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**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*

**Council of Ministers Response to the  
Tynwald Constitutional and Legal Affairs and Justice Committee –  
First Report for the Session 2020-21 on Legal Services**

**March 2021**

**To the Hon S C Rodan MLC, President of Tynwald, and the Hon Council and Keys  
in Tynwald assembled**

**Foreword by the Minister for Justice and Home Affairs**



The Tynwald Constitutional and Legal Affairs and Justice Committee's ("the Committee") report has come at a time of significant change and activity for all involved within the justice system. The challenges which have been faced – and continue to be faced – in the justice system as a result of Covid are well documented. In the criminal justice system, the criminal courts have responded quickly to the new environment in which they were forced to operate. This included positive and effective collaboration and co-operation with other parts of the criminal justice system, including defence advocates, to ensure that justice continued to be administered in an open, transparent and efficient manner, even during the period of lockdown. Similarly, the civil courts continued to sit, as did tribunals, both of which employed technology where appropriate to ensure access to justice was maintained throughout this period with the support of Manx Advocates.

In addition to the changes which were introduced in response to the pandemic, there has been a significant amount of new legislation which is being or which has been introduced which will affect all those within the justice system, including:

- Domestic Abuse Act 2020
- Sexual Offences and Obscene Publications Act
- Justice Reform Bill
- Administration of Justice Bill
- Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Act 2020
- Capacity Bill
- Divorce, Dissolution and Separation (Isle of Man Act) 2020

Alongside the above legislation, the legal aid system which is dependent on the continuing support of Manx Advocates is currently the subject of review by Her Majesty's Attorney General. Legal Aid forms a fundamental part of the justice system of the Isle of Man,

ensuring fair access to justice for all. This review is aiming to provide an interim report to the legal aid committee for its consideration of reforms in the mid part of this year.

The continuing support of all stakeholders in the provision of legal services on the Island is essential to maintain the rule of law.

Significantly, the Council of Ministers agreed in November 2020, that the Minister for Home Affairs would become the Minister for Justice and Home Affairs. This role would include advising and speaking for the Council of Ministers on matters of justice, oversight of justice policy and its delivery for the Isle of Man and Chairing the Council of Ministers' sub-committee for justice.

Finally, I would like to thank members of the Council of Ministers' sub-committee for justice for their invaluable input and support:

- Hon Ray Harmer MHK, Minister for Policy and Reform,
- Mr Ralph Peake MHK, Member for Treasury,
- Mrs Kerry Sharpe, MLC, Member for Department of Health and Social Care with responsibility for Children and Families

**Hon Graham Cregeen MHK**  
**Minister for Justice and Home Affairs**  
**Chair – Council of Ministers' Sub-Committee for Justice**

## The report

The Council of Ministers is grateful to the Constitutional and Legal Affairs and Justice Committee for its thoughtful and in-depth consideration of the issues identified within the report. The work to review the Tynwald Committee's recommendations has been undertaken by the Council of Ministers' sub-Committee on Justice.

Having reviewed the recommendations, the Council of Ministers has identified areas of agreement such as the need for reform of the Advocates Disciplinary Tribunal, the need to address the concerns over the dual regulatory and representative roles of the Law Society and also the need for a clear Continuous Professional Development (CPD) programme not only for Manx Advocates but also for all who offer legal services on the Island. Council notes that some issues identified by the Committee are already under consideration and development by the Law Society such as revising the training programme for advocates wishing to qualify for the Manx Bar.

While Council notes the Committee's comments relating to the urgent nature of the need to reform the legal system, Council cannot necessarily agree with the urgency of this statement. In 2017, just a year before the Committee's review began, the external and independent peer review by the MoneyVal Committee found that the Isle of Man had a '*...sound legal system*'.<sup>1</sup> That report also stated that '*The Deemsters of the IoM have an excellent reputation and are independent*'.<sup>2</sup>

It is the Council of Ministers' view that, as with our parliamentary system, the strength of the Island's legal system is its stability, resilience and certainty. In this regard, Council considers that the existing differences between our legal system here on the Island with that of other comparable jurisdictions is also one of our system's strengths and that it remains a fundamental tenet of our constitutional position. This was acknowledged in the Clothier commission's report in 1990 which stated that it was:

***"in the Island's best interests to preserve the distinctive character of its legal system"***

Council of Ministers is concerned that some of the Committee's recommendations might have an adverse impact on maintaining the distinctive character of the Island's legal system and would welcome an in depth review of the full impact and consequences of the Committee's recommendations.

