

**5. Council of Ministers (Amendment) Bill 2020 –  
Third Reading approved; Bill passed**

Mr Mercer to move:

*That the Council of Ministers (Amendment) Bill 2020 be read for the third time and do pass.*

**The President:** Item 5, Council of Ministers (Amendment) Bill, Third Reading. Mr Mercer, please.

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

Firstly, I would like to thank my hon. colleagues for their consideration of this Bill during its passage through this Hon. Council. As has been observed it is a small Bill, but with much consequence. I am therefore obliged to my colleagues for drilling down to the detail of this Bill and for the wider debate that has ensued.

275 Hon. colleagues have expressed their thoughts and concerns about its potential effect on the stability of Government and they have offered potential solutions that might address those concerns. Hon. Members, our request to form a committee to discuss these matters was not taken up and the Keys has let us know that these concerns are not sufficient for them to wish to debate further in committee.

280 Mr President, the primacy of the Keys in this matter has featured strongly in our debates and there is no need to reiterate the points made in another place. We must listen to the answers that we have received.

I would urge Members to support this Bill and satisfy themselves that they have carried out their duty of legislative scrutiny. With that, Mr President, I beg to move that this Bill be now read  
285 a third time.

**The President:** Thank you.  
Miss August-Hanson, please.

290 **Miss August-Hanson:** I beg to second and reserve my remarks for now, Mr President, thank you.

**The President:** Mrs Lord-Brennan.

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

I will be very glad when this thorny issue has left our Branch, but I am afraid some of my thinking did not cease over the past week since the last sitting, so I just hope that Members will entertain me a little bit further, because the question is at the moment .... and the mover talked about the Bill being sufficient.

300 The object of the Bill is about how a Chief Minister ends his term. So the question is: how do you oblige a Chief Minister to end his term?

I am not going to make the arguments about numbers and about checks and balances, and about implications and stability. That has all been had already. But I did look back recently to do with the original Council of Ministers Act 1990, because what I was trying to get down to is: why  
305 is it, in order to oblige a Chief Minister to end his term, that there would need to be a vote of no confidence in the *Council* of Ministers?

I had actually assumed this was a recent amendment to the 1990 Act. I thought that perhaps it had been brought in in the past few years, but it had not. The reason for me making this point is because the fact that it says 'Council of Ministers' is because over time we have had Council of  
310 Ministers substituted for Executive Council, and that went back to a time before the 1990 Act

when Tynwald in fact did approve the Executive Council. So basically they gave that power to the Executive Council and therefore they would take it away.

315 As the ministerial system has developed we have been left with that, in effect, a substitution; but instead we have the progression of the Chief Minister's role. In considering this, the Council of Ministers obviously has collective responsibility – Ministers have Departments, Departments have Members. So the question is if the goal is to remove a Chief Minister to actually oblige him to not be in post any longer and accepting that a consequence of that is that Ministers fall and they lose their jobs, but in the present ministerial system and with memberships and everything at play, *how* is that actually achieved? There would have to be a confidence vote in the entire Council of Ministers, therefore obviously needing to discredit the Council of Ministers just to make the point against the Chief Minister.

320 So I will get back to the practical point again, but I thought it would be of interest to Members to know that this is something that is a hangover, it is left over from the previous system. One Member raised this issue in the debate in 1989 in *Hansard*. I know it is incredibly boring to look at all of this stuff, but something was just really niggling me about all of this.

325 So I would say actually if the purpose of this Bill is to reduce the threshold to remove a Chief Minister, it reduces the threshold, I still have the concerns that it would potentially have harmful consequences to remove an entire Council of Ministers, but would it actually work to remove a Chief Minister? The Chief Minister is responsible and has collective responsibility with the Council of Ministers, but what is the Council of Ministers' responsibility for a Chief Minister? So how does all that pan out?

330 So I am concerned about the interaction between maybe that, and maybe things like Government Departments Act, maybe departmental responsibilities. I am just not sure that it would necessarily work but, if it does, I think it may be problematic for the entire set up.

335 I had endeavoured to get an amendment drafted, Mr President, but I have not been able to successfully have that done in a way that would be shared. So I would like to propose from the floor in order to remedy this if the will of the Keys and the intention is to put in place something that removes the Chief Minister, acknowledging that Council of Ministers falls from that, then I would propose in terms of the Act, and this is within the long title of the Bill, so Council of Ministers Act section 2(3)(b), which is the exact same part that the Bill is amending now, instead of it saying 'has no confidence in the Council of Ministers' I am suggesting proposing and hopefully moving an amendment to say 'No confidence in the Chief Minister'.

