

#### iv. Admission of visitors on sitting and non-sitting days

Sittings of Tynwald and the Branches are open to the public. Anyone may watch a sitting from the public galleries located in each chamber which are accessed via the public entrance on Prospect Hill.

The dates of sitting days are published on the Tynwald Website. The times are as follows:

Tynwald Court - 3rd Tuesday of each month from 10.30 - 13.00 and 14.30 to no later than 20.00, including a 30 min break around 17.00. Please note that timings are approximate and the sitting may continue into Wed and Thu.

House of Keys - Tuesday (except 3rd in each month) 10.00 - 13.00 and 14.30 - 17.30 or earlier if the business is concluded.

Legislative Council - Tuesday (except 3rd in each month) 10.30 - 13.00 and 14.30 - 17.30 or earlier if the business is concluded.

Order Papers for the sitting(s) in progress are available to the public from the Messengers in the entrance lobby. The public may come and go freely during sittings provided there is no disturbance caused and any rules of conduct [53] which have been issued are followed.

There are regular tours of the chambers each week (excluding public holidays) on Monday at 2.00pm and Friday at 10.00am. It is not usually necessary to book but if you wish to reserve a place you may do so by calling the Tynwald Library on (01624) 685520 or emailing

library@tynwald.org.im. There is no charge for tours and they usually take no more than an hour and a half.

It is also possible to pre-book tours at other times, including evenings and weekends. To request this please call or email the Tynwald Library giving an indication of the requested date, time and number in your party and we will contact you to confirm.

Please be aware that due to the age of the building, some parts of the tour are accessible only via stairs. Mobility impaired visitors can be accommodated via a different route but prior notice would be appreciated.

#### v. The Media

Admission to the Press Gallery in each chamber is controlled by the Seneschal and Messengers. Any media representative who has not previously attended a sitting should contact the Seneschal, at the Clerk of Tynwald's Office on (01624) 685500, before the sitting in order to gain access to the press gallery.

Media representatives wishing to film or photograph the chambers should seek permission by applying in the first instance to the Clerk of Tynwald.

For security reasons media representatives attending the Tynwald Day Ceremony must be accredited to gain access in and around the Chapel, Hill and Processional Way. The Parliamentary Administration Office on (01624) 685500 should be contacted well in advance.

[1] See chapter 7. Making Legislation

[2] Standing Orders of Tynwald, 1, 2.4(1)

[3] Standing Orders of the Legislative Council, 2.1(2)

[4] Standing Orders of the House of Keys, 2.2

[5] Standing Orders of Tynwald, 2.4(3)

[6] Standing Orders of Tynwald, 1, 2.3(1)

[7] Standing Orders of the Legislative Council, 2.1(1)

[8] Standing Orders of the House of Keys, 2.1(5)

[9] Standing Orders of Tynwald, 1, 2.3(3)

[10] Standing Orders of Tynwald, 2.3(2)

[11] Standing Orders of Tynwald, 1, 2.3(4)

[12] Procedure Notes for the Submission of Papers, Reports and Legislation to the Council of Ministers and its Sub-Committees and Working Groups (incorporating the Government Business Timetable; Presentations to Tynwald Members Guidance and Tynwald Decisions Report Guidance)'. Chief Secretary's Office, September 2010.  
[www.gov.im/lib/docs/cso/procedurenotesforsubmissionofpa.pdf](http://www.gov.im/lib/docs/cso/procedurenotesforsubmissionofpa.pdf)

[13] Standing Orders of Tynwald, 3; Standing Orders of the Legislative Council, 3.6; Standing Orders of the House of Keys, 3.3-3.10

[14] Standing Orders of Tynwald, 3.3-3.4; Standing Orders of the House of Keys, 3.3-3.4.5

[15] Standing Orders of Tynwald, 3.5(5); cf Standing Orders of the House of Keys, 3.24(7)

[16] Standing Orders of Tynwald, 4; Standing Orders of the Legislative Council, 3.6-3.7; Standing Orders of the House of Keys, 3.11-3.17

[17] Standing Orders of Tynwald, 3.11(1); Standing Orders of the House of Keys, 3.11(1)

[18] Standing Orders of Tynwald, 3.11(3)

[19] Standing Orders of the House of Keys, 2.2

[20] Standing Orders of Tynwald, 3.26

[21] Standing Orders of Tynwald, 3.24, Standing Orders of the House of Keys, 3.26

[22] Standing Orders of the House of Keys, 3.28

[23] Standing Orders of the Legislative Council, 3.10(3)

[24] Standing Orders of Tynwald, 3.23 and 3.30–3.34; Standing Orders of the House of Keys, 3.24 and 3.32–3.34

[25] Standing Orders of Tynwald, 3.18 and 5.3-5.4; Standing Orders of the Legislative Council, 3.8; Standing Orders of the House of Keys, 3.18 and 6.2-6.3

[26] Standing Orders of the House of Keys, 3.18(1)

[27] Isle of Man Constitution Act 1971

[28] Constitution Act 1990, section 2; Standing Orders of Tynwald 9.1

[29] Council of Ministers Act 1990, section 2; Standing Orders of Tynwald 3.17A

[30] Isle of Man Constitution Act 1961; Standing Orders of Tynwald 3.19

[31] Isle of Man Constitution Act 1961; Standing Orders of Tynwald, 3.19

[32] Isle of Man Constitution (Elections to Council) Act 1971, s 2(2);  
Standing Orders of the House of Keys, 8.2

[33] Constitution Act 2006; Standing Orders of the House of Keys, 4.18-4.20

[34] Standing Orders of the House of Keys, 4.5(2) and 4.11(2)

[35] Standing Orders of Tynwald, 3.18(10)

[36] Constitution Act 1990, section 6; Standing Orders of Tynwald, 3.18(11)

[37] Constitution Act 1990, section 6

[38] Isle of Man Constitution Act 1961; Standing Orders of the House of Keys 3.18(8)

[39] Constitution Act 1990, section 6

[40] Standing Orders of Tynwald, 2.10; Standing Orders of the House of Keys, 2.6

[41] Standing Orders of the House of Keys, 11.6.1

[42] Standing Orders of Tynwald, 11.4

[43] Standing Orders of the Legislative Council, 3.5(1)-(3)

[44] See chapter 2c. Tynwald at St.John's

[45] Standing Orders of Tynwald, 6.12

[46] The booklet is available from the Tynwald Library and [www.tynwald.org.im](http://www.tynwald.org.im).

[47] Standing Orders of Tynwald, 6.1-6.4; Standing Orders of the House of Keys, 7.2–7.6; Standing Orders of the Legislative Council, 5.1

[48] Standing Orders of Tynwald, 10.10;

[49] Standing Orders of Tynwald, 7.1–7.7; Standing Orders of the House of Keys, 7.7–7.10; Standing Orders of the Legislative Council, 5.2

[50] Standing Orders of Tynwald, VI & VII, 1; Standing Orders of the Legislative Council, V; Standing Orders of the House of Keys VII

[51] Standing Orders of Tynwald, 8.2–8.4; Standing Orders of the House of Keys, 4.31–4.33 and 7.1; Standing Orders of the Legislative Council, 5.3–5.5

[52] Isle of Man Examiner; 4th July 1930 p.2, 11th July 1930 p.4

[53] Posted in the chambers and available from [www.tynwald.org.im](http://www.tynwald.org.im)

	Tynwald Court	Legislative Council	House of Keys
Submission of items for Order paper	at least fourteen clear days before the sitting [2]	In writing not less than five days before the sitting [3]	By 5.00 pm six working days before the sitting [4]
Submission of items for Question Paper	at least seven clear days before the sitting [5]	n/a	n/a

Order Paper distributed to Members.	So as to be received at least five clear days before the sitting [6]  In practice on Wed 13 days prior to the Tue sitting	As early as conveniently may be before the date of the sitting [7]  In practice the Wed prior to the Tue sitting	So as to be received at least three clear days before the sitting [8]  In practice the Wed prior to the Tue sitting
Order Paper distributed to public	12.00 on Thu 12 days prior to the Tue sitting	12.00 on the Thu prior to the Tue sitting	12.00 on the Thu prior to the Tue sitting
Question Paper distributed to Members	So as to be received at least three clear days before the sitting [9]  In practice the Wed prior to the Tue sitting	n/a	n/a
Question Paper distributed to public	12.00 on the Thu prior to the Tue sitting	n/a	n/a

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April 18,  
2016

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## 7. MAKING LEGISLATION

### a. Primary Legislation

Primary legislation is the highest form of legislation that applies in the Island. In the Isle of Man there are the following types of primary legislation:

Acts of Tynwald are passed by the Branches of Tynwald, the House of Keys and the Legislative Council, and require the Assent of her Majesty in Council, though this is usually given by the Lieutenant Governor on her behalf.

