



COUNCIL OF MINISTERS

Summary of Responses to the Consultation on the draft Tynwald Commissioner for Administration Bill

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1. Introduction

- 1.1 The Tynwald Commissioner for Administration Bill was issued for consultation by the Council of Ministers on 6 August 2009 with an extended deadline for responses of 16 October 2009.
- 1.2 The Bill would introduce the Tynwald Commissioner for Administration who would perform an Ombudsman role with power to investigate complaints from members of the public that they had suffered injustice or hardship as the result of alleged maladministration or service failure on the part of Government or other public body. Such an investigation could only be made after a complaint had first been pursued with the body in question.
- 1.3 The consultation document stated that a summary of the responses received would be published within 3 months of the closing date for the consultation. Unfortunately this deadline was not met due to the number of responses received and the complexities of some of the issues raised. This document indicates the responses received and whether they have been taken into account in the final drafting of the Bill.
- 1.4 The Bill has been amended in some areas based on the responses received.

2. Overall responses

- 2.1 The consultation document was issued to all Government Departments, Statutory Boards, Offices, local authorities and other interested parties such as Ombudsmen from other small jurisdictions. Thirty one responses to the consultation document were received some of them very detailed. A list of respondents is included in Annex C. The Council of Ministers welcomed the responses and considered each comment made in the final drafting of the Bill. On the whole the responses received were supportive of the need for the appointment of a Tynwald Commissioner for Administration, however concern was expressed with regards to the part time appointment of the Commissioner which is discussed further in section 5 below.
- 2.2 The issues raised are listed below in section 3 and Annex A as amendments made to the Bill; and in section 4 and Annex B as responses that have not resulted in any amendments to the Bill. Where an issue was raised by more than one respondent the issue is listed once to cover the related points made. Where there has been an issue raised that pertains to provisions within the Tynwald Commissioner for Administration Bill as well as the Tynwald Auditor General Bill an amendment has been made to both Bills. All points raised and the Council of Ministers consideration of these points have been summarised in this paper.

- 2.3 Typographical amendments and, in some cases, clarification amendments have not been listed.

3. Amendments to the Bill

The table at Annex A shows the responses received that have been taken into account and the Bill amended, together with the consideration of the Council of Ministers where appropriate.

4. Responses that have not resulted in any changes to the Bill

The table at Annex B shows the responses received but which have not resulted in any changes to the Bill, together with the reason why.

5. Establishment of the Office

- 5.1 Concerns about the limited appointment of the Tynwald Commissioner were raised during consultation from a large number of respondents.
- 5.2 The original figures provided were based on the preferred option within the Impact Assessment of the establishment of a contracted Tynwald Commissioner with no office support. The likely financial cost for this option was estimated at £18,972 based on 26 hours per month with the annual salary based on that of the High Bailiff. There would be the flexibility for additional hours if this should prove necessary, dependent on workload and other relevant factors.
- 5.3 Costs will include -
- one-off costs for computer equipment and a mobile phone;
 - ongoing costs associated with salary and office supplies.
- 5.4 It has been argued that the volume of complaints is likely to rise significantly once the Commissioner is in place. As well as a possible rise in the number of complaints the Commissioner will need to deal with a large number of enquiries to the 'Office', either by telephone or by email, many from people who do not necessarily want to make a complaint but who are enquiring as to where they should seek to find information and in some case, simple explanations of documents. The Commissioner will also be investigating complaints from local authorities which will be additional to the current volume of complaints.
- 5.5 A number of options are being explored with regards to accommodation and administration support including -

