1. European Union and Trade Bill 2018 –
Second Reading approved

The Attorney General to move:

That the European Union and Trade Bill 2018 be read a second time.

The President: Item 1 on our Order Paper, we will resume our debate with the Second Reading of the European Union and Trade Bill, and I call on the learned Attorney to move.

The Attorney General: Thank you, Mr President.

Following my rather lengthy, but hopefully helpful, First Reading speech last week, I will be extremely brief in moving the Bill's Second Reading today, as I would hope that Hon. Members will be content to consider the Bill's clauses in detail now.

However, in moving the Second Reading I would just like to emphasise that regardless of the outcome of the ongoing political debate in the United Kingdom about the Withdrawal Agreement and Political Declaration, this Bill and the secondary legislation made under it will be submitted to Tynwald for approval and will need to be in place before 29th March 2019. Unless something entirely unexpected happens the UK will leave the European Union at 11 p.m. on that date, and Protocol 3 will cease to have effect at the same time.

Mr President, before formally moving the Second Reading I would just like to clarify something I said in responding to a question from the Hon. Member, Mr Henderson, who had sought clarification about whether the powers available to the Department of Environment, Food and Agriculture, under clause 20 of the Bill, allowed the application of UK legislation or EU legislation to the Island. I confirmed that DEFA could apply relevant UK legislation, and should have further clarified the power applies to both UK and EU legislation, and I apologise for not being clearer about this. So the Department will be able to choose whether to apply and adapt either UK legislation or EU legislation for the Island's needs. But I should emphasise that in either case this is the application of legislation that falls within the Department's remit in areas which are largely within scope of Protocol 3 at present and, of course, regulations made under this clause 20 require Tynwald approval.

Mr President, I move that this Bill be now read a second time.

The President: Mrs Lord-Brennan … Mrs Poole-Wilson, I do beg your pardon.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: My apologies, there are too many double barrelled names! *(Laughter)*

Does any Hon. Member wish to speak at this stage? In that case, the motion is that the European Union and Trade Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

European Union and Trade Bill 2018 –
Clauses considered

The President: We turn to the clauses, Mr Attorney.

The Attorney General: Thank you, Mr President.

With your agreement I would like to move clauses 1, 2 and 3 and Schedule 1 together. I am happy to have them voted upon separately if Hon. Members wish.

These clauses and the associated Schedule are introductory. Clause 1 gives the short title that the Bill will have if it is passed.

Clause 2 deals with the Bill's commencement. The majority of the Bill's provisions come into operation on the day that the Act is passed. The Bill's remaining provisions can be brought into operation by the Council of Ministers in the usual way by Appointed Day Orders. Such Orders can include consequential, incidental, supplemental, transitional, transitory or saving provisions in connection with the coming into operation of any provision of the Act.

Clause 3 gives effect to Schedule 1 to the Bill, which provides for the general interpretation of the Bill's provisions.

Mr President, I beg to move that clauses 1, 2 and 3 and Schedule 1 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: I put the motion that clauses 1 to 3 and Schedule 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Attorney.

The Attorney General: Thank you, Mr President.

Clause 4 defines the meaning of 'exit day' for the purposes of the Bill.

As I have mentioned, unless something unexpected happens, exit day is 11 p.m., UK time on 29th March 2019. This is the time and date when the EU Treaties will cease to apply to the United Kingdom, and when the Island's Protocol 3 relationship with the EU will come to an end, in accordance with the procedure set out in Article 50 of the Treaty on European Union.

The UK Prime Minister has stated that the Article 50 period will not be extended, even if Parliament rejects the Withdrawal Agreement and Political Declaration on the future relationship next week. She has stated she believes that extending Article 50 would require the UK Government to reopen negotiations with the EU on the Brexit deal. Nevertheless, with the unanimous agreement of the UK and the 27 other EU Member States, it is possible under Article 50 for the period between the UK submitting the formal notification of its intention to leave the EU and the EU Treaties ceasing to apply to the UK to be extended. If that were to happen exit day would be a later date than that set out in the UK's European Union Withdrawal Act and in this Bill.

The UK Act therefore allows for the definition of 'exit day' to be amended to take account of such an unlikely change in circumstances. Mr President, it is not possible for the Island's exit day to be different to that for the UK. So this clause includes a power for the Council of Ministers to make regulations to amend the definition of 'exit day' for the Bill, if it is changed in the UK Act.

As an aside, Mr President, Hon. Members may be aware that a ruling is awaited from the European Court, as the final arbiter on the interpretation of the EU Treaties, on whether it is possible for the UK's Article 50 notification to be unilaterally withdrawn without needing the approval of the other EU Member States. But even if the European Court decides that this is possible, there is no indication at this time that the UK Government has any intention of following such a course of action.

Mr President, I beg to move that clause 4 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the motion that clause 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

The Attorney General: Thank you, Mr President.

Clause 5 provides that the European Communities (Isle of Man) Act 1973 is repealed on exit day.

Mr President, I explained at the First Reading of the Bill last week why the 1973 Act does not work after Brexit, whether the deal that has been agreed by the UK and the EU is approved by the UK Parliament or not. As I mentioned, the main purpose of the 1973 Act is to give effect in Manx law to the rights and obligations that arise from Protocol 3; and under the Act, EU Regulations and Decisions that fall within the scope of Protocol 3 automatically apply as part of the law of the Island.

When Protocol 3 is no longer in force, the rights, obligations and law that arise from Protocol 3 will all fall away. But there are powers later in the Bill to give effect to a Withdrawal Agreement and the implementation period, if there is one. During any such implementation period, from a practical, but not a legal, point of view, it will be as if Protocol 3 were still in force.

I beg to move that clause 5 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the motion that clause 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

The Attorney General: Thank you, Mr President.

Clause 6 saves those statutory documents made under sections 2A and 2B of the 1973 Act that are in operation immediately before exit day when the 1973 Act is repealed.

As Hon. Members may know, normally when an Act of Tynwald is repealed the orders, regulations and other statutory documents made under that Act automatically cease to have effect. However, as I mentioned during the First Reading, to ensure that the transition from immediately before exit day to immediately after exit day is as smooth as possible, we do not want that to happen in this case. Without this provision, all the orders and regulations made under the 1973 Act would cease to have effect, leaving a considerable hole in the Isle of Man's statute book. An example of why we do not want the orders and regulations made under the 1973 Act to simply fall away when that Act is repealed relates to the Island's implementation of international sanctions measures. As Hon. Members know, the most frequent use of the powers in the 1973 Act is to apply and implement EU Regulations which impose sanctions measures; and many of these EU Regulations give effect to United Nations' sanctions measures that the Isle of Man is under an international obligation to comply with and implement. Although the Island has certain powers in respect of financial restriction measures, at present the Island does not have the ability to fully implement these UN measures other than by using the powers in the 1973 Act.

The saved statutory documents can be amended by clause 12 to deal with any deficiencies arising from Brexit. They will also be treated as if they had been made under clause 17 – which recreates with some modifications the existing powers in sections 2A and 2B of the 1973 Act. This means that they can be amended in the same way as if they had originally been made under that clause; and of course they can be revoked when they are no longer needed. As well as compliance with international sanctions, amongst other things, European Union legislation on intellectual property rights has been applied to the Island using the powers under section 2A and section 2B of the 1973 Act to keep us in line with the UK and EU in this area.