Acts of Parliament that have effect in the Island. There are four ways in which Acts (or certain provisions of Acts) passed in Westminster [1] may apply to the Isle of Man:

- 1) the Act may be expressed to apply to the Isle of Man (often with a power for an Order in Council to modify it in its application to the Island) (e.g. Trade Marks Act 1994);
- 2) the Act may apply to the Island by implication (e.g. Armed Forces Act 1991);
- 3) the Act may apply by virtue of being extended to the Island by Order in Council, where it contains a power to do so (e.g. Communications Act 2003);
- 4) the Act may apply by virtue of being extended to the Island under the authority of an Act of Tynwald (e.g. Social Security Administration Act 1992).

Within the territory of the Isle of Man, the legislative competence of Tynwald is extensive but not necessarily exclusive. The concept of “reserved matters” familiar in the UK’s devolved parliaments and assemblies does not apply in the Isle of Man. There is no fixed list of policy areas in which the Isle of Man makes its own legislation, rather than relying on UK legislation extended to the Island. This is because the Isle of Man has never been part of England or of the UK. Tynwald and the Parliament at Westminster emerged as law-making bodies at around the same time. Hence the powers of Tynwald are not “devolved” in the sense of having been passed down from Westminster. Rather, Tynwald’s legislative powers are, and always have been, its own.

In practice most new primary legislation affecting the Isle of Man is made in Tynwald, and UK legislation is not extended to the Isle of Man without Tynwald’s prior consent.

An Act is a piece of primary legislation that has completed its passage through the relevant legislature and has received Royal Assent. At any time before receiving the Royal Assent (e.g. when it is before the House of Keys or Legislative Council for consideration) it is referred to as a Bill.

#### i. Reading Primary Legislation

An Act is an expression of Tynwald’s legislative intention that states or alters the law in some respect. For example, an Act of Tynwald may establish rights and responsibilities of Manx residents, it may impose

penalties and sanctions or it may impose taxes. Some Acts are free standing, others merely amend existing Acts:

A new principal Act sets up a new legislative scheme and the title will usually reflect the subject matter of the Act. [2]

An amending Act amends existing Acts. Usually an amending Act has the word "Amendment" in its title. [3]

However, the absence of the word "Amendment" does not necessarily mean that the Act is not an amending Act. [4] Many new principal Acts also amend existing Acts as a consequence of the new legislative scheme that is established by the new principal Act. [5]

## ii. Structure of an Act

There is a standard format for Acts of Tynwald and conventions as to the structure and order of provisions. The first page of an Act starts with the Isle of Man Coat of Arms, the date on which it was signed in Tynwald, the date of Royal Assent, the date on which Royal Assent was announced to Tynwald, the Long Title of the Act and the enacting words. They are followed by the rest of the text of the Act (which includes any Schedules to the Act).

All Acts are printed with a table of contents called the Arrangement of Sections which shows the section side-heading for each section. Some things appearing in a printed Act such as the arrangement of sections, section side-headings and marginal notes do not form part of the Act. That means they are not part of the law. However, preambles (a statement of the purposes of an Act) and cross-headings in Acts are part of the Act and are intended to assist in ascertaining the meaning of the Act.

In reprints or consolidated versions of Acts prepared by the Attorney-General's Chambers there are also notes that identify amendments that have been incorporated in the reprint or version. [6]

## iii. Numbering

An Act may be divided into Parts and the Parts may be divided into Chapters. The purpose of dividing an Act in this way is to group the subject-matter so that it is more easily comprehended. Short Acts, particularly short amending Acts, are often not divided. Also, an Act is

generally only divided into Parts and Chapters if the Act deals with a great deal of information on discrete topics.

The text of an Act is contained in individual sections. A section is identified by a bold number and a section heading. There are no specific rules about how much information can be put into a single section. That is up to the drafter although sections should not deal with too much information.

Many Acts also include Schedules. These appear at the end of an Act and always depend on, or are introduced by, a section. Schedules have a number of uses:

amendments of other Acts can be set out in Schedules;

repeals of other Acts can be set out in Schedules;

treaties or agreements referred to in an Act that implements or relies on a treaty or agreement are often set out in Schedules; [7]

procedural or administrative matters can be set out in Schedules.

The legal effect of something is in no way reduced by setting it out in a Schedule rather than a section. [8]

Sections can be further divided to assist comprehension –

Subsections: (1), (2) etc

Paragraphs: (a), (b) etc

Sub-paragraphs: (i), (ii) etc

A Schedule is divided into paragraphs (1, 2 etc). Paragraphs can be grouped together in Parts just like the body of an Act and can be divided into subparagraphs ((1), (2) etc) and in further divisions ((a), (b), (i), (ii) etc).

The numbering of Bills takes the same form except that there is a small difference in terminology. In a Bill a section is referred to as a clause. It becomes a section on enactment. The other groups and divisions in a Bill have the same names as in Acts. [9] The difference in terminology does not affect the internal wording of a Bill which continues to use the same terminology in Acts.

iv. Amendments

If a new provision is inserted between two existing provisions, it will be given the number of the first provision, plus a letter of the alphabet. For example:

a new section between 1 and 2 will be 1A

a new subsection between (1) and (2) will be (1A)

a new paragraph between (b) and (c) will be (ba).

In some cases, when inserting a provision it is not possible to use the number of the first provision in which case the letter of the alphabet will appear before the number of the existing provision. [10]

For example:

a new section before section 1 will be A1

a new sub-section before subsection (1) will be (A1)

a new paragraph before (a) will be (Aa).

Multiple amendments can sometimes mean that the numbering becomes unwieldy.

#### v. Title of a Bill/Act

The Long Title of a Bill sets out its general objectives. It needs to be wide enough to embrace everything covered by the Bill. The other importance of the long title is that any amendments to the Bill have to be within the scope of the long title. [11] This is an example of a long title:

#### A BILL

to make provision for the management of designated coastline zones, to regulate development in such zones; to confer functions on the Department of Transport in respect of such zones; to modify the effect of enactments relating to town and country planning in respect of such zones; and for connected purposes. [12]

In most cases the words and for connected purposes are included to ensure that it is wide enough to enable all ancillary matters to be covered. When a Bill becomes an Act, the words "A BILL" in the Long Title become "AN ACT".

## vi. Preamble

If an Act contains a preamble, this will appear at the beginning of the Act after the Long Title but before the enacting words. The preamble explains the background to the Act or the reasons why its enactment is considered desirable. A preamble may be compared to the recitals of a contract.

Although more common in older Acts of Tynwald, [13] a preamble is normally now used only in Private Acts. A private Bill or Act is an Act limited in its application; it is different from a private Members Bill or Act, which is promoted by a Member as an individual as opposed to on behalf of the government. A preamble is part of an Act and may be used as an aid in its interpretation. [14]

This is an example of a preamble:

### WHEREAS:

(1) Barclays Bank PLC (hereinafter referred to as 'the Transferor Company') is public limited company that was registered under the Companies Acts 1948 to Acts of Parliament) which carries on, inter alia, the businesses of banking and financial services through a branch in the Island, where it is licensed to do so under the Banking Act 1998, in Jersey, where it is registered under the Banking Business (Jersey) Law 1991, and in Guernsey, where it is licensed under the Banking Supervision (Bailiwick of Guernsey) Law 1994.

(2) Barclays Finance Company (Isle of Man) Limited (hereinafter referred to as 'the Company') is a limited liability company incorporated in the Island under the Companies Acts 1931 to 1993 which is a subsidiary of the Transferor Company carrying on, inter alia, banking business in the Island, being licensed to do so under the Banking Act 1998. [15]

## vii. Enacting words

These words appear in every Bill/Act after the Long Title or if there is one, the Preamble. The words are:

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### viii. Short title of a Bill/Act

The short title is the key title used to identify a Bill/Act. The short title reflects the Act's subject matter. For example:

“Veterinary Surgeons Act 2005”

“Race Relations Act 2004”

### ix. Commencement

Most Acts contain a section stating when the Act commences. If there is no commencement section, section 10(2) of the Interpretation Act 1976 states that an Act comes into operation on the day on which the Royal Assent to the Act is announced to Tynwald by the President of Tynwald. The main options for commencement are:

on the announcement of Royal Assent in Tynwald Court;

a specific day falling after the announcement of Royal Assent;

on a specified past date (retrospective);

on a day to be appointed in an order, an “Appointed Day Order” made by the Council of Ministers, or a Department or other suitable body or person named in the Act;

on the commencement of another related piece of legislation.

Note that the whole of an Act does not have to commence at the same time and different provisions in it may be given different commencements.

### x. Definitions

In a Principal Act, the definitions and other interpretative provisions that are to apply across the Act are usually located together in a section entitled “Interpretation”. Sometimes a definition is needed only for a limited part of the Act (this could be a section, a Part or a Chapter). In that case, the definition may be located close to the provisions in which it is needed (e.g. at the end of a Part) rather than in the main definition section.

