

**TYNWALD COMMISSIONER FOR
ADMINISTRATION BILL 2010**

Explanatory Memorandum

1. This Bill is promoted by the Council of Ministers. It provides for the appointment and functions of a new officer of Tynwald, the Tynwald Commissioner for Administration (referred to in this Memorandum as “the Commissioner”).
2. Part 1 (*clauses 1 to 3*) provides for the short title, commencement and interpretation.
3. Part 2 (*clauses 4 to 21*) provides for the appointment of the Commissioner, and the Commissioner’s powers and duties in relation to an investigation.
4. *Clause 4* together with *Schedule 1* provides for the appointment of the Commissioner and his or her administrative functions.
5. *Clause 5* introduces the Commissioner’s investigative functions.
6. *Clause 6* empowers Tynwald to give directions to the Commissioner about the general conduct of investigations. Subsection (3) however expressly precludes Tynwald giving directions in relation to the conduct of particular investigations.
7. *Clause 7* specifies the Commissioner’s powers to investigate, while *clause 8* and *Schedule 2* specify the persons and classes of persons liable to investigation.
8. *Clause 9* specifies what the Commissioner may investigate.
9. *Clause 10* provides for the making of complaints by members of the public.
10. *Clause 11* excludes certain matters from investigation under the Act.

11. *Clause 12* specifies who may complain to the Commissioner, while *clause 13* makes provision about time limits and procedure for dealing with complaints.

12. *Clause 14* specifies the procedure to be followed where the Commissioner determines not to investigate a complaint or accede to a request.

13. *Clause 15* prescribes the procedure to be followed in the conduct of an investigation.

14. *Clause 16* sets out the Commissioner's power to require evidence to be furnished to him or her. It also excludes the right of a specified body to assert the privilege against production which it would enjoy in legal proceedings.

15. *Clause 17* confers a power on the Commissioner to request a listed authority not to give effect to its decision pending determination of an investigation and provides that if such a request is received any duty is to have effect instead as a power until the investigation is complete.

16. *Clause 18* deals with obstruction of the Commissioner's investigations and punishment for contempt, applying the approach which would be taken in proceedings before the High Court.

17. *Clause 19* deals with reports after investigations and *clause 20* with special reports where it appears that an injustice will not be remedied, and *clause 21* with the Commissioner's annual report to Tynwald.

18. Part 3 (*clauses 22 to 27*) contains miscellaneous provisions about privilege, confidentiality, disclosure, consultation and the provision of information to the public.

19. *Clause 22* deals with privilege in the context of defamation in relation to inquiries and *clause 23* deals with privilege in relation to statements made by or at the behest of the Commissioner in connection with an inquiry. *Clause 24* deals with the confidentiality of information obtained during an inquiry. *Clause 25* contains special rules about the disclosure by the Treasury, the Assessor and the Collector of Customs and Excise of information relating to a person's tax and customs affairs. *Clause 26* provides for

consultation with relevant supervisors and investigators during the course of an inquiry. *Clause 27* makes provision about a listed authority's duty to make information available about the right to make a complaint to the Commissioner.

20. Part 4 (*clauses 28 and 29*) contains the closing provisions of the Bill.

21. *Clauses 28 and 29* respectively contain transitional provisions and consequential amendments.

22. An assessment of the financial implications of this Bill has been prepared and it is estimated that costs could be in the region of £108,000.

23. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

PART 1

OPENING PROVISIONS

1. Short title
2. Commencement
3. Interpretation

PART 2

APPOINTMENT AND FUNCTIONS OF THE COMMISSIONER

Appointment

4. Appointment
5. General functions

Investigations by the Commissioner

6. Directions given by Tynwald
7. Power of investigation
8. Persons liable to investigation
9. Matters which may be investigated
10. Complaints from members of the public
11. Excluded matters
12. Complaints: who may complain
13. Complaints: time limits and procedure
14. Decision not to investigate
15. Investigation procedure
16. Evidence

17. Staying other action
18. Obstruction and contempt
19. Reports on investigations
20. Special reports
21. Annual reports

PART 3

MISCELLANEOUS AND GENERAL

22. Privileges of complainants, persons making requests and witnesses
23. Privilege: statements made by or at behest of the Commissioner
24. Confidentiality of information
25. Disclosure of information that relates to a person's tax and customs affairs
26. Consultation with relevant supervisors and investigators
27. Information about right to make complaint

PART 4

CLOSING PROVISIONS

28. Transitional provision
29. Consequential amendments

SCHEDULES: —

Schedule 1 — The Commissioner

Schedule 2 — Listed authorities

A BILL

to make provision for the appointment and functions of the Tynwald Commissioner for Administration; and for connected purposes.

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:—

PART 1

OPENING PROVISIONS

- 1.** The short title of this Act is the Tynwald Commissioner for Administration Act 2011. Short title
- 5** **2.** (1) This Act, other than section 1 and this section, shall come into operation on such day as the Council of Ministers may by order appoint. Commencement
- (2) An order under subsection (1) may —
- 10** (a) appoint different days for different provisions and for different purposes;
- (b) make such consequential, transitional or transitory provisions and savings (including transitory modifications to this Act) as the Council of Ministers considers necessary in connection with —
- 15** (i) any provision brought into operation by the order; or

2 *Tynwald Commissioner for Administration Bill 2010*

(ii) the partial operation of this Act.

Interpretation

3. (1) In this Act —

“action” includes failure to act (including a failure to provide reasons);

“the Commissioner” means the holder of the office created by section 4(1); **5**

“complaint” means a complaint to the Commissioner;

“complainant” has the meaning given in section 10(2);

“listed authority” has the meaning given in section 8(1) and (2); **10**

“relevant function”, “relevant investigator” and “relevant supervisor” have the meanings assigned by subsection (3);

“request” (except in section 17) means a request for investigation under section 7(2)(b); **15**

“service failure” has the meaning given in section 9(2);

“the Selection Committee” means the committee constituted under paragraph 1(1) of Schedule 1;

“the Tynwald Management Committee” and “the Tynwald Public Accounts Committee” mean the respective Committees of Tynwald specified in a resolution of Tynwald. **20**

(2) For the purposes of this Act, action taken by or on behalf of a listed authority includes action taken by —

(a) a member or committee of the authority; **25**

(b) an officer or member of staff of the authority;

(c) any person acting on behalf of the authority; and

(d) any person to whom the authority has delegated functions.

