

THE  
LEGISLATIVE  
ASSEMBLY  
OF  
NORFOLK ISLAND

SELECT COMMITTEE  
ON  
ELECTORAL AND  
CONSTITUTIONAL MATTERS

On 18 May 1994 the Legislative Assembly appointed a Select Committee into electoral and constitutional matters.

The Committee, which comprises Mrs Monica Anderson, MLA, Mrs Helen Sampson, MLA and Mr Robert Adams, MLA, is empowered to inquire into, and report on, the provisions of the Legislative Assembly Ordinance 1979 and the Norfolk Island Act 1979, relating to:-

- (1) elections to the Legislative Assembly;
- (2) the term of the Legislative Assembly;
- (3) requirements for candidates for election;
- (4) requirements for Membership of the Legislative Assembly;
- (5) the present voting system; and
- (6) any other matter relevant to its inquiry (including the criteria for eligibility to vote).

Submissions, evidence and opinions on these matters are invited. Written submissions should be forwarded to Ms Robin Graham, Clerk to the Committee, Old Military Barracks, Kingston, by 30 June 1994. The Committee will also be holding public hearings on Wednesday afternoons from 2.00 p.m. to 4.30 p.m. in the Assembly Chamber, commencing on 27 July 1994. Persons wishing to appear before the Committee should contact Ms Robin Graham on phone 22003.

## Appendix 2

The following persons made personal or written submissions to the Select Committee :

### Written Submissions

Mr. Bill Winner	15.6.94
" "	undated
Mr. J. Hunter Kelly	20.6.94
Mr. G. Maskill-Smith	undated
Mr. Ron Nobbs	undated
" "	15.8.94
Mr. and Mrs. Ed Howard	30.7.94
Mr. Duncan Evans	30.6.94
Mr. and Mrs. Peter Blyth	30.6.94
Mr. Greg Quintal	27.6.94
Mrs. Florence Anderson	27.6.94
Mr. Bill Blucher	undated
The Society of Pitcairn Descendants	28.7.94
Mr. Ian Anderson	25.7.94
Mr. Don Morris	31.8.94
Mr. Mike King	19.9.94
Mr. Brian Burdekin	4.11.94
Mr. John Ryves	2.2.95
Mr. Bill Sanders	4.2.95
Mr. Graeme Woolley	5.2.95
Mr. Ernie Friend	21.2.95
Mr. Robert Adams	24.1.95
Mrs. Nadia Lozzi-Cuthbertson, OAM, MLA	23.2.95
Mr. Brian Bates, MLA	10.3.95
Mr. Albert Buffett	30.3.95
Mr. David Rodgers (Returning Officer)	18.7.95
Mr. and Mrs. Brian Check	15.7.95
Mr. Ric Robinson	4.9.95

### Personal Submissions

Mr. Ed Howard	27.7.94
Mr. David Rodgers	10.8.94
Mr. W.A Blucher	3.8.94
Mr. Lisle Snell	20.7.95
Mr. Mike Zande	20.7.95
Mr. David Buffett, AM, MLA	20.7.95

# Constitution, Parliament & Government

- Introduction
- Legislature
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The Isle of Man's economic and social achievements would not have been possible without the stability which its constitution and institutions provide. Her Majesty the Queen as Lord of Mann is Head of State. Her personal representative on the Island is His Excellency the Lieutenant Governor, who is appointed by the Crown for a five year term. The Island is a Crown Dependency which, through its ancient parliament, Tynwald, enjoys a high degree of domestic legislative and political autonomy. The United Kingdom Government is, by convention, responsible for the conduct of the external relations and defence of the Island.



The Isle of Man has a restricted relationship with the European Union by virtue of Protocol 3 of the Act of Accession of the UK. This extends the European Union legal regime to the Island for limited purposes, principally customs and the movement of goods. The Island neither makes nor receives any financial contribution from European Union funds.

Dating back to Viking origins over one thousand years ago, Tynwald is the oldest legislature in the world in continuous existence. It has two branches: the House of Keys and the Legislative Council. The majority of Members sit as independents, and the virtual absence of party politics encourages a high degree of consensus. This has contributed to the remarkable stability of the Manx system.

The twenty-four Members of the House of Keys (MHKs) are elected by universal adult suffrage every five years. Eight of the eleven Members of the Legislative Council (MLCs), are elected by the Members of the House of Keys; The remaining Members of Legislative Council are the ex officio members, H.M. Attorney General and the Lord Bishop, the President of Tynwald, who is elected by Tynwald as a whole. The Legislative Council generally acts as a revising chamber for Bills which are usually introduced in the Keys. The Royal Assent to Tynwald Bills is given by the Queen or, now more commonly, by His Excellency the Lieutenant Governor.