340 So the paragraph would read:

(3) The Chief Minister shall hold office until –

(b) a sitting of the House of Keys at which a resolution is passed by the affirmative vote of at least ...

– then the Bill enters '13 Members of the House of Keys' –

... that it has no confidence in the Chief Minister.

345 That is what I would like to put forward, Mr President, because I think that, as little numbers here and there have been substituted, we have missed this bit. I would hope that is clear to Members and I would actually hope for a seconder.

Thank you, Mr President.

*Amendment to clause 2*

*Page 5, line 7, after «for '16' substitute '13'» insert: «and for 'Council of Ministers' substitute 'Chief Minister'».*

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

350 I think it is regrettable that there was no advance notice of this move so that detailed consideration could be given to it. You can of course move amendments from the floor, but you

certainly are a Member that well appreciates the advantage of circulating thinking in this regard well in advance.

Miss August-Hanson, you wish to speak?

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

Understanding what Keys are trying to do, I think actually that Mrs Lord-Brennan is quite right. The focus I think does need to be on the Chief Minister as opposed to the Council of Ministers, for more than one reason actually. I think that Ministers are put into place on proposal by the Chief Minister to the Lieutenant Governor as well, and the Ministers are asked to sign a warrant, as we know, and this makes them the Lord of Mann's Ministers, as it were, they are appointed by the Crown in a Crown Dependency. It is like an element I suppose that we have not really discussed just yet.

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But if the Lieutenant Governor therefore appoints, on Her Majesty's behalf, this move that we should rid ourselves of CoMin as a whole on a vote of no confidence, as opposed to just the Chief Minister, I think if we are going to look at this particular piece of legislation, this very specific section as well, and look to appoint a Chief Minister and then on a vote of no confidence to rid ourselves of the Chief Minister, this is a discussion that perhaps we have not really spent much time on. Obviously, going back to my previous statement, the Queen does not necessarily interfere; and she does not. I think the last time that she did interfere in something like this was in the 1970s actually over in Australia. But the Lieutenant Governor, the last time that we had the removal of a Minister from the Council of Ministers, it took four to five days afterwards. He sent a letter. It was an official letter to request removal on behalf of the Chief Minister, who had also sent a letter a couple of days before. So there is almost a debate to be had about removal of Ministers generally, and the removal of the Chief Minister generally, and whether or not there is a hangover actually of the Lieutenant Governor's powers over all this as well?

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I would be seconding this, I think, if I was not already seconding the Bill through Legislative Council. I am unaware as to whether or not I can still second it, so if perhaps Dr King might give us an indication?

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**The Clerk:** Sorry, I do not understand the question, Mr President.

**Miss August-Hanson:** I am seconding the legislation as a whole, so can I also second the amendment that is put forward by Mrs Lord-Brennan?

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**The President:** No, you cannot, Hon. Member, that is not possible.

**Miss August-Hanson:** Well, I do know that Mrs Lord-Brennan is certainly not one to just throw things down at Council without consideration beforehand and I know that she has spent a couple of days mulling all of this over with yourself, Dr King, and also with the drafter as well. So it is not something that she has been flippant about.

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**The President:** I think it would be helpful at this stage if we had a very clear indication of the text of the proposed amendment. That has not been circulated.

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I have in my hands a draft amendment –

**The Clerk:** Mr President, news from the front!

While I was advising you that it had not been circulated, Mrs Lord-Brennan has kindly circulated it by email. I think it is the same paper that I have just given you.

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**Miss August-Hanson:** We have all received it, yes.

**The Clerk:** It says:

Amendment to clause 2

Page 5, line 7, after «for '16' substitute '13'» for 'Council of Ministers' substitute 'Chief Minister;».

In fact the word 'insert' is missing, so it is nearly the same.

405 So the paper that Mrs Lord-Brennan has just circulated is nearly the same as the one I have just printed out for the President. I think the gist of it is clear, Mr President, the idea is that you would vote no confidence in the Chief Minister.

Yes, that is what it says, Mr President.

410 **The President:** Thank you.

Right, in that case, an amendment has been moved.

Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

415 I am happy to second the amendment as set forth by Mrs Lord-Brennan, and for the reasons that she has set out.

I remain deeply concerned with this Private Member's Bill and the potential implications going on into the future, and for all the reasons we have heard about, Eaghtyrane. But it certainly lowers the majority to remove the Council of Ministers, as was. If this amendment is successful, it will be  
420 looking at the Chief Minister. But even so, to me, we are looking at a 13 vote, which is too low in my opinion, and for the possible actions of future Members who may wish for no other reason than to destabilise the Government of the day at that time.