The Council of Ministers is also concerned about the international and reputational impact of the Committee's report which describes our '*legal system*' as in urgent need of reform when this does not appear to be the case.

The Council of Ministers would support the statement that the current regulatory and legislative framework in which *legal services* are provided in the Isle of Man is in need of review and reform.

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<sup>11</sup> Pg 36 <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual-Evalutaion-Isle-of-Man.pdf>

<sup>2</sup> Pg 50, *ibid*

The Council of Ministers recognises that an external review would be valuable and welcomes assisting all those stakeholders with an interest in the future of Manx legal services. Previous reviews, such as the Calcutt review and the Clothier report looked in detail at the provision of legal services in the Isle of Man and indeed both recommended that updated reports are carried out at regular intervals. Those periodic update reports have not taken place.

When considering a future review of legal services on the Island as now proposed, Council is concerned that confining the review's scope to the 'options identified by the Committee', would result in fettering the discretion of such a future review in perhaps predetermining an appropriate outcome or response.

Instead, the Council of Ministers' Sub-Committee for Justice recommendation to Council, with which Council of Ministers agrees, is that the scope of such an update review should include the areas identified by the Tynwald Committee, but importantly, allow the update review to consider the provision of legal services on the Island in depth. The review should aim to determine the most appropriate approach the island should consider in this regard.

The Council of Ministers notes that reviews of this nature (such as the Calcutt review and the Clothier report) are generally costly. Given the current financial climate, prioritisation and allocation of scarce resources must be carefully considered. The Council of Ministers considers however that it is in both the economic interest and in the public interest to support the rule of law that such an update review of the provision of legal services on the Island be undertaken. The Council of Ministers proposes to carry out a proper scoping exercise and will return to Tynwald to seek financial approval for the necessary expenditure in relation to such a review after engaging with the Treasury.

**Responses to the Conclusions and Recommendations of the Tynwald  
Constitutional and Legal Affairs and Justice Committee**

<b>1</b>	<b>The Manx legal system is in urgent need of reform;</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>The Council of Ministers is concerned that the statement that the whole of the Island's legal system is in 'urgent need of reform' does not accurately reflect the conclusions of the Committee. The Council of Ministers agrees that legal services in the Isle of Man are in need of review and, in some areas, reform.</p> <p><b>Council of Ministers therefore proposes the following amendment</b></p> <p><i>"Tynwald notes and agrees that aspects of the Manx legal services framework are in need of review and that the Council of Ministers is committed to ensuring that reform is considered and undertaken following such a review."</i></p>
Response	<b>Amend</b>

<b>2</b>	<b>The training system for Manx advocates is out of date and insufficient;</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>The Council of Ministers agrees that the training system for Manx Advocates is out of date. This point is acknowledged by the Law Society who are actively seeking to replace the current system and Council urges the Law Society to conclude this work as soon as possible. This links to point 3 below and the changes made to the England and Wales qualification system.</p>
Response	<b>Agree</b>