The branches sit separately throughout the parliamentary year principally to enact primary legislation: they sit together as Tynwald Court mainly to debate matters of policy, approve delegated legislation and to adopt financial motions. On 5th July each year, Tynwald Court assembles in the open air on Tynwald Hill at St. John's, a Viking site of the Manx parliament, to conduct parliamentary business and receive petitions for redress from aggrieved citizens.

The Island has a ministerial system of government. The political head of the Manx Government is the Chief Minister, who is nominated by Tynwald from amongst its own members and appointed by His Excellency The Lieutenant Governor. The Chief Minister selects the ministers who have responsibility for the major Government Departments and, with the Chief Minister, form the Council of Ministers, the Manx Cabinet.

The objective of the Manx Government, as set out in its policy document:

## CENTRAL GOVERNMENT POLICIES AND OBJECTIVES

- : Society | The Economy | Our Environment | Quality of Life | Population
- : Constitutional development | International Relations | Government

**Society**

**To maintain and develop respect for a free and fair society which values self-reliance, tolerance and the rule of law and which strives to create equality of treatment for all its members.**

- To protect the human rights and fundamental freedoms of every individual.
- To seek to reduce the incidence of crime
- To cultivate respect for authority and the rule of law.
- To ensure that individuals are afforded the greatest possible equality of opportunity and treatment
- To create opportunities for self development and self-expression through lifelong education and training
- To ensure that support is available for the disadvantaged members of society and that they are integrated as fully as possible into society
- To ensure that every individual has fair and equitable access to the judicial system.
- To encourage self-reliance and a sense of community and personal responsibility.

**The Economy**

**To pursue manageable and sustainable growth based on a diversified economy with the aims of:-**

- a. continuing to raise the standard of living of the whole population;
- b. securing continuous future prosperity throughout the Island; and
- c. providing the resources needed to sustain public services.
  - To maintain the climate which encourages maximum employment opportunities and the raising of average earnings on the Island.
  - By the use of policies, resources and the time-tabling of projects to moderate so far as possible the more extreme fluctuations in the economy's performance.
  - To seek to increase the proportion of the population which is economically active.
  - To seek to secure growth through businesses which show promise of high earnings and profits; that are likely to be stable and enduring; which are of high quality and good reputation; which represent a diversification of the economic base; and accord with agreed environmental policies.
  - To develop a workforce equipped with appropriate skills through education, training and re-training.
  - To create a competitive business environment which is based on fair trading and which encourages the establishment and maintenance of businesses of all sizes.

**Our Environment**

**To preserve, protect and improve the quality of the environment through the pursuit of sustainable development.**

- To promote the preservation of the countryside

- and wildlife
- To endeavour to prevent environmental pollution by effective planning and regulation.
- To dispose of the Island's wastes in a safe, environmentally acceptable, effective, efficient, and cost effective manner.
- To encourage the provision of a safe environment and health and safety in the workplace
- To set appropriate environmental standards and to ensure that they continue to be met.
- To progress plans, circulars and development briefs which reflect, in land use terms, the agreed general policies.

### Quality of Life

**To seek to safeguard and enhance the elements that are essential to the Island's quality of life.**

- To encourage greater awareness and understanding of our environment and heritage.
- To encourage a spirit of community support.
- To encourage the provision of housing that is appropriate, adequate and sufficient to meet the needs of the community.
- To promote a greater awareness of health and healthy living.
- To sustain and actively encourage rural communities.
- To encourage sensitive urban regeneration.
- To seek to avoid rapid and stressful changes in society.
- To encourage the development of leisure and recreational opportunities.
- To encourage the further development and improvement of internal and external communications

### Population

**To ensure that the population does not, by virtue of its structure, size or rate of growth, prejudice the quality of life, whilst seeking to ensure that the Island has a population which is sufficient in skills to serve the needs of the community and the economy.**

- To seek to avoid imbalances in population and maintain population indicators to identify change.
- In managing the population to have regard to constraints imposed by infrastructure, environment and social and economic factors.

### Constitutional development

**To promote and continue the evolution of the constitutional relationship between the Isle of Man and the United Kingdom towards more complete self-Government.**

- To promote and defend vigorously the Island's autonomy in relation to its internal affairs.