(3) For the purposes of this Act, but subject to subsection (4) — **30**

(a) the following are “relevant supervisors”—

- (i) the Communications Commission;
- (ii) the Financial Supervision Commission;
- (iii) an adjudicator under the Financial Services Ombudsman Scheme;
- 5 (iv) the Insurance and Pensions Authority;
- (v) the Isle of Man Gambling Supervision Commission;
- (vi) the Isle of Man Office of Fair Trading, but only in respect of its functions under the Financial Services Ombudsman Scheme;
- 10 (b) the following are “relevant investigators”—
 - (i) the Tynwald Auditor General;
 - (ii) the Data Protection Supervisor;
 - (iii) the Commissioner appointed under paragraph 2(1) of Schedule 1 to the Police Act 1993; [c.11]
 - 15 (iv) the Commissioner appointed under section 28 of the Regulation of Surveillance, etc. Act 2006; [c.23]
 - (v) a person appointed to audit an account under section 3 of the Audit Act 2006; and [c.15]
 - 20 (vi) a person directed to undertake an extraordinary audit under section 11 of that Act; and
- (c) “relevant functions” are functions conferred on a relevant supervisor or a relevant investigator by or under an enactment.
- 25 (4) For the sake of clarity, the persons mentioned in subsection (3)(b)(v) and (vi) are relevant investigators only in connection with the conduct of the audits mentioned in those sub-paragraphs.

PART 2

APPOINTMENT AND FUNCTIONS OF THE COMMISSIONER

30 *Appointment*

4. (1) There shall be a Tynwald Commissioner for Administration (referred to in this Act as “the Commissioner”).

Appointment
S2002/11/1

4 *Tynwald Commissioner for Administration Bill 2010*

(2) The Commissioner, in exercise of that officer's functions, is not subject to the direction or control of —

(a) Tynwald or any Committee of Tynwald;

(b) the Legislative Council;

(c) the House of Keys; or

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(d) the Council of Ministers;

or any member of those bodies, except as provided by this Act (see, in particular, section 6).

(3) The Commissioner shall be an officer of Tynwald.

(4) Schedule 1 makes further provision about the appointment and functions of the Commissioner. 10

General functions

5. The general functions of the Commissioner are to conduct investigations in accordance with section 7 into the actions and service failures of listed authorities, subject to directions given by Tynwald under section 6.

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Investigations by the Commissioner

Directions given by Tynwald

6. (1) The Commissioner shall, in carrying out the functions of that office, comply with any directions given by Tynwald.

(2) Any direction to the Commissioner under this section may, in particular —

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(a) make provision as to the procedure to be followed by the Commissioner when conducting investigations into complaints falling within such class or classes as may be specified in the direction (and different provision may be made in relation to different classes of complaint); or

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(b) require the Commissioner to make a report to Tynwald upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction.

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(3) But no direction to the Commissioner by Tynwald under this section may direct the Commissioner as to whether, or how, any particular investigation is to be carried out.

7. (1) Subject to directions under section 6, the Commissioner may investigate any matter, arising after the passing of this Act, if the matter — Power of investigation

5 (a) consists of an action alleged to have been taken, or an alleged service failure, by or on behalf of a listed authority;

(b) is one which the Commissioner is entitled to investigate; and

10 (c) is not the subject of an investigation by a committee of Tynwald specially empowered to take evidence in accordance with sections 3 and 4 of the Tynwald Proceedings Act 1876. [IV p.473]

15 (2) Subject to directions under section 6, the Commissioner may also investigate any matter, arising after the passing of this Act, if —

(a) subsection (1) is satisfied; and

(b) the listed authority liable to investigation has requested that the Commissioner investigate the matter.

20 (3) It is for the Commissioner to decide whether to initiate, continue or discontinue an investigation under subsection (1) or (2).

Nothing in this subsection limits the operation of section 4(2).

25 (4) The Commissioner may take such action in connection with the complaint or request as the Commissioner thinks may be of assistance in reaching any such decision.

(5) That action may, in particular, include action with a view to resolving the complaint or request.

30 (6) In exercising his or her functions in relation to a complaint or request which involves or affects matters some of which are capable of investigation by a relevant supervisor or a relevant investigator the Commissioner must have regard to the principles that so far as possible—

35 (a) the Commissioner and the relevant supervisor or relevant investigator should co-operate in the conduct of linked inquiries;

(b) matters should only be inquired into once; and

(c) evidence should only be taken once.

6 *Tynwald Commissioner for Administration Bill 2010*

(7) If the Commissioner and the relevant supervisor or investigator cannot agree the way in which the principles in subsection (6) are to be applied in a particular case, they must seek, and comply with, the directions of the Chief Minister on the application of those principles.

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(8) In a case where subsection (7) applies and the relevant supervisor or investigator is appointed by the Governor in Council, the Chief Minister must consult the Governor before giving directions under that subsection.

Persons
liable to
investigation

8. (1) The persons liable to investigation under this Act are the persons and classes of persons specified in Schedule 2. **10**

S2002/11/3

(2) References in this Act to a listed authority are references to any such person.

(3) The Council of Ministers may by order amend Schedule 2. **15**

(4) No order under subsection (3) may be made unless the Council of Ministers has consulted —

(a) every listed authority to which the order relates; and

(b) every person who, if the order were made, would become a listed authority. **20**

(5) An order under subsection (3) must not come into operation unless it is approved by Tynwald.

Matters
which may be
investigated

9. (1) The matters which the Commissioner is entitled to investigate are —

S2002/11/5(1)
& (2)

(a) any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority; and **25**

(b) any alleged service failure.

