



The Isle of Man Constitution Amendment Act 1919 and the Legislative Council

RESEARCH PAPER

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An overview of the key changes introduced by the Isle of Man Constitution Amendment Act 1919, the composition of the Legislative Council before the 1919 Act, and later legislative amendments to the Act.

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A BRIEF HISTORY OF THE LEGISLATIVE COUNCIL UP TO 1919

Over its extensive history the Legislative Council (the Council) has been an executive, legislative and judicial body. The earliest possible reference to the Council is from 1208, when the Norse King of Man and the Isles Reginald Godredsson promised to 'take counsel with his men' in respect of his brother's rival claim for a share of the Kingdom.¹ The Council began as a judicial and executive body, reflecting Tynwald's initial purpose as a forum for promulgating laws and settling disputes, and has evolved into the legislative body which exists today. Prior to the Isle of Man Constitution Amendment Act 1919 all of the Council's members sat *ex officio*.

Prior to the Reformation, the Council is said to have included the Barons of the Island, all of whom, bar the Bishop, were heads of religious houses – most of which were not based in the Isle of Man (although they held lands or monastic cells within the Island).² An example of a Manx Baron is the Abbot of Rushen. Following the reformation the only Baron to actually sit on the Council was the Bishop. The Bishop was known as the premier Baron and it is for this reason that he sits next to the President of Tynwald and is the second person to sign acts.³

Mention of the Council is found in Mann's first codified laws. At the Tynwald held in 1417 by Sir John Stanley II, King of Man, the existence of the Council and its duties were recorded. The following quote from the Customary Laws Act 1417 appears to acknowledge the legislative character of the Council: "divers ordinances, statutes and customs, presented, reputed and used for laws – were ratified, approved and confirmed [...] by all Barons, Deemsters, Officers, tenants, inhabitants and commons [in addition to the King]". Section 13 of the Customary Laws Act 1417 empowered the Council to 'stirr or move any Man to doe that may profit the Lord truely'. In 1422 it was noted that, in giving judgements in difficult legal matters, the Lord's Lieutenant (the Governor) was to be assisted by the Council, Deemsters, and Elders.⁴

The Council is described in numerous ways in subsequent statutory documents, including Lord's Concell; King's Councill; Council; Elders of your Land; the Officers; Principal Officers; Chief Officers; the Officers Spiritual and Temporal; the Lord's Officers of his Council; and Officers of the Lord's Council.⁵

The members of the Council through its history have included the Governor, Deputy Governor, both of the Deemsters, the Clerk of the Rolls, the Lord Bishop, the Comptroller, the Archdeacon, the Receiver General, the Water Bailiff, the Attorney General, and the Vicars General.⁶ The Governor, Deemsters, Receiver-General, Attorney General, Clerk of the Rolls, and the Water Bailiff were appointed by the sovereign. Similarly, the patronage of the offices of the Bishop and Archdeacon was in the sovereign. This had obvious implications for the Council's independence as a legislative body.

In 1561 the Council's composition and role was noted as: 'The Captain [Governor], Receiver, Clerk of the Rolls, and Water Bailiff' who were to meet at least once a month at Castle Rushen to 'consult of [the] Lord in his causes and affairs of the said Isle'.⁷ Here the Council described is an executive body.

¹ G Broderick (transcribed and translated), *Chronicle of the Kings of Man and the Isles*, (Douglas 2004) p. f.42r

² Unpublished Documents Etc, Journal Manx Museum (iv) Document No. 225

³ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p8

⁴ JF Gill (ed), *The Statutes of the Isle of Man Vol I A.D.1417 to A.D.1824* (London, 1883) Section 33 Customary Laws Act 1422

⁵ JF Gill (ed), *The Statutes of the Isle of Man Vol I A.D.1417 to A.D.1824* (London, 1883)

⁶ Grimson, J, *The Isle of Man: Portrait of a Nation* (2009) p 153

⁷ JF Gill (ed), *The Statutes of the Isle of Man Vol I A.D.1417 to A.D.1824* (London, 1883) Section 37 Book of Orders 1561