### xi. Transitional provisions

An amendment (or a repeal) may create a need to deal with the changeover from the old position to the amended position. This sort of

issue is dealt with in provisions known as transitional provisions. The section on transitional provisions is often followed by one on consequential amendments.

#### xii. The Explanatory Memorandum – Bill

An Explanatory Memorandum appears at the front of all Bills that are introduced into the Branches. [16] An Explanatory Memorandum will identify the promoter, outline the general scope of the Bill and specify the financial effect of the Bill.

The Explanatory Memorandum must also include a statement confirming whether or not the Bill is compatible with the European Convention on Human Rights. [17]

The explanatory memorandum that appears on the face of a Bill is not printed with the Act.

#### xiii. Explanatory Notes

Explanatory Notes for each Bill are produced for Members of Tynwald. The notes set out the contents and effect of the Bill on a clause by clause basis. The following will be covered:

an explanation of any statutory repeals or amendments;

an estimate as to when the legislation will come into operation;

reasons and justifications for the inclusion of retrospective commencement dates (if any);

explanations of clauses that amend disciplinary processes and powers;

reasons and justifications for empowering the making of subordinate instruments that have retrospective effect (if any);

material to assist a person reading the Bill to understand what the Bill does;

if a clause of a Bill contains a cross reference to another clause or to a section of another Act, it is sometimes useful to explain briefly, if the reason for the cross reference is not immediately obvious from that explanation, why the cross reference is necessary;



examples of how a clause will operate (particularly if the clause includes a formula);

information on Human Rights aspects of the Bill.

#### xiv. Finding the current text of an Act

Acts of Tynwald are published both in hard copy and electronically. The hard copy, which is published by authority, is the only official version that may be used in court. Each Act is published in hard copy soon after it has passed. It is published on white paper (green paper for Bills). Up to 2011 arrangements were made with a private publisher (Blackhall Publishing) to edit and reprint the Acts incorporating amendments that have been made up to the date indicated in the reprint. A complete reprint was undertaken every five years and a cumulative supplement published annually. This system is being altered radically in 2011/12. As well as a change so that Bills are now produced in-house in final form (or 'camera ready' copy) thus saving the costs and time delay associated with type-setting and proofing, a new legislation website is being established. The Acts of Tynwald formerly published in amended form by Blackhall Publishing will be maintained by the Attorney-General's Chambers with much more frequent updating. In time it is intended that the website will contain all secondary legislation in updated form too. Hard copies of individual Acts will continue to be available from the Tynwald Library.

In the interim electronic copies of Acts (and secondary legislation) as enacted are available on the Isle of Man Government website, Infocentre site. [18] Acts are added to the page shortly after they are passed. Once the new 'legislation on line' site is up and running the Infocentre will cease to contain legislation.

Electronic copies of Bills being considered in the Branches, along with a progress summary, can be found on the Tynwald website. [19]

Members may access the updated copies of Acts via the Clerk of Tynwald's Office subscription to Blackhall until the new website is up and running. For more information Members should contact the Information Service: 685520 or [library@tynwald.org.im](mailto:library@tynwald.org.im)

#### b. Initiating and introducing a Bill

## i. Government Bills

The drafting of a Government Bill cannot commence unless the Council of Ministers has given authority to draft it and the Bill has been included in Council of Ministers' Legislative Programme.

Departments are invited by the Council of Ministers to submit proposals for legislation for inclusion in the Legislative Programme. The Legislative Programme is published in the Strategic Plan produced at the beginning of the new parliamentary term and updated for each annual report on that Plan. If urgent or unforeseen need arises Bills may be added to the Legislative Programme at any time.

Proposals for new primary legislation are presented to the Council of Ministers Administration accompanied by an Impact Assessment Form which sets out:

information on the purpose of the Bill with an explanation as to why there is a need for primary legislation;

what alternatives have been considered to the introduction of the primary legislation and why those alternatives have been rejected;

the likely resource implications of the Bill. Should any major resource implications be identified, Treasury concurrence is required prior to the Bill being drafted; [20]

a structured timetable from initial drafting to introduction into the Branches that has been agreed with the Legislative Drafting Division of the Attorney-General's Chambers;

whether the proposed legislation will impact on the business community. Departments should have consulted fully with the relevant sector of the business community and the views of the sector should be included.

When the Council of Ministers agrees to a Bill, it considers in which legislative year the Bill is to come before the Branches and what priority the Bill should be given. The order in which Bills are drafted and introduced is a therefore a political decision.

The Bill is then added to the running list of current Bills that have yet to go to the Branches. This indicates the year of intended progression, the given

priority and the current state of play. This list is managed and kept up to date jointly by the Chief Secretary's Office and the Chief Legislative Drafter. The list is open to view by all members of the Legislative Working Group, the Legislative Drafters, HM Attorney-General and a representative of the Clerk of Tynwald. The Chief Minister will also have personal access to it.

The next stages are public consultation and drafting. The Bill is drafted in the Attorney-General's Chambers on the basis of drafting instructions prepared by the Department. The consultation must be undertaken in accordance with the Code of Practice on Consultation published by the Council of Ministers. [21] It may take place before the Bill is drafted, in respect of the policy, or afterward in relation to the Bill itself.

When the Bill has been drafted and checked, the departmental Minister will approve the final draft before it is submitted to the Council of Ministers.

If the Council of Ministers approves a submission, a Member must be chosen to promote the Bill. In the case of Public Bills the Chief Minister or the Council of Ministers will intimate to the Speaker that the Chief Minister or a Minister or member of a Department is prepared to take the Bill, particularly if the subject falls within their remit.

Finally the Bill and Explanatory notes are printed (on green paper) ready for circulation to Members when tabled for introduction into the Branches. [22]

## ii. Private Members' Bills

Private Members' Bills may be drafted privately or by the Legislative Drafting Division if requested by the member concerned. Where a private Member seeks drafting assistance from Chambers the Chief Legislative Drafter will allocate a drafter for the purpose of providing that assistance. The equivalent of two days a month of the drafters' time is set aside, if needed, for drafting private Members' Bills. The role of the drafter is to provide apolitical drafting assistance to the Member who will provide the instructions. The Bill will not be discussed with any government agency or representative without the permission of the private Member.

The drafters will also draft amendments to Bills for private Members on the same confidential basis as with Bills.

Private Members' Bills may be introduced by a Member into the House of Keys or Legislative Council, without the endorsement of the Isle of Man Government, or the Council of Ministers but the Member must first obtain leave of the House of Keys or Legislative Council to do so. [23] (Note that, in the House of Keys, leave lapses at the end of the Session following the one in which the leave was granted.) Treasury concurrence is also required if the Bill will affect public revenue or require expenditure to carry into force. [24]

Where a Member is successful in obtaining leave to introduce a Bill, he or she will promote the Bill in the House. The Bill then follows the same parliamentary procedure as a Government Bill.

### iii. Private Bills

A Private Bill is a Bill for the particular benefit or interest of a person or group or a public corporation. Private Bills should be distinguished from Bills which have operation in a particular locality but nevertheless affect the public in general, and are public Bills.

Private Bills may be sponsored by the Government e.g. Lloyds TSB Offshore Banking, or they may be private Members' Bills e.g. Broadway Baptist Church Bill.

Additional procedures for the private Bills are required by Standing Orders. [25] A private Bill will contain a preamble. Matters which should properly be included in a private Bill should not be included in a public Bill.

Where a Member is successful, in seeking leave to introduce a Bill, he or she will promote the Bill in the House. Following leave to introduce a Private Bill follows the same parliamentary procedure as a Public Bill.

### c. Process by Which a Bill Becomes an Act

The procedures for the introduction and passage of Bills are contained in the Standing Orders of each Branch. [26]

The outline of the process of consideration of legislation which follows assumes that the Bill has been introduced in the House of Keys which has become the convention. The process in each Branch is similar, comprising three readings and a stage to examine each clause, but the timing

specified for each stage varies. The process followed in each Branch does not change whether they receive the Bill first or second.

#### i. House of Keys - First Reading

For Government Bills the first reading usually appears on the Order Paper for the first available sitting after the Council of Ministers has approved the introduction of the Bill. [27]

The First Reading is purely formal. The Secretary of the House simply reads the short title of the Bill and announces the name of the Member promoting it. There is no debate. [28]

Once a Bill has received its first reading, it may only subsequently be formally withdrawn with the leave of the House, supported by the votes of at least 13 Members. However, the Member in charge is able to delay putting the Bill on an Order Paper until he or she is ready.

The period after the first reading gives Members time to consider the Bill. The promoting Department may also brief Members about the Bill.

#### ii. House of Keys - Second Reading

At a subsequent sitting the Member moving the Bill moves that the Bill be read a second time [29] and gives a second reading speech, outlining the scope of Bill. There is a general debate on the principles behind the legislation, rather than a clause by clause analysis of the Bill, although references are frequently made to specific clauses. Members who intend to move amendments to the Bill at the clauses stage may choose to give notice of this in the second reading debate.