(2) In this Act “service failure” means —

(a) any failure in a service provided by a listed authority;

(b) any failure of the listed authority to provide a service which it was a function of that authority to provide. **30**

Complaints
from members
of the public

10. (1) The Commissioner may investigate a matter falling within section 9(1) by virtue of a complaint only if —

2002/11/5(3)-
(7)

- (a) a member of the public claims to have sustained injustice or hardship in consequence of —
 - (i) maladministration in connection with an action falling within paragraph (a) of that subsection; or
 - 5 (ii) a service failure;
- (b) that member of the public has objected about the action or service failure in writing to the listed authority whom the complainant alleges is responsible for it;
- (c) the listed authority in question —
 - 10 (i) has in its view taken all reasonable steps to deal with the matter to which the allegation relates; or
 - (ii) having been requested to do so by the member of the public has not, within a period of 28 days following the objection, or, in exceptional circumstances, such longer period not exceeding 15 3 months, as appears to the Commissioner to be reasonable, conducted a proper investigation into it; and
 - 20 (d) the member of the public has complained to the Commissioner within the time limit (see section 13).
- (2) A member of the public making such a claim is referred to in this Act as the “complainant”.
- (3) The Commissioner may investigate a matter falling within section 9(1) by virtue of a request from a listed authority 25 only if the Commissioner is satisfied that —
 - (a) it has been alleged publicly (whether or not by a complainant) that one or more members of the public have sustained injustice or hardship as mentioned in subsection (1): and
 - 30 (b) the listed authority in question has taken all reasonable steps to deal with the matter to which the allegation relates.
- (4) In this section “member of the public” means any individual or body of persons (whether incorporated or not) other than —
 - 35 (a) a listed authority; or
 - (b) any other authority or body whose revenues consist wholly or mainly of money provided by Tynwald (whether directly or indirectly).

(5) This section is subject to section 11.

Excluded
matters
S2002/11/8

- 11.** (1) The Commissioner must not investigate any matter specified in or under subsection (2).
- (2) Those matters are —
- (a) matters certified by the Chief Minister to affect relations or dealings between the Government and any other government or international organisation; **5**
 - (b) action taken in any country or territory outside the Island by or on behalf of a listed authority;
 - (c) action taken by or with the consent or authority of the Attorney General or Chief Constable for the purposes of, or in connection with, the detection, investigation or prevention of crime or the protection of the security of the Island or the United Kingdom; **10**
 - (d) an act or omission of a relevant investigator if the act or omission relates to the discharge of the relevant functions of that investigator; **15**
 - (e) the commencement or conduct of —
 - (i) civil or criminal proceedings before any court of law; or **20**
 - (ii) proceedings before any international court or tribunal;
 - (iii) proceedings before any tribunal established under the law of the Island;
 - (f) action taken by any office-holder in, or member of the administrative staff of, any court or tribunal, so far as that action is taken by, at the direction of, or on the authority (whether express or implied) of, any person acting in a judicial capacity or in the capacity of a member of a tribunal; **25**
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 - (g) action taken by a person acting in an official capacity under the Criminal Injuries Compensation Scheme;
 - (h) action taken in respect of appointment or removal, pay, discipline, or superannuation of staff or other personnel matters; **35**
 - (i) action concerning —

- (i) the giving of instruction, whether secular or religious; or
 - (ii) conduct, curriculum or discipline,
5 in any educational establishment provided or maintained by the Department of Education and Children;
- (j) action taken in matters relating to contractual or other commercial transactions of a listed authority, whether in the Island or elsewhere, except —
 - 10 (i) transactions relating to the compulsory acquisition of land or where the circumstances are such that the land could be acquired compulsorily;
 - (ii) the disposal as surplus of land acquired compulsorily or in circumstances where the land
15 could have been so acquired;
 - (iii) whether any relevant procedures laid down in an enactment or the governing instruments of the listed authority were observed;
- 20 (k) action in respect of which the complainant has a statutory right of appeal or reference to, or review by, an adjudicator, tribunal or other body, but subject to subsection (3);
- 25 (l) action in respect of which the complainant has a remedy by way of proceedings in any court, but subject to subsection (3).
- 30 (3) Despite subsection (2)(k) and (l) the Commissioner may conduct an investigation, even though the complainant has or had such a right or remedy as is mentioned there, if satisfied that it is neither reasonable nor expedient to expect the complainant to exercise, or have exercised, that right or invoke that remedy, having regard to—
 - (a) the inability of the complainant to bear the costs likely to be incurred;
 - (b) the likelihood that those costs will be disproportionate;
 - 35 (c) the inability to obtain sufficient evidence to justify the institution of proceedings; or
 - (d) any other reason which appears sufficient to the Commissioner.

10 *Tynwald Commissioner for Administration Bill 2010*

(4) The Council of Ministers may by order amend subsection (2).

(5) An order under subsection (4) may include such consequential, incidental and transitional provisions (including consequential amendments to other provisions of this Act) as appear necessary or expedient in consequence of the amendment made to subsection (2) by the order. **5**

(6) An order under subsection (4) must not come into operation unless it is approved by Tynwald.

Complaints:
who may
complain

S2002/11/9

12. (1) A complaint may be made — **10**

(a) by the complainant; or

(b) by a person authorised in writing for the purpose by the complainant.

(2) Despite subsection (1) —

(a) if an individual by whom a complaint might have been made has died or is for any reason unable to act, the complaint may be made by — **15**

(i) any person authorised for the purpose of subsection (1)(b) before the individual's death or inability to act; **20**

(ii) the individual's personal representatives or a member of the individual's family; or

(iii) any other person appearing to the Commissioner to be suitable to represent the individual;

(b) if a person by whom a complaint might have been made is for any reason unable to act, the complaint may be made by another person appearing to the Commissioner to be suitable to represent him or her. **25**

(3) The complainant must be resident in the Island at the time the complaint is made (or, if the person has died, must have been so resident at the time of death). **30**

This is subject to subsection (4)

(4) Subsection (3) does not apply if the complaint relates to action taken —

(a) in relation to a person while the person was present — **35**

- (i) in the Island; or
- (ii) aboard a ship or aircraft registered in the Island;
or
- 5 (b) in relation to rights or obligations which accrued or arose in the Island or on such a ship or aircraft.
- 13.** (1) The Commissioner must not consider a complaint made more than 6 months after a final decision of the listed authority has been notified to the complainant. Complaints:
time limits
and procedure
- (2) A complaint must be made in writing.
- 10 (3) It is for the Commissioner to determine whether a complaint has been duly made.
- 14.** (1) If the Commissioner, after considering a complaint, decides not to investigate a complaint, the Commissioner must send a statement of the reasons for the decision to the persons specified in subsection (2). Decision
not to
investigate

S2002/11/11
- 15 (2) Those persons are —
- (a) the complainant;
- (b) the listed authority in question;
- 20 (c) any other person who is alleged in the complaint to have taken the action, or to have been responsible for the service failure, that is the subject of the complaint;
- (d) if the complaint was made by a person authorised for the purpose of section 12(1)(b), that person; and
- 25 (e) if the complaint was made by a person other than the complainant under section 12(2), that other person.
- 30 (3) If a person referred to in subsection (2)(d) was authorised for the purpose of section 12(1)(b) in a particular capacity, but no longer acts in that capacity, the Commissioner must send the statement of reasons instead to such person acting in that or a similar capacity as the Commissioner thinks fit.
- (4) If the Commissioner, after considering a request that the Commissioner investigate a matter, decides not to investigate it, the Commissioner must send a statement of the reasons for the decision to the listed authority that made the request.

