



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th November 2019

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Present:

The President of Tynwald (Hon. S C Rodan OBE)

The Lord Bishop of Sodor and Man (The Rt Rev. P A Eagles),
The Attorney General (Mr J L M Quinn QC),
Miss T M August-Hanson, Mr D C Cretney, Mr T M Crookall, Mr R W Henderson,
Mrs M M Maska, Mrs K A Lord-Brennan, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mrs J Corkish, Third Clerk.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Moghrey mie. Good morning, Hon. Members.

Members: Moghrey mie, Mr President.

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The President: The Lord Bishop will lead us in prayer.

PRAYERS

The Lord Bishop

Centenary of Legislative Council Members being elected by House of Keys

The President: Hon. Members, yesterday was the one hundredth anniversary of the sitting of the House of Keys when Members were first elected by that Branch to this Council. At that time only four Members of this Council were elected by the Keys. The first four to be so elected were
10 Joseph Qualtrough, MHK for Rushen; Joseph Cunningham, MHK for Douglas North; John Robert Kerruish, MHK for Garff; and William Charles Southward, MHK for Ayre.

The four new Members were sworn into the Legislative Council on 9th December 1919. Welcoming them, the Governor Sir William Fry said:

In my view, the change in the constitution of the Council, by making it of a more representative character, gives an accession of strength to the counsels of the Council. I feel sure that, in the opinion of the people of this Island, the work which we carry out will deserve approval. I have every confidence that in our working together, we shall proceed with the same harmony with which we have always worked, because we are all animated by exactly the same desire, that is, the better government and the welfare of the people of this Island.

15 Hon. Members, there have been many further changes to the composition of this Legislative Council in the 100 years since those words were spoken. The elected Members are now eight in number and constitute the overwhelming majority of the Members of this Branch. The Governor no longer sits here and the political centre of gravity has shifted to the House of Keys.

20 Nevertheless, it remains the case not only in this Council but in Tynwald as a whole that in the words of Sir William Fry, in our working together, we must proceed with harmony because we are all animated by exactly the same desire, that is, the better government and the welfare of the people of this Island.

Members: Hear, hear.

25

Order of the Day

1. Communications Bill 2018 – for consideration of Keys' amendments – Motion not moved

HM Attorney to move.

The President: Hon. Members, on this somewhat historic anniversary, we turn to our Order Paper, Item 1, Consideration of Keys' amendments of the Communications Bill.

I call on the learned Attorney.

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The Attorney General: Yes, thank you, Mr President.

As I advised the Clerk, I do not propose to table this motion today.

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As I indicated at the previous sittings when this Bill came before Legislative Council for consideration, I did so at the behest of the Council of Ministers. I have been asked by the Council of Ministers to not move this matter today on the basis that they would wish me to delay consideration of bringing this back until March 2020 as the Chairman of the Communications Commission advised the Council of Ministers that the Commission was undertaking a review regarding the political Chair and that the outcome of that review will be known by March 2020. In accordance, the Council of Ministers asked me to defer bringing this matter before you until then.

40

Thank you.

45

The President: Hon. Members, it is of course the right of the mover to be in charge of the progress of the Bill and we have heard that explanation but, Mr Attorney, would you be in a position to answer any queries Hon. Members may have?

The Attorney General: As best as I am able, Mr President.

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The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

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I would just like to thank the Attorney General for formally advising the Legislative Council with regard to this Bill and for the main reason for it being withdrawn for the time being in relation to the ongoing review with the Communications Commission and it was better felt that the Bill should lie in abeyance until that review report should emerge. That is logical to me.

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However, I would just like to say to the Attorney General if he could convey to the Council of Ministers a personal message from me, in that the Legislative Council were always cognisant of this Bill and would have wished to progress it in a pragmatic, common-sense way that was agreeable to both Branches and that at no time did we feel we were in any particular conflict over this Bill; rather, that we wished to progress in a common-sense way to the benefit of both Branches.

The President: Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President.

I think I would like to concur with the remarks of my colleague on Council, Mr Henderson, that I think Members of this Branch would have been very willing to progress this Bill in a pragmatic and considered way, and really to ask the question that obviously the Bill is a significant Bill with a number of really important provisions that now will be delayed progressing

70 and coming into law, and whether or not the learned Attorney is able to advise on whether the Council of Ministers has taken into account the broader impact of this delay on the other provisions – the significant number of other provisions – in the Bill.

The President: Any other questions?

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Mrs Lord-Brennan: Thank you, Mr President.

I would also echo the comments from the Hon. Member, Mr Henderson. When this Branch considered the Bill it was understood, through conversations with the Communications Commission, that the Bill was needed quite soon so that regulations could be brought forward, and other matters completely irrespective of the particular matter, the reason why it has been delayed.