At the second reading stage any person who claims an interest, distinct from the interests of the general public, to be adversely affected, may present a Memorial to the House. Such Memorials request leave to appear and to be heard at the Bar of the House, either in person or by Counsel. [30]

At the end of the debate the Member moving the Bill has the opportunity to speak again to address any of the issues raised before the Members vote.

#### iii. House of Keys – Clauses Stage

Where the motion “that a Bill be now read a second time” has been carried, the Bill proceeds to consideration of clauses no earlier than the next but one sitting of the House. [31] A sitting of Tynwald Court is counted as a sitting for this purpose, because it incorporates a sitting of the House of Keys.

This stage requires the Member in charge of the Bill to move that each clause stand part of the Bill. Schedules are normally considered with the clause(s) introducing them. It gives Members the opportunity to debate each clause, to seek an explanation from the sponsor of the Bill as to the effect of particular clauses, and to move amendments. [32]

Amendments for Bills are drafted by the legislative drafters, normally by the drafter who drafted the Bill. Members are encouraged to approach the Chief Legislative Drafter as soon as they have decided to bring forward an amendment. They will be directed to the drafter of the Bill who will need time to consider the Member’s instructions and prepare an amendment for his or her approval. When amendments have been finalised, the drafter will usually send an electronic copy to the Tynwald Office but it is for the Member moving the amendment to ensure its inclusion on the Order Paper.

Amendments proposed must fall within the Long Title of the Bill and must be submitted to the Secretary of the House, for circulation to Members, no later than 5.00pm six working days before the day of the sitting at which it is to be considered. [33]

A Member is not permitted to move or second an amendment to a clause after having spoken in the debate on that clause [34] but may speak to an amendment moved by another Member [35]. A Member moving an amendment speaks to the amendment and also has a right of reply before the amendment is put to the House [36]. Where an amendment is moved, it cannot be debated by other Members until it has been seconded. [37]

Where numerous amendments have been proposed and seconded to a clause, they will be put to the House in the order and manner determined by the Speaker. [38] The Speaker might direct that each amendment be debated and voted upon separately; or all the amendments be debated together but voted upon separately; or all the amendments be both debated and voted upon together. If one or more amendments are successful, the Speaker will thereafter put the clause as amended to the House.

New Clauses may also be proposed but these should not be irrelevant, foreign or contradictory to the Bill. [39] For example a new clause dealing with agriculture should not be added to a Bill dealing with merchant shipping. They must be notified to the Secretary of the House by 5.00pm, six working days before the sitting at which the new clause is to be moved. [40] The details are then appended to the Order Paper for that sitting. Where a new clause is moved it is for the Speaker to determine at which point in the Bill the new clause is to be moved. [41]

A new clause is first considered by the House in principle and the mover of the new clause is allowed to reply to this debate [42]. The debate on the principle of the clause is effectively the equivalent of the second reading stage. If the new clause is agreed in principle, it may then be put to the House to stand part of the Bill. However, if a Member wishes to amend the new clause immediately after approval in principle, then such a motion is not to be moved until the next but one sitting. [43]

The preamble and the Long Title of the Bill may be considered at any time that Mr Speaker deems appropriate [44]. If it is desired that matters outside the scope of the Bill be introduced by amendments, they should be dealt with only if the House passes a motion to widen the scope of the Bill and, normally, to amend the Long Title. [45]

#### iv. Reference to Committee

After the motion for the second reading has been carried, the Bill may be referred to a Committee which will be appointed to consider and report. [46] A Committee may also be appointed during the clauses stage when any or all of its clauses may be referred. [47]

A Committee appointed by the House for this purpose usually consists of three or five Members. It is empowered to take evidence and is usually assisted by the Secretary of the House. It may make recommendations and include draft amendments in its report, but it cannot formally amend the Bill.

The Committee reports to the House and the House votes on any recommendations, and/or amendments to the recommendations, made by Members, before the procedure on the Bill continues; unless one of the recommendations or amendments carried is to abandon the Bill.

#### v. House of Keys – Third Reading

After the clauses stage in the House is complete, the question may be put at a subsequent meeting that the Bill be read a third time. [48] The third reading of a Bill is usually a formal step and generally does not involve extensive debate. The mover often makes brief remarks commenting on matters raised about the Bill and thanking Members for their contributions to the second reading debate or consideration of clauses. A minimum of thirteen votes is required for the third reading to be carried. [49]

#### vi. Transmission to Legislative Council

After the Bill has passed its third reading it is signed by the Speaker as having been passed by the House, [50] and transmitted to the Legislative Council by the Secretary of the House. [51] Bills are not normally reprinted at this stage unless they have been significantly amended during their passage through the House of Keys.

There are three readings of a Bill in the Legislative Council which are similar, but not identical in detail, to those of the House of Keys. Each reading must be carried by a majority of the Members present. [52]

#### vii. Legislative Council - First Reading

The first reading draws attention to the Bill before the Council. Unlike the House of Keys, the Member outlines the purposes of the Bill [53] and there is a debate on the principles underlying the Bill.

#### viii. Legislative Council - Second Reading

The second reading, which Standing Orders require to be taken at a subsequent sitting [54], is a further debate on the principles of the Bill. [55] If the second reading is agreed, then at the same sitting, the Bill proceeds to the clauses stage, unless the Council decides otherwise. [56]

#### ix. Legislative Council – Clauses Stage

As in the House of Keys the Bill is considered clause by clause at this stage and each is voted on separately. Amendments are moved at the clauses stage. [57] There are no time limits for the tabling of amendments in the Legislative Council and sometimes they are even drafted during the course of debate. However, as in the House of Keys, the legislative drafters are available to prepare amendments in advance, on request, and it is



preferable to have amendments drafted in advance if possible to avoid problems with the wording later on.

#### x. Legislative Council – Third Reading

The third reading is taken at a subsequent sitting. Unlike the House of Keys amendments may also be moved at this stage. Such amendments require at least six votes in favour in order to be carried. [58] Once the motion for third reading is passed, a Bill has completed its consideration in the Legislative Council.

Whether a Bill begins in the House of Keys or the Legislative Council each House has the opportunity to make amendments. Where such amendments occur the first House must receive the Bill again to consider the amendments made.

#### xi. House of Keys consideration of Legislative Council Amendments

If the Legislative Council has amended a Bill received from the House of Keys, the amended Bill is brought back before the House [59] which may then -

- (a) agree with the Council's amendments; or
- (b) disagree with the Council's amendments; or
- (c) amend the Council's amendments; or
- (d) disagree with the Council's amendments with a view to a Conference. [60]

If the House of Keys disagrees with or amends the Legislative Council's amendments, the Bill is returned to the Council and if the Council disagrees with the House's amendments, the House may again disagree with a view to a Conference. [61]

#### xii. Conference between the Branches

Where a Conference is to be held, the House of Keys elects a deputation of Members to represent the House and they are accompanied by the Secretary of the House [62] to meet a similarly elected deputation of Legislative Council Members and the Clerk to the Council. The Conference is held in private, under the chairmanship of the President of Tynwald, and

under the Standing Orders of Tynwald Court. [63] Differences between the two Branches are normally resolved in a Conference, or a succession of Conferences. At the conclusion of a Conference the deputations report to their respective Branches.

Special procedures apply where a Bill is returned to the House by the Council with new clause(s) and where the House introduces new clause(s) after the Bill has been returned to the House by the Council. [64]

A Bill comes before the originating Branch again once the Conference or Conferences have been concluded. [65]

#### xiii. House of Keys Only Bill

Where a disagreement cannot be resolved, statutory procedures apply that limit the Legislative Council to delaying powers. The House of Keys may, if a Bill has not been passed by Legislative Council within eighteen months of it being passed by the House of Keys, resolve to submit a Bill for signature in Tynwald for request for Royal Assent on its own authority, provided a minimum of seventeen Members support the resolution. [66]

#### xiv. Privy Council Amendment

Throughout the legislative process there is communication with the UK Government through the Ministry of Justice about proposed legislation. At any time before a Bill has received the Royal Assent the House of Keys can consider suggestions made by the Privy Council and make such amendments as the House considers desirable in respect of such suggestions. [67] Such amendments would require Legislative Council agreement.

#### xv. Lapse of Bills

Bills which have not passed their third reading in the House of Keys by 5th July following their introduction will lapse unless the House orders that the Bill be continued (at the same stage) in the next year. [68] It is currently the practice of the House of Keys to order the continuation of Bills in a special sitting held at St. John's on Tynwald Day.

On the dissolution of the House, usually shortly before a General Election, all Bills then before the House lapse. [69] A Bill which is passed by the House of Keys and the Council before dissolution of the House and which

is waiting for Royal Assent at the time of the dissolution may be given Royal Assent without reconsideration by the Branches. A Bill which is before the Legislative Council at the time of the dissolution, if subsequently passed by the Council must go through all its stages in the new House of Keys. [70]

#### xvi. Signing in Tynwald Court

When a Bill has passed in both Branches it must be signed in Tynwald Court before being formally submitted for the Royal Assent.

