

LOCAL GOVERNMENT BILL 2005

ONCHAN DISTRICT COMMISSIONERS



SUBMISSION

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TABLE OF CONTENTS

1.0	CLAUSE 1 – TECHNICAL ASSISTANCE BY THE DEPARTMENT	5
2.0	CLAUSE 2 - STANDARDS OF PERFORMANCE	6
3.0	CLAUSE 3 - ACQUISITION AND DISPOSAL OF LAND	7
4.0	CLAUSE 4 - MEMBERS OF LOCAL AUTHORITIES	7
5.0	CLAUSE 5 - MERGER OF LOCAL AUTHORITIES	7
6.0	CLAUSE 6 – ARRANGEMENTS BETWEEN AUTHORITIES	8
7.0	CLAUSE 7 - OFFICERS OF LOCAL AUTHORITIES	9
8.0	CLAUSE 8 - STANDING ORDERS	9
9.0	CLAUSE 9 – MINUTES	10
10.0	CLAUSE 10 – DISTRICT AND SPECIAL RATES	11
11.0	CLAUSE 11 – WASTE COLLECTION RATE.....	12
12.0	CLAUSE 12 – DIFFERENTIAL RATING	13
13.0	CLAUSE 14 – BORROWING POWERS.....	14
14.0	CLAUSE 14 – TRAVELLING AND ATTENDANCE ALLOWANCES.....	14
15.0	CLAUSE 15 – CHARGES FOR USE OF LIBRARIES	15
16.0	CLAUSE 16 – RESERVE FUNDS	15
17.	CLAUSE 17 – DESTINATION OF FINES.....	16
18.	CLAUSE 18 – BUILDING CONTROL.....	16
19.0	CLAUSE 19 – TRANSFER OF RECREATIONAL FACILITIES	17
20.0	CONCLUSIONS.....	17

1.0 Clause 1 – Technical Assistance by the Department

- 1.1** It is noted that the draft Bill provides that the Local Authority “*shall*” pay to the Department of Local Government and the Environment, “*the expenses incurred by the Department*” in providing technical assistance to a local authority.
- 1.2** The Explanatory Notes issued with the draft Bill, as part of the consultation exercise, explained that the “*technical assistance*” referred to the services of environmental health inspectors, although the Act itself does not specify that the provisions of Section 2 of the Local Government Act 1985 are limited to that service.
- 1.3** The Onchan District Commissioners would prefer that the services for which charges are to be made of Local Authorities be specified.
- 1.4** It has also been noted that such expenses “*shall*” include a reasonable sum in respect of “*the Departments’ establishment charges*”.
- 1.5** Again, the Explanatory Notes circulated as part of the consultation exercise offers some clarification, stating that the Department is to include an element of its overhead expenses but does not indicate the costs which would be included in such a calculation.
- 1.6** If there is to be a charge levied of local authorities in relation to “*technical assistance*” given to an authority by the Department, the Onchan District Commissioners would prefer to see a schedule of fees issued, based upon an hourly rate, to reimburse the Department for the specific cost of the officer involved.
- 1.7** The availability of an arbitrated agreement in relation to such charges is acknowledged.
- 1.8** It is observed that the requirement to apply charges might lead an Authority to restrict activity in the field of “*technical assistance*” on the grounds of cost.

2.0 Clause 2 - Standards of Performance

- 2.1** The insertion into the Local Government Act 1985 of a new provision, empowering the Department of Local Government and the Environment to establish minimum standards of performance, and to take action to deal with non-compliance therewith, is noted.
- 2.2** The Onchan District Commissioners would seek to include a minimum requirement for the Department to consult with the local authorities in relation to the “*minimum standards*”, prior to the making of any Regulations.
- 2.3** It is clearly recognised, however, that the Department must be able to make any necessary regulations following the suggested consultation exercise, having taken into account all of the views expressed.
- 2.4** It is assumed that any Regulations made in relation to “*minimum standards*” would apply equally to all local authorities and, in the case of services common with the Department, to the Department as well.
- 2.5** The proposed replacement of Section 5 of the Local Government Act 1985 is noted as is the removal of the requirement to hold an inquiry.
- 2.6** Proposed Clause 5(2), including the proposal that the Department “*may make an order*” transferring functions from an authority in default of discharging any such functions, contains no provision for the Order to be approved.
- 2.7** It is suggested that a failure to discharge functions will not become apparent simply overnight and that therefore the opportunity will exist for the Order to be approved by Tynwald, particularly as the proposed powers of the Department include for the drastic step of the removal of functions from the defaulting authority.
- 2.8** It is also noted that the Department would be obliged to issue notice in writing to the defaulting authority in relation to the perceived failures but that the Department would then

consider any representations duly made in response to such notice.

