PP 26/11

LEGISLATIVE COUNCIL COMMITTEE
ON THE
PUBLIC SECTOR PENSIONS BILL 2010

REPORT

2010-2011

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At the sitting of the Legislative Council on 25th January 2011, during the Clauses Stage of the Public Sector Bill 2010, it was agreed:

> *"that Clause 5 and the remaining Clauses and Schedules be referred to a Committee of three Members to consider and report with recommendations."*

Committee Membership

Mrs C M Christian MLC (Chair)

Mr D A Callister MLC

Mr E G Lowey MLC

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Table of Contents

To: The Hon Noel Q Cringle MLC, President,

and the Hon Members of the Legislative Council

LEGISLATIVE COUNCIL COMMITTEE

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I. INTRODUCTION

1. The Committee was established by resolution of the Legislative Council on 25th January 2011. The establishment of the Committee was moved by Mrs Christian as part of the debate on whether Clause 5 should stand part of the Bill. Concerns had been expressed during the debate that Clause 5(8) gave the PSPA too open-ended an opportunity to determine the pay and conditions of its staff and particularly of its Chief Executive.

2. Mr President made it clear that the Committee was to seek a resolution to this issue and also to look at the remaining Clauses and Schedules of the Bill. Clauses 1 to 4, however, could not be re-opened by the Committee as they have already been approved by the Council.

II. BACKGROUND: SENIOR SALARY LEVELS IN THE PUBLIC SECTOR

3. By way of illustration of the reasons for our concern we would draw the Council's attention to the salaries now being paid to Chief Executives of Government Departments and Statutory Boards. Top salaries in all Departments, Boards and Offices were published in a Keys Answer on 3rd February 2009, which is reproduced for ease of reference as Appendix 1 to this report. The Gambling Supervision Commission was not a Statutory Board at the time of this Keys Answer so was not included in the responses given. For completeness we have sought the salary of the Chief Executive of the Gambling Supervision We have been advised that this is £75,000 per year.

III. TERMS OF APPOINTMENT IN THE PUBLIC SECTOR PENSIONS AUTHORITY: OPTIONS FOR DEALING WITH CLAUSE 5(8)

4. Clause 5 of the Public Sector Pensions Bill 2010 establishes the Public Sector Pensions Authority as a Statutory Board. Subsection (8) as currently drafted provides as follows:

> *"(8) The PSPA must appoint, on such terms as it thinks fit –*
>
> *(a) a Chief Executive Officer; and*
>
> *(b) such other officers and employees as it considers necessary for carrying out its functions."*

The words "on such terms as it thinks fit" were of concern to the Legislative Council and gave rise to the establishment of the Committee.

Option 1: no change

5. We considered whether, on further reflection, there was a need for an amendment to the Bill to deal with the Legislative Council's concern. Because the Public Sector Pensions Authority is to be a Statutory Board, it will already

be subject to controls under the Treasury Act 1985 and Statutory Boards Act 1987 even if no amendment is made to the current Bill.

6. In the Treasury Act 1985 the expression "designated body" includes any Statutory Board. Section 3 of the Treasury Act 1985 provides that:

> *(1) It shall be the duty of the Treasury- ...*
>
> > *(e) to receive and consider the annual estimates of all designated bodies and departments of Government in such form as the Treasury shall direct;*
> >
> > *(f) to determine priorities of expenditure, to give directions to designated bodies and departments of Government as to accounting and economies, and to consider applications by designated bodies for supplementary expenditure; ...*
>
> *(2) A designated body or a department of Government which is given a direction under subsection (1)(e) or (f) shall comply with such direction."*

7. Paragraph 12 of Schedule 2 to the Statutory Boards Act 1987 provides in relation to any Statutory Board that:

> *"The Council of Ministers may, after consultation with the Board, give the Board such directions as to the exercise of its functions in relation to any matter which appears to the Council of Ministers to affect the public interest, and the Board shall comply with any such directions".*

8. We believe it is right that these generally applicable controls should apply equally to the Public Sector Pensions Authority as a new Statutory Board. However, given our concerns about terms of employment in existing Statutory Boards (which are themselves subject to these same controls), we believe that something more is needed. We therefore conclude that the Legislative Council should not agree to the Bill as it stands.