In practice this signing is not normally done until the Clerk of Tynwald has been notified that the Lieutenant Governor has been authorised to give the Royal Assent on behalf of Her Majesty (see overleaf). There is often a delay of some months between the final stages in the Branches and such authorisation being given.

In the year of a General Election to the House of Keys, however, all Bills which have been passed by the Branches and have not yet had Royal Assent are signed at the last sitting of Tynwald Court before the General Election. In these circumstances the Royal Assent, if given, would be announced at a sitting of Tynwald Court after the General Election.

A Bill must normally be signed by a quorum of each Branch. Where the procedure for Keys-only Bills is followed, the Bill must be signed by seventeen Members of the Keys. [71]

#### xvii. Giving of Royal Assent

Historically, Royal Assent is given by the Monarch in Council. Today most Bills are dealt with by the Lieutenant Governor, advised by the Ministry of Justice, under delegated powers contained in the Royal Assent to Legislation (Isle of Man) Order 1981. [72]

As soon as a Bill has completed its passage through the House of Keys and Legislative Council, a Royal Assent copy is printed and forwarded to the Ministry of Justice with a certificate from HM Attorney-General for the Isle of Man stating that there is no legal objection to the Bill passing into law.

Once notification has been received from the Ministry of Justice that the Lieutenant Governor may use his delegated powers to grant Royal Assent,

the Royal Assent copy is forwarded to the Clerk of Tynwald's Office and is circulated for signing during a sitting of Tynwald Court. Once signed in Tynwald Court, it is sent to Government House where the Lieutenant Governor adds his signature.

#### xviii. Announcement of Royal Assent in Tynwald Court

Once the Lieutenant Governor has given the Royal Assent, the Royal Assent copy is sent back to the Legislative Buildings. The President of Tynwald announces during a sitting of Tynwald Court that the Royal Assent has been given. It is at this point that, in the absence of express provision to the contrary, the Act comes into effect. [73]

A certificate stating that the Royal Assent has been announced in Tynwald is signed by the President and the Speaker. [74] Following Royal Assent, the Act is given a chapter number. [75]

#### xix. Promulgation

The Clerk of Tynwald arranges for every Act to be promulgated (i.e. announced) at the next practicable Tynwald Day. [76] Promulgation is not necessary before an Act comes into operation but must take place within eighteen months of the Act being passed or the Act will cease to have effect. [77]

#### xx. Commencement

If an Act has no commencement date specified, it comes into operation on the day on which Royal Assent is announced in Tynwald Court. [78]

An Act of Tynwald may, however, be drafted so as to be capable of being brought into operation, either all at once or in stages, by a specific type of secondary legislation called an Appointed Day Order. By order of a former Governor, all Appointed Day Orders are laid before Tynwald. [79]

#### d. Consideration of Secondary and Applied Legislation

Legislation is passed to give government bodies the powers necessary to implement policies decided by Tynwald. The primary legislation (Acts of Tynwald) can either set out in detail what those powers are or give general powers, omitting the detail, classed as 'enabling legislation'. Secondary legislation, also known as subordinate legislation, is legislation made under

the authority of primary, enabling, legislation. In the Isle of Man we have the following types of secondary legislation:

Statutory Documents, commonly Regulations and Orders made under the authority of an Act of Tynwald (or under a UK Act that applies here which has been modified to give power for Regulations or Orders to be made by the relevant Department). Some EU legislation is brought into effect in the Isle of Man by way of an Order under the European Communities (Isle of Man) Act 1973, an Act of Tynwald.

UK secondary legislation that applies to the Island. If a provision of an Act of Parliament that gives power to a UK Secretary of State to make Regulations or Orders applies in the Island, any Regulations or Orders made under that provision will apply (unless expressed only to apply to the UK or part of it). In these circumstances the UK often make separate secondary legislation, known as Orders in Council, for the Isle of Man. It is, however, more common for the Act, as it applies in the Island, to have been modified so that the power to make secondary legislation is given to an Isle of Man Government Department rather than the Secretary of State. Where an Act of Tynwald so enables, UK secondary legislation may be applied to the island by an Application Order made by a Department and modified to meet the island's internal purposes.

Secondary legislation derives its authority from the power or powers under which it is made. This enabling power and the legislation made in pursuance of it must be within its scope or *intra vires*. If the secondary legislation goes beyond the power it is said to be *ultra vires* and is liable to be struck down by the court.

For example, if an Act gives a power for a Department to make Regulations for the management of beaches and the Regulations contain restrictions on certain activities that are expressed to apply to "any beach, park or other amenity area", then clearly they are unlawful insofar as they purport to apply to places other than a beach.

The use of enabling powers and secondary legislation reduces the need to amend primary legislation, a more time consuming process than that for secondary legislation.

#### i. Structure of a Statutory Document (SD)

Statutory Documents have a standard format as do Acts. Like Bills they bear the Isle of Man Coat of Arms on the top of the first page but they also have an SD number on the top left. SD numbers run sequentially for each calendar year. Immediately below the Coat of Arms is the title of the Act under which the SD is made and below that, the title of the SD itself. There then appears the date when it was approved by, or laid before, Tynwald and the date on which it came into operation. There then follows the enacting provision which sets out who is making the SD and the power(s) under which it is made. If there is a statutory requirement to consult any other person before it is made, this will be recited here. If public expenditure is involved there will need to be Treasury concurrence.

Rules as to the ordering and numbering of provisions are very much the same as for Acts. There is some difference in terminology between the various types when it comes to the name of the various divisions and sub-divisions which are as follows:

Order	Regulations	Rules	Byelaws
article	regulation	rule	byelaw
paragraph	paragraph	paragraph	paragraph
sub-paragraph	sub-paragraph	sub-paragraph	sub-paragraph

At the end of an SD is an Explanatory Note, which explains its legal effect.

The secondary legislation of the Isle of Man from 2000 to date is available from the Isle of Man Government website [80]. Eventually it will all appear on the new legislation on line site. Paper copies, including those prior to 2000, are held in the Tynwald Library.

## ii. Making Secondary Legislation

Having decided whether the provisions in an Act of Tynwald give it sufficient powers, a Department then decides by what means (these may also be set out in the Act) it will implement those powers by its own and/or applied legislation. A consultation exercise, with or without a draft copy of the proposals, may be carried out with one or more of the following: other Departments, the Council of Ministers, HM Attorney-General's Chambers, or externally with persons outside government who are materially affected

by their provisions. Comments resulting from the consultation process may lead to further drafts and changes before the next stage.

When the contents of the draft are settled the legislation becomes part of the law by being made, which means it is signed and dated by the authority making it, usually the Minister of the relevant Department, or if it is made by a Statutory Board, a member of that Board. This is known as execution.

The correct procedure for Tynwald's consideration, if required, is included in the Act containing the enabling power. There may be a general provision as to all secondary legislation made under the Act, or different provisions may apply to different types of secondary legislation. The procedure may also impact on when the secondary legislation may come into force. The following procedures may apply:

Approval before coming into operation - Regulations must not come into operation unless they are approved by Tynwald. It is useful to know that nearly all provisions for applying United Kingdom Legislation e.g. Social Security, Shipping, Customs and Excise and VAT etc. require approval;

Positive resolution - Regulations must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting fails to approve them, they cease to have effect. This provides for the making of regulations to be introduced as emergency measures between sittings but prevents their continuation until Tynwald approves them;

Negative resolution - Regulations must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they are to be annulled, they cease to have effect. A Member would need to place a motion on the Order Paper to accomplish this;

Laid - Regulations must be laid before Tynwald (as soon as practicable after they are made).

Unusual - See section 2A of the European Communities (Isle of Man) Act 1973 under which the draft must be approved by Tynwald before the order can be made.

See also Electronic Transactions Act 2000 which requires Tynwald approval but allows for commencement before approval in urgent cases.

Appointed Day Orders are not usually subject to a specific Tynwald procedure but the relevant provisions of the Act being brought into operation will confirm this. Where no Tynwald procedure is required, Tynwald still requires the ADO to be laid before Tynwald in order to comply with a direction made by the Governor in Council. [81]

It is also possible that there will be no procedure specified in which case Tynwald is not involved in the making of the secondary legislation.

When Tynwald consideration is required items appear on a Tynwald Order Paper, published some ten days before a sitting. Whether a procedure is specified or not, anything can be laid 'for information' either voluntarily by the Department etc. making it, by an executive direction or Tynwald resolution to do so or by a Committee of Tynwald.

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[1] UK Legislation is available from [www.legislation.gov.uk](http://www.legislation.gov.uk)

[2] for example: Minimum Wage Act 2001

[3] for example: Representation of the People (Amendment) Act 2004

[4] for example: Transfer of Deemsters' Functions Act 2003

[5] for example: Medicines Act 2003

[6] See the Reprints Act 1981 under which the Attorney General may publish reprints of any enactment.