80 So I am interested to know if the Council of Ministers are aware that the Commission is comfortable that the Bill is further delayed. I think if it is going to be March, if I remember correctly, next year that would be a delay of a year. Also just to mention for the record that the contested amendment did not change anything potentially for three years from, I think it was, the point of Royal Assent for the Bill, so nothing would need to change in the short to medium, or actually longer term. So is it relevant then still to seek to delay the other aspects of the Bill, is what I would be interested to know.

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Thank you.

The President: You will understand we are not into a debate situation at this point, it is merely questions of clarification of Mr Attorney's announcement.

Miss August-Hanson.

95 **Miss August-Hanson:** Thank you, Mr President.

I would also like to agree with my colleagues on Legislative Council that with the discussions that have been had there would have been a sensible option, I think, here. Having had discussions with the Communications Commission since summer of last year regarding this particular piece of legislation, they have recently said to me that they are getting daily phone-calls from industry asking when this Bill is likely to go through and I would imagine that it is not necessarily all about this particular matter. So I am wondering, very similarly to other Members on Council, exactly whether or not there were discussions and whether or not the Communications Commission are content with this, and industry by extension.

100
105 **The President:** Mr Attorney to reply.

The Attorney General: Yes, thank you, Mr President, and I thank Hon. Members for their comments.

110 What I would like to assure all Hon. Members is that I will convey to the Council of Ministers the comments that have been made this morning.

I can give you the comfort that the potential impact of the delay was considered by the Council of Ministers at its meeting and I can also confirm that my instructions are that the Commission is content with the course of action which is being adopted today.

115

Thank you, Mr President.

The President: Thank you, Mr Attorney.

**2. Public Sector Pensions (Amendment) Bill 2019 –
First Reading approved**

Mr Henderson to move:

That the Public Sector Pensions (Amendment) Bill 2019 be read a first time.

The President: We turn to item 2, Public Sector Pensions (Amendment) Bill for First Reading. I
120 call on the Hon. Member, Mr Henderson.

Before I do, may I just point out to Hon. Members that there is a copy on your desks of the
Bill in its form as amended by the House of Keys. That was put there this morning. I think you all
had an email to that effect.

125 Mr Attorney.

The Attorney General: Could I just make a very brief statement?

For the record, as this Bill touches upon the Judicial Pension Scheme, I ought to comment and
make note of the fact that I am a member of that scheme, Mr President.

130 **The President:** Thank you for that declaration, Mr Attorney.

With that clarification in mind and as to the Bill that is before us that we are actually
considering, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

135 Before I launch into my introduction of this, I would just beg the Council's indulgence on a
slightly different matter that you raised earlier with regard to LegCo's hundredth anniversary of
elected Members. I appreciate the comments that you said and laying out the foundations of
the current Legislative Council, and I would just like to point out the huge reforms that have
gone along with this Council over the last few years and that should be carefully noted going
140 forward.

I am especially pleased to note that Joseph Cunningham was one of the elected Members,
who I am a fan of. I would just like to say that he started the world's first holiday camp here on
the Isle of Man and set the foundations for what we see currently around the planet. Of note, is
Mrs Cunningham in the background, who was the backbone to the business and steered her
145 good husband into the fortunate position he was in with his holiday business.

That being said, Eaghtyrane, I would like to move on to the Public Sector Pensions
(Amendment) Bill and indeed you have taken the words from me, sir, as I was going to indicate
to Legislative Council Members that in fact the original Bill circulated to us and on the BoardPad
for our perusal is in fact the House of Keys' version before amendment. Since then it was drawn
150 to my attention by Mrs Poole-Wilson and between the pair of us we have managed to get a copy
of the amended Bill.

I can further assure Members that by this time next week we will have the formally printed
amendment Bill before us. I can only apologise for the slight oversight that we have this
155 morning.

Eaghtyrane, this is the First Reading of the Public Sector Pensions (Amendment) Bill 2019,
and the statutory basis for the Isle of Man's public sector pension schemes is the Public Sector
Pensions Act 2011. This short amendment Bill seeks to improve upon its provisions by: amending
section 3 of the Act which sets out how schemes for the judiciary are made; amending sections 4
and 6 which contain the provision for making schemes, so that they include Pension Regulations
160 and Orders in the definition of schemes; and amending section 15 to amend the Tynwald
procedure for schemes that make administrative changes to schemes, i.e. those that do not
amend contribution or accrual rates.

Stakeholder consultation took place on this amendment Bill, with seven responses, including a collective response from members of the judiciary being received.

165 This Bill comes to us from the House of Keys already amended, as I have indicated, at clause 4, which is the clause that affects members of the judiciary – and, I note, positively.