Option 2: PSPA administration costs to be paid from fund income

9. The question was raised during the debate whether the PSPA could operate like a trust fund and pay its own administrative costs out of income deriving from the funds it administers. We consider that, if the Isle of Man can reach a

position where public sector pensions are sustainable through income from investments and contributions, then in principle it should be possible for the administrative costs of the PSPA to be funded from those sources. This would give the Authority a clear incentive to keep its administrative costs down. However, we recognise that in practice the Island is many years from realising this vision. We conclude that this option is not practical at present, although we would hope that it might be returned to by a future generation.

Option 3: Treasury to set terms

10. It was suggested during the debate on 25th January 2011 that it might be possible to improve Clause 5(8) by deleting "on such terms as it [i.e. the PSPA] thinks fit" and substituting "on such terms as the Treasury thinks fit". However, we have been advised that, if collective bargaining arrangements were to be put in place, this could potentially see the Trade Union or staff representative organisation bargaining directly with the Treasury and its Minister in seeking to set the terms of pay. We do not consider on reflection that this would be a desirable outcome.

Option 4: PSPA to set terms after consultation with Civil Service Commission

11. It was drawn to our attention that the rates of pay for Industrial Relations Officers are determined after consultation with the Civil Service Commission. This arrangement is set out in section 5(3) of the Trades Disputes Act 1985, which provides:

> *"There shall be paid to an industrial relations officer out of moneys provided by Tynwald such salary and allowances, and such sums towards his expenses, as the Treasury after consultation with the Civil Service Commission may determine."*

12. It would be possible to provide that the PSPA should set staff terms after consultation with the Civil Service Commission. We have been advised, however, that the Trades Disputes Act 1985 arrangement is cumbersome in practice and we do not recommend that it be extended to the present circumstances.

Option 5: PSPA to set terms subject to Treasury concurrence

13. During the debate attention was drawn to paragraph 12 of Schedule 1 to the Tynwald Auditor General Bill 2010, which proposes that:

> *"The terms and conditions of appointment of such staff* [i.e. the Auditor General's staff], *including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Auditor shall be determined by the Auditor with the approval of the Treasury."*

The suggestion made in relation to this provision was that the principle of Treasury approval (or "concurrence") could be followed in relation to the terms of appointment of staff working for the Public Sector Pensions Authority.

14. The advice of the officers advising on the Public Sector Pensions Bill, together with the Attorney General's Chambers, is that an approach based on Treasury concurrence would be straightforward. We consider that this approach is sufficient to meet our concerns and those of the Legislative Council. We therefore recommend that the following amendment be made to Clause 5:

> *Page 4, line 34 in subsection (8) for "as it thinks fit" substitute "as have been approved by the Treasury".*

While noting that one of the objects of the Bill is to introduce a degree of separation between the Public Sector Pensions Authority and the civil service, we nevertheless consider it likely that the PSPA would base its terms of appointment closely on civil service terms. This is analogous to the position in other public sector bodies which are constitutionally separate from the civil service, for example, the Clerk of Tynwald's Office.

IV. AUDITED ACCOUNTS: CORRECTION TO CLAUSE 10(2)

15. Clause 10 of the Public Sector Pensions Bill as originally introduced into the House of Keys provided:

> *"**10.** (1) The PSPA must arrange for annual accounts to be drawn*
>
> *up in respect of any scheme for which it is responsible.*
>
> *(2) As soon as reasonably practicable after the end of each*
>
> *year ending on 31 March the PSPA must send the most recent accounts*
>
> *for each scheme, together with a report for each scheme, to the Council*
>
> *of Ministers which must lay the accounts and reports before Tynwald."*

16. The following motions, tabled by Mr Juan Watterson MHK, were agreed to by the House of Keys on 30th November 2010:

> *Page 7, line 19, clause 10(1), after "annual" insert "audited".*
>
> *Page 7, line 22, clause 10(2), after "annual" insert "audited".*

The first of these amends Clause 10(1). However, the second is defective. It refers to the word "annual" in Clause 10(2), whereas in fact the word "annual" does not appear in Clause 10(2). To correct this and put in place what we believe to have been Mr Watterson's, and the House of Keys', intention, we recommend to the Legislative Council the following amendment:

> *Page 7, line 22 after "recent" insert "audited".*

V. SUMMARY OF RECOMMENDED AMENDMENTS

17. The following are the amendments which we recommend be made to the Bill:

> *CLAUSE 5*
>
> *Page 4, line 34 in subsection (8) for "as it thinks fit" substitute "as have been approved by the Treasury".*

CLAUSE 10

Page 7, line 22 after "recent" insert "audited".

C M Christian (Chair)
D A Callister
E G Lowey

The Speaker: Mr Houghton.