[7] For example, the Recognition of Trusts Act 1988 sets out the text of the Convention on the law applicable to trusts and on their recognition.

[8] Provided it is clear how the text of the Schedule is intended to operate; for example if the Schedule consists of an agreement or EU legislation, it needs to be made clear how it has effect in domestic law.



[9] It is not correct to refer to sub-clauses although the expression is used colloquially.

[10] Examples of both styles of numbering can be found in sections 107A and 107B, A108 to J108 and 2KA of the Income Tax Act 1970.

[11] Standing Order 4.7(3)(a) of the Standing Orders of the House of Keys requires an amendment in a Bill to be “within the long title of the Bill”.

[12] Coastline Management Act 2005

[13] the Derby Square Act 1945.

[14] Section 8(1) of the Interpretation Act 1976: “(1) The preamble to...an enactment shall be construed as a part thereof intended to assist in explaining the purport and object of the enactment.”

[15] Barclays Private Clients International Act 2002

[16] Standing Order 4.1 of the Standing Orders of the House of Keys requires a Bill that is to be introduced into the House to have a “memorandum stating the objects and financial implications of the Bill”

[17] Human Rights Act 2001, s.16

[18] [www.gov.im/infocentre/acts](http://www.gov.im/infocentre/acts)

[19] [www.tynwald.org.im](http://www.tynwald.org.im)

[20] The Treasury Act 1985, section 10

[21]

[www.gov.im/lib/docs/cso/consultations/code\\_of\\_practice\\_on\\_consultation\\_200.pdf](http://www.gov.im/lib/docs/cso/consultations/code_of_practice_on_consultation_200.pdf)

[22] Standing Orders of the House of Keys, 4.1-4.2

[23] Standing Orders of the House of Keys, 4.4

[24] Treasury Act 1985 section 10

[25] Standing Orders of the House of Keys, 4.34–4.42; Standing Orders of the Legislative Council, 4.8-4.9

[26] Standing Orders of the House of Keys, IV Bills and Standing Orders of the Legislative Council, IV Bills

- [27] Standing Orders of the House of Keys, 4.2(1)(a)
- [28] Standing Orders of the House of Keys, 4.5(1)
- [29] Standing Orders of the House of Keys, 4.6
- [30] Standing Orders of the House of Keys, 4.31–4.33
- [31] Standing Orders of the House of Keys, 4.7(1)
- [32] Standing Orders of the House of Keys, 4.7(2)
- [33] Standing Orders of the House of Keys, 4.7(3) see also 2.2 and 3.15(1)–(4)
- [34] Standing Orders of the House of Keys, 3.27(2)
- [35] Standing Orders of the House of Keys, 3.27(4)
- [36] Standing Orders of the House of Keys, 3.28
- [37] Standing Orders of the House of Keys, 3.11(4)
- [38] Standing Orders of the House of Keys, 3.15(5)
- [39] Standing Orders of the House of Keys, 4.8(1)
- [40] Standing Orders of the House of Keys, 4.8(2) and 2.2
- [41] Standing Orders of the House of Keys, 4.8
- [42] Standing Orders of the House of Keys, 4.8(4)
- [43] Standing Orders of the House of Keys, 4.8(5)
- [44] Standing Orders of the House of Keys, 4.9
- [45] Standing Order 4.7(3)(a). In view of the procedures adopted in the House in respect of the Constitution Bill on 24 April 2007 it is difficult to determine the practical operation of this Standing Order. At the clauses stage of that particular Bill the House was presented with two sets of amendments which amounted to different Bills. In each case the amendments included a new Long Title. Standing Orders were suspended and one of the alternative Long Titles was carried on a vote and the Bill reprinted with the new provisions replacing the original. It would appear that Standing Order 4.7(3)(a) is not necessarily a bar to amendments outside the Long Title.

- [46] Standing Orders of the House of Keys, 4.10(1)
- [47] Standing Orders of the House of Keys, 4.10(2)
- [48] Standing Orders of the House of Keys, 4.11(1)
- [49] Standing Orders of the House of Keys, 4.11(2)
- [50] Standing Orders of the House of Keys, 4.12
- [51] Standing Orders of the House of Keys, 4.25
- [52] Standing Orders of the Legislative Council, 4.3(1)
- [53] Standing Orders of the Legislative Council, 4.3(3) and Annex: A1
- [54] Standing Orders of the Legislative Council, 4.3(2)
- [55] Standing Orders of the Legislative Council, 4.3(4) and Annex: A2
- [56] Standing Orders of the Legislative Council, 4.3(5)
- [57] Standing Orders of the Legislative Council, 4.3(5) and Annex: A3
- [58] Standing Orders of the Legislative Council, 4.3(6) and Annex: A4
- [59] Standing Orders of the House of Keys, 4.13(1)
- [60] Standing Orders of the House of Keys, 4.13(3)
- [61] Standing Orders of the House of Keys, 4.14–4.15
- [62] Standing Orders of the House of Keys, 5.2
- [63] Standing Orders of Tynwald, 4.3–4.5
- [64] Standing Orders of the House of Keys, 4.27-4.28
- [65] Standing Orders of the House of Keys, 4.14(2)
- [66] Constitution Act 2006; Standing Orders of the House of Keys, 4.17-4.22
- [67] Standing Orders of the House of Keys, 4.16
- [68] Standing Orders of the House of Keys, 4.26(1)–(2)
- [69] Standing Orders of the House of Keys, 4.26(3)
- [70] Standing Orders of the House of Keys, 4.26(4)

[71] Standing Orders of Tynwald, 10.6; Constitution Act 2006.

[72] Copy available from Tynwald Library.

[73] The Interpretation Act 1976, section 10(1)

[74] Standing Orders of Tynwald, 10.7

[75] Issued by the Clerk of Tynwald's Office

[76] Standing Orders of Tynwald, 2.1(3)(e)

[77] Promulgation Act 1988 sections 2 and 3

[78] The Interpretation Act 1976, section 10(2)

[79] Government Circular 226/85

[80] [www.gov.im/infocentre/acts](http://www.gov.im/infocentre/acts) - Secondary Legislation

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## Recent Press Release

Sir Paul, who was accompanied by Tracey White, the Scottish Parliament's Head of Chamber and Reporting, was speaking at the conclusion of a 24-hour study visit arranged by the Clerk of Tynwald's Office.

The programme included opportunities to observe sittings of the House of Keys and the Legislative Council, prompting Sir Paul to comment: 'I found the sittings extremely interesting and the exchanges between Members lively; I also thought Question Time was conducted in a most thoughtful and constructive manner.'

Against the background of the forthcoming elections in Scotland and increased powers transferred to Holyrood, notably in matters of taxation , Sir Paul said: 'In this we can learn from the Isle of Man as it enjoys greater fiscal autonomy, so is some considerable way ahead of us. Scotland's moving in that direction, though, so to have been fortunate enough to observe economic business being debated was particularly absorbing.'

Ms White said: 'The Scottish Parliament doesn't have a second chamber so coming to Tynwald served as a valuable opportunity to discover how proceedings in the House of Keys and the Legislative Council operate.'

Sir Paul added: 'In Scotland there's no call at present for a second chamber, but were that to change, then the Legislative Council would be an interesting model.'

Commenting on briefings with the Head of Tynwald Chamber and Information Service Ruth Eastham and Head of Hansard Ellen Callister Ms White said: 'We're both using technology to reach out to the people, but in different ways.'

'We're all trying, though, to "crack the nut of engagement" through parliamentary outreach and attempting to be more creative,' Sir Paul added.

'As with Tynwald, social media - Twitter, Facebook, etc., - works for us because it's interactive and starts a conversation. It's a way to connect with people, target different user groups and has the potential to be a real game changer,' said Ms White.

Sir Paul concluded: 'Tracey and I have been seriously impressed by what a well run operation Tynwald is and how the staff are all highly motivated. On one level Tynwald is successfully preserving a sense of tradition but on another, Tynwald is clearly open to new things and embracing innovation.'

-ends-

Sir Paul Grice and Tracey White are pictured with the Third Clerk of Tynwald Joann Corkish. Photo courtesy of Paul Dougherty, Tynwald Seneschal



## Paper 2

### **Tynwald Reform – Arguments in favour of the Legislative Council**

#### Reasons to have an Upper House

1. Provides checks and balances to the lower house, especially on government legislation and policy which predominantly emanates from the first or lower house. A second house importantly provides a counter balance and check on the level of executive dominance, and to any ill-considered or hastily moved legislation. It also provides for a more measured progression of legislation and / or policy-making. John A. Macdonald, Canada's first Prime Minister, is quoted as saying that when Canada's parliamentary structure was founded and provision was being made for an upper house that it would be a place of 'sober second thought.'(Canadian parliamentary web pages) This exemplifies the importance of a second house as a means of strengthening parliamentary democracy. It also foresees the 'potential' for any executive dominance / legislation issues.

