

**European Union and Trade Bill 2018 –
Second Reading approved**

The Deputy Speaker: In light of the support the House has shown for suspension of Standing Orders, I call upon the Chief Minister to move the Second Reading of the Bill.

480 Chief Minister.

Mr Quayle: Thank you, Mr Deputy Speaker.

The United Kingdom's decision to leave the European Union is a once-in-a-generation event. It is an event that has significant implications for the Isle of Man. The full shape of those
485 implications is not yet clear, as the outcome of the negotiations between the UK and the EU is not yet known. But, unless something extremely unlikely and unexpected happens, we do know that from 11 p.m. on 29th March 2019 the UK will no longer be a member of the European Union and at that same time the Island's formal relationship with the European Union will come to an end. This is because our relationship is through the UK's membership of the European
490 Union, and in particular through Protocol 3 to the UK's Treaty of Accession.

As Hon. Members know, because of Protocol 3, and the provisions of our European Communities (Isle of Man) Act 1973 that gave effect to Protocol 3 in the Island, a large number of EU regulations and decisions that are within the scope of Protocol 3 apply directly and automatically as part of the law of the Island. When Protocol 3 is no longer in force, section 2(1)
495 of the 1973 Act no longer works, and if we do nothing all of that EU legislation will cease to be part of the law of the Island. As I have said before, but I feel it is important to reiterate, this is the position whether or not there is a deal between the UK and the EU. Large gaps in the Island's legal framework would be the result, particularly in relation to agriculture and fisheries and customs matters. One of the principal purposes of this Bill is to avoid such a legal cliff-edge and ensure as smooth a transition as possible from immediately before exit day to immediately after
500 exit day. The intention is that regulations will be made under clause 7 of the Bill to list exactly which pieces of Protocol 3 legislation are to be retained as part of Manx law on and after exit day. The aim is to provide as much legal certainty as possible after Brexit, although, as I know Hon. Members understand, this is not particularly easy as the situation continues to be
505 uncertain.

It is largely the Department of Environment, Food and Agriculture that has been working to identify the EU legislation that needs to be retained. This is simply because that Department, along with the Customs and Excise Division of Treasury, has responsibility for most of the areas that are within the scope of Protocol 3 and only EU legislation that is considered to be currently
510 wholly or partly applicable to the Island under Protocol 3 can be retained after exit day with regulations under clause 7. These regulations require the approval of Tynwald. Hopefully, with all the preparatory work that has been taking place, this will not happen, but the possibility remains that something important may be inadvertently missed off the prescribed list under clause 7. With the approval of Tynwald, this possibility can be addressed after Brexit by
515 regulations under clause 17.

In addition to retaining certain directly applicable EU legislation, the existing statutory documents which have been made under sections 2A and 2B under our 1973 Act will be saved when that Act is repealed by this Bill. These statutory documents are existing Manx legislation that has been made and approved by Tynwald in slower time, and it is beneficial for them to
520 continue to be in operation after Brexit. But these saved statutory documents can be amended or revoked with the approval of Tynwald, using the powers in clause 16, at a later date if or when that becomes necessary or desirable.

Both the retained direct EU legislation and other Manx legislation that has a connection to the EU needs to be reviewed to ensure that it still works after the UK has left the European
525 Union and Protocol 3 is no longer in force. Clause 11 of the Bill can make these technical and drafting amendments. This may include giving functions that are currently carried out for the Isle

of Man and the United Kingdom by an EU body to a new or existing body in the Island or in the UK. Regulations under this clause require the approval of Tynwald.

530 Under clause 8 of the Bill, the rights, powers, liabilities, obligations, restrictions, remedies and procedures that relate to the statutory documents saved by clause 6 and the direct EU legislation that is retained by clause 7 are also retained. So, for example, Mr Deputy President – Deputy Speaker even, I am promoting you! – the Court of Justice of the European Union may have decided that plant breeders have certain rights under an EU plant health regulation but those rights are not explicitly set out in the regulation itself. If the relevant EU legislation is
535 retained as part of the law of the Island after exit day, the rights as set out in the European Court’s judgment would also be retained.

Clauses 9 and 10 of the Bill deal respectively with exceptions to the saving and retention of legislation by clauses 6 and 7 and the interpretation of retained EU law.

540 Clause 14 provides that retained direct EU legislation and any associated rights that are saved by clause 8 can be amended in certain clearly defined ways following Brexit, and it also provides that this retained EU law can be repealed when it is no longer needed. Regulations under this clause require the approval of Tynwald.