As far as I am concerned, the one thing that sells this Island well and serves people exceptionally well is our political stability through Tynwald and its Branches. It is the gem in our  
425 political crown, if I can put it like that, that has seen us through so much and even as we speak currently with regard to the COVID pandemic and crisis here in the Isle of Man.

So I would be loath to make constitutional changes of this magnitude almost on the hoof, and I am very reticent in providing any further support for this as we go forward, Eaghtyrane.

Gura mie eu.

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**The President:** Thank you.

Mrs Poole-Wilson.

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

435 I was very interested by Mrs Lord Brennan's commentary and indeed, when we were debating this particular Bill, when we first debated it at an initial Second Reading, even though it did not pass its Second Reading at that stage, I think the question of whether it should read 'Council of Ministers' or 'Chief Minister' was raised at that point. I think the background to the wording is of great interest.

440 My hesitancy, however, in supporting an amendment at this stage is that I believe colleagues in Legislative Council have taken a very constructive and sensible approach to engaging with the other place in this Bill, and what its purpose is and how it is going about achieving it. The constructive way in which we did that was careful reflection and the offer to form a joint committee to consider it further. I recognise that the House of Keys in their discussion in relation  
445 to our offer did not dismiss it completely out of hand, recognised that the intent was to allow full reflection and consideration before proceeding with the particular amendment in this Bill, but by a large majority felt strongly that this was the correct way for now.

450 We have already acknowledged the primacy of the Keys in our many discussions in this Hon. Council. So, whilst I do believe that consideration of the Council of Ministers (Amendment) Act and the full implications of constitutional change ought to be considered in a very wide sense in due course, I am not convinced that further amending today at Third Reading is the most effective way of achieving this, as I think any further changes merit worthwhile consideration. So I am

uncomfortable moving with an amendment such as this notwithstanding, I think Mrs Lord-Brennan raises some important points about how the language of the legislation came to stand as it does today. Therefore I do not feel I can support this amendment today.

Thank you, Mr President.

**The President:** Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President.

I would like to thank Mrs Lord-Brennan for bringing forward this amendment which does seem extremely elegant and simple, as amendments go, and also for her in-depth research into looking at the whole history. I think she raises a really interesting point, and I for one in an ideal world would like to think further about this amendment and discuss it with the original mover of the Bill, and put it within the context that we have of having gone to the other place and requested a meeting and had that request rejected.

If we were on the Second Reading, of course, this would be the ideal time for this amendment and we would have that time and space, but because we are at the Third Reading and we have to be careful, I suppose, we have to bear in mind our relationship with the elected Branch. Like Mrs Poole-Wilson, I do feel it is the timing for me that is the problem with this, and that I would not be able to support the amendment today, even though it may actually be the best way forward, but time is against us. So today I am afraid I cannot support the amendment.

Thank you.

**The President:** Thank you.

Mrs Lord-Brennan, do you wish to reply?

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

I would just thank Hon. Members for their consideration. I think that Legislative Council was in a difficult situation with all this, because of course clearly what we have to do is to have a longer-term, bigger-picture view, as well as thinking does a piece of legislation actually work?

I retain a lot of the concerns that I had previously. This is just an extra bit for me that makes me think this is the issue and danger of dealing with things in isolation. The House of Keys obviously wants it this way. I do not know if they are knowingly binding themselves. I do not know. I really do not know. Maybe it is better. Perhaps it is better that it is this way. But I really do thank this Council absolutely for indulging me as I have raised all these points.

Thank you, Mr President.

**The President:** Thank you.

Mr Mercer to reply.

Mr Henderson, do you wish to speak?

**Mr Mercer:** I am sorry, are we waiting for Mr Henderson?

**Mr Henderson:** I am sorry, Eaghtyrane, I did not realise you were calling me there. No, I do not wish to speak. Mrs Lord-Brennan has set the case out very well.

**The President:** Thank you.

Mr Mercer, then, to reply.

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

Just for clarification, I am replying for the amendment at this point?

505 **The President:** I am inviting you to reply to the debate. If you wish to speak on the amendment, I do not think anyone else wishes to speak, but you can certainly speak to the amendment and then I will invite anyone else to speak and then you may reply to the debate.

**Mr Mercer:** Okay, thank you very much.

510 Mr President, with regard to the amendment, I caution that we may be treading a perilous path here. We have already established that this matter is a concern for the Keys, and we are in danger of appearing to not like the answer we got, so we will keep asking another question. Or, worse, we did not listen to the answer we were given.

515 For people to consider a vote of no confidence in the Council of Ministers, the entire CoMin team, that is a major thing and it would not be trivially done. Evidence from the past, when a simple majority held sway, demonstrates that this is the case. For people to consider a vote of no confidence in a single person, the Chief Minister, then that might in the heat of a crisis be easier for people to consider and support.