12 *Tynwald Commissioner for Administration Bill 2010*

Investigation
procedure
S2002/11/12

15. (1) An investigation under section 7 must be conducted in private.

(2) If an investigation is pursuant to a complaint, the Commissioner must give —

(a) the listed authority in question; and **5**

(b) any other person who is alleged in the complaint to have taken the action which is its subject;

an opportunity to comment on any allegations contained in the complaint.

(3) In other respects the procedure for conducting the investigation is to be such as the Commissioner thinks fit. **10**

(4) The Commissioner may, in particular —

(a) obtain information from such persons and in such manner, and make such inquiries, as the Commissioner thinks fit; **15**

(b) determine whether any person may be represented, by an advocate or otherwise, in the investigation.

Paragraph (a) is subject to sections 16 (evidence) and 25 (disclosure of information relating to a person's tax affairs).

(5) The Commissioner may pay to — **20**

(a) the person by whom the complaint was made (where an investigation follows a complaint); and

(b) any other person who attends or supplies information for the purposes of an investigation (whether or not following a complaint), **25**

such allowances in respect of expenses properly incurred by the person and by way of compensation for loss of time as the Treasury may by order determine.

(6) The conduct of an investigation does not affect —

(a) any action taken by the listed authority in question; **30**

(b) any power or duty of the listed authority to take further action with respect to any matter being investigated.

This is subject to section 17 (staying other action).

(7) An order under subsection (5) shall not come into operation unless it is approved by Tynwald.

5 **16.** (1) Subject to subsections (10) to (12), the Commissioner may, for the purposes of an investigation, require the listed authority in question and any of the persons mentioned in subsections (2) and (3) to supply information or produce documents relevant to the investigation. Evidence
S2002/11/13

(2) Those persons are —

10 (a) any member, officer or member of staff of the listed authority; and

(b) any other person,

who in the Commissioner's opinion is able to supply such information or to produce such documents.

15 (3) If the listed authority in question is an office-holder in a Department or Statutory Board, the Commissioner may also require —

(a) any other office-holder in the Department or Statutory Board; or

20 (b) any member of the Civil Service assigned to assist the office-holder under investigation in the exercise of the office-holder's functions,

to supply information or to produce documents relevant to the investigation.

25 (4) For the purposes of any such investigation the Commissioner has the same powers as the High Court in respect of —

(a) the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad); and

30 (b) the production of documents.

35 (5) No obligation to maintain secrecy or other restriction on the disclosure of information, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation by the Commissioner, except as provided by subsections (8) and (10).

(6) A listed authority is not entitled in relation to any investigation by the Commissioner to any such privilege in respect

of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(7) Subject to subsections (5) and (6), no person is compelled, for the purposes of an investigation by the Commissioner, to give any evidence or produce any document which that person could not be compelled to give or to produce in civil proceedings in the High Court. **5**

(8) No person is or may be required or authorised by virtue of this Act to supply any information or answer any question relating to proceedings of the Council of Ministers or of any committee of the Council of Ministers, or to produce so much of any document as relates to such proceedings. **10**

(9) For the purposes of subsection (8), a certificate issued by the Chief Minister certifying that any information, question, document or part of a document so relates is conclusive. **15**

(10) Section 25 contains special rules about the disclosure of information relating to a person's tax and customs affairs.

(11) This Act does not authorise the Commissioner to require the production of documents that are in the custody of a member or officer of Tynwald, or a member or officer of a Branch of Tynwald, in that person's capacity as such a member or officer. **20**

(12) This Act does not authorise the Commissioner to require any person to produce, or the listed authority in question and any of the persons mentioned in subsection (2), to produce to the Commissioner, any information or document originating from any person outside the Island unless — **25**

- (a) that person's written consent has first been obtained;
- (b) the listed authority already holds the information in the exercise of its statutory functions; or
- (c) the listed authority is entitled to require the provision of that information in the exercise of those functions. **30**

Staying
other action

17. (1) If the Commissioner decides to conduct an investigation and takes the view that giving effect to the decision of the listed authority which is the subject of the complaint is likely to cause serious harm to the complainant, the Commissioner may request the listed authority not to give effect to it pending the determination of the complaint. **35**

(2) Any rule of law that would preclude the listed authority from complying with the Commissioner's request under subsection

(1) shall not apply until the complaint has been determined, and the listed authority shall instead be taken to have a discretion to give effect to the decision that is the subject of the complaint during the investigation.

5 18. (1) If —

Obstruction
and contempt

(a) a person, without lawful excuse, obstructs the Commissioner in the exercise of the Commissioner's functions; or

10 (b) a person does any act or fails to take any action in relation to an investigation which, if the investigation were a proceeding in the High Court, would constitute contempt of court,

the Commissioner may apply by petition to the High Court for the person to be dealt with in accordance with subsection (2).

15 (2) If such a petition is presented, the High Court may inquire into the matter and after hearing —

(a) any witnesses who may be produced against or on behalf of the person in question; and

(b) any statement which may be offered in defence,

20 may deal with the person as if the person had committed a contempt of court in relation to the High Court.

(3) If a person —

(a) without lawful excuse, obstructs the Commissioner in the course of the Commissioner's functions; or

25 (b) with the intention of obstructing the Commissioner in the course of the Commissioner's functions, destroys or falsifies any document or other evidence relevant to those functions;

that person commits an offence.