I cite here, by way of hastily moved or ill-considered legislation – another point that comes into play in the background of my observations - the strain that our legislative draughts people face on a daily basis from government departments and government centrally to have legislation prepared and progressed to parliament (via Council of Ministers scrutiny).

This in turn puts strain on department legislative and policy offices in constructing the initial legislative proposals. This can have an immediate effect on a Bill commencing its passage through



parliament: Legislation often 'receiving' continual amendments that have to be made to offset the discovery of 'typos,' errors, omissions and the need for additions.

2. Lower parliamentary branches can operate by government / party majority / coalitions. In the Isle of Man, we do not have party politics *per se*.

We do, however, have a ministerial system of government, the Council of Ministers, which results in executive dominance. In the House of Keys the Council of Ministers holds nine votes and works by collective responsibility, to which all appointed ministers must sign up, causing them, in the main, to vote *en bloc*. Furthermore, in the Isle of Man a minister usually has a single department portfolio with 'junior ministers', members of Tynwald, to assist. This can be as few as two in number or more, such as the Department of Economic Development which has five, depending on the size of the department and its responsibilities.

These department members are expected to vote with their minister on departmental business (which is ostensibly government business) in the House of Keys or Tynwald. Other Keys or Tynwald members can be canvassed for support as well, especially if there is something the government views as important in the progression of its policy aims.

This situation then gives government, the Council of Ministers, the upper hand or majority in many cases; certainly in the House of Keys, as there are only 24 members.

In our parliament there is an oft-used phrase born out of sheer frustration with this situation: 'the block vote of the Council of

Ministers' party.' And to me this is very true when examining the dynamics of proceedings, voting numbers and patterns and the way the Council of Ministers operates. Executive dominance is clear to see in that nearly all legislation transitioning the Keys is government sponsored and with the 'CoMin / departmental member' block vote system it is critical to have a second, independent chamber at work to act as a counter balance. This is also true when the executive operates in Tynwald by way of moving government policy and monitory motions.

I cite here the paper attached by Mr. Nat le Roux, published by the London School of Economics and Political Science 2014 regarding executive dominance and its downsides, much of which is true about our system and would be even more so were LegCo removed or its powers tempered further.

Le Roux argues the case that executive dominance is pervading the UK Parliament, rendering it less democratic than at first it might appear. He further argues that the executive can bring about constitutional changes through ordinary legislation in the absence of a codified constitution, a situation which, he points out, has an implication of instability. Much of what he describes exists in our own system and I feel we should learn from his observations and apply a good helping of 'sober second thought' before we go down a road of no return. What some are calling for (on the Island) – reform, is in fact such fundamental change of a depth and breadth once initiated is almost impossible if ever to reverse.

Le Roux is one of an increasing number of political analysts, reviewers and politicians who are adding weight to a growing argument / debate that we are losing democracy by virtue of increasing executive dominance. This leads me to point out that going down the route of unicameralism would only exacerbate the

situation. What we should be looking at are the democratic benefits bicameralism can bring to parliamentary structure.

In their seminal work 'Restraining Elective Dictatorship' Aroney, Prasser, and Nethercote illustrate to great effect the flaws in unicameralism, citing Queensland, Australia as the prime example, and by drawing on observations of other parliaments around the world. They submit compelling evidence to support their view that a bicameral institution far outweighs a unicameral system in terms of practicality and democratic functionality.

In their work they point out in great detail the failings of unicameralism (Queensland) and the rise of executive dominance in the absence of the filter check a second chamber gives.

This is true also in the Isle of Man - government (CoMin) can bring whatever legislation or policy it wishes to Keys or Tynwald, such as the recent raft of proposals to address the Public Sector Pension Scheme deficit, without being answerable to the electorate. Government (CoMin) are free to attempt to introduce whatever they see fit.

In the Isle of Man government achieves dominance through collective responsibility. It places debates, motions, legislation and orders before Keys and Tynwald to give it democratic legitimacy. Yet government usually holds the voting key to this and votes solidly behind its own initiatives in the knowledge that it has the potential to win the vote. LegCo is the only vehicle which provides a check to this 'narrow democracy'.

A stark example of executive dominance in the Isle of Man can be seen in the Employment (Sex Discrimination) Act 2000 (ESDA)

which, when on its passage through the Keys, saw this legislator go to great pains to point out that the clauses and exemptions it contained to make exceptions for small business was actually passing legislation that legitimised sexual discrimination, so was inherently flawed. My observations were, however, ignored and the Bill was pushed through by the executive. Very fortunately this point was picked up in the Legislative Council and commentary by the Attorney General brought about an amendment to correct this fundamental failing, which then had to go back to the Keys to be accepted. I can cite many other incidences where this has happened, especially in the case of employment law where the rights of minorities are, quite correctly, protected in the workplace, but the rights of the majority do not enjoy the same level of protection.

This clearly demonstrates the need for a counter balance to the executive and reviewing function the Legislative Council provides. It also highlights another important function: to uphold the rights of individuals, minorities and others and their civil liberties – LegCo being in a prime position to achieve this.

3. A paper produced (attached) by the Kenyan Parliament 'The Legislature: Bi-Cameralism under the new Constitution' underscores the values of Bi-Cameralism mentioned throughout Paper 1 and within this paper - fundamental principles which can be transposed to our own system. Obviously there are some inherent differences between the needs of the Kenyan Parliament and our own. However, the fundamentals of what is being highlighted ring true for our own system requirements -
  - a. Checks and Balances
  - b. Legislative and Oversight functions
  - c. A second look / revision capacity
  - d. Ability to enhance quality of legislation

- e. Hold Government accountable
  - f. Role in formulating policies and legislation
  - g. An 'Appellate Hierarchy'
  - h. Improves stability
4. Upper houses provide checks and balances by placing of public questions, oral and written, debate, discussion, examination and analysis of government legislation. It can also provide for amendments and the formation of committees to consider legislation. These bodies can, if need be, serve as a last resort to block legislation or policy initiatives, but usually only for a set period of time, allowing for further examination / consultation.

This is true of the Legislative Council, which provides a valuable reviewing mechanism, a 'second look' at legislation which could ultimately affect the community. LegCo or Keys can call for a joint delegation to resolve issues and impasses between the two branches, which puts a substantial check to the tensions argument. So, far from LegCo being seen as a blocking mechanism and the cause of tensions and stresses (previous parliamentary reviews), there are procedures in place to achieve a pragmatic solution to difficult issues, a highly desirable situation for any parliament. Legislation being by and large government legislation makes the need for a second examination all the more valid.

5. Membership of upper houses can be by appointment, such as in the UK and Canada. There are, however, directly elected upper houses such as in the US and Australia. These senate / presidential-type parliamentary formations can give rise to a very powerful upper house (consider the US Senate) with, in some cases, almost equal power as the lower house. There are some checks on this degree of power, but usually a directly elected senate is extremely powerful in its own right, and in some parliaments has powers and functions not

enjoyed by the lower house. In this sense the Isle of Man Legislative Council is completely different, benefiting from appointments being nominated and voted upon by the directly elected House of Keys – indirect election.

If we accept the principle of a bicameral parliamentary structure how, then, is the second chamber to be formulated? In the Isle of Man numerous committees have been set up over the years to examine this situation, and their reports are no doubt in the hands of the reviewer. Perusing these reports at length I can clearly see the political dilemma these committees faced when struggling to progress the matter, with members, in many cases, having polarised views on the subject. It will be seen that many hundreds, perhaps thousands of hours have been spent, including calls for public evidence, expert opinion sought, Bills drawn up, committees instituted, by Keys, Tynwald and LegCo, to look at the matter of constitutional makeup of the upper house. It is clearly evidenced through the machinations of these committees that they had the greatest of difficulty coping with this political conundrum. In the end, some recommendations came to nothing and in other matters committee members were at loggerheads.

After the experience of nearly 20 years serving in Tynwald, following the various parliamentary reviews, viewing other parliaments and undertaking my own research from time to time, it is my considered opinion that we need to be honest here and face up to the inevitable: that the Isle of Man has the correct parliamentary structure for its own set of unique needs. It may be as simple as that. What we have may be best suited to us and it serves the Island well. It may not be perfect, but it may be the best solution for our parliament and Island.

That is not to say that calls for parliamentary reform are stifled or rejected, as I have pointed out in Paper 1. Far from it, but I would advocate a more considered, evidence-based, pragmatic approach so as not to destabilise and disenfranchise us of the benefits of our current system.

The Isle of Man Parliament, Tynwald, has a long history of operating an upper house system, the Legislative Council as it is now called. Originally introduced by the Kings of Man as 'council to the King' it has stood the test of time, despite having undergone extensive reform over the centuries which has led to its present and quite possibly unique composition and also that it retains a seat for the Lord Bishop and the Attorney General (advisory only)

The membership of upper houses generally is seen as providing a valuable resource of breadth and depth of experience and diversity.