By 1656 the Governor was assisted by the Deemsters in matters of Law and also by the Comptroller, Clerk of the Rolls, Receiver, Water Bailiff, and Attorney General.⁸ The Comptroller held duties in connection with the Isle of Man's internal revenues and the audit of related accounts, and acted judicially in relation to offences within the household and garrison. The offices of Comptroller and Clerk of the Rolls had been held by a single person for a long period up to the Revestment, at which point the former was discontinued.⁹

The Council's role in the legislative process has also evolved considerably over the course of the body's history. In 1594 legal orders were made 'by [The Governor], and the Rest of the Officers of Tinwald then holden, and there proclaimed for the good Government, common Weale, quiet Estate, and safe Keeping of the said Isle.'¹⁰ It was not until the early 18th Century that the familiar mode of legislating, requiring the assent of both Branches of the Legislature and the sovereign became predominant. This fact is evidenced by an examination of the statute books: in 1737 an Act of Tynwald¹¹ confirmed the illegality of a 1692 Book of Rates (a tariff of customs duties) which was assented to by the Council and James Stanley, 7th Earl of Derby and Lord of Mann, but not the Keys. Therefore, between 1692 and 1737 it was decided that tripartite assent was necessary for an act to be of effect.

Prior to the Revestment in 1765, the key elements of Island's constitution were the Lord Proprietor, the Governor and Council, and the House of Keys. The Council was a Privy or Executive Council: the Governor with his subordinate officers were the Privy Council of the Sovereign, and such officers were the Privy Council of the Governor, together forming the executive. The expression 'Standing Council' was, at a time, used to refer to those who were entitled as of right to attend the meetings of the Council in that executive capacity. The Privy/Executive/Lord's Council was when summoned, and in cases of emergency, to act for the public good in a summary way without waiting for the concurrence of the House of Keys or the Lord Proprietor.¹²

It was customary from ancient time for the Council and Keys to attend the Court of General Goal Delivery. The Governor, Deemsters, Clerk of the Rolls, and Water Bailiff all exercised judicial functions therein, with a Deemster being the mouthpiece of the Court. The ecclesiastics and other officers were frequently present but did not take any part in proceedings. For a time it was common for the Keys to attend the Court as an authoritative source of the common law and to "pass upon" the proceedings of juries in the Court by declaring whether or not their findings were according to the evidence. However, such practice had ended by the Revestment.

A 1792 report,¹³ which, *inter alia*, examined the constitution of the Isle of Man, stated that legislative authority lay in the Lord, the Governor and Council, and the House of Keys. The report affirmed the Council's legislative role, stating that the Council with the Governor formed the second branch of the Legislature, whose role it was to assent or dissent to proposed laws. However, due to continuing constitutional confusion following the Revestment, the Attorney General and Deemster were of different opinions as to the proper constitution of the Council.

⁸ James Chaloner, *Chaloner's Treatise of the Isle of Man* (London 1656) p.29

⁹ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p8

¹⁰ Military Orders 1594

¹¹ Act as to Trial by Jury, Fairs and Markets, Arrests, Jurisdiction of Chancery Court as to unreasonable Costs and Damages, Fraudulent Arrests, Slander, Herring Fishery, Great Enquest, Breaking Prison, Leaving Island without Licence, Trial of Titles to Lands, Mortgages, Procedure at Common Law, Contempt of Keys, Appeals, Bribing Juror, Excommunication, Oath, *ex officio*, Contempt of Court, Customs Duties, &c. 1737

¹² J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p12

¹³ *Report of Commission of Inquiry* (1792) Part the Third

The Deemster submitted that the Council comprised the Treasurer or Receiver-General, the Comptroller, Clerk of the Rolls, Water Bailiff, Attorney General, two Deemsters, Bishop, Archdeacon and his Official, and the two Vicars General. The then Clerk of the Rolls, in his letter to the commissioners of the report, supported this view with regard to the lay-officers, although adding thereto the Collector. However, he considered the ecclesiastics entitled to attend when summoned by the Governor.