520 By amending this Bill, as suggested by my hon. colleague, and reducing this to a vote of no confidence in the Chief Minister, it may actually have the opposite effect for that sought by my hon. colleague. This amendment, to my mind, does not strike the balance between stability and democracy. In fact, it risks lowering the bar further.

Mr President, I cannot support an amendment that tips the balance further away from stability, and I would urge Members to vote against this amendment.

525 Thank you, Mr President.

**Mr President:** Thank you.

Does any other Member wish to speak? In that case –

530 **Mr Henderson:** Yes, Eaghtyrane.

**The President:** Mr Henderson.

**Mr Henderson:** Thank you.

535 I know I said I did not wish to carry on, but really we are have additional commentaries placed in here, and I feel the Legislative Council is being placed under a great deal of pressure here and being cautioned and warned about what our role is and what it is not and so on. One of the main reasons I got elected in the first place to the House of Keys and successful further elections and then to Legislative Council was that one of the main planks of my principles is that we should do the right thing, and if we feel something is incorrect or not right, do we just vote with it and bow to pressure, and just vote something through that we feel is right or is not right? It places an instability into our constitutional system, just at a whim.

540 Well, I am sorry Eaghtyrane, I was not elected just to vote for something I do not believe is correct, and I do not think anybody who has ever given me a vote would expect me to do that either. The supremacy of the Keys is fine, but whilst Legislative Council are examining this proposal, it is the Legislative Council's duty to point any particular issues out, review for clarity, clarification, amendments and so on and so forth.

545 But to my mind, it is also LegCo's duty if we consider something not to be safe or not quite right or not the right way to do things, it is certainly my duty to point it out and, if necessary, vote against it. This is the invidious position we find ourselves in currently. I think we need to look at the Bill in the cold light of day, pushing emotions and possible threats to one side for a minute, and just look at what we are actually being asked to do here.

550 It is also incumbent on the House of Keys to reflect on what we are saying, and I know we have asked for a committee and the House of Keys have given their verdict on that, fine. We have done our duty. But to me if there is something fundamentally wrong with a piece of legislation it is my duty to point it out; or, if I so wish, it is my public duty if I feel it is wrong to actually vote against

it. I do not think placing pressure on Members is the right way to be going about it, as far as I am concerned. Our views should be respected, just as much as we respect the Keys' views.

Gura mie eu, Eaghtyrane.

560 **The President:** Mrs Lord-Brennan, do you wish to speak?

**Mrs Lord-Brennan:** Yes please, Mr President. Thank you very much.

I think I must in some ways take issue with the mover saying it is because we do not like the answers. I have asked quite a few people as to why it is Council of Ministers and not Chief Minister, and I did not get a sufficient answer. That is why I ended up having to find the root cause of this myself, because I think we are obliged to look at it, as Mr Henderson has said.

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570 Secondly, that heat of the moment will allow an action that might be taken against a Chief Minister that Mr Mercer mentions. I quite agree that would happen with this amendment, but I would also say two things. Well, if you have a wayward Chief Minister, then how do you deal with that? And secondly, to put the exact same issues of stability and democracy at stake with the entire Council of Ministers – and I accept that they would fall, whoever the confidence vote would be in. But that is a serious matter to have a vote in the entire Council of Ministers of no confidence. That is a really big deal.

575 So I would just throw that back there: you have highlighted exactly the point of the issue of striking the balance between stability and democracy, especially in either scenario when there is no second chance to put the brakes on, there is no second chance to revisit a decision that may have been made in a single moment. There is no check and balance on that to reassess that decision.

580 So I think if anything it has made me more concerned, because at each point we have stepped along the way, it is not like we have any particular answers on this. All we have heard is, 'Because I want it that way' – and that is it, end of. So I think that with other Bills, we probably would not accept that, although I appreciate the hesitancy all round on this. It is a very serious matter. I think that part of dealing with this in isolation is how we have got to this situation today, which is why we have a system that is jarring, a proposal which is in fact jarring within the ministerial system as it is, even though it is purporting to achieve a particular objective, it has got issues on both sides of the argument.

585 Thank you, Mr President.

**The President:** Mrs Poole-Wilson.

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

I am listening with interest to all of the contributions. I think what I take from it is that the very nature of this debate, again, means to me it is difficult to amend this Bill at Third Reading. What this debate shows to me is something we debated earlier on during the stages of this Bill, which was that the system and how it works and whether it delivers everything that it needs to deliver, balancing all the different considerations, is worthy of a full and wider look. But I am not sure we will achieve that today by further amending the Bill.