Where there are existing non-EU international obligations that apply to the Island before exit day, if a breach of these obligations arises from the UK leaving the EU and the loss of Protocol 3
545 clause 12 allows the breach to be remedied or prevented. For example, if EU legislation or rights that are not retained after Brexit contributed to the Island’s compliance with another international obligation, clause 12 could be used to address that situation. This is purely a contingency power that would only be used if the breach could not be addressed in an effective and timely manner in another way. I understand that no such breaches have yet been identified
550 but we cannot guarantee that this will not change either in the run up to Brexit or following Brexit. Any regulations made under this clause would require the approval of Tynwald.

Clause 15 allows certain EU treaty provisions to be implemented in the Island. This clause applies to the EU Treaties as defined in section 1(1) of the 1973 Act immediately before exit day. Regulations under this clause require the approval of Tynwald. This clause may also be applied
555 to other agreements, including future agreements between the UK and the EU, after exit day. This would, though, only be used for non-trade agreements – for example, an agreement on security matters – as there are other powers in the Bill to deal with trade agreements.

And speaking of agreements, the Island will need to implement the UK Withdrawal Agreement, if there is one, to the extent that that Agreement will apply to the Isle of Man. In
560 particular, there is the transitional or implementation period during which, to all intents and purposes, it will be as if Protocol 3 was still in force. Until quite recently, it had appeared that the implementation period would run until 31st December 2020, but it seems that even that is no longer certain. There have been suggestions that the implementation period could be extended as a way of allowing the UK and EU to reach a deal.

565 Clause 13 of the Bill deals with implementing the Withdrawal Agreement. It is subject to a number of restrictions, but it is necessarily broad. Regulations under this clause require the approval of Tynwald.

Clause 16 of the Bill replicates with modifications the existing powers in sections 2A and 2B of 1973 Act. The ability to apply and adapt EU legislation dealing with matters that are perhaps not
570 within the scope of Protocol 3 has been useful to the Island over the years, particularly in relation to international sanctions and intellectual property rights. It might be asked why we should still have this power after our Protocol 3 relationship with the European Union has come to an end. What makes EU legislation any different to Australian legislation, for example? The difference is that, whatever happens, the EU is going to continue to be the Island’s near
575 neighbour and trading partner. Even if there is no deal in place between the UK and the EU on exit day, at some point there will be a new formal relationship between the UK and the EU, and that relationship may well apply to the Island partly or wholly, and as part of any future relationship it is likely that the Island is going to have to follow certain EU standards and

580 practices. It is therefore considered that the powers in clause 16 continue to be appropriate. As
is currently the case by virtue of section 2C of our 1973 Act, regulations under this clause and
certain other clauses in the Bill can make use of ambulatory references to EU legislation and
also, where relevant, to UK legislation. And, of course, regulations under this clause require the
approval of Tynwald.

585 Clause 18 is another contingency power that would allow UK legislation relating to Brexit and
any future UK-EU relationship to be applied to the Island with any necessary adaptations. I
realise that I am repeating myself, Mr Deputy Speaker, but again any regulations that were
made under this provision would require the approval of Tynwald.

590 Clause 19 is a new provision since the consultation on the Bill. It is a power for DEFA to be
able to apply to the Island certain UK legislation relating to agriculture and fisheries and food
that is currently within the scope of Protocol 3, so that legislation is currently directly and
automatically part of the law of the Island. This clause will allow the Department of
Environment, Food and Agriculture to ensure that our legislation keeps sufficiently in line with
that of the UK so that there are no barriers to free trade in agricultural and fisheries products
between the Island and the United Kingdom. Some of what this clause can do could be done by
595 the Council of Ministers under other powers in the Bill, but it is considered to be appropriate for
the Department that has responsibility for these areas to have the powers to act itself. As Hon.
Members know, this was a late addition to the Bill and it was included as an effective alternative
to developing new powers for DEFA in its own Acts. However, the intention is that in due course,
when time and resources allow, the powers will be incorporated into one or more DEFA-specific
600 Acts. Once more, Regulations under this clause require the approval of Tynwald.