By way of background, under the original provisions of the Act, for members of the judiciary who were in a public sector pension scheme, their consent was required before any change could be made to their scheme. The Bill, as it was originally drafted, sought to remove that right entirely, by repealing section 3(2)(a) of the Act and put in place arrangements that are more aligned to the remainder of the public service.

170 Following discussions with the judiciary after the Bill's First Reading, Government moved an amendment to clause 4 in order to address a concern raised by the current judiciary in respect of this clause. The amendment added a saving provision to maintain the provision to obtain consent for current members of the judiciary. Subject to final approval, the inclusion of this amendment will enable the PSPA to finalise the reforms to judicial pension arrangements.

175 This amendment therefore preserves section (3)(2)(a) of the Act which sets out that the consent of the Judges of the High Court, within the meaning of section 3(1) of the High Court Act 1991, the Attorney General and the Solicitor General for the Island is required for the making of a superannuation scheme in respect of those persons. With the repeal of provision 3(2)(a) such consent will not be required in respect of those individuals who are subsequently appointed to those positions in the future and the amendment only applies to those who currently hold those positions.

185 For the benefit of doubt, the amendment to clause 4 is unrelated to the core functions of the judiciary. Rather it is focused on how pension arrangements are implemented for the judiciary. As such, this amendment does not affect the independence of the judiciary, but rather seeks to put in place legislation which provides equity of treatment for all public servants in respect of how changes are made to public sector pension schemes.

190 The amendment regarding schemes, regulations and orders addresses an issue raised by the fact that under the former Superannuation Act 1984, pension provision was made for police officers by use of Police Pension Regulations, and for teachers through the Teachers Superannuation and Pension Orders, whereas the 2011 Act defines 'scheme' as 'a superannuation scheme made, or treated by this Act as made, under this Act.'

195 The PSPA has been advised that whilst the PSPA may term all public service pension arrangements as schemes, legislatively a scheme is not an order or regulations. Therefore, whilst the pension arrangements for police and teachers have been deemed to have been made by the PSPA, currently the PSPA has to update the appropriate orders and regulations via an amending scheme rather than amending order or regulations, as the case may be.

200 The PSPA considers that it would be more straightforward to have the ability to make amending orders and regulations and is therefore seeking to amend the definition of schemes within the 2011 Act to include superannuation 'orders' and 'regulations'.

Eaghtyrane, it is important to note that whilst this clause extends the definition of schemes to include orders and regulations, in doing so it does not extend the powers of the PSPA beyond those already in place, namely to make pension provisions for public servants.

205 Finally, in respect of Tynwald powers, the 2011 Act currently states that a scheme or regulations made under this Act must be laid before Tynwald as soon as is practicable after it is made and if at the sitting at which it is laid or the following sitting Tynwald fails to approve the scheme or regulations, they shall cease to have effect. In cases where amending schemes are being made for administrative purposes — i.e. correcting a definition or clarifying a rule — the PSPA considers that these procedures are unnecessarily burdensome.

210 The PSPA is therefore seeking to follow the procedure taken by various items of Social Security legislation whereby administrative amendment schemes would be subject to a negative resolution procedure and therefore only require to be laid before Tynwald.

215 However, in cases where an amending scheme seeks to amend the contribution rates, accrual rates or benefit provisions of scheme members, then such schemes would be subject to the current procedures i.e. positive resolution. The PSPA is therefore seeking to put in place provisions which differentiate between the two types of legislation.

220 Hon. Members should be assured that the PSPA is not seeking to put in place a procedure that can be utilised to introduce any form of change by stealth, but rather to reduce the burden in respect of administrative changes.

225 I should inform Hon. Members that before determining which Tynwald procedure is appropriate in each case, the PSPA will have reviewed both the proposed amendments and the feedback received following consultation. I can also tell Members that the PSPA board is made up of both employee and employer representatives, with an independent Chair, and any scheme will also have been reviewed by the Attorney General's Chambers and would have been approved by the Council of Ministers for introduction in Tynwald as Government business — going through these assessments first.

230 So in closing, this Bill neither introduces changes to current schemes nor gives new or different powers to the PSPA, but it amends the current Act in light of the experience of having to progress pension changes through it.

Eaghtyrane, I beg to move that the Public Sector Pensions (Amendment) Bill 2019 be read a first time.

235 **The President:** Hon. Member, Mr Crookall.

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

The President: Thank you, Hon. Members. Does any Member wish to contribute?

240 In that case I put the question that the Public Sector Pensions (Amendment) Bill be read for the first time. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that completes our Order Paper this morning. Council will now stand adjourned until our next sitting which will take place at 10.30 a.m. on Tuesday 3rd December.

The Council adjourned at 10.52 a.m.