

**REPORT OF THE
HOUSE OF KEYS STANDING
ORDERS COMMITTEE
FOURTH REPORT FOR THE
SESSION 2016-2017**

**Elections to the Legislative
Council**

HOUSE OF KEYS STANDING ORDERS COMMITTEE

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House of Keys Standing Orders

Membership

6.6 At the first sitting of the House after a General Election, the House shall elect five Members to form the Standing Orders Committee to hold office until the next succeeding dissolution of the House; and the House shall from time to time fill any vacancy that may arise. The Speaker shall be a member of the Committee ex officio.

Duties

6.7 It shall be the duty of the Standing Orders Committee to consider Public Petitions and to review the Standing Orders from time to time and to make recommendations to the House for any amendments thereof.

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

The Hon J P Watterson SHK (Rushen) (Chairman)

Mr D J Ashford MHK (Douglas North)

Hon G D Cregeen MHK (Arbory Castletown and Malew)

Hon R K Harmer MHK (Glenfaba and Peel)

Mr L L Hooper MHK (Ramsey)

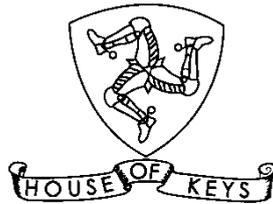
Hon C C Thomas MHK (Douglas Central)

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HOUSE OF KEYS STANDING ORDERS COMMITTEE FOURTH REPORT FOR THE SESSION 2016-2017

Elections to the Legislative Council

I. INTRODUCTION

1. The House has agreed to the principle of establishing the system for electing Members of Legislative Council in Standing Orders, rather than in statute as at present. It has agreed the Elections to Legislative Council Act 2017 to achieve this. This Act received Royal Assent on 21st March, which was announced that day in Tynwald Court.
2. The Act will be brought into effect by Order of Mr Speaker, once the House has agreed the necessary changes to Standing Orders to provide for elections to Legislative Council. The recommendations in this Report will allow the House to decide the Standing Orders for such elections and thus enable Mr Speaker to make the Commencement Order at the earliest opportunity.
3. Members were consulted about the proposed changes and we are grateful to the following Members who sent in their comments: Dr Alex Allinson; Miss Clare Bettison; Mrs Daphne Caine; Mr Alfred Cannan; Mrs Ann Corlett; Mr Bill Shimmins; and Mr Chris Thomas.
4. Members were, among other things, consulted on the matter of whether Members of the House of Keys should be able to stand for election to Legislative Council. This was mentioned in the Lisvane Report and some Members believe that there should be a restriction. The position is that section 12 of the Isle of Man Constitution Amendment Act 1919 sets out the limitations on the qualifications for standing for election to the Legislative Council.
5. Advice received from the Attorney General's Chambers is that since this matter is in statute the provision cannot be amended by way of anything other than legislation, for example by removing the right of Members of the

House of Keys to stand. This does not, however, necessarily restrict decisions on whether candidates may vote for themselves or other considerations which may fall to be controlled by Standing Orders.¹

6. Tynwald has yet to complete its consideration of the Lisvane Report; it is not yet clear how much of that Report will eventually be adopted or on what timescale. Most of these proposed changes do not directly affect decisions to be made in respect of that Report, but in any event the changes are necessary now.

II. FRAMEWORK FOR ELECTIONS

Completion of the process in one day

7. The House agreed on 28th February 2017 to the principle that the election procedure for Committees be used to elect members of the Legislative Council, subject to modifications. This procedure is set out in Standing Orders 6.2 to 6.3. One cardinal virtue of this procedure is that the election should be completed on a nominated day, rather than potentially stretch out over several days or even months, as before.
8. A majority of the Committee believes that an important modification is that Members should retain the right to decline to vote for any or all candidates. We all agree, however, that any new system should encourage a much wider range of people to put themselves forward for election to Legislative Council; we regard the previous system as being discouraging to many potential candidates who otherwise would offer themselves to serve, by reason of the long drawn out and, at times, wounding process of electing Members.
9. After some discussion, the Committee has agreed on the following principles:
 - The process for nominations should remain the same, with some scope for flexibility if necessary.
 - The ballot should initially be secret, using the current electronic system (Mr Hooper dissents from this and believes voting should be public).
 - There should be no nominations from the floor, as this would undermine the formal process for nominating candidates.

¹ The section reads: *“A person to be qualified as an elected member must be not less than twenty-one years of age, and must be, at the time of his election, and must, so long as he continues in office by virtue of such election, (a) be resident within this Isle; and (b) not being a person in receipt of a salary payable by the Imperial or Insular Government.”* (sic)

- Members should keep the ability to vote for none of the candidates or to plump for one of them. Whilst this dilutes the guarantee of a result in a day, it is felt that the other reforms proposed will assist in obtaining a result.