In addition, Mr President, some of the regulations made under section 2B of the 1973 Act implement EU legislation that currently directly applies to the Island under Protocol 3 – and DEFA wants to retain that EU legislation as part of the law of the Island after Brexit using the powers in the next clause of the Bill. This clause is subject to clause 9 and associated Schedule 2, which deal with certain exceptions to the saving and retention of EU legislation.

Mr President, all of the statutory documents that are saved by this clause are pieces of Manx legislation and have already been submitted to Tynwald in slower time. However, I do not doubt that some of them, and perhaps most of them, will be replaced by other legislation over time after Brexit.

Mr President, I beg to move that clause 6 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the motion that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

The Attorney General: Thank you, Mr President.

Clause 7 deals with the retention of certain EU legislation that is believed to be directly applicable, or largely applicable, to the Isle of Man under Protocol 3.

As a result, by virtue of section 2(1) of our 1973 Act, that legislation is currently part of the law of the Island. Although this clause would allow all Protocol 3 EU legislation to be retained as part of the law of the Island if that was considered to be appropriate or necessary, the intention is that instead we will have a list of specific EU Regulations and Decisions that are to be retained. This is with a view to having legal clarity going forward. Regulations made by the Council of Ministers under this clause require Tynwald approval; and such regulations cannot be made after exit day.

Mr President, Protocol 3 has been beneficial to the Island over the years, and broadly what it covers is known, but its exact scope has never been identified; so it has always been open to interpretation as to whether a particular piece of EU legislation falls within Protocol 3, wholly or in part, or not. That situation has been unavoidable. Only the Court of Justice of the European Union can give a definitive ruling on such questions, and there is very little EU case law in respect of issues relating to Protocol 3.

Regulation (EEC) Number 706 of 1973 confirmed certain broad areas of agricultural and food legislation where EU law applies to the Island in the same way as it applies to the UK for the purposes of trade in animals, fish, agricultural products and food between the Island and the EU.

But the list in that old EU Regulation is not the full story, of course. We know that EU customs legislation applies to the Island under Protocol 3 and that there is free trade in *all* goods, and not just the agricultural, fisheries and food items that I have just mentioned. So, for example, certain EU rules on matters such as product standards for goods must also apply to the Island, at least to a degree, as part of that free movement of goods. And some EU legislation may be only partly applicable under Protocol 3; or applicable to the Island only in certain circumstances. Therefore clause 7, and the way the clause will be used, is designed to give greater legal certainty after Brexit than is currently the case.

For the avoidance of doubt, only EU Regulations and Decisions that are considered to be substantially applicable to the Island under Protocol 3 and which are operative immediately before exit day can be retained as Manx law following exit day using this clause. Any EU Regulation or decision that currently applies to the Island under Protocol 3 that is not prescribed under this clause will cease to be part of Manx law when the UK leaves the EU. And, because of the difficulty with being certain about the exact extent to which an EU Regulation or Decision

falls within Protocol 3, this clause confirms that any such Regulation or decision that is prescribed applies to the Island in its entirety. This provides the legal certainty that I am sure Hon. Members and the public would expect, and it ensures that powers in the Bill to modify a retained direct EU instrument can operate on the whole of the instrument.

The retained direct EU legislation can also be revoked when it is no longer required. In any question as to whether it was reasonable to include a particular EU Regulation or Decision in the prescribed list of direct EU legislation to be retained under this clause, a certificate can be issued by or under the authority of the Attorney General stating whether or not such EU Regulation or Decision fell within the scope of Protocol 3, either in its entirety or in part. This is based on section 2(3) of the 1973 Act where the power to issue such a certificate rested with the Secretary of State in the UK, but to reflect constitutional developments over the last four decades it is now appropriate for it to be an authority in the Island. Any person who was unhappy with such a certificate could challenge it in the Island's courts by way of a petition of doleance.

Mr President, by 29th March 2019 the Island's Protocol 3 relationship with the EU will have been in place for more than 46 years. In that time the EU has adopted many thousands of pieces of legislation. Of course, not all of that legislation is within Protocol 3, and some of it has simply amended or replaced earlier legislation. But since 1973 a significant body of EU law that applies to the Island has built up. The Island has not had to legislate domestically over the years in matters covered by Protocol 3. Indeed, the operation of Protocol 3 has prohibited the Island from legislating in areas covered by relevant EU Regulations and Decisions – other than to implement that directly applicable legislation with regulations under section 2B of the 1973 Act or with other Manx legislation such as the Food Act 1996. If we do nothing, there will be very significant holes in the Island's legislative framework on exit day.

Mr President, whilst the power to make regulations under this clause rests with the Council of Ministers, as the Chief Minister has emphasised both in briefings for Hon. Members and in the House of Keys, the consideration about what directly applicable EU legislation needs to be retained on exit day has not been a top down exercise. The Brexit team in External Relations has had a role in coordination and support but this exercise has been led by the relevant Departments and DEFA in particular. For the record, the directly applicable EU Protocol 3 legislation that DEFA is looking at retaining under this clause includes legislation on animal health and animal feedstuffs, food, plant health, veterinary medicines and marketing standards for agricultural and fisheries products. This amounts to several hundred pieces of directly applicable EU legislation. In addition, each EU instrument that we want to keep will need to be reviewed and modified to ensure that it will function properly after Brexit.

Clause 12 will allow any such identified deficiencies in the retained direct EU legislation to be addressed. This clause is subject to clause 9 and the associated Schedule 2, which deal with certain exceptions to the saving and retention of EU legislation. In addition, clause 11 that was inserted into the Bill during its passage of the House of Keys will require a full review of the retained direct EU legislation, with conclusions and recommendations, to be debated and voted on in Tynwald within five years from exit day. I will deal with these clauses in more detail when we come to them. Regulations made under this clause require the approval of Tynwald.

Mr President, if there is no approved Withdrawal Agreement between the UK and the EU, there is limited time for DEFA to complete its exercise of identifying the legislation to retain. It is accepted that there may be limited time for Tynwald to scrutinise the list of EU legislation set out in the regulations under this clause, but I know that the Department and the Council of Ministers aim to provide as much information as possible, as early as practically possible, to assist Hon. Members.

It is worth reiterating that this is an exercise that, so far as possible, seeks to preserve the current position with EU legislation that at the very least already substantially applies to the Island.

Mr President, I beg to move that clause 7 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the motion that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

The Attorney General: Certainly, Mr President.

This clause saves certain rights, powers, liabilities, obligations, restrictions, remedies and procedures that currently exist by virtue of section 2(1) of the 1973 Act. The wording used in this clause closely follows the current wording used in that section of the 1973 Act. It is also based on a provision of the UK's European Union (Withdrawal) Act 2018, which has been described as a 'sweeper up provision' that is intended to cover EU law that is outside legislative instruments. But in our case, those rights, etc. are only saved so far as they relate to: firstly, a statutory document that is saved by clause 6; secondly, a piece of direct EU legislation that is retained by clause 7; or thirdly, any other Manx legislation which gives effect to Protocol 3 obligations in the Island.

So, for example, 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 legislation itself. If that EU legislation is retained as part of the law of the Island after exit day, the rights as expressed in the judgment of the European Court would also be retained. In addition, directly effective rights contained within EU treaties, so far as those treaties apply to the Island by virtue of Protocol 3, including Protocol 3 itself, are also saved. For example, there is a requirement under Article 4 of Protocol 3 for the Island to apply the same treatment to all natural and legal persons of the EU Member States. The right for EU nationals to be treated by the Island in a way that does not discriminate on the basis of which Member State they come from will be retained under this clause – but only so far as it relates to the legislation I have just mentioned.