According to the Attorney General's account, the Council consisted of the Receiver-General or Treasurer, the Comptroller, Clerk of the Rolls, Water Bailiff or Collector, the Attorney General, the Bishop and Archdeacon, and with the Vicars General and Archdeacon's Official as occasional members. However, despite doubting their proper ranking as members of the Council, the Attorney General did acknowledge that the Deemsters had never been absent from a meeting of the Council.¹⁴ Further submitting that, prior to 1765, the concurrence of three members of the Council with the Governor was necessary to make an act binding. In this respect the Comptroller believed that the concurrence of two members with the Governor was necessary. Both positions accepted a majority vote was necessary. The Attorney General's opinion that the Comptroller was entitled to a seat on the Council is likely misguided; as prior to the Revestment the position of Comptroller was frequently held concurrently by the Water Bailiff and, similarly, following the Revestment was sometimes held by the Receiver-General.¹⁵

In 1874, by Act of Tynwald, the Court of the Archdeacon was abolished, and its jurisdiction (mainly wills, letters of administration, and probate) and authority and the judicial functions of the Archdeacon's Official transferred to the other Ecclesiastical Courts.¹⁶ Following this the Official advised the Archdeacon and deputised for him when archidiaconal duties did not need to be performed by the Archdeacon in person. However, the Official was the only person who was not on the Legislative Council but held a lawful seat on the Executive Council. The view that the Archdeacon's Official and the Vicars General were not entitled to seats on the Executive Council as of right is a logical one, given that the patronage of their offices rested with the Archdeacon and Lord Bishop respectively, and not in the Crown, depriving them of a sovereign mandate.

According to Lieutenant Governor Shaw, following the Revestment, a number of the Council together constituted the *Staff of Government* – formerly termed the *Standing Council* – the executive and the Governor's council in judicial matters. He submitted that the judicial *Staff of Government* consisted of the Governor, who presided over the Court, and the Deemsters, the Attorney General and the Clerk of the Rolls, as assessors.¹⁷ However, it is unlikely that the Attorney General formed part of the *Staff of Government* in its judicial capacity as he practiced at the bar of that Court.¹⁸ The *Staff of Government* today is the appellate venue for inferior jurisdictions and exercises jurisdiction comparable to the superior courts of England in the context of prerogative writs.

In 1881 the Legislative Council comprised the Governor, the Bishop, the Attorney General, the Clerk of the Rolls, the two Deemsters, the Water Bailiff and Receiver-General, the Archdeacon, and two Vicars

¹⁴ It is notable that the Deemster's oaths of office have at no point contained any reference to their position as Councillors, unlike those of the Bishop, Attorney General, Clerk of the Rolls, Water Bailiff, Receiver-General, Archdeacon, and Vicars-General.

¹⁵ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p13

¹⁶ Report of the Commissioners appointed to inquire into the Constitution and Working of the Ecclesiastical Courts (Eyre and Spottiswoode, London 1883) Vol. II p333-334

¹⁷ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p12

¹⁸ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p12

General.¹⁹ The Attorney General of the day, James Gell, opined that this composition was 'undoubtedly' the one that existed prior to the Revestment. The offices of the Water Bailiff and Receiver General were, in 1881, held by a single individual²⁰ and this has led to some confusion in other attempts to ascertain the composition of the Legislative Council at that moment in time. Similarly, in 1881 and for many years prior, there had only been one Vicar General.

Gell further opined that the Collector was never properly entitled to a seat on the Council and that this misconception had arisen out of the fact that, prior to the Revestment, the position was frequently held by the Water Bailiff, who, of course, sat on the Council *ex officio*. Similarly, following the Revestment the position was sometimes held by the Receiver General. This view is supported by the authors of the 1792 Report, who treated the title of Collector as applicable to the Water Bailiff.

In 1885 the office of the Water Bailiff, which had been responsible for the collection of revenues and the enforcement of law in relation to fishing and presided in the Court of Admiralty,²¹ was dissolved.²²

In 1918 the positions of First Deemster and Clerk of the Rolls were amalgamated.²³