- To retain the link with the Crown.

### International Relations

**To promote and seek to ensure recognition of the Island's interests internationally and to honour the Island's international obligations**

- To maintain a constructive relationship with the European Union which ensures the Island's continued right to trade with Member States and protects established rights and safeguards
- To consider constructively and on the merits of each case the extension to the Island of appropriate international agreements.
- To recognise the importance of world influences and of contacts with the wider world, to be alert to international developments which have implications for the Island and to respond appropriately

### Government

**To provide a Government committed to stability and to the progressive development of the Island.**

**To forward plan and develop strategies for the economic, efficient and effective provision of the services and infrastructure necessary to meet the Island's needs.**

- To develop further a system of Government which is cohesive, co-ordinated and can act effectively.
- To recruit and retain appropriate well-motivated and properly trained personnel placing an emphasis on the recruitment, training and retraining of local persons.
- To ensure that policy makers are publicly accountable through the development of an open, stable, and democratic Government.
- To undertake a regular review of services and ensure that those to be delivered by, or on behalf of Government, are provided in an efficient and cost-effective manner, with a minimum of bureaucracy.
- To promote and utilise modern information and communications technology.

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## **The Legislative Process and the Parliamentary System of the Isle of Man**

Apart from the fact that the Manx Parliament, Tynwald, is the oldest continuous parliament in the world, it also has the distinction of being the only one which has three parts (i.e. it is tricameral): firstly, the House of Keys, second the Legislative Council and third the two chambers sitting together as Tynwald Court:

### **Tynwald Court**

Tynwald Court normally meets on the third Tuesday of each month and consists of the members of the House of Keys and Legislative Council sitting together. Meetings can last for up to three days and normally begin at 10.30am. The main purposes of Tynwald Court are to debate policy issues, including the Chief Minister's annual Policy Document, to approve all taxation and government spending and deal with secondary legislation. Secondary legislation refers to rules, orders and regulations made within the scope of existing law and it is often referred to as Delegated Legislation. The sessions of Tynwald Court are presided over by the President of Tynwald, who is elected for a five-year term by the Members. The current President is The Hon Noel Cringle, who succeeded Sir Charles Kerruish when Sir Charles retired in 2000. Sir Charles was the first President of Tynwald. Prior to his election to this post in 1990, Tynwald was presided over by the Lieutenant Governor, who is the Queen's representative in the Island.

### **The Midsummer Court**

Once a year, on July 5th or the weekday closest to it if the 5th falls over a weekend, Tynwald meets in the open air at St John's. This midsummer sitting on July 5th is on midsummer day according to the Julian calendar, which was replaced throughout Europe in the 18th century, but retained for certain limited purposes in the Isle of Man including the midsummer sitting of Tynwald. The sitting is more than a mere ceremony - though there is much ceremonial - since it is and always has been a legal requirement upon which validity of legislation enacted by Tynwald depends that it be proclaimed to the people on this occasion. It is also the occasion on which the ancient right to petition Tynwald with individual grievances is exercised, and each year several such petitions are made and, if considered justified, investigated by a select committee of Tynwald.

The day, known as Tynwald Day, begins with the Court assembling for worship in the Royal Chapel at St John's, after which there is a procession to Tynwald Hill. Tynwald Hill is known to be one of the ancient sites of open-air parliamentary meetings. Anciently, the sitting of Tynwald was presided over by the Lord of Mann; since 1765 when the Lordship was vested in the English Crown, the Lieutenant Governor, unless a member of the Royal

family is present. During the open air sitting the Coroners are sworn in and all Acts of Tynwald which have had Royal Assent are promulgated in both Manx and English by the two Deemsters (High Court judges). Full details of the work of Tynwald Court and the events of Tynwald Day may be found in the linked web site for Tynwald Court.



## **The Legislative Process and the Parliamentary System of the Isle of Man**

### **The Two Branches of Tynwald**

The House of Keys and Legislative Council meet in their own chambers on the Tuesdays that Tynwald Court does not sit. Their primary role is the making of legislation.

#### **The House of Keys**

The Keys has 24 directly elected Members who are returned once every 5 years by the Manx voters. The Island is divided into 15 constituencies, some returning one Member (such as Middle), some two (such as the Douglas constituencies) and two returning three Members (Onchan and Rushen). The voters use the Simple Majority System of voting, by which those candidates who gain the most votes win. An absolute majority (i.e. over 50% of the vote) is not required. There was an experiment with Proportional Representation in the elections during the 1980s but the system reverted to the "First Past the Post" method for the 1991 General Election.