30 (4) A person who commits an offence under subsection (3) is liable —

(a) on conviction on information, to custody for not more than 2 years, a fine, or both; or

35 (b) on summary conviction to custody for not more than 6 months, or a fine not exceeding £5,000, or both.

16 *Tynwald Commissioner for Administration Bill 2010*

(5) No-one shall be liable to be prosecuted for an offence under subsection (3) if a petition has been presented under subsection (1) in respect of the same conduct, and no-one shall be the subject of a petition under subsection (1) if a prosecution has been commenced against him or her in respect of the same conduct. **5**

(6) Nothing in subsections (1) to (5) is to be construed as applying to —

- (a) any action taken by the listed authority in question;
- (b) any power or duty of the listed authority to take further action with respect to any matter being investigated. **10**

Reports on
investigations
S2002/11/15

19. (1) After conducting an investigation, the Commissioner must —

- (a) if the investigation is pursuant to a complaint, send a report of the investigation to the persons specified in section 14(2) and to the Council of Ministers; **15**
- (b) if the investigation is pursuant to a request, send a report of the investigation to the listed authority that made the request and to the Council of Ministers;

and lay a copy of the report before Tynwald.

(2) If a person referred to in subsection (1)(a) above was authorised for the purpose of section 12(1)(b) in a particular capacity, but no longer acts in that capacity, the Commissioner must send the report instead to such other person acting in that or a similar capacity as the Commissioner thinks fit. **20**

(3) Apart from identifying the listed authority in question, the report must not — **25**

- (a) name any person; or
- (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report, **30**

unless the Commissioner determines that it is necessary to do so.

(4) The listed authority in question must, unless the Commissioner otherwise directs —

- (a) make arrangements, having effect for a period of at least 3 weeks, for allowing any person to — **35**

- (i) inspect the report at any reasonable time;
 - (ii) obtain a copy of it, or any part of it (whether or not on payment of a reasonable fee); and
 - (b) publicise those arrangements.
- 5** (5) In considering whether—
- (a) to make a determination under subsection (3); or
 - (b) to give a direction under subsection (4);
- the Commissioner must take into account the public interest as well as the interests of the complainant (if the investigation is pursuant to a complaint) and of any other persons.
- 10** (6) Any person who obstructs another person seeking to inspect a report or obtain a copy of it or any part of it in pursuance of arrangements made under subsection (4) is guilty of an offence and liable, on summary conviction, to a fine not exceeding £2,500.
- 15** **20.** (1) This section applies where a report under section 19 contains a finding that the complainant has sustained injustice or hardship as mentioned in section 10(1)(a). Special reports
S2002/11/16
- 20** (2) If, following the making of the report, it appears to the Commissioner that the injustice or hardship has not been, or will not be, remedied, the Commissioner may make a special report on the case.
- (3) If the Commissioner makes a special report he or she must —
- 25** (a) send it to the persons to whom the report under section 19 was sent; and
- (b) lay a copy of the report before Tynwald.
- (4) Apart from identifying the listed authority in question, the special report must not—
- (a) mention the name of any person; or
- 30** (b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report;
- unless the Commissioner determines that it is necessary to do so.

18 *Tynwald Commissioner for Administration Bill 2010*

(5) The Commissioner may make arrangements for the special report to be available to the public in such manner (whether or not on payment of a reasonable fee) as the Commissioner thinks fit.

(6) The listed authority to which the special report relates is liable to reimburse the Commissioner in respect of any expenses incurred by the Commissioner by virtue of subsection (5). **5**

Annual reports

P2002/11/17

21. (1) The Commissioner must lay before the ordinary sitting of Tynwald in July of each year, or the next practicable sitting, an annual report on the general exercise of the Commissioner's functions. **10**

(2) Such a report may include, in particular, any general recommendations which the Commissioner may have arising from the exercise of those functions in the period in question.

(3) Tynwald may — **15**

(a) give the Commissioner directions as to the form and content of a report under subsection (1); and

(b) may impose a requirement that the Commissioner include in the report matters specified in the direction.

(4) The Commissioner must comply with any direction under subsection (3). **20**

(5) The Commissioner may from time to time lay before Tynwald such other reports with respect to the exercise of the Commissioner's functions as the Commissioner thinks fit.

(6) For the sake of clarity, in subsection (1) "the ordinary sitting of Tynwald in July" means a sitting in that month which is not — **25**

[X p.390]

(a) a meeting of Tynwald convened under section 3 of the Isle of Man Constitution Amendment Act 1919; or

(b) a sitting of Tynwald at St John's. **30**

PART 3

MISCELLANEOUS AND GENERAL

Privileges of complainants, persons making requests and witnesses

22. (1) A person has the same privileges in relation to —

(a) making a complaint or request;

- (b) giving information to the Commissioner;
- (c) answering the Commissioner's questions; and
- (d) producing documents or information to the Commissioner,

5 as the person would have as a witness in proceedings in the High Court.

(2) Compliance with a requirement of the Commissioner under section 16 —

10 (a) is not a breach of any relevant obligation of secrecy or non-disclosure or of an enactment imposing such an obligation; and

15 (b) no person is liable to prosecution for any offence by reason only of the person's compliance with a requirement imposed by the Commissioner under that section.

(3) Except in proceedings for perjury or under section 18 (obstructions and contempt) or subsection (4) —

20 (a) no statement made or answer given by any person in the course of an investigation by the Commissioner is admissible in evidence against any person in any proceedings (whether in court or otherwise); and

(b) no evidence of proceedings before the Commissioner may be given against any person.

(4) A person ("A") commits an offence if A —

25 (a) refuses to employ or to continue to employ a person ("B");

(b) threatens to dismiss or demote B or threatens to penalise B in any other way in relation to B's employment or any term or condition of that employment;

30 (c) treats B less favourably in relation to B's employment or any term or condition of that employment; or

(d) intimidates, coerces or imposes any penalty upon B,

35 in order to prevent B or any other person from making a complaint under this Act, or to punish B or any other person for having done so or having given information or produced documents in the course of an investigation.

(5) If the Commissioner has reasonable grounds to believe that a person has contravened subsection (4) the Commissioner may give details of the alleged conduct to the Attorney General.