2.9 It has been suggested that the opportunity could be taken for any representations made in relation to the notice in writing to be considered by another body, perhaps the Council of Ministers, before a formal Order could be made.

2.10 If the suggestion of representations being considered by a separate body before the making of a formal Order is not considered appropriate, it is considered imperative that a mechanism be provided within the legislation to allow for an independent review of the content of the formal Order.

2.11 The inclusion of a step to provide an independent review at some stage in the procedure is felt to be necessary.

3.0 Clause 3 - Acquisition and Disposal of Land

3.1 The inclusion of a provision to permit “*a general consent*” in relation to any class or description of transaction regarding the acquisition or disposal of land is welcomed – as is the requirement for such “*general consent*” to be approved by Tynwald.

4.0 Clause 4 - Members of Local Authorities

4.1 The proposed new requirements in relation to the provision of notices to the Department do not appear to be problematic for the Authority to comply with.

5.0 Clause 5 - Merger of Local Authorities

5.1 The insertion of a new Section 6A into the Local Government Act 1985, making provision for the merger of local authorities (by mutual consent), is not, in itself, an issue with which the Onchan District Commissioners would take exception.

- 5.2** The Authority does have reservations, however, over the method which it is proposed will be adopted to achieve this aim
- 5.3** To take the Onchan Authority as an example, it is established under the provisions of the Onchan District Act 1986; would it not (or indeed should it not) require primary legislation to affect such changes, the original legislation having been passed by the branches of Tynwald and having received the Royal Assent?
- 5.4** It is understood that the proposal is only to permit the merger of two whole authorities, not the merger of one authority with part of another authority – and also that the provision will require the explicit consent of the local authorities involved.
- 5.5** It is not clear whether it is intended that the explicit agreement of the local authorities would extend beyond Clause 6A(1) to include the provisions of Clauses 6A(2) to Clause 6A(4), but as these Clauses would affect the implementation of an agreement under 6A(1), it is considered appropriate for this to continue in relation to the detail of the transfer arrangements and consequences.
- 5.6** Specifically in relation to the Onchan District, the Urban Ward and the Rural Ward within the District are established under the provisions of the Onchan District Act 1986, a situation which, hitherto, the Authority had understood could only be amended by primary legislation – this too would need to be considered as to whether secondary legislation could override the existing primary legislation.

6.0 Clause 6 – Arrangements between Authorities

- 6.1** The Onchan District Commissioners have noted the proposed provisions of this clause and have no comment to make thereupon.

7.0 Clause 7 - Officers of Local Authorities

- 7.1** The Onchan District Commissioners have noted the draft provision which would substitute a new provision which would require every appointment of Clerk of an Authority to be approved by the Department.
- 7.2** It is also noted that every appointment undertaken by a Parish Authority would be subject to the approval of the Department.
- 7.3** The Onchan District Commissioners do not consider it necessary for the appointment of a Clerk to the Authority to be subject to Departmental approval, particularly since each Local Authority is a legal entity in its own right and as such, must take whatever steps it considers appropriate in relation to the appointment of staff.
- 7.4** It is considered to be inappropriate for the Department to over rule the Local Authority in the appointment of staff, since in the case of the position of Clerk, the appointment would have been undertaken by the elected Members of the Authority.
- 7.5** The Onchan District Commissioners do not support this change.
- 7.6** The draft new provision within Section 23 of the Local Government Act 1985 regarding the disclosure by Officers of interest in contracts, and indeed any other matter in which the Officer has an interest, is noted and supported.

8.0 Clause 8 - Standing Orders

- 8.1** The Onchan District Commissioners note that the requirement for an Authority to make Standing Orders for the regulation of proceedings and business of the Authority is to be repeated, with the addition of a requirement for proceedings at Committee of the Authority also to comply with such Standing Orders.