The Members of the Keys elect their own Speaker, currently The Hon Anthony Brown SHK, who presides over the sessions. Keys business is chiefly concerned with the making of primary legislation. All Bills, be they Government Bills or Private Members' Bills, have to pass through several stages; First Reading, Second Reading, Clauses Stage and Third Reading. A full description of each may be found in the linked Keys website. Once a Bill has successfully passed these stages in the Keys it goes to the third chamber, the Legislative Council.

#### **The Legislative Council**

The Council is a much smaller body. It has 11 Members, three of whom sit by virtue of their office, namely the President, the Bishop of Sodor and Man and the Attorney General. The remaining eight are elected by the House of Keys for a five year period. To avoid all 8 seats coming up for election at the same time, they are elected in groups of four in different years. The Keys may elect anyone to sit on the Council, but in practice they tend to elect retired Keys Members or existing Keys Members who are willing to serve in the Council instead. In the Council Bills go through the same stages as in the Keys.

Being a smaller chamber, the Council can often suggest useful amendments to make the proposed law more effective, and its role is therefore primarily as a revising chamber. Any amendments made by the Council must return to the Keys for their approval. If the Keys do not agree and the view of the two Houses is different, a Conference may be called consisting of representatives of both Houses. Ultimately, however, a Bill can be passed without Council approval providing it is passed again

by the Keys in the subsequent session. Like the other two branches of Tynwald, full details of the work of the Legislative Council can be found on its linked website.

## The Legislative Process and the Parliamentary System of the Isle of Man

### Parliament and the Government

One function of any parliament is to scrutinise the work of Government (the Executive) and Tynwald is no exception. The scrutiny of government is part of the concept of Representative and Responsible government. In liberal democracies, governments are chosen by the people and answerable to them for their actions. However elections occur only infrequently and therefore responsibility is maintained by the executive being answerable to the parliament for its actions between elections.

All three branches have various devices which can be used to achieve this goal. Some of these mechanisms apply to all three and some are specific to individual chambers. However the environment within which this scrutiny operates is very different from that of many other parliaments and assemblies in the British Isles, since unlike the U.K., Scotland, Wales and Northern Ireland, the Isle of Man does not have a party system: there is no system of Government and Opposition and no whip system. In many ways this is very helpful since it means that Members approach issues on their merit rather than having to follow a "party line". It is also helpful because the Government does not have an in-built majority to force its measures through.

The nine Ministers that make up the Council of Ministers are bound by a modified form of the convention of collective responsibility, but they are the only ones it applies to. Departmental Members, who are appointed by the Chief Minister from the membership of Tynwald, to assist Ministers, are not subject to the convention and are not junior ministers. Their only authority is that which a particular Minister delegates to a particular Member.

## The Legislative Process and the Parliamentary System of the Isle of Man

### Question Time

A common element of scrutiny used in all three branches of Tynwald is Question Time. The main business in the Keys and Tynwald Court always begins with Questions, and sometimes the Legislative Council has Questions on its agenda too. There are two types of Question, those for oral answer in the particular chamber and those for written answer. The importance of both Tynwald and Keys Questions is now recognised by the media, with Manx Radio broadcasting them live each week.

Oral Questions in Tynwald Court normally occupy the chamber until 1pm on the first day of its sitting each month. Members can table questions to ministers on almost anything concerned with the work of their department. Questions have to be tabled at least seven days in advance of the sitting, to allow the relevant Department to research the answer for their Minister. Tynwald Court's Standing Orders (Standing Order 3.4) contain precise rules for framing questions. For example a Question may not be asked on a matter which is before the courts of law or about more than one subject. The Questions are then printed in a Question Paper which follows the Order Paper for each sitting.

When the Question is asked the President calls upon the Member who tabled it to ask his or her Question and the Member stands and says "I Beg leave to ask the Question standing in my name." When the Minister has answered the Question, the President will normally allow one or more supplementary questions to be asked. It is these which Members often seek to use to scrutinise the Government, and Ministers need to try to predict what the likely content of the supplementary may be so they are prepared to answer it. Unlike procedure in the House of Commons, however, supplementary questions may only be asked within the scope of the original Question. The popularity of Question Time as a means of seeking to scrutinise the work of Government is increasing amongst Members and the ability to ask such Questions is an important aid to effective scrutiny of government.