(6) A person guilty of an offence under subsection (4) is liable — **5**

(a) on conviction on information to custody for not more than 2 years, a fine or both; or

(b) on summary conviction to custody for not more than 6 months, a fine of £5,000 or both.

(7) Proceedings for an offence under subsection (4) may only be instituted by, or with the consent of, the Attorney General. **10**

Privilege:
statements
made by or at
behest of the
Commissioner

23. (1) For the purposes of the law of defamation absolute privilege attaches to any statement made—

(a) by the Commissioner in pursuance of section 14, 19, 20 or 21; or **15**

(b) in pursuance of arrangements under section 19(4) or 20(5).

(2) In subsection (1), “statement” means words, pictures, visual images or any other method of signifying meaning.

Confidentiality
of information
S2002/11/19
and 20

24. (1) Information obtained by the Commissioner or any of the Commissioner’s advisers in connection with any matter in respect of which a complaint or a request has been made must not be disclosed except — **20**

(a) for any of the purposes specified in subsection (2); or
(b) as permitted by subsection (3) or (5). **25**

(2) The purposes mentioned in subsection (1) are —

(a) the purposes of —

(i) any consideration of the complaint or request (including any statement under section 14);

(ii) any investigation of the matter (including any report of such an investigation); **30**

(b) the purposes of any proceedings for —

- (i) an offence under the Official Secrets Act 1911 (an Act of Parliament), as that Act has effect in the Island, alleged to have been committed in respect of information obtained by the Commissioner; [c.28]
- 5 (ii) an offence of perjury alleged to have been committed in the course of any investigation of the matter;
- (c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b); and
- 10 (d) the purposes of any proceedings under section 18.
- (3) If information referred to in subsection (1) is to the effect that any person is likely to constitute a threat to the health or safety of others, the Commissioner may disclose the information to any person to whom the Commissioner thinks it should be disclosed in order to safeguard the interests of those whose health and safety may be threatened as a result.
- 15 (4) In relation to information disclosed under subsection (3), the Commissioner must inform the person from whom the information was obtained of the disclosure.
- 20 (5) The Commissioner may disclose relevant information to a relevant supervisor or investigator if the information appears to the Commissioner to relate to a relevant function.
- Here “relevant information” means obtained by, or supplied to, the Commissioner or any of the Commissioner’s advisers under or for the purposes of this Act.
- 25 (6) Neither the Commissioner nor the Commissioner’s advisers are competent to give evidence in any proceedings (other than proceedings referred to in subsection (2)) of matters coming to the knowledge of the Commissioner or those advisers in connection with any matter in respect of which a complaint or request has been made.
- 30 (7) The Attorney General may give notice in writing (“a non-disclosure notice”) to the Commissioner to with respect to —
- 35 (a) any document or information specified in the notice;
or
- (b) any class of document or information so specified.
- (8) The Attorney General may only give the Commissioner a non-disclosure notice if satisfied that the disclosure of the document or information, or of documents or information of that

class, would prejudice the security, economic well-being or international relations of the Island or of the United Kingdom.

(9) If a non-disclosure notice is given, nothing in this Act authorises or requires the Commissioner or any of the Commissioner's advisers to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified. **5**

(10) References in this section to the Commissioner's advisers are to persons from whom the Commissioner obtains assistance or advice under paragraph 13 of Schedule 1. **10**

(11) Section 25 contains special rules about the disclosure to the Commissioner of information that relates to a person's tax and customs affairs.

Disclosure of information that relates to a person's tax and customs affairs

25. (1) Nothing in this Act authorises —
(a) the Commissioner to require; or **15**
(b) the relevant authority to give to the Commissioner,

information that relates to a person's tax and customs affairs except in accordance with this section.

(2) Information "relates to a person's tax and customs affairs" if it is information about, acquired as a result of, or held in connection with the exercise of, a function of the relevant authority that relates to the collection, assessment or enforcement of — **20**

- (a) any tax;
- (b) any duty of customs; **25**
- (c) any duty of excise,

in respect of the person, but it does not include information about internal administrative arrangements of the relevant authority in relation to those matters.

(3) Information that relates to a person's tax and customs affairs may only be supplied by the relevant authority to the Commissioner with the person's written consent. **30**

(4) In this section —
"the relevant authority" means —

- 5
- (a) in relation to value added tax, any duty of customs and any duty of excise, the Collector of Customs and Excise;
 - (b) in relation to National Insurance contributions, the Treasury; and
 - (c) in relation to any other tax, the Assessor of Income Tax; and

“tax” includes National Insurance contributions of any class.

10 **26.** (1) If the Commissioner, at any stage in the course of considering a complaint or request, forms the opinion that the complaint or request relates partly to a matter which could be the subject of an investigation by a relevant supervisor or relevant investigator the Commissioner must consult the relevant supervisor or relevant investigator about the complaint or request.

Consultation
with relevant
supervisors
and investigators
S2002/11/21

15 (2) If the Commissioner considers it necessary, the Commissioner must inform the complainant or the person who made the request of the steps necessary to initiate a complaint to the relevant supervisor or relevant investigator.

20 (3) If the Commissioner consults a person in accordance with this section, the consultations may extend to any matter relating to the complaint or request, including —

- (a) the conduct of any investigation into the matter to which the complaint or request relates, and
- (b) the form, content and publication of any report of the result of such an investigation.

25 (4) Nothing in section 24(1) applies in relation to the disclosure of information in the course of consultation or co-operation under this section.

30 **27.** (1) A listed authority must take reasonable steps to publicise the application and effect of this Act in relation to the authority including, in particular, providing information about —

Information
about right to
make complaint
S2002/11/22

- (a) the right conferred by this Act to make a complaint;
- (b) the time limit for doing so; and
- (c) how to contact the Commissioner.