- a) If the Bill progresses through the Branches successfully the Tynwald Management Committee will explore possible accommodation within the Legislative Buildings, Finch Road.
 - b) Initial discussions have taken place between Officers from the Chief Secretary's Office and the Department of Education as to the possibility of the Tynwald Commissioner and Education Commissioner sharing services.
- 5.6 The Bill does allow for the Commissioner to be appointed full time and for the Commissioner to appoint staff and persons to provide services and/or advice.
- 5.7 The option that most respondents thought was more realistic was a full time office-based position with support staff. Of course there would be ongoing office costs comprising of salaries; office rent and services; communications and miscellaneous expenses. There would also be one off costs associated with the purchase of equipment and furniture.
- 5.8 We can look at examples of other Jurisdictions us a guide as to possible levels of staff required to run such an Office -
- Bermuda has a population of 62,000 and has 4 members of staff.
 - Gibraltar has a population of 30,000 and a staff of 6.
 - York University's (Canada) Ombudsman services 60,000 people and has a staff of 6.
- 5.9 Whatever decision is taken with regards to the setting up of the Commissioners Office it must allow the role to perform its functions effectively.
- 5.10 There may be savings from Government Officials and Tynwald Members not being involved in a continuing process. There may indeed be savings from improved administration practices and procedures. However there is as yet no realistic published estimate of savings arising from the proposed establishment of the Commissioner.
- 5.11 Further work is required on the appointment of the Tynwald Commissioner and the establishment of their office.

6. Next Steps

The Bill will now be the subject of Parliamentary scrutiny. The legislative process is explained on the Tynwald Website under 'How Bills become Law' on the following site <http://www.tynwald.org.im/process/index.html>.

Amendments to the Bill**Annex A**

Issue Raised	Outcome
1. Public Officers need protection when providing information to the Commissioner on a highly confidential basis.	Provision amended.
2. Often at the heart of a complaint is that the authority did not adequately explain the reason of statutory basis for an action.	The definition of "action" has been amended to include "failure to provide reasons".
3. The Surveillance Commissioner and the Communications Commission should be included in the list of relevant persons who may be capable of investigating any matters that have come to the Commissioners attention.	Additions made.
4. The Commissioner should be given more discretion as to whether a complaint falls within the matters that he is required to investigate.	Provision amended.
5. Any action taken by or with the consent or authority of the Financial Supervision Commission Enforcement Division in connection with the investigation or prevention of crime must be excluded from the Commissioners remit.	Provision amended.
6. The Commissioner should be able to investigate whether appropriate procedure was followed in matters relating to contractual and commercial transactions.	Provision amended.
7. There should be provision to ensure that the Commissioner can request that a listed authority refrain from exercising its powers until completion of the investigation.	Provision amended.

Issue Raised	Outcome
8. Concern was expressed that the Bill would allow the Commissioner to have access to confidential information held by the Assessor of Income Tax.	A new section has been inserted containing special rules about the disclosure to the Commissioner of information that relates to a person's tax and customs affairs.
9. The provisions prevent listed authorities from requiring information from licence holders who are outside the Island.	This was an unintended consequence and therefore the provision has been amended.
10. There is no provision to ensure that the Commissioner places Special Reports before Tynwald.	Provision amended.
11. The Financial Supervision Commission and the Insurance and Pensions Authority need to be included in the table of persons or bodies to whom the Commissioner can disclose certain information if the information relates to any matter in respect of a function of that person or body.	Provision amended.
12. The general powers given to the Commissioner should exclude requiring any committee of Tynwald or its branches to part with papers and other information. This might affect the ability of the Public Accounts Committee or the Scrutiny Committee or individual select committees to have proper control over their papers.	Provision amended.
13. Concern was expressed as to how the Commissioner will interrelate with Tynwald Court proceedings.	Bill amended so that if Tynwald chooses to appoint a select committee then the select committee investigation should take precedence and the Commissioner would suspend their investigation.