THE HISTORIC MEMBERS

Office	Historic functions
Governor/Lieutenant Governor	The Sovereign's representative in the Isle of Man. Presided in the Staff of Government, Tynwald, and the Legislative Council.
Lord Bishop	Ordinary and senior cleric of the Dioceses of Sodor and Man. Occasionally presided in the Ecclesiastical Court.
Deemsters	Senior judicial officers.
Attorney General	Acted on behalf of the Lord in any civil and criminal cases; especial duty was to prevent any infringements of the Lord's prerogative rights. Generally attended all courts to record fines and ensure their collection for the Lord. Provided advice on questions of jurisdiction; also represented any incapable of defending themselves at law. Set rents for newly enclosed land etc. at the annual Sheading courts.
Clerk of the Rolls	Responsible for the maintenance of court records.
Water Bailiff	Responsible for the enforcement of fishing laws. Presided in the Court of Admiralty.
Receiver General	Responsible for the collection of the Lord of Man's revenues and disbursing his expenditure.
Comptroller	Responsible for the audit of the Lord of Man's accounts. Acted judicially in relation to offences committed in the household and garrison.
Archdeacon	Assisted the Bishop in administering spiritual law. Presided in certain Ecclesiastical Courts.
Vicars General	Presided in the (dissolved) Ecclesiastical Courts on the behalf of the Bishop.
Archdeacon's Official	Lay assistant to deputise for the Archdeacon.

¹⁹ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p7

²⁰ J Gell, Attorney General Report on the Constitution of the Isle of Man to Henry B Loch, Governor (1881) p7

²¹ Jefferson, *The Lex Scripta of the Isle of Man; Comprehending the Ancient Ordinances and Statute Laws from the Earliest to the Present Date*, (Manks Advertiser Office, Douglas, 1819) 96

²² Joint Committee on the Constitutional Principles Raised by the Electoral Reform Bill 2019 PP 0139/12 182

²³ Ibid

THE ISLE OF MAN CONSTITUTION AMENDMENT ACT 1919

Following the recommendations of the MacDonnell Committee of 1911,²⁴ the Isle of Man Constitution Amendment Act 1919 (the 1919 Act) amended the Isle of Man's unwritten constitution, codifying some of its elements for the first time. The Constitution Amendment Act was granted Royal Assent on the 18th of August 1919 and came into force on the 7th of October 1919. Below is a summary of the Act's main features as enacted.

CONVENING MEETINGS OF THE LEGISLATURE

Section 3 imposed an obligation upon the Governor to convene a meeting of Tynwald upon receipt of a request signed by a majority of either Branch of Tynwald.

Sections 4 and 5, similarly, imposed obligations upon the Governor to convene a meeting of the House of Keys (the Keys) or the Legislative Council (the Council), respectively, on receipt of request signed by a majority of the relevant Branch.

CONSTITUTION OF THE LEGISLATIVE COUNCIL

Section 6 removed the Archdeacon, the Vicar General, and the Receiver General from the Council. However, those offices retained their judicial functions.

Section 7 detailed the how the council would then be composed. The Governor, of course, retained his seat and four seats were to be occupied by *ex-officio* members: the Bishop, the First Deemster and Clerk of the Rolls, the Second Deemster, and the Attorney General.

Under section 8, four Council members (the elected members) were to be elected by a majority of the Keys from within their own number. At the first election under the Act, two of the elected members were to be nominated as the first to vacate their positions on the Council.

Under section 9, two members were to be appointed by the Governor (the appointed members). Similar to as with the elected members, at the first appointment of members to the Council, the Governor was to nominate one to vacate his office first.

Under sections 10 and 11, the appointed member and two elected members nominated to vacate their seats first were to do so at four years from the date of their election. Thereafter, the appointed member and two elected members who had been in office the longest, without re-election or re-appointment, would go out of office and be replaced under the appropriate procedure. Thus, under the 1919 Act, following the end of the first period of four years after the Council's first constitution thereunder, members of the Legislative Council served eight year terms.

REQUIREMENTS AND DISQUALIFICATIONS

Under section 12, to be qualified for election to the Council, one had to be a male of no less than 21 years of age and a resident of the Isle of Man. To be qualified for appointment, under section 13, one had to be a male of no less than 21 years of age, resident of the Isle of Man, and not in receipt of a salary payable by the Isle of Man or Imperial [British] Government.