I would now like to briefly touch on the provisions in the Bill specifically relating to trade. The
UK's membership of the WTO has included the Isle of Man since 1997. As Hon. Members may be
aware, when a country joins the WTO it has to comply with not just the overarching Marrakesh
Agreement itself but also a range of multilateral agreements on trade which are attached as
605 annexes to that Agreement. At the time that the UK's membership of the WTO was extended to
the Isle of Man, the UK did not require a line by line analysis from the Island of how we comply
with all of these agreements, but now that the UK is leaving the EU, and so it has to establish
itself as an independent member of the WTO, the UK's compliance with WTO rules, and also the
Island's compliance, is under greater scrutiny. If any deficiencies in the Island's compliance come
610 to light, clause 21 will allow them to be addressed in a timely manner.

Clause 22 similarly provides for the implementation of other free trade agreements that may
be entered into by the Island or extended to the Island in the future. Regulations under both of
these provisions require the approval of Tynwald.

615 Clause 23 allows the Treasury to obtain information in relation to the export of goods and
services from the Island in the course of a trade, business or profession.

Clause 24 provides for regulations to set out the detail of how Treasury may disclose
information for the purpose of facilitating its functions relating to trade, or facilitating the
exercise by an international organisation or other body of its public functions relating to trade.
This may involve disclosure of information to, for example, the WTO or the UK's new trade body,
620 the Trade Remedies Authority.

I do not believe that we are talking about personal information within the meaning of our
data protection legislation here. It is likely to be information such as, for example, the number of
exporters or importers of particular items and the volume and value of exports and imports.
However, to put this beyond doubt, the Council of Ministers will be bringing forward a
625 Government amendment to confirm that regulations under clause 24 cannot authorise any
disclosure that would contravene the Island's data protection legislation.

As with other powers in the Bill, regulations under clauses 23 and 24 require the approval of
Tynwald.

630 The final three clauses of the Bill then give effect to a number of schedules and deal with consequential and transitional provisions. I will, of course, explain these in detail at the clauses stage if the Bill passes its Second Reading today.

In concluding, I would just like to mention that following further discussions with the legislative drafters in the Attorney General's Chambers we are looking to bring forward a number of amendments at the clauses stage.

635 I have just mentioned the potential amendment to clause 24. Having taken on board views expressed to me by some Members about the absence of time limits on some of the powers in the Bill, subject to approval, the Council of Ministers will be bringing forward several amendments to address these concerns.

640 The first of these amendments will require a review, no later than five years after exit day, of all the direct EU legislation that is retained under clause 7. This review of clause 7 will ensure that the retained EU legislation is still relevant and appropriate for the Island. Initially, we are probably looking at several hundred pieces of EU legislation being retained, but by the time the retained direct EU legislation under clause 7 is reviewed it is likely that some will no longer be part of the law of the Island. This review will, though, be a substantial task that will need to be built into Departments' forward planning.

We are also looking at an amendment to provide for a review of the deficiency amendments to Manx legislation under clause 11.

In addition, we are looking at bringing forward amendments which will allow for time limits on the use of the powers in clauses 12 and 13.

650 The power to make provision about judicial notice and admissibility in paragraph 2 of Schedule 3 will have a requirement for consultation with Deemsters added to it.

There may also be one or two more technical drafting tweaks to the Bill.

With that, Mr Deputy Speaker, I would like to thank Hon. Members and move that the European Union and Trade Bill be read for a second time.

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The Deputy Speaker: I call on the Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you, Mr Deputy Speaker.

I beg to second and beg leave to reserve my remarks.

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The Deputy Speaker: Hon. Member, Mr Callister.

Mr Callister: Thank you, Mr Deputy Speaker.

665 I thank the Chief Minister for his summing up and for giving the reassurance of the sunset provisions within this Bill, which I think is one of the concerns a number of Members have.

670 My only concern with regard to the Bill – and I was more than happy to support the First and Second Readings this morning – relates to legislation. My own personal view is that legislation that is only considered of urgency or of national importance should be laid before Tynwald. Any legislation that is not considered to be of urgency or of national importance should still go through the due process through the correct Chambers.

675 I was wondering if the Chief Minister could give that reassurance today, because I do not believe that every part of the changes that are going to happen to Brexit needs to have that urgency, it does not need to go through Tynwald, and therefore I hope that the Chief Minister can give that reassurance that the only things laid before Tynwald Court during this very difficult period as the UK exits, Brexit ... is the urgency, and that has to be followed up by a statement from the particular Minister to show why it is of such urgency and why it is of such national importance.

If the Chief Minister can give that reassurance, then I am happy to support this going forward. Thank you.

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The Deputy Speaker: I call on the Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Deputy Speaker.