Issue Raised	Outcome
14. Where a complaint received by the Commissioner relates partly to a matter which could be the subject of an investigation by another regulator. The list of regulators with whom the Commissioner should consult should reflect the list of those persons with whom the Commissioner can disclose relevant information.	Provision amended.
15. The issue of non-disclosure notices should not be the responsibility of the Chief Minister as there could be a perception of political interference if any elected Member is involved in a process.	The provision is amended so that non-disclosure notices are given to the Commissioner by the Attorney General. The Attorney General will give a non-disclosure notice only if he is satisfied that the disclosure of the information would prejudice the security, economic well being or international relations of the UK or of the Island.
16. The Communications Commission should be included in the list of persons or bodies that the Commissioner must consult if, when considering a complaint, the Commissioner forms an opinion that the complaint relates to a matter which could be the subject of an investigation by the person or body.	Provision amended.
<p>17. The following amendments have been made to the Appointment Schedule of the Bill -</p> <ul style="list-style-type: none"> • to allow the Tynwald Commissioner for Administration and the Tynwald Auditor General to be the same person; • to allow a member of the Selection Committee to appoint a substitute in their absence; • the disqualification provisions have been rewritten for clarity; • the restrictions on the Commissioner with regard to entering into any other contract of employment has been strengthened; • a motion for the removal of the Commissioner to be through the two Presiding Officers with advice from the Clerk of Tynwald; • to clarify what happens if a motion for the removal of the Commissioner is debated in Tynwald within 3 months of it being tabled, but is adjourned without a vote; • to provide that the expenses of the Commissioner must be approved by Treasury; • to include provisions with regard to delegation and discharge of function of the Commissioner. 	

Issue Raised	Outcome
18. Is it right for Prison Officers to be 'singled out' as disqualified under Schedule 1(3).	The paragraph referring to Members of the Isle of Man Prison Service is removed from the Bill as prison officers are covered by another paragraph.
<p>19. The following Regulatory Bodies will be excluded from the provisions of the Bill.</p> <p>These Body's decisions in the regulatory sphere are all subject to judicial scrutiny. Regulators need to be demonstrably independent of government and free from interference by it. It would be inappropriate for the decisions of a sector regulator to be questioned by the Tynwald Commissioner.</p>	<ul style="list-style-type: none"> a) Financial Supervision Commission b) Insurance and Pensions Authority c) Communications Commission d) Gambling Supervision Commission e) Radio Manx Ltd
20. Decisions of an Adjudicator have the same standing as a high court judgement and therefore it would not be appropriate for the Commissioner to investigate such decisions.	a) Financial Services Ombudsman Scheme Adjudicators
21. The following Officers will be excluded from the provisions of the Bill as they have their own complaints system.	<ul style="list-style-type: none"> a) Clerk of Tynwald and officers working in his Office b) Chief Minister and Ministers (but for the avoidance of doubt only in relation to their personal acts, and not those of their staff)

Amendment to other Bills

22. Commissioner will be exempt from Jury Service under Schedule 1 to the Jury Act 1980.

Responses that have not resulted in any changes to the Bill

Annex B

Issue Raised	Reason for the Bill not being changed
1. The application of the Bill to local authorities should be limited to statutory functions.	All decisions of a local authority should be open to independent scrutiny. The UK has Local Government Ombudsman separate from their Government Ombudsman, however it would not be cost effective or relevant to have local authorities separated from the Commissioner system on the Island.
2. The provision for listed authorities to request investigations should exclude investigations where no member of the public has complained, to prevent the Commissioner being used as a management consultant for authorities' internal systems.	A listed authority should be able to request the Commissioner to investigate where there is no complaint. It is an important part of the Commissioners role.
3. The Commissioner should be empowered to take steps to secure redress and require a public body to cooperate with such steps.	<p>The Commissioner should not be able to compel listed authorities to do anything which would include the payment of compensation. However the Commissioner can make recommendations and draw issues to the attention of Tynwald and therefore he/she will be a powerful and influential figure.</p> <p><u>Note</u> the UK jurisprudence of Regina (Bradley and Others) v Secretary of State for Work and Pensions and others (Court of Appeal, February 7, 2008). The Court of Appeal held that while Ombudsman findings are not binding, they cannot be rejected irrationally, having regard to the legislative intention which underlies the Ombudsman's legislation.</p>
4. Where the action complained about has been taken in accordance with the provisions of relevant legislation but is nevertheless unfair in its effect on the complainant. Would a decision by the Commissioner undermine the legislation and would a decision made by the Commissioner set a precedent?	The Commissioner is not a Court so cannot set a precedent. The Commissioner will be able to make recommendations to change legislation or to go against what is set down in the legislation but listed authorities are not compelled to follow.