This clause also saves directly effective rights arising under an EU Directive so far as they relate to EU related legislation that we have saved or retained or Manx legislation that implements the Island's EU obligations. However, the clause will only save those rights that have been recognised by the European Court, or a court in the Island or the UK, in a case decided before exit day.

Mr President, the purpose of clause 8 is to ensure that the rights, etc. that exist immediately before exit day by virtue of section 2(1) of the 1973 Act will continue to be recognised and available after exit day, where those rights etc. concern EU-related legislation that we keep after exit day. This clause is subject to clause 9 and Schedule 2 which deal with certain exceptions to the saving and retention of EU rights and obligations.

Mr President, I beg to move that clause 8 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Mr President, I beg to second and I have just had a very quick query that has only just occurred to me, I am sorry. I just wondered whether either the learned Attorney might be able to assist or possibly one of the drafting team, if I may.

The President: By all means, in the first instance, to the mover.

Mrs Poole-Wilson: The savings provision of rights and so on, under clause 8, is clearly linked to retained direct EU law under clause 7 that is prescribed in regulations. Later on in the Bill we have a clause, clause 18, which enables us to pick up anything that does not make it into that

list, is my understanding. So clause 18 is a belt-and-braces … I know we have not done that clause yet, but my understanding is it is a belt-and-braces provision in case anything is missed under clause 17. My query is the saving of rights under clause 8; does it extend to anything that we have to pick up under clause 18 that we may miss under clause 7?

And my apologies for not having raised this sooner but it has literally just occurred to me as we were looking at this clause.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

If I may, with your leave, refer to my drafter please, thank you.

The President: Would you please identify yourself and your post, please.

Ms Geldart: Yes, it is Joanne Geldart, a legislative drafter at the Attorney General's Chambers.

Looking at clause 18, as you say, it is a belt-and-braces provision, should we discover after the event that mistakenly there is a piece of directly applicable EU legislation which we have not prescribed for the purposes of clause 7.

There is an opportunity in clause 18 to provide that anything that is applied under clause 18 is to be treated as retained EU law but, looking at the wording in clause 8(2), it does not seem as though the rights would be caught under the wording of clause 8(2) itself. However, in clause 18(2) it does say that:

> Regulations under this section may make any provision that could be made by an Act of Tynwald.

So it would be possible to include in the regulations something that would ensure that the rights or remedies were captured in clause 8.

Mrs Poole-Wilson: Okay, thank you.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

I am very grateful to Ms Geldart and I hope that that answers the query which the Hon. Member raises. (**Mrs Poole-Wilson:** Yes, thank you.) So if I may so move the clause, clause 8.

The President: I put the motion that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

The Attorney General: Thank you, Mr President.

As I have mentioned in moving the preceding clauses, this clause sets out certain exceptions to the saving of statutory documents made under the 1973 Act, and the retention of EU legislation and EU rights and obligations. The clause confirms that 'retained EU law' as defined in Schedule 1 to the Bill is subject to Manx legislation that is passed or made after exit day.

But Manx legislation that was passed or made before exit day and which came into operation before that day continues to be subject to retained EU law. In other words, the supremacy of EU law that is retained ceases to apply on exit day and such retained EU law can be repealed, amended and replaced by post-Brexit Manx legislation. Clause 9 also confirms, for the avoidance of doubt that, in line with the position under the UK's Withdrawal Act, the Charter of

Fundamental Rights of the European Union does not apply as part of Manx law on or after exit day.

However, any of the rights included in the Charter that exist independently from the Charter in Manx legislation or retained EU legislation will not be affected.

Mr President, the Charter may currently apply to the Island; but only to extent that it relates to the EU Treaties and EU legislation which apply to the Isle of Man under Protocol 3. The Charter codified existing fundamental rights found elsewhere in EU law, for example, in the EU Treaties or EU legislation or the case law of the European Court. The Charter is not itself the source of these fundamental rights. Many of the rights set out in the Charter are similar to the rights under international treaties which apply to the Isle of Man and which are given effect in Manx law. For example, rights under the European Convention on Human Rights are given domestic effect in Manx law by the Human Rights Act 2001.

Mr President, as Hon. Members may know, the Council of Europe, which is responsible for the European Human Rights Convention, is an entirely separate organisation to the European Union. The fact that the UK is leaving the European Union does not change either the UK's or the Isle of Man's relationship with the Council of Europe. Isle of Man residents will still have the ability to take cases to the European Court of Human Rights.

Clause 9 also gives effect to Schedule 2 to the Bill. Paragraph 1 of this Schedule deals with challenges to the validity of retained EU law. It provides that on or after exit day, there is no right to challenge any retained EU law on the grounds that immediately before exit day an EU instrument, for example, an EU Regulation that is retained by clause 7, was invalid. The restriction in this clause is subject to two exceptions: firstly, is where the European Court of Justice had decided before exit day that the EU instrument is invalid; and the second exception is where the challenge is of a kind described or provided for in regulations made by the Council of Ministers and approved by Tynwald.

The second exception is a contingency provision that it is envisaged will not need to be used unless the UK makes regulations under the equivalent power in the European Union (Withdrawal) Act 2018. If it does, we will need to consider whether a similar exception is appropriate for the Island. To be clear, though, Mr President, this is a power to provide for more types of possible challenge to retained EU legislation rather than a power to restrict challenges.

Paragraph 2 of the Schedule 2 deals with the general principles of EU law. The general principles of EU law are developed by the case law of the European Court. It provides that only general principles of EU law that have been recognised in a European Court case decided before exit day will form part of Manx law on or after exit day. After exit day a failure to comply with the general principles of EU law cannot be challenged in the Isle of Man courts and the courts cannot disapply any Manx legislation or rule of law, or quash any conduct, after exit day on the basis that it is incompatible with the general principles of EU law. To the extent that the right to *Francovich* damages is saved in the Island in relation to retained EU law, paragraph 3 of Schedule 2 provides that there is no right in Manx law after exit day to damages in accordance with the rule in Francovich.

Mr President, *Francovich v Italy* was a decision of the Court of Justice which established that EU Member States could be liable to pay compensation to individuals who suffered a loss because of the Member State's failure to transpose an EU Directive into national law. It is sometimes known as the principle of state liability in EU law. Since the decision in the Francovich case, the principle of State liability has been extended to apply to breaches of all EU law. So, for example, to the extent that an EU Directive falls within the scope of Protocol 3, at present the Isle of Man Government could potentially be liable for compensation if an individual suffered loss because the Directive had not been properly transposed into Manx law. In line with the position in the UK Act, there will be no right to claim damages on this ground after exit day. However, in line with an amendment that was made to the UK's Withdrawal Act in the House of Lords which was accepted by the UK Government, a provision in Schedule 6 means that if a

claim relates to something that happened before exit day, proceedings can be started up to two years after exit day.

Paragraph 4 of Schedule 2 clarifies that the references in clause 9 and this Schedule to the Charter of Fundamental Rights, to any general principle of EU law, or to the rule in *Francovich* are to be read as references to that Charter, principle or rule as they stand at exit day, not as they may operate in EU law after exit day.

Mr President, I beg to move that clause 9 and Schedule 2 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: I put the question that clause 9 and Schedule 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

The Attorney General: Thank you, Mr President.