There are only really two points I would like to make on this Bill. The first one is in respect of the treatment of case law under the Bill itself. The Chief Minister has already briefly commented on Schedule 3, the rules of evidence. I would like a bit of an explanation as to why the requirement is built in there that the Council of Ministers can require the judiciary to take note of relevant matters. My understanding of the way the Bill is structured is if it is case law before exit day, it is still case law; if something happens in the EU courts after exit day, that is not case law, or not necessarily, with the exception of some things that the Council of Ministers will have the power to direct the Deemsters towards. My worry there is, of course, inappropriate use of that power, saying, 'Well, actually, you must take regard of this particular employment case in the EU because that is good for Government and bad for employers,' for example. I need some clarity on exactly why that clause is going to be included. I am more than happy to wait until the clauses stage for an explanation, but I think we do need that in detail.

There is something else inside the schedules which worried me about the case law, or the application of case law. It says specifically that there is 'no right in Manx law on or after exit day to challenge any retained EU law on the basis that' and then lists a few reasons, but it then says this section does not apply if the Council of Ministers prescribes that it does not apply. So, again, I would like an explanation as to why the Council of Ministers feels it needs those opt-outs, saying 'Case law is case law unless we decide it is not,' basically. I think we need clarity on that.

When it comes to the Bill itself, the powers here are very broad, and I think understandably so because Brexit itself is almost a complete unknown. We do not know which way it is going to go, we do not know where we are going to end up in two years, we do not know where we are going to end up tomorrow at this rate. So I just thought I would briefly touch on one or two of the clauses that concern me the most here.

Section 14 talks about 'Amendment of retained direct EU legislation' and it basically allows the Council of Ministers to change anything that has been retained. Section 7 says everything that is in existence before exit day stays after exit day, as the Chief Minister has just explained, but it gives the Council of Ministers power to amend any of that by way of secondary legislation. That is very broad, considering the number of things that EU law covers on the Isle of Man that the Chief Minister has already alluded to. What worries me the most, actually, about this clause is the ability to create criminal offences underneath it. The draft in front of us specifically states that regulations under this section – and this is repeated a few times in the Bill – cannot create a relevant criminal offence. A 'relevant criminal offence' is one that is defined as something that can have a custodial sentence attached of more than two years, which means under this power the Council of Ministers can lay before Tynwald a regulation or an order that can take away somebody's rights to freedom for up to two years. To my mind, if you are going to lock somebody up, that really is a primary piece of legislation. That should not be done through our secondary legislation process, where you table something with two weeks' notice. That seems massively inappropriate, so again there needs to be a brief conversation, I think, in this House around that provision.

Section 16, which the Chief Minister has referred to, is very similar to the powers in the 1973 Act. It is a bit broader than those powers. The Chief Minister mentioned it was modified in a few ways. One of those specific modifications would appear to be that under this section regulations can be made by the Council of Ministers to allow a Department or a Statutory Board to make any regulations they want. So, actually, we are not just giving the Council of Ministers power to do whatever they like under this section of this Bill; we are also giving the Departments themselves the power to do essentially whatever they like under this section in this Bill. So, again, there needs to be a real conversation around whether these powers are appropriate. They may have been appropriate back in 1973, but I think as has been said before, the past is a

foreign country and they do things differently there. It may have been appropriate 45 years ago; it may not be appropriate today.

735 The same powers again exist in section 18. I think the point I am trying to make is some of these powers are very broad. I think if we pass this Bill today you will not need any other legislation. This is it, this is the Isle of Man law Bill that you will need forever, because the Council of Ministers can just copy and paste EU-UK law at a whim with only Tynwald approval required – and that is something I want to talk about briefly as well.

740 The Chief Minister made a number of references to Tynwald approval being the safeguard to all this, so I had the wonderful staff in our research team do some work on Tynwald approval over the last seven years. Over the last two years, 531 individual Statutory Documents have come before Tynwald. Of those 531, Hon. Members will be pleased to know that Tynwald has rejected two of them, GDPR and LED, both of which came back the following month in exactly the same form, no changes. So, of those 531 the only ones that failed to pass Tynwald were the
745 13 items that were withdrawn by Government. Tynwald in the last two years has not rejected a single piece of Government policy or a single piece of Government legislation.

