

**5. Council of Ministers (Amendment) Bill 2020 –  
First Reading approved**

Mr Mercer to move:

*That the Council of Ministers (Amendment) Bill 2020 be read a first time.*

1150 **The President:** We turn now to Item 5, which is the Council of Ministers (Amendment) Bill, for First Reading. I call on the mover, Mr Mercer.

**Mr Mercer:** Thank you, Mr President.

1155 I am moving the Council of Ministers (Amendment) Bill 2020 in this Chamber. This is a Private Member's Bill promoted by the Hon. Member for Garff, Mrs Caine MHK.

1160 This Bill amends the current provision within the Council of Ministers Act 1990, at section 2(3)(b), which requires an affirmative vote of at least 16 Members of the House of Keys to pass a resolution that it has no confidence in the Council of Ministers. Prior to the previous changes to the Council of Ministers Act 1990, the election of a Chief Minister was undertaken by Tynwald. In that previous state, 17 affirmative votes were required, this being the simple majority of the 24 MHKs and nine voting MLCs that made up the membership of Tynwald. When the ability for Legislative Council Members to vote for a Chief Minister was removed, it became the concern of Keys Members only and the affirmative votes of 16 MHKs became the threshold, a two-thirds majority. The reason for this Bill is to re-establish the simple majority rule in the House of Keys. The proposed amendment would, therefore, reduce the required affirmative vote of at least 16 Members down to an affirmative vote of at least 13 Members, this being a simple majority in the House of Keys.

1170 I would like to thank Hon. Members in advance of their consideration of this Bill. I would be happy to attend to any broad or specific queries that Hon. Members may have, and to reply on the record either at this or subsequent readings.

Mr President, having drawn the purpose and principle of the Bill to the attention of the Council, I beg to move the First Reading of the Council of Ministers (Amendment) Bill 2020.

**The President:** Thank you, sir.

1175 I call on Miss August-Hanson.

**Miss August-Hanson:** Thank you, Mr President.

1180 I would like to second, but first I would like to thank Mrs Daphne Caine of another place for bringing this legislation, the Clerk of Tynwald's Office for supplying a history of no-confidence votes, Prof. Peter Edge for his unwavering interest and solid advice on Manx legislative matters, and my colleague on Council, Mr Mercer, for bringing it before us today.

Mrs Lord-Brennan and I love a bit of debate on constitutional matters and we have spent an awful lot of time discussing LegCo reform over the years, even before we headed off for our course at McGill with the CPA on parliamentary governance.

1185 I think any opportunity to benchmark parliamentary practices is a win, so just for the benefit of everybody else on the Legislative Council, I would like to ask that the proposer also share Prof. Edge's thoughts with the Council and also the research document from the Clerk of Tynwald's Office regarding the history of motions of no confidence, if that is all right.

1190 I believe that Mr Speaker, in 2016, was right when he described the two-thirds majority as a regrettable anomaly, and I am also – I quote the wise owl again – optimistic that it would not be brought in frivolity, as I believe that it would be destabilising to any Government and this Island if it were. CoMin is not famed for its popularity. Very difficult, sometimes unpopular decisions may need to be taken, and it is a serious constitutional matter that cannot be underestimated or undermined. A careful balance, therefore, I believe quite strongly, needs to be struck. In a small

1195 parliament, as the Hon. Member for Ramsey of another place said, a two-thirds majority may  
make it possible for the executive to direct the way the legislature functions, and this can also  
potentially work the other way round; so, to be sure of testing what appears to point to the right  
moderate outcome before it becomes law, I believe is sensible.

1200 Therefore, just looking to round the *Hansard* coin, as it were, I have talked with the proposer  
about this and asked if there was any thought given to the Bill's time in the Branches and,  
indeed, in its development, as to whether consideration has been given to the number of  
Members needed to bring a vote of no confidence motion under 16 and over 13, so 14 Members  
or 15 Members. I need no answer today, but I do feel that if consideration to those numbers has  
been given, the record would benefit from hearing the arguments for and against.

1205 I am certainly not suggesting this, but I would also like to know if there was any thought given  
to a potential delay to bringing a no-confidence vote back following an unsuccessful no-  
confidence vote, so a stabilising pause for thought. Again, I am not suggesting it at this point at  
all; I am just interested in whether or not any thought has been given to it, so far.

1210 I would also like to point out that this is the first piece of legislation Mr Mercer has brought  
before us since his term began, and I would like to thank him already for his positive  
engagement so far.

There is one other thing that I would quite like to round off in discussion. It is just relating to  
a question on section 4(2) of the Council of Ministers Act 1990. Before 2018, the subsection said:

The resignation of the Chief Minister or a Minister under this section shall be notified by the Governor to the  
President of Tynwald.

1215 There is a logic to that, because, in the case of a Chief Minister's resignation, the President  
would have to make arrangements to nominate a successor. Ordinary Ministers were also  
included in that. It would be useful for the President to know, at that point in time, who the  
Ministers are, but there is no requirement for him to be told when they were appointed.

