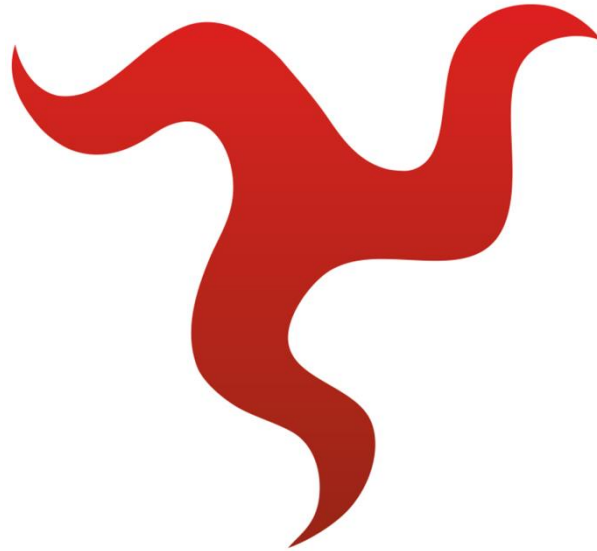


Programme for Government

Our Island: A Special Place to live and work



Consultation Report Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020



**Isle of Man
Government**

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Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020

1. Introduction

1.1 We Asked

We asked for views and comments on the draft primary legislation which would place some of the positive operational changes to practices and protocols, that had arisen during the Island's response to the coronavirus (SARS-CoV-2) (COVID-19) pandemic, on a legal footing.

1.2 You Said

Twelve (12) responses were received from Members of Tynwald, Departments, Boards and Offices of Government, Local Authorities, and members of the public.

1.3 We Did

All responses received during the consultation period were been considered by the Cabinet Office, the Attorney General's Chambers and the Council of Ministers. Following discussions with these bodies about the responses, some changes to the primary legislation were made.

The finalised version of the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020 was introduced into the Legislative Branches on 13 October 2020.

The Bill progressed through Branches expediently, with a number of useful amendments both in the House of Keys and in the Legislative Council. The legislation was granted Royal Assent at the December 2020 sitting of Tynwald.

2. Consultation

The public consultation was launched online via the Isle of Man Government Consultation Hub. Due to the urgent nature of the legislation the consultation was open for four weeks from 17 August 2020 to 14 September 2020.

The survey detailed the parts of the legislation and sought comment on the provisions in each section as well as the wording and phrasing.

3. Responses

Twelve (12) responses were received from Members of Tynwald, Departments, Boards and Offices of Government, Local Authorities, and members of the public.

All responses received during the consultation period have been considered and changes, where appropriate, have been made to the primary legislation.

Overall the engagement was positive and constructive.

3.1 Part 1 – Introductory

Respondents questioned which body/entity of Government would commence the resultant Act. This was updated in the final version to show that the Council of Ministers would bring the Act into operation by Order. The Appointed Day Order was laid before the December 2020 sitting of Tynwald.

3.2 Part 2 – Courts and Tribunals

Division 1 – Criminal Justice, Police and Courts Act 2007

Respondents welcomed the use of live audio and video links in various court proceedings. Some respondents suggested that the use of live links should be extended to cover proceedings before the summary courts, before the High Bailiff and before hearings of the Land Commissioner and Land Registrar. The suggestions would be considered within the policy development of the Isle of Man Government's Justice Reform project.

Respondents suggested the explicit inclusion of press and public as attending in Court. On consideration, this suggestion was not included in the final Bill as these are observers not "participants" in the proceedings.

Respondents suggested that the consideration of the vulnerability of the participant should be more explicit. Additional provision was included in relation to eyesight and hearing impairment in the context of the use of live links.

Division 2 – Procedure of Tribunals

Respondents suggested that there could be other legislative routes to address the provisions in Division 2, through amendment to the Tribunals Act 2006 and other relevant primary legislation. Following consideration, the proposed legislative provision was retained within the final Bill.