- 8.2 The new provision to make the issue of Standing Orders in relation to the conduct of Joint Committees to be compulsory is also noted and supported.
- 8.3 The Onchan District Commissioners do not, however, support a requirement to advise or inform the Department of any occasion when there is a suspension of Standing Orders.
- 8.4 It is recognised that Standing Orders provide structure to the conduct of business and a suspension of such Standing Orders would not be moved unless absolutely necessary.
- 8.5 Should it still be considered necessary to record a suspension of Standing Orders, a more practical alternative might be for a register of such occurrences to be kept by the Clerk to the Authority to be open for inspection by the Department at any time.
- 8.6 Once again, the Onchan District Commissioners consider that as a legal entity in its own right, with Commissioners who are elected by the people of the District and are accountable thereto, the Authority must retain its ability to manage its own affairs without intervention by the Department of Local Government and the Environment.

9.0 Clause 9 – Minutes

- 9.1 The insertion of a new sub-section in to Section 34 of the Local Government Act 1985, to enable the Department by notice, to require the submission of minutes to the Department, is noted.
- 9.2 It is appreciated that the minutes of Local Authorities may differ in style from Authority to Authority and that some minutes are more detailed than others.
- 9.3 The Onchan District Commissioners have always held the view that the minutes of any meeting, be it at Authority or Committee level, should provide a clear picture as to the matters which had been taken in to account in reaching a decision and there are occasions that, in achieving this, some

personal data or indeed commercially sensitive information must be included.

- 9.4** The Onchan District Commissioners are concerned that this requirement might place the Authority in a position of conflict between its obligations under the terms of this legislation and the requirements of the Data Protection Legislation.
- 9.5** The Onchan District Commissioners, therefore, understand the reasons for the inclusion of the provision and support the principle but would seek clarification to the wording to ensure that the Authority would not be in contravention of the Data Protection Act in complying with this provision.

10.0 Clause 10 – District and Special Rates

- 10.1** The Onchan District Commissioners have noted the new provision which will require the Local Authority to levy a rate but in doing so, to exclude matters related to waste collection under the provisions of Part 4 of the Public Health Act 1990.
- 10.2** It is also noted that the Local Authority is given power to levy a “special rate” to cover expenses of a specific kind which are to be charged exclusively on properties within a particular part of the Authority’s District which might be constituted as a special district.
- 10.3** It is further noted that the District rate must include the cost of a service provided under Section 69 of the Public Health Act, relating to the provision by Local Authorities for the deposit of waste – Civic Amenity Sites.
- 10.4** The change to allow the district or “special rate” to consist of either a sum according to the valuation for the time being in force for rating purposes or a fixed amount levied in respect of each hereditament and a further sum according to the valuation at the time being in force for rating purposes is accepted.
- 10.5** Further, that the setting of the rate is brought forward from the existing February date to 31st January in each year.

- 10.6** The Onchan District Commissioners have noted the inclusion of a draft provision which would allow the Department of Local Government and the Environment to specify a maximum rate in any given area and the Authority is most concerned that this will seriously constrain the ability of the Authority to provide adequate and acceptable services to the people of the district, particularly as the individual Members of the Authority are elected to make such judgements.
- 10.7** Furthermore, increases in costs which are outwith the control of the Authority might well dictate the necessity for an increase in rate beyond that which the Department would like to see.
- 10.8** The Onchan District Commissioners are not supportive, therefore, of the introduction of a provision which would allow the Department to cap the level of rate for Local Authorities, which could be to the detriment of the ratepayers of the district, and where whatever rate is set, it has been determined by the elected Members of the Authority, who are accountable to the electorate for their actions.

11.0 Clause 11 – Waste Collection Rate

- 11.1** The insertion of a new provision within the Public Health Act 1990 to require a Local Authority to set a separate rate for services provided under Part 4 of the Public Health Act 1990, excluding the costs of Civic Amenity Site provision under Section 69 thereof, is not supported.
- 11.2** In real terms, the effect of the separation of a waste disposal rate from the general rate will have no impact upon the total charged to the ratepayer of the district, with the exception of additional cost of running a second administrative and accounting function.
- 11.3** It is questioned whether this section is intended to cover domestic premises only or, in fact, to cover commercial premises as well – is it intended to impact upon the charges that may be levied of commercial premises in respect of

waste collection, under the terms of the Public Health Act 1990 (as amended)?