Going back to the last five years, because obviously we are a much more – I do not want to use the word ‘compliant’ – consensus Tynwald than the last administration was, in the last administration there were 1,444 individual Statutory Documents put before Tynwald. During
750 those five years none were rejected by Tynwald. Not a single Statutory Document laid before Tynwald was rejected by Tynwald. Government could operate under the sure knowledge that if they passed a regulation under a Bill it would get through Tynwald. There were only 30 items withdrawn, so that is 30 out of 1,400 items were withdrawn, and all of those 30 came back to Tynwald within six months slightly amended.

755 The point I am trying to make here is that while Tynwald is a backstop, it has to be seen as the last backstop, the ultimate backstop, because Tynwald clearly does not act unless something is so fatally and fundamentally wrong that they feel they need to act. That means that we need to build into this Bill checks and balances. I am very glad to hear the Chief Minister talking about checks and balances being built into this Bill in the form of review dates or sunset clauses. I think that is definitely the right way to go. I look forward to seeing the exact wording of some of those amendments. My proposal originally was that every single regulation passed under this Bill, under most of the sections – some of them I think we are okay with – should include a review date or sunset clause. I think the Bill should set a maximum timescale and let the Departments determine themselves within that timescale what works for them, what is appropriate for them
760 in line with their resources and workloads.

I think the end result of this Bill ... It needs to be seen as a mechanism. It needs to be looked at as a mechanism to get us from where we are now to where we are going to be at the end of Brexit. Hopefully, within the next five to 10 years this Bill itself will fall away and we will have separate Bills for fisheries, agriculture, veterinary medicine, international trade – whatever it is the Isle of Man needs – and that legislation will be appropriate for the Isle of Man and not simply copied and pasted from the EU.
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Members, I just really want you to think about this Bill. I really want to take time to go through it, to think about checks and balances, to think about just how much power is being handed over to the executive in this Bill. I think whilst I accept that some of that is necessary, we
775 have to make sure that we retain control of our legislative process. We cannot hand all of that over to Government. I cannot impress upon this House just how important it is that we build checks and balances into this Bill.

The Deputy Speaker: Thank you very much.
780 Mrs Beecroft, Member for Douglas South.

Mrs Beecroft: Thank you, Mr Deputy Speaker.

785 I am going to be brief on this. It is extremely concerning the amount of power that the Council of Ministers will have if this Bill goes through, even if the five-year sunset clauses which have been talked about as part of the checks and balances are brought through with the amendments, because if you look at the explanatory memorandum, number 81 says, to do with clause 18:

The Council of Ministers can amend the list above by adding or deleting any UK Parliamentary enactment or any description of UK legislation but only with the approval of Tynwald.

790 I think that, even with a five-year sunset clause to that, that is a very dangerous thing to do. They can do whatever they like for the next five years until the sunset clause kicks in, if my interpretation of what we have been given in the explanatory memorandum is correct. I just feel so strongly that we are being rushed into this without giving it proper consideration and without correct timeframes being kept to, regardless of what the Chief Minister says.

795 I honestly would urge Members to think very carefully about the powers that you are giving away to the executive. As Mr Hooper said, they have to come back to Tynwald but that just is not good enough. That is not enough of a check and balance as going through this House and the normal procedure would be.

800 I said before I think everybody wants to work in the national interest of the Isle of Man and I am sure that if something was so urgent we would be more than happy to have an urgent sitting of Keys, and I am sure Legislative Council would be the same, so that it could go through due process properly.

Thank you.

The Deputy Speaker: Mr Baker, Member for Ayre and Michael.

805 **Mr Baker:** Thank you very much, Mr Deputy Speaker.

810 Some interesting comments made in the debate so far. For me, we need to take one step back and look at the bigger picture here. What are we trying to do? We are trying to navigate our way through very uncharted waters with very high risks attached to getting it wrong and some real lack of clarity around the journey and where we are. In summary, we do not know where we are going, we do not know how we are going to get there, and actually we do not even know where we are starting from because there is not clarity around Protocol 3 and exactly how that applies to our existing legislative position. It is not a great starting point. In that situation we need a pragmatic approach. This is a crucial issue which we have to manage our way through. We cannot duck the question, we cannot let somebody else answer it; we have to answer it for ourselves.