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600 I completely respect colleagues may not feel comfortable with the Bill and they will vote accordingly, but I am not sure that we really arrive at all the answers that perhaps we are seeking by trying to amend this one-line Bill within its very tight long title. I think there is though scope, needed scope, to have a proper review constitutionally of how our current arrangements work.

Thank you, Mr President.

**The President:** Miss August-Hanson to speak.

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**Miss August-Hanson:** Thank you, Mr President. I will be very brief with this.

I think Mrs Poole-Wilson is quite right that it does need perhaps large-scale review constitutionally, as to how all of this fits together. We do have a *very* tight long title of this particular Bill that we have in front of us at the moment. For me, it certainly felt like it needed to be dealt with in the ground, as opposed to being dealt with a very molecular level like, 'Oh well, we'll just deal with this little bit, but we're not going to deal with the rest of it.'

I think that Mrs Lord-Brennan is quite right when she used the word 'jarring', because it does feel like it is jarring. I agree with an awful lot of what Mr Henderson said as well, it does not feel quite right. The stability that we have in our political system, he is quite right, is a gem. We do need to be very careful with how we make alterations to it. They need to be very well-considered and they need to be considered as part of a much wider review. So I would hope that perhaps Mrs Poole-Wilson's committee down the line will look at this piece of legislation, but also perhaps constitutional matters that surround this piece of legislation, so that it can be viewed in the whole down the line. And potentially our constitution, and our constitutional position in relation to this piece of legislation and others, might be changed for the better.

Thank you, Mr President.

**The President:** Thank you.  
Lord Bishop.

**The Lord Bishop:** Thank you, Mr President.

I think I would have to say that in my time in this Hon. Council, I have not known a debate in which the mind of Council has been so uncertain, and perhaps my reflection is that our task is not always to actually pass legislation so much as to enter into discussion and constructive dialogue, and it seems to me that that is precisely what we have done.

I have concerns about the amendments and the proposals put forward by this legislation, and I think I made those clear at First Reading. I was disappointed that our offer of further conversation was not taken up by the other place, and that perhaps at Second Reading we were not able to make as much progress as we might have done. I feel now at Third Reading that I am not minded to seek further to stop this in its tracks. But I think, nonetheless, Council has made clear that it is far from convinced in this matter and that perhaps there is further conversation and discussion to be had; and it seems to me that in exercising that role Council has adequately fulfilled its purpose.

Thank you, Mr President.

**The President:** Thank you.  
I call on Mr Mercer to reply to the debate.

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

I would like to take this opportunity to thank my hon. colleagues, once again, for their contributions for consideration. I know that the record reflects the care and attention that has gone into our consideration of this Bill, but I think now is the time for us to make our decision.

Mr President, I beg to move that this Bill do pass.

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

I put to Council first the amendment moved in the name of Mrs Lord-Brennan. I put the amendment to Council and take it that the amendment carries unless I hear an indication. I have had an indication of dissent. We will therefore move to a vote and in a second I will invite you to vote in the chat box when the Clerk is in a position to record.

Please vote, Hon. Members.

**Mr Henderson:** Eaghtyrane, I am voting against, please. I cannot access the chat box because all the blogs are coming up and it is blocking out where I can type in.



**The President:** Thank you, Mr Henderson, we will record your vote against the amendment. Is that correct?

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**Mr Henderson:** Sorry, Eaghtyrane, I am *for* the amendment.

**The President:** Mr Henderson is for the amendment. We are voting on the amendment.

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**The Clerk:** Just a minute, Mr President, I am on my own here and so I am going to record the votes and I will read them out for the record.

**The President:** Yes, please.

*Voting resulted as follows:*

<b>FOR</b>	<b>AGAINST</b>
Miss August-Hanson	The Lord Bishop
Mr Greenhill	Mr Mercer
Mr Henderson	Mrs Poole-Wilson
Mrs Lord Brennan	Mrs Sharpe

**The Clerk:** So the votes are 4-4.

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**The President:** Thank you.

In that case, with an equality of votes, my casting vote is against the amendment.

I put therefore the motion that the Council of Ministers (Amendment) Bill be read for the third time. I take the Council to be in agreement unless I see dissent. Indication of dissent, we will again proceed to a vote.

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*Voting resulted as follows:*

<b>FOR</b>	<b>AGAINST</b>
Mr Greenhill	Miss August-Hanson
The Lord Bishop	Mr Henderson
Mr Mercer	Mrs Lord Brennan
Mrs Poole-Wilson	
Mrs Sharpe	

**The President:** The motion carries, Hon. Members, with 5 votes to 3.