Clause 10 deals with how retained EU law is to be interpreted by the Island's courts and tribunals after exit day. The clause confirms that, on or after exit day, courts and tribunals in the Island are not bound by new EU case law; and they cannot refer any matters to the European Court of Justice – which, of course, for questions that are within the scope of Protocol 3, is currently possible. But after Brexit the Island's courts and tribunals may have regard to a decision of the European Court, another EU entity or the EU if they consider it relevant to the issue before them. For example, after exit day the European Court might give a judgment in a case concerning an EU Regulation on food hygiene requirements. If we have retained that EU Regulation and there is subsequently a case in the Island in respect of it, the Island's courts would not be required to follow the view of the European Court but they could have regard to it in reaching a decision.

Subsection (3) of this clause provides that for retained EU law which has not been modified after exit day, any question as to its validity or meaning will be decided in accordance with any retained pre-Brexit EU or Manx case law and any retained pre-Brexit general principles of EU law. Any such retained EU law will also be interpreted by reference to the limits of EU competence in relation to the Island immediately before exit day – that is, within the scope of Protocol 3. Retained EU law which has been amended on or after exit day can be determined in accordance with pre-exit EU or Manx case law and the pre-exit general principles of EU law, if doing so is consistent with the intention of the modifications. This clause also provides that the Staff of Government Division – the Island's Court of Appeal – is not, as the most senior court on the Island, bound by any retained EU case law. Before Brexit, the Staff of Government Division would be bound by such EU case law in matters that are within the scope of Protocol 3. In deciding whether to depart from such pre-Brexit EU case law, the Staff of Government Division must apply the same test as it would apply in deciding whether to depart from its own case law. This clause confirms that no court or tribunal in the Island is bound by any retained Manx case law that would not otherwise bind it.

Retained Manx case law in this context means decisions of a Manx court or tribunal before exit day that relates to anything covered by clauses 6, 7 and 8 of the this Bill or other Manx legislation that gives effect to the Island's Protocol 3 obligations.

Mr President, I beg to move that clause 10 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

The Attorney General: Mr President, as I mentioned earlier, this is the new clause that was inserted into the Bill by the House of Keys to provide for a review of the continued appropriateness of all the retained direct EU legislation to be carried out in slower time after Brexit, no later than five years after exit day.

As I am sure that Hon. Members are aware, there was considerable debate on this clause in the other place. There were two different versions of the clause, with the main difference being the inclusion of a sunset provision in one and not in the version moved on behalf of the Government. I explained the Government's thinking in not supporting sunset provisions in the context of this Bill and Brexit during the First Reading last week, and it was the Government version that was supported by a substantial majority in the Keys.

However, it would be remiss of me not to acknowledge that the Government review clause as it was eventually given unanimous support in the other place was amended from the floor, with agreement between the mover and the Chief Minister, to ensure that the report on the review must include recommendations and be debated in Tynwald. It had been intended that there would be a debate in Tynwald but the amendment put this beyond doubt on the face of the Bill. Although the Council of Ministers must cause the review to take place, it will be the relevant Departments – and largely, if not entirely, DEFA – that will carry out the review and report back to the Council of Ministers and then Tynwald. This review will undoubtedly be a substantial additional piece of work since DEFA is looking at the retention of several hundred pieces of EU legislation that is currently directly applicable to the Island under Protocol 3. But it will be a useful backstop to allow the position to be reconsidered by the Government and Tynwald at a time when, hopefully, the future relationship between the UK and the EU, and also the Island's own new relationship with the EU, has been settled. If a piece of retained direct EU legislation has been repealed by the time of the review, a statement to that effect will be all that is required.

Mr President, I beg to move that clause 11 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I am pleased to second this new clause as I think it is a welcome addition to the Bill, having been added in the other place. It is something that I was interested to see in this Bill. I understand there would have been difficulties if you put sunset provisions on each individual set of regulations. You would have a cliff edge where you had multiple pieces of secondary legislation failing. But this is, as the learned Attorney has said, a useful backstop to at least create the opportunity to look at what has been retained and to assess its usefulness and what we need to retain going forward.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

I would briefly like to thank Mrs Poole-Wilson for her very helpful comments and support and I so move.

The President: The motion is that clause 11 do start part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

The Attorney General: Thank you, Mr President.

Clause 12 is the power in the Bill to deal with deficiencies that arise from the UK leaving the European Union.

In the 46 years that Protocol 3 has been force, a range of Manx legislation has been drafted which explicitly refers to the EU, one of the EU institutions or EU legislation; or which has been drafted to operate in the context of the UK being an EU Member State and the Isle of Man having its Protocol 3 relationship with the EU. When the UK is no longer a Member State and our Protocol 3 relationship has come to an end, some of that Manx legislation will not work properly.

I have already talked about the retention of certain EU legislation using the powers earlier in the Bill; and in many cases this retained direct EU legislation will not work properly outside of the EU context without some modifications.

Mr President, I should emphasise that the power in this clause is to enable a correction process to be carried out. Its use requires the approval of Tynwald. Our Departments are still in the process of preparing the regulations to give effect to these changes. The UK Government has started to publish the first few statutory instruments to make these types of corrections using the equivalent power in the Withdrawal Act. They are generally very dull reading, but I am happy to share the link to the website where they can be found with any Members who are interested. *(Laughter)* Not everything will need to be amended of course, but every relevant piece of legislation needs to be reviewed.

An example of the sort of thing that is being looked at can be found in the Sunbeds Act 2013, which refers to a photographic driving licence issued in an EU Member State as being acceptable proof of age. The United Kingdom is not referred to separately. To allow this provision to continue to work effectively, and as it was intended, after Brexit the Act needs to be amended to insert a UK driving licence as being an acceptable proof of age. Or, in this case, the Department of Infrastructure could make regulations under the Act to separately prescribe a UK driving licence as being an acceptable document. Either way, a set of regulations to deal with this issue will need to be brought to Tynwald for approval.

It is worth emphasising at this point that some deficiency corrections to Manx legislation will need to be made even if there is an implementation period under a ratified Withdrawal Agreement during which EU legislation will continue to apply to the Island as if Protocol 3 was still in force. This is because after exit day the UK will not be a Member State of the European Union, even if there is an implementation period. But if there is an implementation period, because EU legislation will continue to apply to the Island as if Protocol 3 was still in force, we will not need to retain, on exit day, any directly applicable EU legislation using clause7 and we are unlikely to need to make deficiency corrections to that EU legislation.

I will come to implementing the Withdrawal Agreement when I move clause 14. If there is no implementation period, though, we will need to use clause 7 and we will need to make deficiency corrections to the retained direct EU legislation using this clause. This is to ensure that it continues to work in an Isle of Man context after Brexit. So, for example, Regulation (EU) 2016/429 deals with transmissible animal diseases such a BSE and scrapie. It is considered that it is currently applicable to the Island under Protocol 3, and the Department will want to retain it. There are numerous places in this Regulation where there are things that the European Commission must do or where information must be submitted to the Commission by the Member States. Appropriate substitutions or deletions must therefore be considered.

Mr President, a list of what constitutes a deficiency in Manx legislation or retained direct EU legislation arising from Brexit is set out in this clause. The clause confirms that Manx legislation and retained EU law is not deficient just because it does not include any modification to EU law which is adopted or notified, comes into operation or only applies on or after exit day. The clause provides that the power to deal with deficiencies can make the same provision as an Act of Tynwald, which is necessary to ensure that the clause can effectively deal with the adjustments that are required.

I would emphasise though that the power in this clause can *only* be used to deal with deficiencies arising from the UK's withdrawal from EU, and there are a number of restrictions on the use of this power. The power to make regulations under this clause cannot: impose or increase taxation; make retrospective provision; create a criminal offence that has a maximum penalty of greater than two years' custody and a fine; or amend, repeal or revoke the Human Rights Act 2001, or any statutory document made under it. In addition, as a result of amendments promoted by, or accepted by, the Government in the House of Keys, this clause cannot be used any later than two years after exit day and the use of the clause is subject to a review no later than five years after exit day.