815 Clearly there are concerns around the amount of power, as other Hon. Members have said, that is being perceived as going into the Council of Ministers' hands, and I understand that concern but how else do we tackle this challenge? We need to be flexible, we need to be able to adapt, if necessary, from a situation which could change rapidly, not just between now and Brexit day but after Brexit day as things settle. We need the ability to react, we need to be agile. We ought to be able to do that as a small jurisdiction. We ought to be able to get to the answers that we need to get to and we have got to give ourselves the best chance of success. In my view, the process being promoted here is exactly doing that. Yes, there are some risks and there are some concerns, and I agree with my hon. friend from Ramsey, Mr Hooper, about the need for some sort of sunset provisions to make sure that some of these things do not get embedded for the long term as a result of the lack of process through the short-term challenges, but it seems as though we have got that commitment and that should provide that protection.

820 There are, of course, other protections that the Hon. Tynwald Court has if the Chief Minister or CoMin were to seriously overstep the mark, and we should not ignore those things if those concerns were manifested, but taking the draft legislation at face value there is a lot of Tynwald

approval baked into this Bill; that should give us comfort. Yes, Mr Hooper has outlined the fact that, actually, in the past, has it been applied, but he also undermines his own argument by saying the past is a foreign country, so past performance is not necessarily a guide to what will happen in the future. So there is provision within the Bill for Tynwald. It is laced right through
835 the document, whether that is through secondary legislation or whether it is through regulations being laid before – there is a mix – and we can debate at the clauses stage where that balance sits. If we do not feel that that is being drafted in the appropriate manner, then we can change it.

The key question for me is, for those who do not like what is being proposed here, what is
840 the alternative? We do not have a choice of ducking the question, we have to answer it, so if somebody can come forward with an alternative package of measures that is going to work better than this, then we should be open to debate those, but I think what we have got in front of us is pragmatic and realistic, it speaks to the challenges that we are facing and personally I am going to support it. I am particularly reassured by the comments from the Chief Minister about
845 the sunset clauses.

Thank you, Mr Deputy Speaker.

The Deputy Speaker: Member for Ramsey, Dr Allinson.

850 **Dr Allinson:** Thank you, Mr Deputy Speaker.

So, at long last Brexit arrives at this House – and as we have seen in the UK, it causes far more questions than it answers.

Later in the sitting, Mrs Caine will ask for leave to reform the divorce laws of our country, and what we are dealing with here is possibly one of the most expensive divorces you have ever seen
855 in world politics.

When we went into what was then the EEC it was on the coat-tails of the United Kingdom under Protocol 3. What we are now coming out of with the EU is at the forefront of the Chequers plan because of the involvement of this Government with the Brexit negotiations in making sure that the Isle of Man and the Channel Islands are recognised as a real part of this.

860 If we are to stay ahead of the runaway train that is the Brexit negotiations, we must be flexible, we must be able to move fast and change direction to maximise the opportunities for our economy and minimise the damage to our abilities to change and also the inconvenience inflicted on our people if they want to travel.

I do not see this as a blank cheque, but it is certainly an open chequebook and there is a great
865 degree of trust here that we as political Members are giving to the executive. I hope that we can enforce the checks and balances enshrined in legislation before you and refine these further to make sure that it is protected, because I think there is the idea that, as in the UK, this could be a power grab by the executive. I do not think there is any cunning masterplan. The main plan we have in this country is the Programme for Government, which clearly commits us to influence
870 and engage with the UK, the EU and others to ensure the best possible outcome for all the Isle of Man from Brexit, and I hope that by having the right legislation we can achieve that.

I appreciate there are profound concerns about the changes in this, but I see this as far more change coming from Departments up, especially from DEFA, rather than commands coming
875 down from CoMin, and if we can make sure that the Brexit negotiations are done on a departmental basis and address the real problems that various parts of our economy will come into contact with through the Brexit negotiations, then I think we can lead forward.

We have already heard about clause 16 and clause 18 and the profound way they open up changes to legislation. Also in the document we have got Schedule 5, which allows Statutory Documents that are thought to be very urgent to be brought in by the affirmative Tynwald
880 procedure. But throughout this there has to be the responsibility that we read the documents, we read the laws and we argue the case. We have to step up to the mark as elected representatives to challenge legislation and to get it right.

885 I do not think anyone has set out in Manx politics wanting this Bill. Brexit is an unwelcome distraction at best, and at worst a really quite disruptive car crash of failed decision-making by politicians on the adjacent isle. What this Bill gives us is the agility and ability to make the right decisions quickly and enable us to limit the damage to our economy and seize the opportunities that will present themselves over the coming years.