35 (2) Information about the matters specified in subsection (1)(a) to (c) must be included in or provided with —

24 *Tynwald Commissioner for Administration Bill 2010*

- (a) any document published by the listed authority and containing information about services provided by the authority to members of the public or about the procedures of the authority for dealing with complaints; 5
- (b) any document issued by the listed authority responding to a complaint made to it by any person who might be entitled to make a complaint to the Commissioner.
- (3) The Commissioner may issue guidance with respect to the performance by listed authorities of their duties under this section. 10

PART 4

CLOSING PROVISIONS

Transitional provision 28. A complaint may be made under this Act about any action or alleged service failure occurring within the period of 12 months immediately preceding the date on which section 13 comes into operation (“the commencement date”), and, in relation to a complaint falling within this section, the 6 month period referred to in section 13(1) shall be calculated as if the final decision of the listed authority had been notified to the complainant on the commencement date. 15 20

Consequential amendments [c.9] 29. (1) In Schedule 1 to the Jury Act 1980, in Part 1, Group A (persons ineligible as jurors: members of the Legislature and associated bodies) after the entry relating to the Tynwald Auditor General insert — 25

“The Tynwald Commissioner for Administration”.

[c.8] (2) In Schedule 1 to the Civil Service Act 1990 (offices and employments outside the Civil Service) —

(a) in Part I after “Tynwald Auditor General” insert “Tynwald Commissioner for Administration”; 30

(b) in Part II after paragraph 4A insert —

“4B. Employment on the staff of the Tynwald Commissioner for Administration.”.

[c.7] (3) In the Personal Liability (Ministers, Members and Officers) Act 2007 in section 3(2) after paragraph (ib) insert — 35

“(ic)the person holding the office of Tynwald
Commissioner for Administration;

5 (id) officers (permanent or temporary) serving on
the staff of the Tynwald Commissioner for
Administration.”.

(4) In Schedule 6 to the Insurance Act 2008 in paragraph [c.16]
2(1) after paragraph (r) insert —

“(ra)for the purpose of an investigation by the
Tynwald Commissioner for Administration
and any report on such an investigation;”.

26 *Tynwald Commissioner for Administration Bill 2010*

Section 4(4)

SCHEDULE 1

THE COMMISSIONER

- Selection of a candidate
- 1.** (1) A candidate for appointment as the Commissioner must be selected by a committee (“the Selection Committee”) consisting of —
- (a) the Chair of the Tynwald Management Committee;
 - (b) the Chair of the Tynwald Public Accounts Committee; and
 - (c) the Chief Minister.
- [c.20] (2) For the sake of clarity, section 21 of the Interpretation Act 1976 (delegation of functions by public officer) applies to each of the members of the Selection Committee, but section 20 of that Act (exercise of functions during vacancy or absence or inability of holder) does not.
- (3) The Selection Committee must nominate a candidate for appointment after consulting such persons and bodies as appear to the Selection Committee to be appropriate.
- (4) The Selection Committee must seek the approval of Tynwald to the candidate it has selected, and if such approval is not obtained, must propose an alternative candidate.
- Qualifications
- 2.** A candidate for appointment as the Commissioner must be a person whom the Selection Committee believes —
- (a) has an appropriate knowledge and experience of the law; and
 - (b) will command the confidence of the public and Tynwald.
- Disqualification
- 3.** (1) A person is not eligible to be a candidate for appointment as the Commissioner if that person is —
- (a) a member of Tynwald;
 - (b) a member or officer of a local authority;
 - (c) a member or officer of a body that is required to have its accounts audited in accordance with the Audit Act 2006;
 - (d) an officer of Tynwald or a Branch of Tynwald (other than the Tynwald Auditor General);
 - (e) a member of the staff of Tynwald or a Branch of Tynwald;
 - (f) an officer or servant of a Department or a Statutory Board;
 - (g) a member of the Isle of Man Constabulary.
- [c.15]

This is subject to sub-paragraphs (3) and (4).

(2) The Commissioner is not qualified for election or appointment to an office or employment mentioned in sub-paragraph (1). SCH. 1

(3) Nothing in this paragraph prevents the Commissioner from being appointed also as the Tynwald Auditor General.

(4) A person who would be disqualified for appointment as Commissioner by sub-paragraph (1) may nevertheless —

(a) be considered as a candidate if the person undertakes to resign the office or employment if appointed as Commissioner; and

(b) be appointed as Commissioner once the person's resignation from the office or appointment by virtue of which he or she is disqualified has become effective.

Terms and conditions **4.** The terms and conditions of employment and the term of office of the Commissioner shall be such as Tynwald may determine after a recommendation by the Selection Committee.

Appointment of the Commissioner **5.** (1) Once the Selection Committee's selection has been approved by Tynwald, the Commissioner shall, with effect from such date as the Commissioner and the Selection Committee may agree, be employed by Tynwald.

(2) The Commissioner shall hold office for such term as is determined under paragraph 4, and may (but need not) be reappointed upon the expiry of that term.

Restrictions **6.** (1) The Commissioner must not —
(a) enter into any other contract of employment;
(b) hold any other office (other than that of Tynwald Auditor General); or
(c) carry on any profession, trade or vocation,
except with the approval of the Selection Committee.

(2) The Selection Committee may attach conditions to such approval.

Resignation and removal **7.** The person holding the office of Commissioner —
(a) may resign by written notice to the Clerk of Tynwald; and
(b) may be removed from office by resolution of Tynwald in accordance with paragraph 8.

Procedure for removal **8.** (1) Tynwald may revoke the appointment of a person to the office of Commissioner on a motion in respect of which sub-paragraphs (2) to (5) are satisfied.

28 *Tynwald Commissioner for Administration Bill 2010*

SCH. 1

(2) A motion under this paragraph may only be tabled in the names of the President of Tynwald and the Speaker acting jointly and on the advice of the Clerk of Tynwald.

(3) The motion must allege one of the following grounds for revocation, namely that the person holding the office of Commissioner —

- (a) has not carried out the duties of the office in a competent manner;
- (b) is incapacitated either mentally or physically from carrying out the duties of the office;
- (c) has neglected to carry out all or any of the duties of the office;
- (d) has failed to comply with the requirements of paragraph 6(1) (restrictions on other employment and professional activity);
- (e) has failed to comply with any term or condition of the appointment;
- (f) has engaged in conduct incompatible with the office of Commissioner;
- (g) has taken leave of absence not provided for by the terms and conditions of the appointment; or
- (h) has been convicted of an offence (in the Island or elsewhere) and by reason of that conviction shown himself or herself not to be a fit and proper person to continue to hold the office.

(4) The motion must not be moved unless the person holding the office of Commissioner —

- (a) has been given a copy of a statement in support of the motion setting out details of the evidence relied upon in support of the alleged grounds for revocation; and
- (b) has been given such reasonable opportunity as the circumstances permit to prepare a written statement in respect of that evidence.