<b>3</b>	<b>The system for qualification should be brought into line with the qualification system in England and Wales;</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>The Council of Ministers notes that the changes in England and Wales – particularly the removal of the Legal Practice Course (LPC) and the planned future removal of the Graduate Diploma in Law will affect the current routes into the Manx Bar and that it is incumbent on the Law Society to act to address this gap.</p> <p>The Council of Ministers is not convinced that mirroring the new system for legal qualification in England and Wales is necessarily the best path for the Isle of Man to follow. The current system of qualification in the Isle of Man is rigorous and ensures a consistently high standard for all those who wish to practice at the Manx Bar. The separate process also highlights the difference in jurisdiction between the Isle of Man and other neighbouring jurisdictions.</p> <p>It is important to note that the changes in England and Wales are not reflected in Scotland, Northern Ireland, Jersey and Guernsey which will retain their existing entry routes to the legal profession.</p> <p>Under the new Solicitors’ Qualifying Examination (SQE) in England and Wales, a person with a non-law degree can now become a solicitor by undertaking the SQE1 and SQE2 exams and undertaking two years’ qualifying work experience.</p> <p>In the Isle of Man currently, those who have concluded the LPC may undertake their articles in the Isle of Man for a period of two years, during which time the trainee advocates must complete their Bar exams.</p> <p>The Minister for Justice and Home Affairs has sought clarification from the Law Society on the impact of the changes in England and Wales to qualification as a lawyer in the Isle of Man. The Law Society has confirmed that new proposals are now agreed which will respond to the changes in England and Wales – particularly the removal of the LPC. The new requirement for entry to the Manx Bar will remove the need for candidates to undertake the LPC and instead new training modules, undertaken while the trainee advocate is articulated to an on-Island legal firm, will be developed which replace the LPC. This will save prospective candidates almost £18,000 a year on course fees.</p> <p>The Law Society has made the case that the environment in which Manx advocates practice, the fact that they act as both barrister and solicitor and the composition of the Island’s economy necessitates a high standard of practice. It is the view of the Council of Ministers that reducing the Bar to entry – in England and Wales, the new SQE test will consist of multiple choice questions – will lessen the quality of the Manx legal profession in general.</p>

	<p>The Council of Ministers remains concerned that the phasing out of the Graduate Diploma in Law has not been fully addressed. This route allows students with a non-law degree to convert to a legal degree. The Council of Ministers believes it is incumbent on the Law Society to address this gap.</p> <p>The Council of Ministers requires the Law Society to act urgently to ensure it can respond to the forthcoming changes in England and Wales and that there is a clear route to qualification for Manx students. The Council of Ministers believes that any delay to this approach will compromise the next intake of new Manx Advocates and so cannot support the conclusion as drafted or the recommendation that the area is subject to review as this would create further delay.</p> <p><b>Council of Ministers propose the following amendment</b></p> <p><i>"That Tynwald notes the changes being made to the entry requirements to the legal profession in England and Wales and directs the Law Society to revise its system for qualification to ensure there remains a clear path to qualification for Manx students and addresses the issue of a route to the Manx Bar for those without a legal degree."</i></p>
Response	<b>Amend</b>

<b>4</b>	<b>There should be a system of practising certificates for Manx advocates and others practising on the Island;</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>In the United Kingdom, one of the drivers behind the introduction of practising certificates was to provide assurance for insurance companies when a legal professional applied for professional indemnity insurance. This is not the case in the Isle of Man. The Council of Ministers does support some form of enhanced regulation in respect of continuing fitness to practice.</p> <p>In respect of other, non-Manx qualified legal practitioners on the Island, this needs to be considered. This recommendation appears to overlap with recommendation 5, 6 and 7.</p> <p>The recommendation is not explored in detail in the main body of the report which focuses primarily on the use of practising certificates to replace the current Registered Legal Practitioner (RLP) system.</p> <p>Nonetheless, the Council of Ministers supports improved consumer protection through increased professional oversight for Manx Advocates and others practising on Island, possibly linked to CPD and an assessment of up to date right to practice.</p>



	<p>Council believes that the use of practising certificates as an alternative route to qualification to the Manx Bar is potentially problematic and is likely to prove difficult to implement in practice.</p> <p>Council believes this matter requires further exploration and recommends that this is a matter to be considered by the review proposed under the final recommendation.</p> <p><b>Council of Ministers proposes the following amendment:</b></p> <p><i>"The use and value of practising certificates for improved consumer protection and oversight of all who practice law on the Island, including barristers and solicitors from other common law jurisdictions, should be explored by an independent review into the provision of legal services in the Isle of Man"</i></p>
Response	<b>Amend</b>