Issue Raised	Reason for the Bill not being changed
<p>5. The reference to 'once and once only' with regards to the gathering of information of a complaint should be reconsidered. The Commissioner must be able to initiate and conduct investigations as he/she considers appropriate in the circumstances of the case. Whilst the Commissioner may welcome evidence already gathered by another entity, he/she must be able to re-visit the source of the evidence if required.</p>	<p>The provision allows for the Commissioners discretion to take further evidence as the Commissioner only needs to have regard to evidence that has already been taken so far as possible.</p>
<p>6. The requirement for complaints to be in writing is inconsistent with principles of ensuring accessibility to the Commissioners mechanism of redressing perceived wrongs.</p>	<p>Complaints to be made in writing including electronically, it has been decided not to include verbal complaints in person as there would be no audit trail.</p>
<p>7. Power to determine whether to initiate, continue or discontinue an investigation. The Bill states that if the Commissioner declines to investigate, reasons must be given. However, would it not be more appropriate to include in the Bill those circumstances in which the Commissioner might determine not to investigate – e.g. if they believes the complaint to be frivolous or vexatious?</p>	<p>Commissioner has to prepare a statement under clause 14 as to the reasons for the decision not to investigate a complaint which is considered sufficient provision in the Bill. There should not be a prescriptive list.</p>
<p>8. Access to Council of Ministers papers should not be prevented.</p>	<p>Under the Council of Ministers Act 1990 the proceedings of the Council of Ministers shall be confidential, and no member thereof, without the leave of the Chief Minister, shall divulge to any unauthorised person any matter or thing said or done therein.</p> <p>It has been the practice of successive governments not to disclose the details of Council of Ministers proceedings. Similarly in the UK papers or information relating to the proceedings of the Cabinet Office are generally classified as restricted.</p>

Issue Raised	Reason for the Bill not being changed
<p>9. Clause 22(2)(a)(ii) allows the Commissioner to disclose confidential information in his report of an investigation. Confidential information disclosed by the Commissioner in their Report may be classified as 'restricted' under the provisions of Schedule 6 of the Insurance Act 2008 and therefore it may be an offence for it to be disclosed in this way.</p>	<p>The provisions already ensure that the Commissioner must deal with the disclosure of information with discretion. If it is an offence to disclose such information then the Commissioner will not include it within his Report.</p>
<p>10. The listed authorities in Schedule 2 do not include grant aided bodies for instance if a complaint was made against David Gray House would it be accepted and would it be included in the statistics as a complaint against Home Affairs (Probation)? Similar query with regards to the Victim Support Scheme and IoM Arts Council.</p>	<p>This is already covered by clause 9(1)(a) "any action taken by <u>or on behalf</u> of a listed authority".</p>
<p>11. Will the records of the Commissioner be public records under the Public Records Act 1999?</p>	<p>The records will be public after 30 years unless that period is extended by the Council of Ministers. The 30 year protection cannot be shortened by Council only lengthened. Schedule 1 of the Public Records Act applies.</p>
<p>12. Is there an appeal mechanism against the determination of the Commissioner?</p>	<p>The Commissioner will only be making recommendations and therefore there is no appeal mechanism available.</p>

Annex C

The list of respondents

Isle of Man Government

Attorney General
Department of Tourism and Leisure
Department of Transport
Department of Health and Social Security
Department of Home Affairs
Communications Commission
Financial Supervision Commission
General Registry
Insurance and Pensions Authority
Office of Fair Trading
Treasury, Income Tax

Local Authorities

Arbory Parish Commissioners
Douglas Borough Council
Marown Parish Commissioners
Maughold Parish Commissioners
Port Erin Commissioners
Ramsey Town Commissioners
Rushen Commissioners

Tynwald Members

Mr R W Henderson MHK
Mr J P Watterson MHK
Clerk of Tynwald

Interested Parties

Independent Review Body
M Cornwell-Kelly, ex Clerk of Tynwald
Radio Manx Ltd.
Positive Action Group
Arlene Brock, Ombudsman for Bermuda
Mario Hook, Ombudsman for Gibraltar
Executive Committee of the Association of British and Irish Ombudsman
British Republic

Members of the public

W Gilbey
A M Milburn
Anonymous

The information in this booklet can be provided in
large print on request

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