The review is in somewhat different terms than the review of the retained direct EU legislation under clause 7. This is because what is being done with clause 7 and what is being done with this clause is very different. Clause 7 is about retaining as Manx legislation a very substantial amount of EU legislation that is currently directly applicable to the Island under Protocol 3. Any modifications made to that retained direct EU legislation, under clause 12, will be considered when that legislation is itself reviewed under clause 11. The review under clause 12 will concentrate on the modifications that were made to Manx legislation under this clause to ensure that it continued to work outside of the EU.

Mr President, I beg to move that clause 12 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to second this clause and in doing so I note that this clause, along with several others that we have yet to look at, gives the Council of Ministers the power to make those regulations as it considers appropriate. In another place amendments were moved to replace the word 'appropriate' with 'necessary'. The argument in favour of 'necessary', made not only in another place but by the House of Lords Constitution Committee, is that the word 'necessary' is understood as containing an objective test, 'appropriate' on the other hand is considered subjective and thus could be regarded as inappropriately wide.

A key difference between the Island and the position across the water is that regulations made under clause 12 will be subject to Tynwald approval. This means, as the Chief Minister said in another place, that Tynwald will be able to debate whether the use of enabling powers in the Bill is appropriate in each case and then approve the regulations or not. If the regulations only had to be laid before Tynwald or even just subject to the negative procedure then perhaps the argument for 'necessary' would carry more weight, but they are subject to Tynwald approval.

I said at the First Reading that this Bill should strike the right balance between the executive's powers to make legislative changes to deal with the impact of the UK leaving the European Union, and the ability of Tynwald to provide effective scrutiny of that legislation. That important role of Tynwald was emphasised by the Chief Minister in relation to the particular issue of considering whether regulations are appropriate and I welcome the acknowledgement of Tynwald's role in due course in scrutinising the regulations that will be brought forward.

The President: Mr Attorney, would you like to reply?

The Attorney General: Thank you, Mr President.

I again would thank Mrs Poole-Wilson for her very helpful advice and guidance to Hon. Members, with which I entirely concur and I so move.

The President: I put the motion that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

The Attorney General: Thank you, Mr President.
This is a contingency – *[A mobile phone rang.]*

The President: Apologies, Mr Attorney.

The Attorney General: Thank you, Mr President.
This is a contingency power to deal with the possibility that when the UK leaves the EU, and the Island's Protocol 3 relationship with the EU comes to an end, there may be a knock-on effect on other international obligations that apply to the Island. The scenario that this clause is designed to deal with is where the Island is currently subject to certain international obligations other than the obligations that flow from Protocol 3. This might, for example, be under a United Nations convention or a Council of Europe convention, and the UK's withdrawal from the EU results in, or could result in, a breach of the Island's international obligations under such a convention. This could come about because, in part, the Island's compliance with the requirements of such a convention is through EU rights, obligations or legislation that currently apply to the Island by virtue of Protocol 3 but may not apply to the Island after Brexit. This situation may not strictly be a deficiency for the purposes of clause 12.

Mr President, as I have said, this is a contingency provision. At present we do not have any examples of exactly where the power would need to be used. And, obviously, if it turns out that there are no such examples then the power will not be used. Hon. Members may know that this clause is based on a provision that was included in the UK's Withdrawal Bill but which was removed during that Bill's passage of the House of Lords. But we still believe that it is still a potentially useful additional tool for our Brexit toolbox. It is a tool that we may not need to use, but in these uncertain times it is better to be safe than sorry. The power in this clause would only be used if we needed to prevent or remedy any breach in the Island's international obligations more quickly than would normally be possible by other means. It can *only* be used where an international obligation already applies to the Island before Brexit and *only* if a breach of the Island's compliance with the obligation comes about as a result of Brexit. Any regulations under this clause would require the approval of Tynwald. And, the clause cannot be used any later five years after exit day

Mr President, I beg to move that clause 13 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 13 do stand part of the Bill. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.
Clause 14.

The Attorney General: Thank you, Mr President.
Clause 14 is the main provision in the Bill for giving effect to the UK's Withdrawal Agreement, if there is one.

'Withdrawal Agreement' is defined in Schedule 1 to the Bill as meaning any agreement, whether or not ratified, between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU. The power in this clause is necessarily broad. Subject to certain limitations it can do what an Act of Tynwald can do – but it can *only* be used for the one specific defined purpose. Regulations under this clause require the approval of Tynwald and such regulations cannot: impose or increase taxation; make retrospective provision; create a criminal offence that has a maximum penalty of greater than two years' custody and a fine; or amend, repeal or revoke the Human Rights Act 2001 or any statutory documents made under that Act.

This clause is based on section 9 of the UK's Withdrawal Act.

Mr President, Hon. Members may be aware that the UK is also planning to bring forward another Bill to implement the Withdrawal Agreement and it is not yet clear what will be done using the existing power in its Withdrawal Act and what will be covered in the new Bill. However, what is clear from section 9 of the UK Withdrawal Act is that the power under that section can only be used if a Minister of the Crown considers that implementing provisions for a Withdrawal Agreement need to be in force before exit day. In addition, the UK Parliament must also have passed a new Act of Parliament actually approving the final terms of the Withdrawal Agreement before the powers in section 9 of the UK's Withdrawal Act can be used.

Mr President, we do not yet know if the Withdrawal Agreement that has been agreed by the UK Government and the EU will be approved by the UK Parliament. At the moment all reports suggest that it is unlikely to be approved. But we will just have to see what happens on 11th December after five days of debate in the House of Commons. If the Withdrawal Agreement and the associated Political Declaration on the future UK-EU relationship is not approved, we will be in a position of great uncertainty. I outlined a number of possibilities during the First Reading debate last week, and another is that the UK-EU might try to agree some superficial changes to the Agreement and Declaration at the scheduled European Council on 13th and 14th December with a view to a further vote being held in Parliament before Christmas. As I have mentioned, if the Agreement is finalised and approved by the UK and European Parliaments, the main initial areas of interest for the Isle of Man are the transitional or implementation period and the extent to which the Agreement would extend to the Island. So under the draft Agreement there will be an implementation period running to the end of 2020, or perhaps longer, during which the same rights and obligations will apply to the UK and the EU as if the UK was still a Member State. We know that the Withdrawal Agreement will apply to the Isle of Man to the extent that EU law was applicable to the Island before Brexit. In other words, the same rights and obligations that apply to the Island under Protocol 3 will continue to apply to the Island under the Withdrawal Agreement until the end of the implementation period. So we need a power to give legal effect to the Withdrawal Agreement, so far as the Island needs to do so.

There are at least two ways that regulations under this clause could give legal effect to an implementation period. One would be to have standalone provision set out in regulations; and the other would be to have the regulations under this clause modify the 1973 Act to link to the Withdrawal Agreement, defer the repeal of that Act under this Bill and make any other necessary modifications to Manx legislation, including this Bill. Although consideration has obviously been given to this issue, the preferred approach is still to be finalised.

But, as I have said, Tynwald approval will be needed for whatever is done with regulations under this clause and the use of the clause is restricted to within two years of exit day.

Mr President, I beg to move that clause 14 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 14 do stand part of the Bill. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 15.

The Attorney General: Thank you, Mr President.