The House of Keys also has a Question Time at the commencement of business. Keys Questions are a relatively new development, originally being introduced to allow Members to table Questions on important issues between the monthly sittings of Tynwald Court. Like Tynwald Court, the House of Keys has its own set of Standing Orders and these govern the framing and asking of Questions. Rules governing the framing of Questions in the Keys are broadly similar to those for Tynwald Court. Keys Questions are also increasingly used by Members and there are occasions when the Keys Standing Orders are suspended to enable Questions not reached by 11am (the official cut off point for Question Time under Standing Orders) to be answered. If any Question is not answered, the Member must receive a written

reply from the Minister within 48 hours. A similar practice operates in Tynwald Court for Questions not answered by the official cut off time of 1pm.

Sessions of the Legislative Council may also have Questions, but there are fewer here, since normally few Members of the Council are also Ministers, and therefore the effectiveness of Questioning may be less as it will be answered by a Member who may not have responsibility in the Department concerned.

## The Legislative Process and the Parliamentary System of the Isle of Man

### Debates

While Question Time is one common means of scrutiny of government between all three branches, another is debate. Debate may be used as a means of scrutiny in several ways. Firstly Members may table Motions for debate that may call upon the government to do something or to cease from doing something. For example a recent motion before Tynwald from a Member called upon the Government to take more responsibility for financing of the Island's Hyperbaric Medical Chamber, while another called upon the Government to implement some form of residence control in the Island. The length of these debates is unpredictable, with any Member who wishes to do so being permitted to speak and there being no "guillotine" on the length of debates.

Second, in Tynwald debates occur on government policy and finance. The Chief Minister produces an annual Policy Document which is debated at the October sitting. Members have a chance to speak their mind on the direction in which policy is going and they must approve the Policy Document in a vote. Whilst it is unlikely that Members will reject it outright given the strong tradition of consensus government in the Island and that it will therefore have been prepared with that in mind, serious scrutiny of Government through this debate nevertheless does take place.

The annual Budget, setting out the Government's taxation and expenditure plans for the forthcoming financial year, is also subject to Tynwald debate. As in the U.K., the Manx Treasury Minister presents the Budget to the Court and a debate then follows. The Court may approve or defeat the various financial Motions which are based upon the Budget, and the opportunity to debate the Budget and the financial motions associated with it give Members a chance to air their feelings, suggest alternatives for the future and influence the Government's policy.

Debate also takes place at each sitting of Tynwald Court when there will be various Government Motions for consideration. Many of these Motions are relate to Orders made as delegated legislation. In some cases Orders are subject to an affirmative resolution, meaning that Tynwald must vote explicitly to bring an Order into effect; in other cases, an Order may be subject to a negative resolution, meaning that it will not have effect if a Member of Tynwald successfully moves the Court against it. The likelihood of orders and regulations being challenged successfully is markedly higher in the Manx Parliament than it is, for example, in the House of Commons.

## The Legislative Process and the Parliamentary System of the Isle of Man

### Scrutiny of Legislation

In the U.K. party discipline means that effective scrutiny of government legislation through parliamentary debate on Bills is in reality very limited. However in the Isle of Man, without a party system, there is real opportunity for Members of the Keys to scrutinise and amend the legislative proposals which are put before it by the Government. The first opportunity occurs at the Second Reading stage of a Bill. At this stage the Keys discusses the principle that lies behind the proposal and a vote is taken on whether to proceed. Given the lack of a built-in government majority, the approval of the Keys is not always forthcoming. While many Government Bills do receive a Second Reading, some do not.

Once a Bill has passed its Second Reading, Members have a further opportunity for scrutiny and amendment at the Clauses Stage. The Clauses Stage provides for in-depth analysis of the proposals in the Bill. It is usually taken by the whole House but sometimes, if a Bill is particularly complex, it may be taken by a committee of the House which will report back. At this stage Members frequently propose amendments. Subject to the constraint of having to remain within the scope of the Bill's long title, amendments may be to make the Bill a more workable piece of legislation, or to extend the Bill beyond that which the Government originally intended, or to change the original intention behind the Bill. Amendments can be the subject of vigorous debate and some of them succeed while others do not. However the fact that such an opportunity exists and can succeed provides the Keys with a valuable means of scrutiny.