Furthermore it is highly desirable that members be independent of the lower house in order to carry out their functions without fear or favour in a transparent, impartial manner. In my view successful bicameralism is about having an entirely separate distinct branch of parliament.

The way in which the membership of an upper house is constituted has to be very carefully considered. Members directly voted in by the public has an outward resonance to it. This, however, comes with its own set of inherent problems, not least the power base of such a constitution which, in turn, has the very real potential to cause considerable conflict because of equality or near equality of power.

This is clearly indicated in the evidence submissions and analysis provided in the Tynwald Select Committee Report into the Legislative Council of 1994 which is appended – page 31. And I would support the committee's view that the current system should be retained, coupled with my reasoning in the preceding dialogue

Should a reviewing body such as a second chamber be popularly elected, or formed from a directly elected Tynwald if it is to have a smaller power base with the separation, independence and transparency required to provide that 'sober second thought?' As it stands, the current system provides a distinct and unconnected second house which amply fulfils those requirements.

Another issue which hasn't really been brought to the fore in debates on reform is the huge issue of resource in terms of finance, time and additional staffing costs that would undoubtedly be involved were a sea change of such magnitude implemented. Let alone the legislative resource and time required to accommodate the amendments needed for what some are pushing for.

Ultimately this could happen and, taking into account previous committees' deliberations, runs the very real risk of taking an unacceptably protracted period of time. Some would say 'a period of procrastination.' The other risk, in my view, is that we can ill-afford to be distracted by these inward-looking ruminations / procrastinations which steer parliament away from combating national and international threats requiring its full attention.

The resources required would not be only for the dismantling of Tynwald but also for its replacement. There would be the need for legislative platforms, repeals of current legislation, renaming a plethora of current enactments and, most likely, a call for the redrawing of constituency boundaries. In summary, a complete reconfiguration of the existing system. This would be hugely costly and labour intensive. I feel we can ill-afford to be overwhelmed by such inward-looking examination in what are dangerously challenging times for this island (paper 1) when our current finite finances are under extreme pressure. Is this really a priority, given what we are faced with and that, in the main, Tynwald is functioning well?



I ask this at a time when there is no groundswell of public opinion on the matter of reform (there is however a poll being engineered currently, the results of which according to the media are to be presented to the review). I think deconstructing our foundations at this juncture would severely compromise the stability and security of a parliamentary system that is serving us well.

Why employ the very machinery which has proved to be resilient over the centuries as the architect of destruction?

The Isle of Man parliamentary system is unique in that it works because it has an upper house selection system using the House of Keys, the lower house, as an electoral college for the nominations of all LegCo Members, voted upon by the House of Keys, seconded by a Member of Keys and a prerequisite number of votes being required to be a successful candidate to LegCo. LegCo candidates are usually, in the main, Keys representatives but nominations can come from 'outside,' but similarly must be proposed in the House of Keys by a member, seconded by another and voted upon by Keys.

This incorporates a fair degree of democracy and legitimacy into the process, with the Keys proposing, nominating, seconding and voting on prospective candidates, and for those candidates to need a prerequisite number of votes – a minimum mandate required. Building upon this, it is the Keys themselves as part of their role and functions as individual members to formulate the composition of LegCo by way of the nomination process, and a Member of the House of Keys is elected with that aspect being part of their role. I think this process goes a long way towards ensuring a democratic element is in place; at the very least it goes a long way in providing a considerable check on the 'not democratic' argument.

LegCo's diversity of membership can be seen currently with a former banking director, head of banking and a media business executive together with former Keys members, who also bring a wealth of outside experience, working well together. This also includes the important contribution made by the Lord Bishop and Attorney General. By virtue of its indirectly elected status the work of LegCo is able to be undertaken in a much more impartial environment that is the bedrock of independent, unfettered legislative examination and executive oversight.

The work is impartial as it is not connected to the Keys or a committee thereof, so cannot be criticised for being biased. By virtue of not being directly elected mitigates the issues that formal 'senatorial power delays / challenge / friction' as a body can pose. It does, however, benefit from indirect election, steering our system away from the practices of some institutions' selection processes and styles of nomination, which gives it a more independent membership together with that all-important democratic element absent from many other parliamentary systems. All of which places the Manx Legislative Council effectively above criticism with respect to bias.

Rarely are there 'Minister LegCo Members.' Any government issues under examination would usually only involve one department member via LegCo membership so the independence is retained and, as a body, there is no collective vested interest, which strengthens the impartiality of the reviewing function.

This places the Manx parliamentary system in an enviable position from a structural point of view. This is especially notable when it is viewed by international parliamentarians and officers on study visits to Tynwald. Their feedback is unfailingly positive and they applaud our system as it is...not what could it could be. (Please see attached commentary from a Scottish delegation). By way of emphasising the functionality of Tynwald, its makeup and the point that the current system delivers – we have our fourth Kenyan Parliamentary delegation visit to the Island examining our system. Obviously they

hold our system in regard and wish to learn from it, having in recent years re-introduced a bicameral system within their own parliament. Additionally, these visits contribute greatly to promoting Tynwald and the Isle of Man to a wider, international audience.

Central to this debate is that the Legislative Council is exclusively and directly elected from the popularly elected House of Keys, the Keys using their direct mandated authority to do so on behalf of the electorate. This vital element helps to avoid any potential criticism from which other, less democratically constituted, parliaments can suffer. It also contributes to a better public understanding and acceptance of our current system.

Membership to the Legislative Council is not by basic nomination, eliminating the patronage/undemocratic argument and strengthening a positive public perception of the Manx process, perhaps the envy of other jurisdictions.

This gives the Manx system some notable advantages over other bicameral institutions. The power of LegCo is tempered, so provides a functional, practical and, in the main, acceptable system, with Keys retaining its supremacy. A LegCo member's office is for only five years; members' periods of election are rotational and not simultaneous. The branch itself is not dissolved, ensuring an element of continuity, with LegCo providing the new parliament with its experience and knowledge. It is indirectly, democratically elected by the publicly mandated representatives of the lower house, bypassing the nomination process we see in other parliaments, making it a far fairer system.

I have also noted other arguments by protagonists for change: a call for greater democracy and confidence in the democratic choice of the electorate, institutional paternalism, a 'stress' between the two

branches and limit the functions of the Legislative Council. Arguments have also been advanced that the current process stifles constitutional and parliamentary development and leads to the existence of political tensions. These and similar arguments have re-emerged from time to time in the many studies and reports undertaken over the years for other reviews on the constitution.

Such reviews tend to be instigated by a minority, whose own views I believe to be subjective, arbitrary, even populist or worst, born out of self-interest. When these criticisms are put forward, at first sight they appear to have some substance but when we drill down and examine that 'substance' it is found to be somewhat lacking. It boils down to 'we need democracy,' 'we need legitimacy,' 'we need to develop constitutionally,' or 'it's not right'. All these are merely personal / political / perceptual views and ill-considered at that, in my opinion..

Our system works well and is producing, in the main, the results needed. There does not appear to be anything fundamental that is causing serious constitution crisis or hampering the work of Tynwald. The success of other bicameral arrangements would suggest that there really is no valid argument for the fundamental change being sought here on the Island.

In general, Tynwald in its present tricameral or two plus one format - whether working separately or as one - functions well indeed. Legislation is being passed, challenged, amended and examined. Government policy is progressed, passed, challenged, scrutinised, examined and even, in some instances, withdrawn. Members can place public questions, motions for debate and private members' Bills, as well as call for an amendment to or challenge government policy.

Some challenges will see a government initiative fail. For example the Post Office corporatisation policy, heavily amended in Tynwald, and the withdrawal of a government policy initiative intended to address the Public Sector pension deficit. Many private members' Bills are successful - as are their motions and policy initiatives - by way of posing a debate / motion or by amendments. LegCo forms an integral part of this process, in many instances supporting back-bench opinions. LegCo can also represent public issues supporting minorities and the disadvantaged.

It is my firm belief that in the institution of Tynwald we have a 'best of both worlds' parliamentary system, the envy of many. This is largely by virtue of having an upper house, with associated powers balanced by the LegCo selection process to ensure it does not have senatorial might, elected by the lower house to strengthen democratic process and oversight. This creates a LegCo that provides an invaluable check, balance and scrutiny filter to proceedings sitting within its own branch of Tynwald, or indeed Tynwald itself.

Our system has long stood the test of time. It is flexible, resilient and forward-looking, more than able to meet modern political challenges and social needs and withstand international pressures. A system that is unique, steeped in history and tradition yet well adapted to the modern world. Which, in my view, is why the Tynwald Select Committee came to the conclusions it did in 1994.

R. W. Henderson, MLC  
Legislative Buildings