The 2018 Act amended section 4(2), so that it says:

The resignation of the Chief Minister or a Minister under this section shall be notified by the Governor to the  
President of Tynwald and the Speaker of the House of Keys.

1220 As far as the Chief Minister is concerned, there is logic to adding the Speaker, since the  
Speaker must now make arrangements to nominate a new Chief Minister, so there would no  
longer be any need for the President to be formally notified of a Chief Minister's resignation.

1225 I still am not entirely sure as to why the President stands to be formally notified of any  
ordinary Minister's resignation, so I would like to have a look at amending section 4(2) so that it  
reads, more sensibly: 'The resignation of the Chief Minister under this section shall be notified  
by the Governor to the Speaker of the House of Keys.' I wondered what his thoughts were on  
that, before I actually table anything, and perhaps he might confer with Mrs Caine on whether  
or not that might be acceptable.

But thank you to the proposer for his positive engagement already, and thank you,  
Mr President.

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**The President:** Thank you.  
Mrs Lord-Brennan to speak.

1235 **Mrs Lord-Brennan:** Thank you, Mr President, and I thank Mr Mercer for bringing this Bill  
forward.

I am very much aware that Mrs Caine had gone into a great deal of research and preparation  
before advancing this Bill. She always does it with such bravery and such preparedness that I am  
sure she will not mind me raising the points that I will raise now, because I feel, in a way, my

interest, and perhaps the interest of the Legislative Council in this, is in some ways academic because it is not really within our remit

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I amused myself a little bit because initially when I saw the Bill I thought absolutely this sounds like a sensible move, to bring the votes to remove a Chief Minister in line with the number of votes required to appoint one, but we have also not lived through that experience yet, where we are dealing with really low numbers to appoint a Chief Minister and also to remove an entire Council of Ministers. So, I surprised myself when I went back to some study work to do with parliaments, and in my notes ... in acknowledging the present situation which Mrs Caine is attempting to address, it means that, essentially, the House of Keys is effectively hamstrung unless you get a high enough bar at 16, which is clearly determined by the House of Keys to be too high, given the Bill coming forward in that form. But also my views and my observations at the time were that it is possibly also hamstrung by that number of Members in the House of Keys not only having issue with a Chief Minister but also being willing to bring all of Government down, and obviously that is affected by the wording in the Bill – not Mrs Caine’s amendments, but in the wording of the Bill – where the Chief Minister stays in office until a sitting of the House of Keys where a resolution is passed, where at least 16 Members of the House of Keys says that it has no confidence in the Council of Ministers.

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I surprised myself in my evaluation of this situation, which was not only to do with this matter. My view was that it might be helpful. It was not about addressing the numbers so much, but actually restoring Tynwald’s involvement in the removal of a Chief Minister, or really a Council of Ministers. So, I have been testing my thoughts on that.

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The reason why it is still sparking my interest – and I just thought it was interesting to talk about it, really – is the House of Keys obviously sits every week, and, in the previous system, it would have to be something pretty major to have occurred for there to even be an appetite for removal of the entire Council of Ministers. As we all know, in the ups and downs of what a government does and in politics there can be good times and there can be in bad times, so part of my thinking about it only happening within the House of Keys is what safeguards there are against something being pursued purely for political opportunity or ambition, or in response to populism. In my thoughts about it, possibly were it to be the case as it used to be with putting that back to parliament, is the idea of having more time and consideration based on that, rather than a motion being put down and then, within days, being voted on in the House of Keys, which could potentially remove the entire Council of Ministers, which would be a matter of concern for all the Island. If it were to be within Tynwald, would it not be the case that a little bit of a step-back approach might be involved purely because of the make-up of both Branches being there, acknowledging that nobody in the Legislative Council would be set to gain or benefit from any resulting re-establishment of any Council of Ministers should that motion be successful?

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Those are some of my thoughts. In that respect I would be interested if the mover – and I believe this might be able to be supplied – can advise as to whether any other options were identified or considered in addressing this issue of it being 16 Members in Keys needed, recognising that it was felt that that threshold was so high as to be unachievable.

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I would be interested in other Members’ views as to whether they feel that there is an element where censure to that level should be happening in Tynwald, rather than just in the House of Keys, and whether it is an issue that the confidence vote, although it may effectively be directed at the Chief Minister ... The motion itself is about a confidence vote in the whole Council of Ministers. So, eight Ministers, eight Departments – it is pretty critical to the Isle of Man.

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I know this is probably quite an odd response that I am putting forward here, but I think it is important to look at these things properly, and in this study, this essay that I did a while ago, it certainly was this issue that I was concerning my mind with. It is quite possible that I might have also looked at things to do with having a different way of directly electing Tynwald and the Legislative Council, possibly the idea of a directly elected Chief Minister, and other things, too. I am just saying that, in my observations, this particular matter of numbers and the risks possibly

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associated did cross my mind, so I am just advancing those thoughts to this Branch because I think it is good to look at it and test it.