Having passed through the Keys, Bills are then considered by the Legislative Council. Again the Council can and does propose amendments to legislation, but generally amendments proposed in Council are to make the law more effective, rather than to undermine the intention of the Government. Nevertheless the Council can propose amendments to restrict the intended scope of a Bill, although the Keys have to endorse any amendment made by the Council. The Council's powers in the event of disagreement with the House of Keys are - if the mechanisms designed to reconcile the two branches' views fail - essentially delaying powers akin to those of the House of Lords in the U.K.

Because of the confidential nature of the proceedings within the Council of Ministers, the Legislative Council considers them in private session. This too can prove a useful exercise, since it gives the Members some idea what the Council of Ministers is considering and how it might go about achieving its aims. This can be useful in preparing for future Tynwald Court debates on items of Government policy.



## The Legislative Process and the Parliamentary System of the Isle of Man

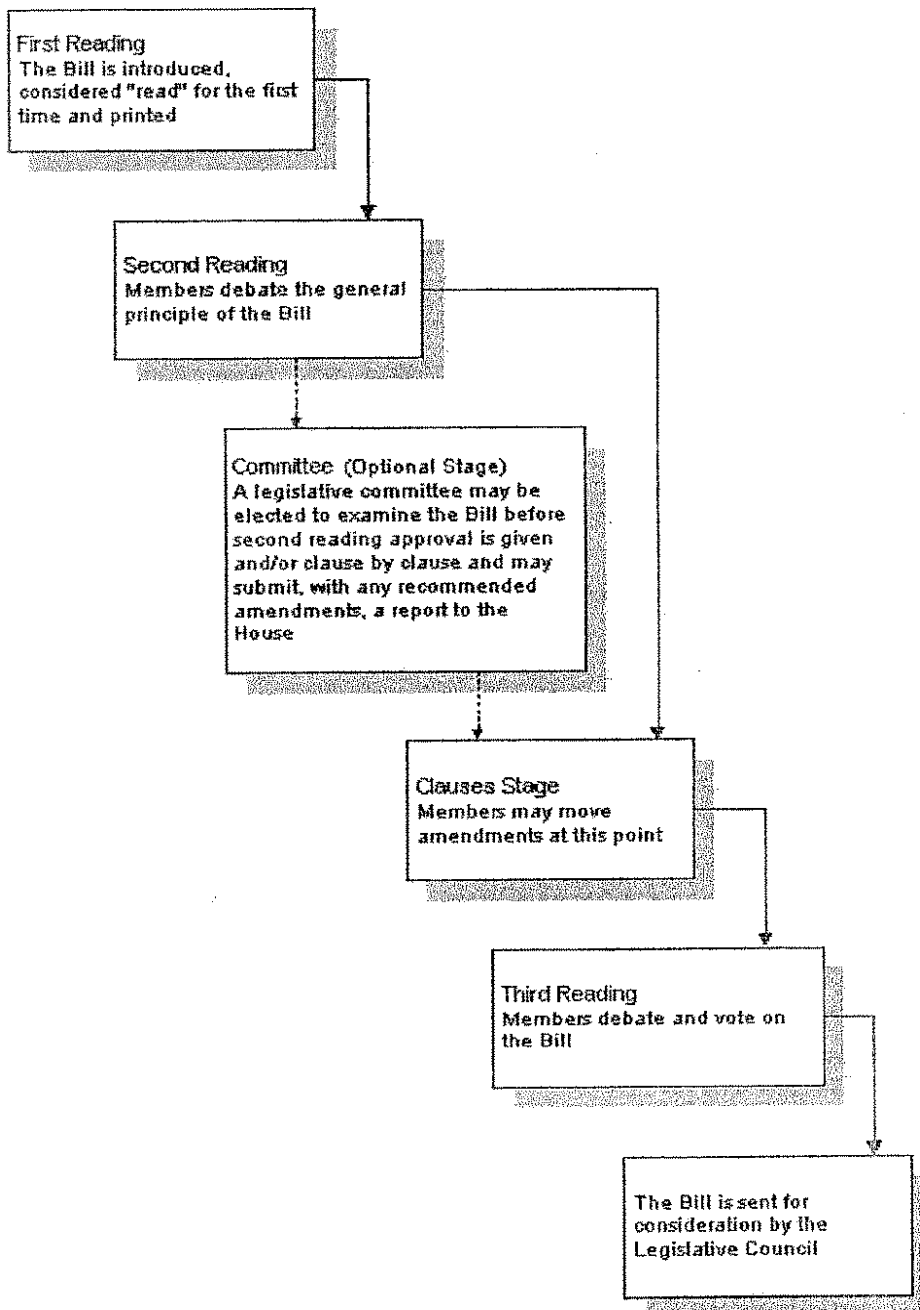
### Conclusion

There is no doubt that all parliamentary systems are continually evolving. The Manx system is no different. With the ever-growing role of Government, parliamentary scrutiny becomes more and more important. Consequently Tynwald will surely develop further means of scrutiny in the future as the need arises to ensure it maintains an effective means of checking Government without destabilising it. The parliament of the Isle of Man now enters its second millennium with structures and procedures of a modern parliament.