3.3 Part 3 – Bail

Respondents questioned whether there would be appropriate legislative provisions for an appeal mechanism for a person who was not content with the conditions of bail imposed by the custody officer. Operational procedures do allow for informal review where the individual and the duty advocate can discuss the conditions with the Custody Sergeant if the person is not content with them. The person can choose to not accept conditions and wait for a Court appearance. If an individual accepts and later challenges the bail conditions then they can appeal to a Justice of the Peace for a review of these. Following consideration, the proposed legislative provision was retained within the final Bill.

Respondents suggested further legislative provisions for conditional cautions, protections for victims, breaches of bail conditions. The suggestions would be considered within the policy development of the Isle of Man Government's Justice Reform project.

3.4 Part 4 – Local Authority Meetings

The Local Authorities which responded made no comments in relation to this part of the Bill.

Respondents questioned the need for provisions in relation to ratifying decisions taken by Local Authorities. The provision remained in the final Bill as a mechanism, not an

instruction, in order for Local Authorities to ratify decisions (which had been taken virtually during emergency measures) where they determined this was necessary.

Respondents suggested that legislative provision for virtual meetings of Local Authorities should be made. Following consideration, provisions would be considered within the policy development of the Isle of Man Government's Local Government Reform project.

3.5 Part 5 – Miscellaneous Provisions

Division 1 – Departmental Facilities

Respondents said that the meanings in the definitions and the governance safeguards needed to be clearer. Therefore provisions were amended to provide better clarification about "P"; "O"; "O's representative"; and to include a requirement for a written record of advice when decisions of last resort are taken to remove a person from a Department of Health and Social Care facility.

A provision in Part 5 Division 1 that sought to give a person (P) protection was misunderstood as providing protection to the Department of Health and Social Care, which was not the case. The provision intended to mean that P is not *personally* liable in damages – not that damages were not available. It did not prevent a negligence action nor did it aim to prevent an action being brought to Court for determination – it aimed to prevent the person from being liable to pay personally. On consideration, the provision was removed from the final Bill.

Division 2 – Information Use

Respondents said that the provision of the Government Departments Act 1987 Section 3 subsection 3(2) provided for the Minister to authorise any other person to exercise any functions of the Department; while Subsection 3(4) of the same Act provided for standing orders to regulate the authorised exercise of any function. This meant that the provision in the Bill would duplicate already enacted legislative provision, therefore the Division 2 Information Use was removed from the final Bill.

Division 3 – Public Health

Respondents thought that the provisions which aimed to insert clauses into Section 51F of the Public Health Act 1990 about written protocols would have a wide ranging effect on the legislation. It was decided therefore that some of the provisions could be achieved through relevant current primary legislation without amendment. Therefore the specific clauses in relation to Public Health Act Protocols were removed from the final Bill.

Respondents suggested that provision for enforcement of breaches of Health Protection Regulations may be required. An additional provision was included in the final Bill to allow for the issuing of Fixed Penalty Notices through a change to Section 51F of the Public Health Act 1990.

Division 4 – General

There were no substantive comments on this section. The final Bill was updated to reflect that Council of Ministers would have the power to make Regulation(s) under the resultant Act.

4. Conclusions

A number of other minor amendments were also made to the final Bill in relation to language and style.

The fundamental purpose of the legislation was to ensure that the positive operational changes to the practices and protocols which resulted from the Island's response to the Covid19 pandemic, and contained within the provisions of the Bill, could:

- Be used as part of the Government's business-as-usual functions to enhance service delivery, and
- Stand ready to be used during another emergency situations, alongside civil contingencies provisions and the Public Health Act 1990, to enhance the Island's response.

The aim was that following the passage of the Bill through the Legislative Branches, Royal Assent was granted quickly, which happened at the December 2020 sitting of Tynwald. This was because the provisions made, and continued, under the Emergency Powers Act 1936 were due to fall away on 26 December 2020.

New Regulations under the amended Public Health Act 1990 (as a result of the Bill becoming an Act) needed to be drafted, ready to be implemented, so that the Isle of Man Government could continue to respond to the ongoing global coronavirus pandemic, in the most appropriate way for our Island's public safety and welfare, whilst balancing social, economic and health impacts.

Ends.