<b>5</b>	<b>The process for re-qualifying as a Manx advocate for barristers and solicitors from other common law jurisdictions should be simplified;</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>This links in with recommendation 4, but the Council of Ministers believes that further investigation of this matter is required before any final recommendation is agreed.</p> <p>The current system of entry to the Manx Bar for barristers and solicitors from other jurisdictions is already relatively simple in that those with more than three years' experience can undertake one year instead of two as an articulated clerk, during which time they must take their Manx Bar exams. The Council of Ministers would draw attention to the many differences between Manx Law and other common law jurisdictions, and would urge caution in the desire for simplification which may mean advocates practising in the Isle of Man who have relatively limited experience of Manx law.</p> <p>In addition, the dual nature of the Manx advocate who performs the role of solicitor and barrister should be considered. In particular, the ability of advocates for a right of audience at a High Court, a right to which English and Welsh solicitors are not automatically entitled.</p> <p>The Council of Ministers supports further investigation of this matter as part of an independent review of legal services in the Isle of Man.</p> <p><b>Council of Ministers proposes the following amendment:</b></p>

	"The process for re-qualifying as a Manx advocate for barristers and solicitors from other common law jurisdictions should be explored by an independent review into legal services in the Isle of Man."
Response	<b>Amend</b>

<b>6</b>	<b>It should be possible for legal practitioners to be given automatic temporary licences, giving them right of audience in Isle of Man courts, if they are briefed by a Manx advocate</b>
Commentary	<p><b>Council of Ministers response</b></p> <p>The current system does not, at first glance, appear to be in need of change. Some concern was expressed by the Council of Ministers' sub-Committee that the change would turn the Island into a circuit of the High Court in England and Wales and lead to Advocates simply acting as solicitors. There are additional complexities around regulation and insurance for such automatic audiences, particularly where standards differ between jurisdictions. There are also questions which cannot easily be answered about who the regulator would be and what sanction may be applied to those who did not meet the required standards of the Law Society.</p> <p>Removal of the restrictive provisions on licensing temporary advocates (as provided for in s.17 of the Advocates Act 1995) would, by definition, result in a less regulated system of appointment of any legal practitioners. Allowing the grant of temporary licences to be automatic would result in the removal of checks that currently serve to ensure the public have reliable access to a legal practitioner versed in Manx law. The current restrictions act as a regulatory system to safeguard the public by ensuring that cases falling under Manx jurisdictions are dealt with by a Legal Practitioner who has suitable expertise and capacity to fully represent their client under Manx law. The current restrictions effectively provide that the First Deemster may refuse to grant a temporary licence to a legal practitioner if he believes a Manx Advocate has sufficient expertise and availability to act on the client's behalf.</p> <p>As the First Deemster noted to the Chairman at of the Committee's report,</p> <p><b><i>"we do now have an excellent selection of specialists in the Manx Bar who can deal with virtually every case. It is pretty rare that one cannot find, or a client cannot find, the specialism that is needed for a particular case".<sup>3</sup></i></b></p> <p>Volume 2 of the Committee's report at shows that 73 of the 93 applications for temporary licences were granted by the First Deemster between 2014 and 2018.<sup>4</sup> This shows that the regulations in their current</p>