The purpose of this clause is to allow Protocol 3 EU legislation that is retained under clause 7, and rights, etc. that are saved under clause 8, to be amended or revoked in the future. Since the public consultation on the Bill, the types of amendments that can be made by this clause have been clarified and limited. It can modify such retained EU law to reflect changes that are made to that law in the EU after exit day – if that is considered to be appropriate. Regulations under

this clause can link to provisions of the EU law as amended from time to time. For example, if we retain a piece of plant health EU legislation that contains a technical Annex of permitted plant protection products that is regularly updated, DEFA may wish to have the Annex in the retained direct EU legislation stay automatically in line with the Annex as it has effect in the EU. This is what happens now when we apply EU sanctions Regulations to the Island, the Annexes are applied to the Island as they are amended from time to time.

Mr President, after Brexit the UK's retained direct EU legislation in areas that are currently within Protocol 3 might diverge from that legislation as it has effect in the EU. Clause 15 can therefore also be used to modify Manx retained direct EU legislation to keep it in line with the UK's equivalent retained direct EU legislation. In addition, this clause can also make amendments to give proper effect to such retained EU law in the law of the Island. Regulations under this clause require the approval of Tynwald.

Such regulations cannot: impose or increase taxation; make retrospective provision; create a criminal offence that has a maximum penalty of greater than two years' custody and a fine; or amend, repeal or revoke the Human Rights Act 2001 or any statutory document made under that Act.

Mr President, I beg to move that clause 15 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 15 do stand part of the Bill. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 16.

The Attorney General: Thank you, Mr President.

Clause 16 is a power to allow certain treaty provisions to be applied and implemented in the Island. It is something of a belt-and braces contingency power and it is recognised that there is potentially some overlap with the powers in clauses 14, 22 and 23. On the actual face of the Bill the clause relates to the application of the EU Treaties, which is defined as having the same meaning as it does in our 1973 Act immediately before exit day. This clause would allow the actual text of an Article of an EU Treaty to be incorporated into the law of the Island in the same way as is possible with EU Regulations or Decisions. Regulations under this clause require the approval of Tynwald. Further types of agreement which are related to the EU can also be applied and implemented in the Island if Tynwald approves the Council of Ministers making Regulations to declare that this clause applies to it. This contingency power may be useful for the implementation for non-trade agreements, for example an agreement on security matters, as there are other powers in the Bill to deal with trade agreements.

Mr President, I beg to move that clause 16 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 16 do stand part of the Bill. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 17.

The Attorney General: Thank you, Mr President.

Clause 17 is similar to existing sections 2A and 2B of the 1973 Act. Under this clause, with the approval of Tynwald, it will continue to be possible to voluntarily apply EU instruments to the

Island when useful to do so with any modifications and to make provision to implement such instruments. As with the existing powers in the 1973 Act, regulations under this clause may make provision similar to an Act of Tynwald, but they cannot: impose or increase taxation; make retrospective provision; create a relevant criminal offence; or amend, repeal or revoke the Human Rights Act 2001 or any statutory document made under it. Regulations must have annexed to them a text of an EU instrument applied by the regulations, incorporating the exceptions, adaptations and modifications specified in the regulations.

As is currently the case with Orders and Regulations under sections 2A and 2B of the 1973 Act, although the power under this clause formally rests with the Council of Ministers, it will normally be for a relevant Department to make the case for and lead on the application and implementation of an EU instrument within their areas of interest. Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 17 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

Mr President, I am tabling two amendments today and before I speak to the first I would like to say a few words about how I got to this view. The amendments are in the same form as they were put to the Keys and upon considering them myself independently, albeit quite recently, and the debate around them in the other place I have decided to put them to the Legislative Council for its consideration. The reason for this is that the Bill confers significant powers on the Council of Ministers, and whilst I think it is roundly recognised that these are exceptional measures for exceptional times, the exception should not become the rule of how we legislate and the relationship between government and parliament and how that is impacted. The question would be should the powers conferred continue indefinitely? That is essentially the question I will be asking the Hon. Members of Council today.

Turning to my amendment to cause 17, it is in the same form as was put by Mr Hooper. In the Keys it was amendment 18 to clause 16, in the Keys copy of the Bill for those that have been cross- referencing, as I have, in our lead up to this. Clause 17 deals with the application and the implementation of EU instruments and law, on page 35 of the Bill as we have just been hearing about. In the broadest of ways this clause gives power to the Council of Ministers by way of regulations to apply any EU instrument and implement any other EU law whether it is in operation before on or after exit day to the Island and make any necessary provisions to implement.

The best explanation I have found of this is actually listed at page x of the explanatory memorandum of the Bill. To me, clause 17 does seem to standalone, although it is quite possible that there are other clauses that rely on it. The clause and the regulations provided for are subject to Tynwald approval but, different to other clauses, there is no cut off point for how long these powers would be in place for and with the powers being broad especially when regulations can do anything an Act of Tynwald can do. May I remind Hon. Members that these EU instruments can be very complex, lengthy and hard to discern. They include regulations, directives, decisions and recommendations, that is all within the scope of an EU instrument. It is not the sort of thing we are particularly used to dealing with over here although we have a little bit more in recent times. They are not a joy to work with and can be difficult to scrutinise, I am not sure I would wish that on any Tynwald Member indefinitely, so I am taking a long-term view.

Though I respect the need, absolutely, of the Council of Ministers to be able to do what is needed in this challenging period, the amendment put forward to Keys was essentially to add a

time limit to this provision so that no regulations be made under this section after the end of a period of two years, beginning with exit day. But it also added a provision to allow that Council of Ministers may amend the period referred to, subject to Tynwald approval, so as to increase the time period during which the power can be exercised, and that is the substance of the amendment I put before this Hon. Council.

In Keys the amendment did receive support from six Keys Members and because, to me, this clause 17 and the previous concerns raised in the Keys debate are significant in terms of legislating, I think the Legislative Council should also consider the proposed amendments.

Importantly this amendment does not prevent the Council of Ministers from doing anything, it just puts a limit and a parliamentary check on how long they can do anything for. One day we will be through Brexit and I think we need to have an eye and a responsibility on a long-term view and consider that whilst it may be permissible to have such powers given for exceptional times, should it become the norm? Does there need to be something that prompts a limit, a check and then if needed an extension?

Mr President, I beg to move the amendment to clause 17 in my name:

Amendment to clause 17:
Page 36, after line 12 insert:
«(12) No regulations may be made under this section after the end of the period of two years beginning with exit day.
(13) The Council of Ministers may by regulations amend the period referred to in subsection (12) so as to increase the period during which the power may be exercised by not more than 12 months on any one occasion.
Tynwald procedure – approval required.».

The President: Mr Cretney.

Mr Cretney: Yes, thank you, Mr President.

I wish to second the amendment which has been put forward by the Hon. Member. I think the Council this morning has demonstrated its commitment and support of the Government in terms of moving forward each and every clause which has been unanimously accepted, with very little. debate. However, this is a matter which calls into question the primacy of parliament and government and for that reason I believe it should be explored further. I hope that explanations can be forthcoming and we can then make a decision.

The President: We are now open for debate on the clause and the amendment.
Mr Attorney.

The Attorney General: Yes, Mr President, thank you.

I would urge Hon. Members not to support the proposed amendment to this clause. As you know, the primary objective of the Bill is to maintain the *status quo* following Brexit, so far as possible, and this clause does just that in relation to the application and implementation of EU legislation.

As I have explained, the clause is based on the existing sections 2A and 2B of the 1973 Act and under this clause, with the approval of Tynwald, it will continue to be possible to voluntarily apply EU instruments to the Island when useful to do so, with modifications and to make any appropriate provisions to implement such instruments.

