe: Amendments 6 and 9 were moved together.

The President: Amendments 6 and 9 together, right, thank you.
Now we have everything before us, we can move to the debate.
Mr Downie.

1415 **Mr Downie:** Thank you, Madam President.

On the schedule, if Members turn to item 10 on the schedule – ‘Payment of Members Expenses Act 1989’ – there is a substitution there, which is ‘chairperson of the Public Services Commission’.

If I am not mistaken, at the present time the Chairman of the Civil Service Commission is not allowed a role in any other Government Department and his salary is enhanced accordingly, as I understand it. What I want to find out is: is this situation going to be the same, or is the chairmanship of Whitley Council going to be abolished and this new body deal with both sides, the Whitley Council workers and the civil servants, as one entity? If that is the case, that is going to be quite an onerous position for a Tynwald Member and I think, if what I am reading here... without having to cross-reference to the other areas... it just clarifies the position regarding the salary and the terms and conditions of the Member taking the job.

Mr Braidwood: Madam President, just for clarification, I do not think there is any enhancement at the present time for the Chairman of the Civil Service.

1430 **Mr Downie:** I think there is.

Mr Braidwood: There is?

Mr Downie: Yes, because he cannot work in a Department.

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The President: Is there any further comment?
The mover to reply.

Mr Turner: Thank you, Madam President.

1440 As I understand it, for Department Members, there is a 30% uplift; for the Chairman of the Civil Service, I understand it is 40%, which I think brings it in line with the likes of a Member who would also be Chair of Planning, for example, as extra.

As of 1st April 2014, the Chairman of the Civil Service Commission receives £15,508.40 per annum, although as a Minister you will not receive payments for both – is what I am told.

1445 The current Chair is a Minister, and I think that, going forward, it was designed that whoever the Minister was assigned to the Cabinet Office, they would be assuming the role of Chair of the Civil Service Commission. That is the policy that they seem to have adopted, in which case the Minister gets only his ministerial enhancement and does not get the additional Civil Service Chairman enhancement that a non-Minister Member of Tynwald could get.

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The President: Hon. Members, the motion before us is that clause 12 and the schedule do stand part of the Bill.

To clause 12 we have an amendment in the name of Mr Crowe, and I will deal with that first. That is the amendment numbered 5 on your Order Paper. Those in favour of the amendment to clause 12, please say aye; against, no. The ayes have it. The ayes have it.

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We now take the amendments to the schedule, Hon. Members.

We have the amendments numbered 6 and 9 in the name of Mr Crowe. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1460 Amendment 7 to the schedule: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, amendment 8 to the schedule: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you clause 12 and the schedule as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1465 Thank you, Hon. Members. That concludes the business on our Order Paper this morning.

Council will now stand adjourned until the sitting of Tynwald next week, followed by our own sitting the week after.

Mr Braidwood: The week of the second.

1470

A Member: No, one more.

The President: Oh, sorry. It is because I am dealing with Order Papers at the moment. In two weeks' time. We will be sitting next week, Hon. Members.

The Council adjourned at 12.32 p.m.