III. ISSUES

Procedure for Nominations

10. We recommend that the basic procedure be much the same as before: one month for nominations to be received and not less than 14 days for Members of the House of Keys to consider the candidates; then have a sitting to elect the new Members of Legislative Council.
11. We propose to keep the rule that in the absence of any provision covering a point Mr. Speaker may make a Ruling; Mr Speaker may exercise appropriate discretion over the date of the Election to allow the House to respond to different sets of circumstances or urgency in reaching a result. For example, the Committee was keen not to trigger a recall of the House in the summer to fill a casual vacancy in Legislative Council.

Getting to know the candidates

12. Previously, some candidates have been able to meet Members of the House of Keys and talk matters through in order to allow Members to decide on the relative merits of candidates. If the new system is successful in encouraging more non-Tynwald candidates then the process of organizing hustings for candidates will be even more important. We regard this as a major responsibility of the Speaker who should take the lead in making all necessary arrangements for candidates to meet as many Members as possible in advance of the Election.
13. Mr. Speaker should organize at least one meeting between candidates and Members at the earliest opportunity after the close of nominations to ensure that all candidates are known to the House ahead of the Election.

Procedure for conducting the election

14. If our recommendations are approved, the process of electing Members of the Legislative Council will be as follows:
 - The election may be on a normal sitting day but no other business may be taken on that day until the election is completed.
 - Candidates for election are proposed and seconded. The Speaker asks the Secretary of the House to read out the list of candidates in the order in which they appear in the voting paper.

- If the number of candidates does not exceed the number of vacancies the Speaker declares the candidates elected.
 - If the number of candidates exceeds the number of vacancies the Speaker puts to the House the names of the candidates to be voted on.
 - Each Member may vote for as many candidates as there are vacancies to be filled, or more candidates or fewer candidates or no candidates.
 - To be elected, a candidate must have a majority of the votes of the Members present and voting.
 - Voting will be by electronic means and a separate vote on each candidate will be held, taking them in the order in which they were nominated. Any continued failure to decide between two remaining candidates who have equality of votes may be settled by the Speaker drawing lots.
15. A particular aim of the reformed system is to encourage greater interest to be displayed among all Members of the House of Keys in ensuring that a wider range and greater number of suitable candidates are nominated than has been the case in the past.
16. The main change which these proposals would introduce is that there would be no required majority of 13 votes, but only a simple majority of Members present (although this usually will be 13). The system will mean that if there are several candidates the lowest in votes will drop off. Those who remain will inevitably require a majority of those present and voting i.e. 13 or more, unless there are vacant seats in the House of Keys or there are Members absent.

IV. MEMORANDUM OF DISSENT FROM MR SPEAKER AND MR HARMER

17. The proposals and recommendations in this Report no doubt improve the likelihood of the House of Keys to fill a vacancy to Legislative Council. However, unlike elections to the House of Keys, the system does not guarantee a result. By retaining the ability to not vote for the same number of candidates as vacancies, there remains the possibility of re-opening nominations after a full election process. By retaining their power to not vote, Mr Speaker and Mr Harmer believe that members are failing in their constitutional duty to their electorate to ensure that vacancies to Legislative Council are filled.

V. MEMORANDUM OF DISSENT FROM MR HOOPER

18. The proposals and recommendations have much merit and should result in a more open system for filling vacancies in the Legislative Council. However, Mr

Hooper believes that by retaining the secret ballot Members are not fulfilling their duties to their electorate. In electing Members of Legislative Council the House of Keys acts as an Electoral College on behalf of the people and Members are exercising their judgment on a matter that can and likely will have significant impact on future Policy and Legislation. The electorate has a right to know how their elected representatives vote on any issue of policy or legislation, as they do with all such votes in either the House of Keys or Tynwald Court.

VI. RECOMMENDATIONS

19. We therefore recommend the following Standing Order changes to provide for elections to Legislative Council, to take effect not before Royal Assent has been signified to the Legislative Council Elections Act 2017:

Recommendation 1

That Standing Order 8.1 be amended to leave out “in the manner provided by section 2 of the Isle of Man Constitution (Elections to Council) Act 1971, as amended,”.

Recommendation 2

That Standing Order 8.1 be amended by adding “(3) Mr. Speaker shall organize at least one joint meeting between candidates and Members at the earliest opportunity after the close of nominations to ensure that all candidates are known to the House ahead of the Election.