890 So, whilst I completely recognise some of these profound changes, I do thank the Chief Minister for taking on board some of the responses from the consultation period that we had and also thank him for his announcement today about looking at sunset provisions through the clauses stage, perhaps not for all the technical documents that have to come before us but certainly some of the more profound changes, so that we can come back to them with open eyes when we have got through Brexit to make sure they are still the best laws for the Isle of Man.

895 Thank you, Mr Deputy Speaker.

The Deputy Speaker: I call on the Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you very much, Mr Deputy Speaker.

900 Very briefly, building on the comments which the Hon. Member for Ayre and Michael mentioned, that the past is a foreign country, there have been some assertions made about the process by which we deal with primary legislation and there have been some assertions made about the process by which we deal with secondary legislation. I put it to this Hon. House that that is for another day.

905 I would expect that the new Members in this House and the new Members in the other place upstairs will be reviewing the processes in the Standing Orders Committee and places like that about how we deal with primary legislation and how we deal with secondary legislation. The Hon. Member for Ramsey mentioned research by the excellent colleagues in the research and information service about secondary legislation. I brought to this place, and upstairs as well, research about some inadequacies, as I perceive them, in the way we deal with primary legislation in this House and upstairs. What I say quite powerfully is Brexit and the issues that we have at the moment and the challenge that we have at the moment is not the place to argue theoretically about the processes of primary and secondary legislation. That is what I want to say as my most important point: that of course it is absolutely fundamental to get our processes right, but we do not do that at a Second Reading or at a clauses stage on the most important piece of legislation for some time.

915 Hon. Members, I just would like to remind you that in 1973 when the European Communities (Isle of Man) Bill became an Act, all of that happened between 19th June and 7th August and the Act commenced on 1st September, so we should not look at ideals in all of this, we should not look at philosophy and think we need to be pragmatic, because this is the place, if anywhere else is the place, where we need to be pragmatic about something. Thank you very much, Mr Deputy Speaker.

The Deputy Speaker: The Member for Middle, Mr Shimmins.

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Mr Shimmins: Thank you, Mr Deputy Speaker.

930 We are in danger of moving a wee bit off piste from the subject of Brexit, but I was very interested in the comments that the Minister for Policy and Reform mentioned when he said do not use this as a test case to debate the efficacy of our processes on primary and secondary legislation. I kind of get that. This is pretty important. This is not what you would choose to use to make those points. The only point I would make in reply to the Minister for Policy and Reform – and perhaps the Chief Minister might want to consider this – is that the comfort that the Minister for Policy and Reform has given is all about the Standing Orders Committee, so would the Chief Minister then take the view that it would be less appropriate for the Standing

935 Orders Committee to have a majority of Council of Ministers members? If you follow that argument to its logical conclusion, you would say that potentially that Standing Orders Committee is not able to take the appropriate amending action looking at the appropriateness of the primary and secondary legislation if it is beholden to the will of the Council of Ministers.

940 I would just welcome a view on that. I appreciate it is not a particularly Brexit comment, but I do absolutely concur that the Brexit Bill is probably not the Bill to look at the efficacy of these matters.

The Deputy Speaker: Thank you.

The Member for Douglas North, Mr Peake.

945

Mr Peake: Thank you, Mr Deputy Speaker.

950 I would just like to say that the Isle of Man has an agreement with the UK on customs and excise, the FERSA agreement. They were our biggest trading partner before Brexit and they will be our biggest trading partner after Brexit and it will be a completely frictionless agreement with them.

Thank you very much.

The Deputy Speaker: It is a relief to hear that, thank you.

955 I think that perhaps concludes the comments from Hon. Members. Can I invite the Chief Minister to reply, please.

Mr Quayle: Thank you, Mr Deputy Speaker, and I will do my very best to reply, where I can, to all Members' comments.

960 If I can first comment regarding the Hon. Member for Onchan, Mr Callister's comments, he wanted me to assure him that any legislation of matters of urgency would go to Tynwald and the rest would come back for primary legislation. I think he is maybe missing the point on this one. It is standard under most Acts for Tynwald to make secondary legislation which goes before Tynwald for approval etc., but if everything else had to come back to the House of Keys – we are talking several hundred pieces of legislation, Hon. Members – the House of Keys would be totally gridlocked because we would have several hundred Bills that would need primary legislation to be taken through this House in the years going forward. We average 15 or 16 Bills a year; we would have to average a few hundred a year, and that is why we are making this provision. It would not be practical. I understand the Member's concern but I hope he can see that if we followed what he is saying to its full logic, we would be having to do hundreds of primary legislation pieces and therefore this proposal is secondary and I think it is important to point out what would happen if we followed what he would like – though I hope he can see I am trying to be as fair and reasonable as possible on this.