The Chairman: Thank you, Mr Speaker. (*Interjection*) I fully support, I fully endorse the Member's points. These are personal matters to do with private people and they should remain in that way. I fully support the Hon. Member's point.

The Speaker: Hon. Members, that brings us to the end of Questions for Oral Answer. (**Several Members:** Hurray!)

Questions for Written Answer, six Questions tabled and the replies have already been distributed, I think.

Questions for Written Answer

CHIEF MINISTER

Government Chief Executives and Finance Directors Wages

2.1. The Hon. Member for Douglas South (Mr Malarkey) to ask the Chief Minister:

What the wages are of the Chief Executive and Finance Director of each of the (a) Statutory Boards and (b) Departments?

Answer: *[The following Answer has been revised to include additional information since the original Answer was circulated in the House.]*

A. The disclosure of 'personal data', including personal salary information, is subject to the provisions of the Data Protection Act 2002 and thus cannot be provided without the consent of the individual to whom it relates.

The current annual salary payable at 31st January 2009 to those officers from whom consent to disclose has been received is as follows:

Table no 2.1.a

	Note 1	£ per annum Chief Executive Note 2	 Finance Director Note 3
a	Financial Supervision Commission	£225,000	Note 5
b	Insurance and Pensions Authority	£185,765	Note 5
c	Chief Secretary's Office	£132,458	£59,546
d	Treasury	£114,982	£81,047
e	Manx Electricity Authority	£111,300 (plus a performance related payment of £21,000 p.a.)	Consent not received
f	Dept. of Education	£110,382	£68,051
g	Dept. of Health & Social Security	£105,783	£65,217
h	Dept. of Agriculture Fisheries & Forestry	£92,097	£60,921
i	Dept. of Local Government & Environment	£92,097	£76,399
j	Dept. of Trade & Industry	£92,097	£60,921
k	Dept. of Home Affairs	£92,097	£58,575
l	IOM Water Authority	£81,047	Note 5
m	Personnel Office	£81,047	£68,051
n	Communications Commission	£80,163	Note 5
o	IOM Office of Fair Trading	£70,887	£32,522
p	Office of the Data Protection Registrar	£67,210	Note 5
q	General Registry	£65,217	Consent not received
r	Dept. of Tourism & Leisure	Note 4	£52,073
s	Isle of Man Post Office	Consent not received	£67,665
t	Dept. of Transport	£92,097	£70,887

Note 1 – For completeness salary information has been provided in respect of the Departments, Statutory Boards and Offices of Government.

Note 2 – Chief Executive or equivalent, however designated.

Note 3 – Not all Departments, Statutory Boards and Offices have a Finance Director, therefore the information given may relate to the Finance Manager/Officer, as appropriate. Some of those job holders designated as Finance Director or Manager/Officer have a diverse remit of which finance related duties form only a part. The overall scope and complexity of the role will determine grade and thus salary level.

Note 4 – The Chief Executive of the Department of Agriculture, Fisheries and Forestry is currently Acting Chief Executive of the Department of Tourism and Leisure and receives no salary enhancement for this.

Note 5 – There is no separately defined role of Finance Director/ Manager/Officer and this role is undertaken by the Chief Executive

Tribunal panel members Recruitment process

2.2. The Hon. Member for Douglas North (Mr Houghton) to ask the Chief Minister:

Further to his Written Answer number 24 in the January sitting of Tynwald regarding the recruitment of members of tribunal panels can he clarify –
(a) what the selection process is in respect of candidates;
(b) how many candidates responded to advertisements;
(c) how many candidates have been interviewed and who sits on the interview panels; and
(d) what criteria are used to achieve a successful appointment?

Answer: In accordance with the Tribunals Act 2006, the appointment of the statutory Appeals Tribunals and other bodies covered by the Tribunals Act is the responsibility of the Appointments Commission. The Appointments Commission is an independent body established under the Act and appointed by the Council of Ministers.

The Chairman of the Appointments Commission, Mr John Wilson, upon request, has provided the following information with regard to the above Questions:

(a) All applicants are required to submit formal applications, including a full CV and contact details of referees. The Appointments Commission meets to consider applications and to determine, taking into account the references obtained and the overall suitability of candidates, who should be offered appointment. The Commission may decide to hold formal interviews in circumstances where this is deemed appropriate.

(b) A total of 202 applications have been received to date following the inaugural meeting of the Appointments Commission on 17th May 2006.

(c) Since the introduction of the new procedures under the

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