## The Legislative Process and the Parliamentary System of the Isle of Man

### How a Bill becomes law

A Bill introduced in the House of Keys must go through the following stages to become law:

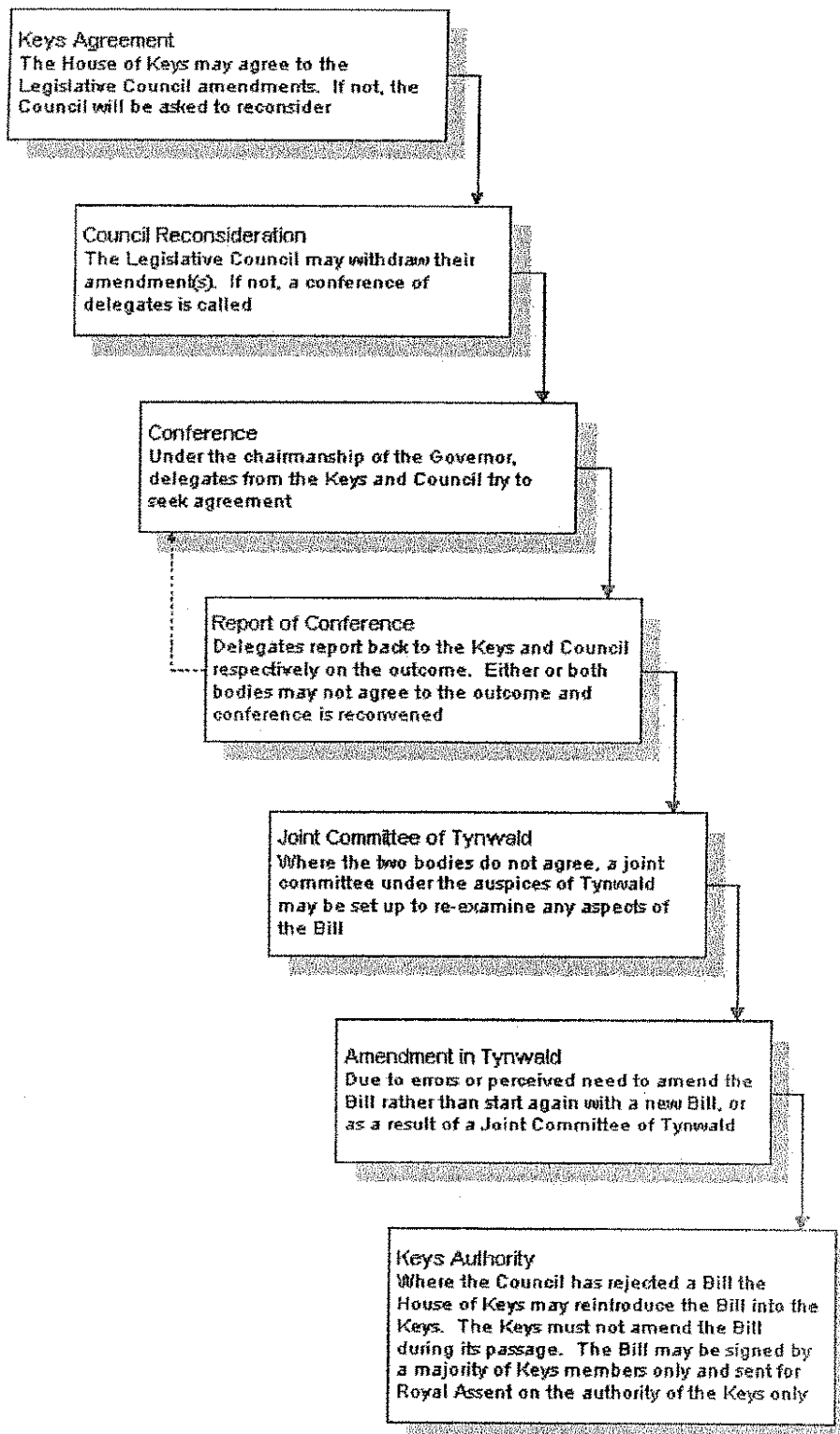


A Bill introduced in the House of Keys and Legislative

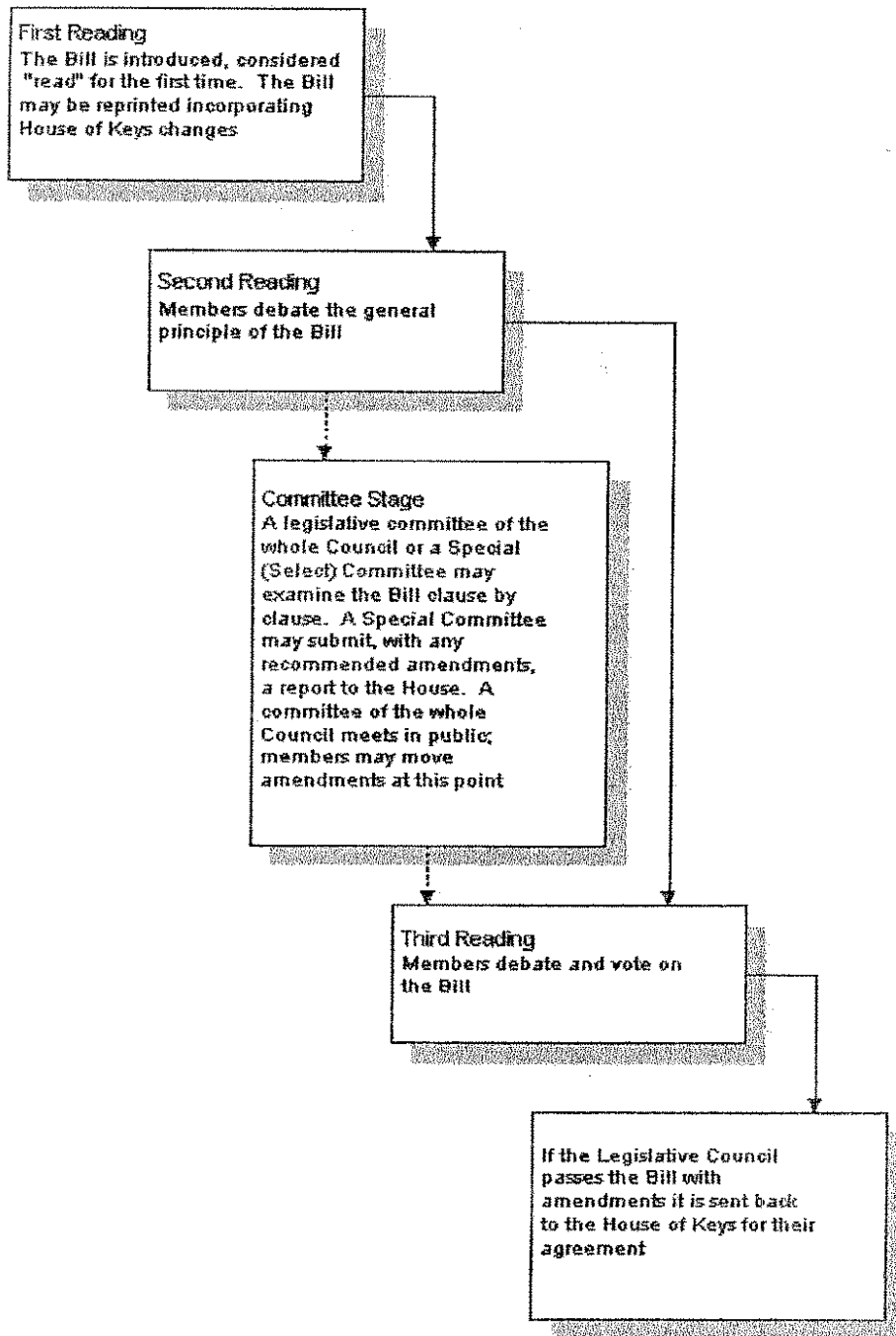
<http://www.tynwald.org.im/process/how-a-bill-becomes-law.shtml>

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**Council may go through some or all of the following stages to become law where the two bodies are not in agreement:**



**A Bill introduced in the Legislative Council must go through the following stages to become law:**



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**A Bill passed by the House of Keys and Legislative Council must then go through the following stages to become law:**