- 11.4** The software which is used by the Onchan District Commissioners in the production of rate demands within the district – a function which is still undertaken by some Authorities on the Island – would not readily accept a second rate to be included thereupon.
- 11.5** To change the software, or amending the existing provision, will be costly.
- 11.6** The Onchan District Commissioners accept that it would be advantageous to have provision to allow for the separation of a district rate or special rate from a waste collection rate, but believe that such provision should be optional rather than obligatory.

12.0 Clause 12 – Differential Rating

- 12.1** The Onchan District Commissioners have noted the intent to nullify the effect of Section 4 of the Onchan District Act 1986.
- 12.2** It is well known that the Onchan District Commissioners sought to reduce the factor under which the differential rate in respect of the Rural Ward was reduced, with the ultimate effect of the equalisation of the rate across the district.
- 12.3** The Authority continues to support the equalisation of the rate but is mindful that the Rural Commissioner and Rural Committee Members elected under the provisions of the Onchan District Act 1986 did not support the Order when previously submitted to Tynwald for consideration.
- 12.4** Mindful of this situation, the Onchan District Commissioners would request the inclusion of an amendment to Section 12 of the proposed Bill insomuch that Section 4 of the Onchan District Act 1986 be repealed five years after the appointed day.

13.0 Clause 14 – Borrowing Powers

- 13.1** The Onchan District Commissioners have recognised the strengthening of language which is proposed in relation to Section 51 with the substitution of a requirement to gain approval before a borrowing can be progressed to having to obtain formal consent.
- 13.2** The concept of “*a general consent*” is supported, and the requirement for such a consent to be laid before Tynwald is also recognised.
- 13.3** The Onchan District Commissioners is cautious in noting the suggested insertion of a section which would allow the Department to make regulations to further control transaction of a Local Authority since, once again, this could conceivably diminish the right of the elected members of the Local Authority to make judgements in its own right when the Members of that Authority are accountable to the electorate for those decisions.
- 13.4** The Authority is comforted, however, to note that any regulation made by the Department under this provision would have to secure the approval of Tynwald before becoming effective.

14.0 Clause 14 – Travelling and Attendance Allowances

- 14.1** It is noted that the requirement for a Local Authority to approve payment of Members’ attendance or travelling allowances or both would be removed with the proposed amendments to Schedule 2 to the Local Government Act 1985.
- 14.2** The consequential amendment which would allow a Joint Board to make payments of attendance allowance and travelling allowance to the Members of that Joint Board directly is also noted.

15.0 Clause 15 – Charges for Use of Libraries

15.1 The replacement of Section 338 of the Local Government Consolidation Act 1986 with a proposed section to make it clear that an Authority is not precluded for charging the loan of books is supported.

16.0 Clause 16 – Reserve Funds

16.1 The Onchan District Commissioners oppose the amendment of Section 43 of the Local Government Act 1985, to allow the Department to direct the Local Authority in relation to maximum funds that can be held in reserve.

16.2 Once again, it is argued that the Members of the Local Authority are elected by the people of the District in question and are accountable to the electorate for their actions.

16.3 Further, the Onchan District Commissioners argue that there is circumstance where it is both prudent and good management to carry reserves of significant value, particularly in relation to property maintenance and the replacement of expensive assets such as refuse collection vehicles.

16.4 A refuse collection vehicle, for instance, would cost in excess of £150,000 and so the purchase of such a vehicle from reserves, as has been the case in Onchan for some considerable time, will require a significant balance to be retained simply for this purpose.

16.5 Clearly, the proper maintenance of property, including civic buildings, commercial properties, playgrounds and so forth, must be budgeted for and it is the view of the Onchan District Commissioners that to be unable to make provision in reserve for such purposes would severely restrict the good management of such assets.

16.6 The Onchan District Commissioners accept, however, that it would be appropriate for reserve amounts to be held and

identified for specific purposes such as property repairs, vehicle replacement and so forth.

17. Clause 17 – Destination of Fines

17.1 The Onchan District Commissioners support the provision which is suggested within the Collection of Fines, Etc, Act 1985, which would allow for the payment of fines to the Local Authority, where the contravention of a Local Authority Byelaw is prosecuted by the Local Authority or one of its Officers.

18. Clause 18 – Building Control

18.1 The Onchan District Commissioners have consistently opposed the transfer of the building control function from Authorities which are the Building Authorities under the Building Control Act 1991 to the Department.