(5) The Clerk of Tynwald must forward a copy of the statements to each member of Tynwald with the Order Paper for the sitting at which the motion is to be considered.

(6) Once the motion has been tabled, the Selection Committee may suspend the Commissioner from office.

(7) If the motion —

- (a) is withdrawn;
- (b) is lost after debate;
- (c) is not debated within 3 months of being tabled; or
- (d) is debated but not voted upon within that time,

the Commissioner must be restored to office without loss of remuneration or any other benefits.

(8) In reckoning the period of 3 months referred to in sub-paragraph (7)(c) SCH. 1 disregard August and September.

(9) For the sake of clarity, the definition of “the Speaker” in section 3 of the Interpretation Act 1976 does not apply for the purposes of this paragraph.

When
office of
Commissioner
becomes
vacant

9. (1) The office of Commissioner becomes vacant if the term of appointment of the person holding the office expires and is not renewed.

(2) It also becomes vacant if the person holding the office —

- (a) dies;
- (b) gives the Clerk of Tynwald written notice of resignation;
- (c) accepts nomination to become a member of Tynwald;
- (d) takes up an appointment by virtue of which he or she would be disqualified for appointment by virtue of paragraph 3(1);
- (e) is compulsorily detained as a patient in a hospital (but otherwise than by virtue of Schedule 2A to the Summary Jurisdiction Act 1989, Schedule 1A to the Criminal Jurisdiction Act 1993, or section 2, 4, 5 or 132 of the Mental Health Act 1998 (short term detentions));
- (f) has a receiver appointed in respect of his or her property;
- (g) becomes bankrupt or makes a composition or arrangement with his or her creditors;
- (h) is convicted, in the Island or elsewhere, of an offence involving corruption; or
- (i) is convicted, in the Island or elsewhere, of an offence and sentenced to custody.

[c.15]

[c.9]

[c.3]

(3) It also becomes vacant if Tynwald acting in accordance with paragraph 8 revokes the appointment.

Exercise of
functions
during absence,
inability or
vacancy and
delegation

10. Section 20 of the Interpretation Act 1976 applies to the office of the Commissioner, but section 21 of that Act (power to delegate functions to deputy) does not.

General
powers

11. The Commissioner may, with the approval of the Treasury —

- (a) enter into contracts; and
- (b) acquire and dispose of land and other property.

This paragraph does not limit the operation of section 26(3) of the Interpretation Act 1976.

Staff

12. (1) The Commissioner may, with the approval of the Treasury as to numbers, appoint staff to assist in carrying out the Commissioner’s functions.

30 *Tynwald Commissioner for Administration Bill 2010*

- SCH. 1 (2) The terms and conditions of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Commissioner shall be determined by the Commissioner with the approval of the Treasury.
- Appointment of persons to provide services **13.** (1) The Commissioner may, with the approval of the Treasury, appoint any person to provide services by assisting or advising the Commissioner in carrying out his or her functions.
- (2) The fees and allowances to be paid to that person shall be determined by the Commissioner with the approval of the Treasury.
- Delegation of functions **14.** (1) Any function of the Commissioner may be exercised by —
- (a) a member of the Commissioner’s staff; or
- (b) a person providing services to the Commissioner,
- authorised by the Commissioner for that purpose.
- (2) Tynwald may by resolution impose limitations and conditions on the exercise of the Commissioner’s power to authorise others to discharge functions under sub-paragraph (1).
- (3) Any authorisation given under sub-paragraph (1) does not affect the responsibility of the Commissioner for the exercise of the function.
- Validity of acts **15.** The validity of any act of the Commissioner is not affected by any defect in the appointment of the holder of that office, including a disqualification (if any) for holding that appointment.
- Financial provision **16.** The following shall be a charge on the General Revenue —
- (a) the salary, pension and allowances of the Commissioner; and
- (b) any expenses incurred by the Commissioner in the exercise of the Commissioner’s functions.
- Accounts and audit **17.** (1) The Commissioner must —
- (a) keep accounts; and
- (b) prepare annual accounts in respect of each financial year.
- (2) The accounts of the Commissioner are to be audited in accordance with arrangements made by the Treasury.
- (3) The financial year of the Commissioner is —
- (a) the period beginning with the date on which the first Commissioner is appointed and ending with 31 March next following that date; and
- (b) each successive period of 12 months ending with 31 March.

Section 8(1)

SCHEDULE 2

LISTED AUTHORITIES

Listed
authorities

1. The following bodies and offices are listed authorities —

- (a) Departments;
- (b) Statutory Boards;
- (c) local authorities;
- (d) a joint committee of two or more local authorities;
- (e) a joint board being a body corporate established under an enactment and consisting of members appointed —
 - (i) by 2 or more local authorities; or
 - (ii) by the Department of Infrastructure and one or more local authorities;
- (f) the Manx Museum and National Trust;
- (g) the Civil Service Commission;
- (h) the Attorney General’s Chambers;
- (i) the General Registry;
- (j) the Chief Secretary’s Office;
- (k) Industrial Relations Officers appointed under section 5 of the Trade Disputes Act 1985; and
- (l) Laxey Glen Flour Mills Ltd.

[c.18]

Other listed
authorities

2. A person is also a listed authority if he or she is for the time being specified in section 3 of the Personal Liability (Ministers, Members and Officers) Act 2007 except —

- (a) the Chief Minister;
- (b) a Minister;
- (c) a Member of a Department;
- (d) the Clerk of Tynwald and any officer serving in the Clerk of Tynwald’s Office.

[c.7]

Relevant
supervisors
and
investigators

3. (1) Despite paragraphs 1 and 2 a relevant supervisor (and any person serving on the staff of such a supervisor) is not a listed authority.

(2) Despite those paragraphs a relevant investigator (and any persons serving on the staff of such an investigator) is only a listed authority in relation to the performance of functions that are not relevant functions.

IN THE KEYS

**Tynwald Commissioner for
Administration**

A BILL

*to make provision for the
appointment and functions of the
Tynwald Commissioner for
Administration; and for connected
purposes.*

Approved by the Council of Ministers for
introduction in the House of Keys.

MR. BROWN

OCTOBER 2010