Recommendation 3

That Standing Order 8.2 be repealed and replaced with the following Standing Order:

- 8.2 (1) When it is necessary to elect a person to fill a vacancy for an elected Member of the Council, Members of the Keys may, upon being invited to do so by the Speaker, propose persons to be candidates for election to the Council. A member may propose or second up to as many candidates as there are vacancies. However, the Secretary will not accept any further nominations if to do so would mean that it would be impossible to appoint two tellers under SO6.3(6)**
- (2) The Speaker shall, notwithstanding any other provisions in Standing Orders, choose the day for holding an election to the Legislative Council and the Secretary shall notify Members of the House in writing of the date when the election is to take place and the date by**

which nominations must be received. The day for the election may be a sitting day, but no other business may be taken on that day until the election has been disposed of.²

- (3) The Speaker shall invite Members of the Keys to propose persons to be candidates for election to the Council –**
 - (a) one month before an elected Member of the Council goes out of office in accordance with section 10 of the Isle of Man Constitution Amendment Act 1919 (retirement);**
 - (b) as soon as practicable after an elected Member of the Council goes out of office, or a vacancy otherwise occurs, for any other reason.**
- (4) Proposals may be made at any time between the call for nominations, and the deadline for nominations set by the Speaker in 8.2(2), which shall not be less than four weeks after the invitation to propose persons to be candidates.**
- (5) All proposals shall be in writing and delivered to the Secretary of the House and shall be accompanied by particulars in writing of –**
 - (a) the qualifications and experience of the candidate, and**
 - (b) the reasons why the proposer considers the candidate to be suitable to be a Member of the Council.**
 - (c) the name of the Proposer and Seconder.**
 - (d) the contact details for the candidate.**
- (6) The sitting of the Keys at which the election to the Council is held shall be not less than 14 days after the end of the period for the making of the proposals, but as soon as practicable thereafter, unless Mr Speaker deems it expedient to vary the date of the election, in which case he may appoint another day.**
- (7) A person to be qualified as an elected Member must be not less than twenty-one years of age, and must be, at the time of election, and must, so long as he or she continues in office by virtue of such election –**

² Words added: “The day for the election may be a sitting day, but no other business may be taken on that day until the election has been disposed of.”

- (a) be resident within this Isle; and
- (b) not be a person in receipt of a salary payable by either the United Kingdom Government or the Isle of Man Government.

(Isle of Man Constitution Amendment Act 1919, s. 12)

- (8) The Secretary of the House shall distribute to Members of the House, either with the Order Paper for the relevant sitting or earlier, copies of all nominations.
- (9) The Order Paper for the sitting at which the election is to take place shall include the names of the nominees and their proposers and seconders; the names of the nominees shall be in the order in which they were nominated.

Recommendation 4

That Standing Order 8.3 be repealed, and replaced with the following Standing Order:

Standing Order 8.3

- (1) If at the beginning of the process the number of candidates does not exceed the number of vacancies the Speaker shall declare the candidates elected.
- (2) If the number of candidates exceeds the number of vacancies the Speaker shall put to the House the names of the candidates to be voted on.
- (3) The Secretary of the House shall, on the direction of the Speaker, read out the list of candidates in the order in which they appear in the voting paper.
- (4) The Speaker shall put the Question separately on the names of each person proposed and seconded for election, in the order in which the Secretary received the nominations.
- (5) Each Member may vote for or against each candidate.
- (6) If the vacancies to be filled differ in length of term, the person receiving the greatest number of votes shall fill the vacancy for the longer term of office.
- (7) In any round of voting a successful candidate requires a majority of the votes of Members present and voting; and candidates shall be

considered as elected in the order according to the number of votes received until the vacancies are filled.

- (8) If after a vote at any stage of an election vacancies remain, the House shall vote again on the remaining unelected candidates.
- (9) If after a vote at any stage of an election where there are at least three candidates, and no candidate is declared elected –

 - (a) the candidate receiving the fewest votes shall be omitted from the list of candidates and the House shall proceed to vote again;
 - (b) where two or more candidates each receive the fewest votes or all candidates receive an equal number of votes, the House shall proceed to vote again on those candidates and the candidate receiving the fewest votes in that ballot shall be omitted from the list of candidates;
 - (c) if in a ballot under sub-paragraph (b) no one candidate receives more votes than the other candidates, the procedure set out in sub-paragraph (b) shall be repeated; and
 - (d) if in a ballot under sub-paragraph (c) two or more candidates each receive the fewest votes or all candidates receive an equal number of votes one of them shall be eliminated by a lot drawn by the Speaker.
- (10) If after a vote on two candidates neither candidate is elected, but each has an equality of votes and an additional vote would represent a majority of those present and voting, one of them shall be elected by a lot drawn by the Speaker.
- (11) Where paragraph (10) cannot be applied and neither candidate is elected, the Speaker shall call for fresh nominations under Standing Order 8.2.
- (12) At each stage of an election the Speaker shall read out the number of votes recorded for each candidate.
- (13) The ballot shall be a secret ballot unless the House by a majority resolves otherwise.

Recommendation 5

That Standing Order 11.5A (1) be amended to leave out the words “except an election to the Council”.

Add new Standing Order 11.5A (4), “The provisions of Standing Order 11.5A(3) shall not apply in the case of an election to Legislative Council.

J P Watterson (Chairman)

D J Ashford

G D Cregeen

R K Harmer

L L Hooper

C C Thomas

March 2017

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