18.2 The Commissioners most strongly oppose this proposed provision.

18.3 It has previously been indicated that the Building Control Officer at the Onchan Authority is not wholly involved in Building Control matters.

18.4 The Officer is properly qualified and conversant with the regulation but is also involved in other matters, the knowledge for which is most valuable to the Authority.

18.5 The Onchan District Commissioners believe that the removal of local control of the building control function will reduce the level of service that residents within the District presently enjoy, simply because it is unlikely that there would be a dedicated officer for the Onchan District.

18.6 Currently, the Building Control Officer is involved in health and safety issues and planning issues, all of which do not carry sufficient weight in their own right to justify an appointment of an officer and achieve value for money.

18.7 In addition to the financial arguments, it is fair to say that the Building Control Officer does carry a great deal of information which his multi-functional duties assist him with in all areas.

- The knowledge gained in relation to planning applications is helpful in relation to building control matters;
- his knowledge of the sewer infrastructure is useful in the assessment of building control applications;
- his knowledge of planning issues is also useful in dealing with nuisance abatement matters.

18.8 The removal of the building control function is opposed in the strongest possible terms.

19.0 Clause 19 – Transfer of Recreational Facilities

19.1 The Onchan District Commissioners is not affected by the proposals under this section.

20.0 Conclusions

20.1 The Onchan District Commissioners recognises the need for an update of the legislation to provide the Department with a greater degree of involvement in the regulation of the activities of Local Authorities but the level at which such regulation should be set must be balanced in the knowledge that the representatives upon the Local Authority are elected to serve thereupon by the people of the Local Authority area and are accountable to the electorate for their actions.

20.2 Whilst accepting the general need for greater regulation, the Onchan District Commissioners have formed the view that the proposals as specified do not, in some cases, allow the Local Authority to challenge the view of the Department

through independent means and the Authority considers that the inclusion of such a provision would make the proposals more acceptable.

- 20.3** The Onchan Authority would seek the inclusion of greater detail in relation to the charges which might be levied in respect of technical assistance provided to Local Authorities by the Department.
- 20.4** It would support the new provisions in relation to Section 25, and in particular a provision allowing for a general consent in respect of the acquisition and disposal of land.
- 20.5** The Authority respects the proposals in relation to legislation to permit the merger of Local Authorities but is uncertain as to whether the proposal for such provisions to be effected by an Order rather than primary legislation is appropriate.
- 20.6** The Onchan District Commissioners oppose a requirement for the Department to approve the appointment of Clerks to Local Authorities, believing that the elected Members for the District are in the best position to make a judgement in relation to applications received and would, in any case, be accountable for their decision in due course.
- 20.7** The Onchan District Commissioners oppose a requirement to report a suspension of Standing Orders to the Department on each and every occasion but do recognise the need to record suspension of Standing Orders, suggesting the maintenance of a register for this purpose.
- 20.8** The Onchan Authority does not oppose a provision to allow the Department to require the submission of minutes to the Department, but is concerned that the content of the minute might be such as to cause the Authority to contravene the Data Protection Legislation, and would seek clarification on this point.
- 20.9** The Onchan District Commissioners accept that there would be merit in providing a mechanism through which the waste collection rate might be separated from the district

rate but does oppose the obligation which the suggested provisions would place upon the Authorities in this regard.

- 20.10** The Onchan Authority is affected by the proposals in relation to the differential rating provisions, and whilst supporting the principle, it has recognised that the elected representatives upon the Rural Committee have previously opposed such a move.
- 20.11** The Authority is cautious about the suggested new provision in relation to borrowing powers although it notes that any regulations would require Tynwald approval.
- 20.12** The suggested changes in relation to travelling and attendance allowances, and indeed in relation to the charges for the use of Libraries are supported.
- 20.13** The proposed provision which would allow the Department to cap reserve funds is not supported, as this could have serious implications for the good financial management of the Authority and in particular, its larger and more valuable assets.
- 20.14** Proposals to allow fines imposed following a successful prosecution by the Local Authority in relation to Byelaw infringement to the Authority is supported.
- 20.15** The Onchan Authority strongly opposes any move to withdraw the building control function from the Local Authority as this is regarded as a valuable local function, which is also advantageous to the Authority in other areas.