Thank you, Mr President.

1295 **The President:** Thank you.  
Mrs Poole-Wilson.

**Mrs Poole-Wilson:** Thank you, Mr President.

1300 I would like to thank the speaker, Mrs Lord-Brennan, for raising what I think are interesting thoughts on this. I do not wish to repeat what she has contributed; suffice to say that I, too, on looking at this initially, agreed absolutely that restoring a simple majority seemed to be logical and made sense, and I was also struck by the practicality that if, in fact, the House of Keys had lost confidence in a Council of Ministers, in effect the problem would already be manifesting, in that 13 Members can block Government business quite successfully, even before a vote to  
1305 remove the Council of Ministers. And yet I am struck by the contribution of Mrs Lord-Brennan and would likewise be very interested in understanding more about what other considerations were looked at, in terms of striking an appropriate balance between the situation where a Chief Minister has perhaps lost the confidence of the House of Keys but also the ability for some level of check and balance in how that situation is addressed.

1310 I would say no more at this point, Mr President. I am in favour of the principle of a simple majority. I suppose the question really is, does that simple majority work well enough that it should be the House of Keys alone?

Thank you, Mr President.

1315 **The President:** Thank you very much.  
Miss August-Hanson to speak.

**Miss August-Hanson:** Mr President, I have already spoken, but as you have given me the opportunity I would just like to agree with Mrs Lord-Brennan and Mrs Poole-Wilson that this  
1320 does need looking at. It is never cut and dried and I think that having all of the options on the table so that we are discussing this in the round is very helpful, very useful and quite important.

**The President:** Thank you very much.  
I call on Mr Mercer to reply.

1325 **Mr Mercer:** Thank you, Mr President.

I thank the Hon. Members of Council for their comments and I will do my best to address the issues that have been raised.

1330 First turning to Miss August-Hanson, I thank her for seconding this amendment Bill and for her keen interest in constitutional matters. With the permission of the Hon. Member for Garff, Mrs Caine, I will certainly ask about any additional research that I may be able to circulate in advance of the next reading of this Bill.

1335 I also note her comments regarding the balance and whether 14 or 15 Members has been considered as a benchmark. I believe it was mentioned in the debate in the other place, but it did not go any further than that, so I thank her for bringing that particular question forward.

I also would like to thank her for her observation regarding section 4(2) and the Governor, and I will take the time to talk to the originator of this Bill to see what additional work might be needed if there are any further amendments required.

1340 I also note the concepts of the stabilising ... a 'pause for thought', almost, I think were your words, and I think some of these were echoed by Mrs Lord-Brennan.

Mrs Lord-Brennan also notes the Keys have agreed that the bar as set, at 16, is too high.

With regard to safeguards, I think that is echoed really in Miss August-Hanson's earlier statements. Again, from other options considered, I think that should form part of what I would be able to circulate later.

1345 An interesting idea regarding Tynwald involvement in a safeguard and, if a safeguard is added, what involvement for Tynwald there might be – we will take that away and consider it.

I thank Mrs Poole-Wilson for her thoughts, too, and particularly with regard to practicality. Does someone want to intervene?

1350 **The President:** Intervention, Mrs Lord-Brennan.

**Mrs Lord-Brennan:** Thank you, Mr President.

1355 In the summing up, I notice that Mr Mercer says there will be information in response to queries that he would have to circulate. I wondered if that would be able to be supplied in a format that could appear on the record, because I think it actually is a significant point we are looking at here, and also the debate in the House of Keys did focus just in particular, in a narrow way, on 13 or 16. So, if we are not going to have fullness of response today, I wonder if he might consider doing the Second Reading next week only and deferring the clauses, to allow time for a fuller response to the points raised today, on the record.

1360 Thank you, Mr President.

**The President:** Thank you.  
Mr Mercer.

1365 **Mr Mercer:** Thank you, Mr President, and thank you, Mrs Lord-Brennan. I certainly will take those comments.

Finally, returning to Mrs Poole-Wilson, and again the question about what other balanced consideration, I will, if I am able, put those considerations on the record at the Second Reading, as suggested by Mrs Lord-Brennan.

1370 I am not sure whether I covered the point on practicality that Mrs Poole-Wilson made, that in effect, practically speaking, 13 Members can block progress of motions and Bills going through the House of Keys. That did come up in the debate in the other place and actually I think one of the comments in that debate was that if it is possible to practically block, then it makes sense for that to become part of legislation.

1375 Mr President, with that, I beg to move the First Reading standing in my name. Thank you.

**The President:** Thank you, sir.

I put to Council the motion that the Council of Ministers (Amendment) Bill be read for the first time. The motion carries, unless I see dissent. There being no dissent, the motion carries.