<sup>3</sup> paragraph 95 of p183

<sup>4</sup> p587

	<p>form are not insurmountable for applicants. Furthermore, applicants who are refused have a right to appeal. During the same 2014 to 2018 period, 2 appeals were made. However, the absence of any sizeable number of applications for licences appears to indicate that there does not seem to be a pressing need to instruct extra-jurisdictional legal practitioners. Only 9 and 5 applications were made in 2017 and 2018 respectively.</p> <p>The Council of Ministers believes this matter should be considered by the independent review.</p> <p><b>Council of Ministers proposes the following amendment:</b></p> <p><i>"An independent review should assess whether the current system of right of audience requires amending and if so, what alternatives there may be to this system."</i></p>
<b>7</b>	<p><b>Registered Legal Practitioners should be classed as Manx advocates with a restricted licence, based on demonstrable experience and expertise;</b></p>
Commentary	<p><b>Council of Ministers response</b></p> <p>This recommendation appears to link to 4, 5 and 6 above.</p> <p>While the Council of Ministers acknowledges that registered legal practitioners account for a valuable source of legal expertise on the Island, the specificity of their knowledge may make it inappropriate to apply the same status of 'Advocate' to them; notwithstanding that with a restricted licence. Although such practitioners may develop knowledge of Manx law in their particular area, there is a risk that should the matter in which that practitioner is involved develop into multiple areas of law – for example commercial law into civil litigation – then it is questionable whether that practitioner will have the requisite background knowledge of Manx law to approach the issue from a 'Manx law' perspective. As mentioned above such foreign qualified lawyers already have the option of formal qualification with a concessionary curtailed period of articles.</p> <p>The issue of regulation of such practitioners is important, and Council supports the view expressed by the Committee that legal professionals who practice in the Isle of Man, but who hold a qualification from another jurisdiction should be subject to more rigorous oversight. The Council of Ministers does not agree that classing non-Manx qualified legal practitioners as Advocates but under a restricted regime is the best way to do this.</p> <p>The issues should be considered in the round by the review set out in the final recommendation by the Committee.</p> <p><b>Council of Ministers proposes the following amendment:</b></p>

	<i>"The process by which non-Manx qualified legal professionals are permitted to practice on the Island and how they are regulated should be considered by an independent review of Manx legal services."</i>
Response	<b>Amend</b>

<b>8</b>	<b>A system of Continuous Professional Development should be introduced;</b>
Commentary	The Council of Ministers supports this recommendation for all who provide legal services on the Island.
Response	<b>Agree</b>

<b>9</b>	<b>The Law Society should not be the representative body and the regulator;</b>
Commentary	<b>Council of Ministers response</b>  The Council of Ministers agrees that there is an inherent conflict in the dual roles of regulator and representative body and would support further consideration of this matter. This matter should be considered by the review.
Response	<b>Agree</b>

<b>10</b>	<b>The disciplinary system for advocates should be reformed and, in particular, the Advocates' Disciplinary Tribunal in its current form should be abolished;</b>
Commentary	<b>Council of Ministers response</b>  The Council of Ministers supports the view that reform is needed. There are a number of areas in particular, including increased transparency and the constitution of the Tribunal which would benefit from reform. The Council of Ministers would welcome further consideration of this matter by way of the external review.  <b>Council of Ministers proposes the following amendment</b>  <i>"The disciplinary system for advocates should be reformed and that this should be considered as part of the independent review of legal services on the Isle of Man"</i>
Response	<b>Amend</b>

11	<p><b>That the Council of Ministers should commission an independent review of the regulation of legal services in the Isle of Man, chaired by a person who has not practised law in the Isle of Man. The review should consider options for implementing the reforms identified in this Report, in particular:</b></p> <ul style="list-style-type: none"> <li>• <b>The development of better resources for training advocates;</b></li> <li>• <b>Introduction of practising certificates;</b></li> <li>• <b>A new, faster route to requalification as a Manx advocate for foreign qualified lawyers;</b></li> <li>• <b>Keeping qualification in step with England and Wales;</b></li> <li>• <b>The abolition of the category of Registered Legal Professional;</b></li> <li>• <b>A definition of the 'provision of legal services in the Isle of Man';</b></li> <li>• <b>The separation of regulation from representation; and</b></li> <li>• <b>A more transparent, user-friendly complaints system, ideally with a single point of entry, which is able to provide proper guidance as to the standards of conduct expected of all lawyers practising on the Isle of Man.</b></li> </ul>
Commentary	<p><b>Council of Ministers response</b></p> <p>The Council of Ministers supports an independent review of the areas of concern raised by the Committee.</p> <p><b>Council of Ministers proposes the following amendment</b></p> <p><i>"That the Council of Ministers should commission an independent review of the regulation of legal services in the Isle of Man, chaired by a person who has not practised law in the Isle of Man. The review should also consider options for implementing identified reforms."</i></p>
Response	<b>Amend</b>