There is a very long track record of the powers in the 1973 Act being used and this demonstrates that the powers are used sparingly, largely in respect of international sanction measures and intellectual property rights, where doing so was a pragmatic and appropriate approach that could not easily be done in any other way. Whilst the powers in the 1973 Act and in this clause rest with the Council of Ministers, over the years the use of the powers has been

led by relevant Departments – for example, the Department for Enterprise in respect of intellectual property rights.

The power in section 2A of the 1973 Act has been used to apply EU legislation that may not have been applicable to the Island under Protocol 3. In other words, it was used to voluntarily apply EU legislation when useful to do so. Protocol 3 may come to an end when the UK leaves the EU but the EU will still be the Island's neighbour and at some point there will be some formal new relationship, even if this is not in place on exit day, and it is highly likely that there will still be limited occasions when the Government will wish to apply and implement EU legislation that it is not formally required to do, but it is beneficial for the Island to do.

I would emphasise that, as is currently the case under the 1973 Act, regulations under this clause require the approval of Tynwald. In fact, there is actually more Tynwald control over the use of this clause than the use of the powers under sections 2A and 2B of the 1973 Act, as regulations under section 2B are subject to the negative procedure. The point was raised in the House of Keys that this new clause would enable regulations made under this clause to include a provision authorising a Department or Statutory Board to itself make regulations. The purpose of this provision is to ensure that functions which are conferred on an EU institution in any applied EU instrument can be transferred to and performed by Department or Statutory Board in the Island. The enabling provision must itself specify the permissible content of such regulations and specify a Tynwald procedure. The grant of such an enabling power in regulations made under this clause will be subject to Tynwald approval as with the trade agreement related clauses of the Bill. This is a forward-looking provision, rather than just being a measure to deal with the immediate consequences of Brexit.

I trust Tynwald Members to give appropriate consideration to any regulations that are brought to them for approval under this clause. I do not believe that a time bar on the use of the power in this clause is appropriate or necessary. In addition, annual extensions to the power would involve the use of valuable and limited resources and there is a danger that it would be of little more than a rubber-stamping exercise. The same amendment, as has been mentioned, moved in the House of Keys was unsuccessful by 15 votes to 6.

Mr President, I urge Hon. Members not to support the amendments to this clause in the name of Mrs Lord-Brennan.

Thank you.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I have listened to all sides of the debate with regard to this clause, both when I attended the House of Keys when it was discussed and the amendments put both from Mr Hooper and the Council of Ministers and today I have listened both to the Attorney General and to Mrs Lord-Brennan with her views on the subject, which I respect which, which are fine. However, I think I would fall, or urge Members of the Legislative Council to err, on the side of caution here – principally because we have had the Bill amended in the Keys in the first instance, which I think addressed for many of us some of the principal concerns which were floated around initially with regard to the open-endedness (**A Member:** Hear, hear.) of some of the powers of this Bill, that has been addressed.

I think here we need to heed the cautionary words of the Attorney General in that to amend this further with time limits or whatever you want to call it, sunset clauses put on the back of it, hinders the pragmatic approach with which the intend of this Bill is trying to achieve with regard to being as flexible and as nimble as possible to try and take into account the unfolding situations or possible situations which may occur upon exit day.

I think there may be a little over-concern as far as I can see with regard to the overarching possible powers and situations that are being perceived, especially from the debate in the House of Keys when in fact the Attorney General has assured us unequivocally, and several times

during his presentations this morning, that regulations still have to go to Tynwald in any case and I am sure he will reaffirm that afterwards and the pragmatic approach which this clause is trying to achieve here.

So with that, Eaghtyrane, I would ask Hon. Members to think carefully here and vote against the amendment.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I do understand the concern and suggestion made in the House of Keys and again here today, that powers under this clause should be time-limited rather than open-ended, but with the power for the Council of Ministers to renew them. However, that proposal was rejected by a majority of the Keys, the majority therefore accepting that the regulations under this clause will be able to be made into the future without limits in time, and I am seconding this clause today on that basis.

However, the fact that we do have *any* powers in this Bill, whether subject to limit in time or otherwise, to make regulations, to my mind emphasises again the role of Tynwald in taking its duty seriously in scrutinising those regulations. A lot was made in debate in another place of the power of Tynwald to be the check and balance on pretty much all of the secondary legislation that will be made under the powers in this Bill. I have already said I welcome the recognition that Tynwald not only has that power, but should use it.

To quote the Treasury Minister in his response to certain proposed amendments:

> Can I just draw the Hon. House's attention again to these four words: 'Tynwald procedure approval required'. In other words, the Hon. Member is implying that this power rests solely with the Council of Ministers. It does not – they have to bring it before Tynwald for Tynwald's approval. It is clear, it is simple, it really nullifies any of these proposed amendments.

And so I think by this Legislative Council approving any of the powers in this Bill, with or without time limits, it is important to state that such approval does not amount to an express or implicit approval of any of the regulations that will be made under this Bill in due course. On the contrary, it is vital that the broad powers in this Bill are tempered (**Mr Cretney:** Hear, hear.) by the scrutiny of Tynwald. (**Miss August-Hanson:** Hear, hear.)

The reality is currently that where Tynwald has concerns about regulations its mechanisms for addressing those concerns may be seen by the relevant Department as draconian, with no power to amend, Tynwald is left with the options of rejecting the legislation or perhaps referring it to a committee. I have already said that this is not the time to debate the issue of improving the process for scrutiny of secondary legislation. However, in my view, improvements are more important than ever in the light of the powers in this Bill and the volume of secondary legislation that will need to be considered by Tynwald in the coming months and years.

Thank you, Mr President.

Mr Cretney: Hear, hear.

The President: Mr Crookall.

Mr Crookall: Thank you, Mr President.

I thank my colleague, Mrs Lord-Brennan for raising this. Having been raised in the House of Keys I think it was only right that it was raised up here and we were given the chance to debate it.

I also thank the learned Attorney for pointing out that the *status quo* remains and if not, in fact probably Tynwald has more control now, and if that is the case that Tynwald does have more control, I think we should be happy with that.

My colleague, Mr Henderson, said that maybe we were being a bit too over-concerned, I do not think we can be too over-concerned with a Bill like this. I think we have to be concerned but I do think it was right of Mrs Lord-Brennan to raise this today.

Thank you.

The President: Miss August-Hanson.

Miss August-Hanson: I will make it extraordinarily brief – thank you, Mr President.

I would just like to agree with my colleague on Legislative Council, Mrs Poole-Wilson in what she has just said regarding Tynwald and secondary legislation.

I would also like to thank my colleague, Mrs Lord-Brennan, in Council, for bringing this forward because it is right that it is brought up here and we do discuss it here, as it is about the workability of the Bill, which is well within LegCo's reviewing remit, although I do recognise that the amendment did fail 6:15 in Keys.

So I am content to follow that, following what the Attorney General has said, but I do think that there is perhaps another way that we could be looking at secondary legislation and I think it is something that perhaps we need to take very seriously into the future.

The President: Mrs Hendy.

Mrs Hendy: Thank you, Mr President.

I thank my colleague, Mrs Lord-Brennan, for bringing this to us today for further consideration and it is important that we look at all aspects whenever possible. I also am concerned that even today we are even more unclear than we probably were yesterday with what is going on in the debate in the UK Government, and I am conscious that we as a nation need to have all instruments and a tool box, as the learned Attorney has referred to, available to us. But we need to be judicious in keeping our options open, to respond quickly and nimbly to what arises.