Sections 15 to 17 set out grounds for disqualification of Council members. If an elected or appointed member became bankrupt or insolvent, he was to vacate his seat and would be debarred from re-election or re-appointment until he was adjudged no longer bankrupt or, in the case of insolvency, had

²⁴ *Report of the Departmental Committee on the Constitution, &c., of the Isle of Man* (HMSO London, 1911) Part II Legislative Council

made his creditors whole. If any elected or appointed member was found "lunatic, or of unsound mind, and incapable of taking care of himself, or managing his affairs", his seat was to be declared vacant. Furthermore, if any elected or appointed member remained outside of the Island, or was absent from meetings of the Council or Tynwald, for a continuous period of six months, without leave from the Governor, his seat was to become vacant.

RIGHTS OF AUDIENCE

Section 27 conferred a power upon the Governor to authorise a member of the Council, when a government bill passed by the Council was before the Keys for consideration, to appear upon said Bill in the Keys with the power of speech (but not to vote on it). The Speaker of the House was to decide when this right was capable of being exercised.

POWERS RELATING TO BOARDS AND COMMITTEES

The 1919 Act also conferred a statutory power upon Tynwald to create rules and regulations obliging committees or boards to submit periodical reports of their proceedings to Tynwald, and provided for the tabling of such reports, along with any recommendations the committee or board might have, in Tynwald. Such rules and regulations were to have all the force as if they were of the board or committee's enacting statute. Furthermore, under the Act, Tynwald at any time could, by resolution, vary the membership of any board or committee.

REFORM OF THE LEGISLATIVE COUNCIL POST-1919 ACT

Following the 1919 Act, the constitution of the Legislative Council was further amended by a number of subsequent Acts of Tynwald:

- The Isle of Man Constitution Act 1961 increased the number of elected members from four to five; and also removed the Council's absolute power to veto a motion in Tynwald and to block the passage of legislation.
- The Isle of Man Constitution Amendment Act 1965 removed the Second Deemster.
- The Isle of Man Constitution Act 1969 replaced the two appointed members with a further two elected members.
- The Isle of Man Constitution Act 1971 removed the Attorney General's vote (he was also no longer to factor into the quorum of either Tynwald or the Council).
- The Isle of Man Constitution (Amendment) Act 1975 replaced the First Deemster and Clerk of the Rolls with an eighth elected member.

In 1980, with the Constitution (Legislative Council) (Amendment) Act, the Governor was displaced as presiding officer of the Council by the President of the Legislative Council. However, the Governor continued to preside over sittings of Tynwald until the Constitution Act of 1990 established the office of President of Tynwald, who is also *ex officio* President of the Legislative Council. Since the 1990 Act the constitution of the Council has remained unchanged.

MEMBERSHIP OF THE LEGISLATIVE COUNCIL

1765	1881	1918	1919	1961
Governor	Governor	Governor	Governor	Governor
Bishop	Bishop	Bishop	Bishop	Bishop
First Deemster	First Deemster	First Deemster and Clerk of the Rolls	First Deemster and Clerk of the Rolls	First Deemster and Clerk of the Rolls
Second Deemster	Second Deemster	Second Deemster	Second Deemster	Second Deemster
Attorney General	Attorney General	Attorney General	Attorney General	Attorney General
C of R	C of R	Archdeacon	Elected	Elected
Water Bailiff	Water Bailiff	Receiver General	Elected	Elected
Receiver General	Receiver General	Archdeacon	Elected	Elected
Archdeacon	Archdeacon	Vicar General	Elected	Elected
<i>Vicar General</i>	Vicar General		Appointed	Elected
<i>Vicar General</i>	Vicar General		Appointed	Appointed
<i>Archdeacon's Official</i>				Appointed
1965	1969	1975	1980	1990
Governor	Governor	Governor	President of the Legislative Council	President of Tynwald
Bishop	Bishop	Bishop	Bishop	Bishop
D1 and C of R	D1 and C of R	Attorney General	Attorney General	Attorney General
Attorney General	Attorney General	Elected	Elected	Elected
Elected	Elected	Elected	Elected	Elected
Elected	Elected	Elected	Elected	Elected
Elected	Elected	Elected	Elected	Elected
Elected	Elected	Elected	Elected	Elected
Elected	Elected	Elected	Elected	Elected
Appointed	Elected	Elected	Elected	Elected
Appointed	Elected	Elected	Elected	Elected

Note: the membership of the italicised positions is contentious.

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