970 I think it also might be helpful to acknowledge the comments from all Members, which I will take away and consider. Also, I will reiterate that amendments are coming to make some clauses time bound, which I am thankful for some Members noticing. I think the key element here is, finally, Tynwald will have powers to approve regulations and also Departments will have input before matters are sent to Tynwald. That shows power is not entirely with the Council.

980 Some of the comments I have had – and if I pick up on Mrs Beecroft, who is not happy with the way we are doing it ... Well, if Tynwald is not the place to discuss and debate proposals on Brexit, the amendments under secondary legislation, what is? Tynwald is Tynwald: it is the highest Court in the land. We have agreed and I read out each time, after each clause, 'This will be subject to the approval of Tynwald.' Is the Hon. Member trying to make out that Tynwald does not know what it is doing? It is not a senior enough Court to decide?

985 Obviously I get that Mr Hooper very skilfully pointed out that of 531 Statutory Documents Tynwald had only rejected a certain number, but the point is that Tynwald has the right, Tynwald has that power to reject. If it is not happy, Tynwald has that power. But these amendments will

990 be coming from, on the whole, DEFA. It will have the backbenchers on DEFA working. It will be from the bottom up coming to Tynwald. These are key points. It is not Council of Ministers making these changes and I think that is a really key element to put over. The ability of the Council of Ministers to amend lists of UK legislation in clause 18(3), for example, is subject to further approval by Tynwald. It is additional futureproofing, as we cannot be sure what will happen in the coming months and years. The intention is simply that it could be used to change the scope of the clause so that it could deal with similar areas that are perhaps not covered by clause 18(3), or where there might be a legal question over whether they were covered or not.

995 I cannot envisage that Tynwald would support any attempted use of the power in clause 18 to permit any entirely unrelated UK legislation to be applied to the Island, or that of the Council of Ministers. The Hon. Member for Ramsey is well known for reading the legislation coming through and I am sure that if we tried anything, even accidentally, he would point it out and we would have a good debate on that. I think it is fair to say I am more than happy to give any explanations that Mr Hooper asked for and I will share those with all Tynwald Members.

1000 Moving on, Mrs Beecroft felt it was rushed, but we had already had that debate and that was beaten. She meant that some of the powers coming out of Tynwald to Council of Ministers are too powerful, and I think I have already addressed that – a number of times, actually.

1005 I thank Mr Baker, Hon. Member for Ayre and Michael. He says we need to be flexible and need to be agile, and he is right. He said, ‘What is the alternative?’ Well, I have not heard any alternatives, but if anyone came up with a genuine alternative or an amendment that we think could work, well, of course we have open ears. This is an incredibly important piece of legislation and I look forward to valuable input from all Members of not just the House of Keys but all Tynwald Members.

1010 Dr Allinson, the Hon. Member for Ramsey – I really like it and I think he nailed it: the most expensive divorce in world politics. It is, and I think it is not a quick divorce, is it? This divorce is going to rumble on for years and years with the custody over various elements dragging on through the courts, no doubt.

Mr Thomas I thank for his helpful comments.

1015 The Hon. Member for Middle, Mr Shimmins, had a question on Standing Orders and I am sure he and the Hon. Member Mr Thomas will have a lovely debate amongst themselves on that one.

1020 Moving on to the Hon. Member Mr Peake, I thank him for his clarity, and obviously as a Treasury Member he will have involvement in bringing amendments through to Tynwald. So it is not from the Council of Ministers down; it is from you, the backbenchers, coming up with the amendments through your Departments that will then be taken eventually to Tynwald for Tynwald’s final approval. That is the key element: Tynwald will decide. And if Tynwald is not good enough, I honestly do not know where I can go.

Thank you, Mr Deputy President – Mr Deputy Speaker. I beg to move.

1025 **The Deputy Speaker:** Thank you for the repeated promotion, Chief Minister!

Hon. Members, the motion before us is that the European Union and Trade Bill 2018 be read for a second time. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Miss Bettison
Mrs Caine
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen

AGAINST

Mrs Beecroft

Ms Edge
Mr Harmer
Mr Hooper
Mr Moorhouse
Mr Peake
Mr Quayle
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

The Deputy Speaker: 19 for and 1 against.