I thank Mrs Poole-Wilson for her clarity and I agree with the stance that she has taken and spoken on our behalf, and I thank my learned colleagues today for their comments.

Thank you.

The President: Mrs Lord-Brennan, you have the right of reply.

Mrs Lord-Brennan: Thank you, Mr President.

Before I sum up, is it possible to ask the Attorney General a question or is it too late for that?

The President: No, please do.

Mrs Lord-Brennan: Thank you.

I would like to ask the learned Attorney what is there that puts a limit on the powers in clause 17 or is it ongoing?

The President: I will allow the Attorney to answer that now, if he wishes, or in his summing up.

The Attorney General: With your leave, sir, could I just ask if you could explain that to me, please?

Mrs Lord-Brennan: Yes, the question is what is there that puts a limit on the powers in clause 17 or are the powers ongoing?

The Attorney General: I can, Mr President, answer that quite easily. They are ongoing and it is the flexibility that this provision contains which is important going forward. As I say, it is based on what already exists under sections 2A and 2B of the 1973 Act, which again there was no restriction on that. It is a power that is there to be used and it has been used sparingly over the years, but it is there available so that the Government and Tynwald can react accordingly if necessary.

I can only again emphasise the point that has already been made, it is all subject to Tynwald approval.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President, and thank you to the learned Attorney.

I would like to thank the Members of Council for entertaining me – at least this has got us talking, as I moved this amendment. Thank you very much to Mr Cretney for agreeing to second this, especially at relatively short notice.

I take on board the learned Attorney's comments that in the past it has been used sparingly, and that there is by necessity a pragmatic approach that is required. I take comfort from that because we need to be able to be flexible and we need to be pragmatic, I think. This Bill is nothing if it is not flexible or pragmatic and I believe that that has been welcomed.

I suppose I take comfort from that, but perhaps what I do not take comfort from is that really it is the use of the powers that is led by Departments and it is not just under Protocol 3, but that perhaps leads things to another train of thought really.

I do not think that there is anything stopping EU legislation being applied in the longer term if we were to have this amendment, and I think it has been highlighted that some of these things can be brought in anyway. I think, though, that if we have got an appropriate time bar to have the powers confirmed in this particular provision, it does not actually take anything away from what the Council of Ministers are trying to do, and although it has been described as an artificial time bar, I think we need to look forward to a future Tynwald, where there may be different Members, that they can also give that approval again.

I would like to thank Mr Henderson for his comments. I do not really see this as a sunset clause. A lot of talk has been about sunset clauses and about when a particular piece of legislation will stop. This is about a time limit on particular powers, so I think it is important to make that distinction. The flexibility is what is provided by the amendment. I do accept the assurance that we are not really concerned about what the Council of Ministers might do now. However, again taking a long-term view, it is about how this may become the norm and just become the way of doing things in the future, in the long-term.

I would like to thank Mrs Poole-Wilson also for her comments. The majority of the House of Keys supporting this were, of course, made up of the Council of Ministers so I feel like I do need to say that. But mostly and actually overall, I really welcome the comments made about the handling of secondary legislation more broadly, which is perhaps in the background to some of these things. I just welcome those comments there and that there have been other Members nodding in agreement with that.

I would like to thank Mr Crookall and Miss August-Hanson for their comments, and Mrs Hendy as well, thank you very much. I am just glad I have got a bit of discussion going today (**Mr Cretney:** Hear, hear.) and I thank the Members of Council for considering this. I do think it is still worthwhile so I am still going to put the amendment.

So, Mr President, I beg to move the amendment to clause 17, in my name.

The President: Learned Attorney to reply.

The Attorney General: Thank you, Mr President.

Could I firstly say that I welcome the amendment which was moved, which has enabled this debate to take place. I think it is important that Legislative Council have had the opportunity of having their say on this important issue.

I do not want to go over old ground again, I can only answer, as I have answered, the challenge with the proposed amendment, in emphasising the purpose here was to maintain the *status quo* and I will not rehearse those arguments again.

I would also like to take the opportunity of emphasising again, as I have said throughout, what is key here to the control, if that is what you want to look at, of the Council of Ministers' powers or Departments' powers with reference to the flexibility, if you look at it that way, under the Bill is the fact that it is all to be approved, when we exercise those powers by Tynwald. Tynwald must be the final arbiter, and I hope I have made that point very clear in my comments on the clauses going forward.

I have nothing further to add, sir.

The President: Hon. Members, I put the amendment in the name of Mrs Lord-Brennan. Those in favour of the amendment, say aye; against, no. The noes have it. The noes have it.

I put clause 17: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

The Attorney General: Thank you, Mr President.

Clause 18 is a safety-net provision that links to clause 7.

As I have explained, the intention is that regulations under clause 7 should set out a list of the EU Regulations and Decisions that are currently considered to be applicable to the Island under Protocol 3 that are to be retained. Although the relevant Departments, with the support of External Relations, will obviously do their very best to ensure that every piece of required EU legislation is included in the regulations under clause 7, with the size and complexity of the Brexit project, it is possible that something may be missed.

If that does happen, and something comes to light perhaps a month or a year later, I expect that in most cases the powers in clause 17 could be used to re-apply the EU Regulation or Decision to the Island with appropriate modifications. The gap between exit day and the regulations under clause 17 coming into operation would make little or no difference, but it is possible that having a gap in the law might make a difference. Importantly, though, the power in this clause cannot be used to impose any retrospective civil or criminal liability on a person whose actions would have been unlawful if the EU legislation had been retained under clause 7. Only actions that take place after the regulations under this clause come into operation can incur such liability.

Clause 7 cannot be used to deal with any Protocol 3 EU legislation that is inadvertently not retained, as regulations under that clause cannot be made after exit day.

Mr President, I beg to move that clause 18 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I wish to second the clause and note, in so doing, the learned Attorney's points about this being a safety-net clause. There is a belt and braces in case anything is missed under clause 7.

I wonder, though, whether in summing up on this clause the learned Attorney could talk about the retrospective provision that is in clause 18(4), just to clarify that should this clause need to be used, any regulations made under it may be retrospective and that if that is used, the rationale for why the regulations were being made retrospective would be put before Tynwald at the time of making the regulations as Tynwald approval is required.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President – a very quick question: just to confirm that it is five years that the belts and braces will be worn for? (**The Attorney General:** Sorry?)

Just to confirm that the belts and braces will be worn for five years under this? *(Laughter)* Just referring back to something that was said earlier!

The President: Learned Attorney.

The Attorney General: Yes, thank you, Mr President.

Dealing first, if I may, with Mrs Poole-Wilson's query, as I have explained in introducing and explaining this clause to you, it is, as I say, a safety net designed to cover a situation, and I gave an example of something having been missed and using the powers to include regulation under clause 7. On that basis, if something has been missed, it may be necessary to have retrospective effect because a mistake has been made. But I entirely agree with Mrs Poole-Wilson: if that is the case then if this power is going to be used on clause 18, the reasons for any retrospective application ought to be made very, very clear. I can certainly say that that would be a commitment which Government will make and I will ensure that that is the case.

The five years' belt-and-braces exercise: I believe that I can confirm that that will apply. We have got a five-year period here of belt and braces.

Thank you.

The President: I put the motion that clause 18 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

The Attorney General: Thank you, Mr President.

Clause 19 allows certain UK legislation which relates to Brexit and the UK's future relationship with the EU to be applied to the Island with any appropriate modifications.

This power supplements and complements the powers in clauses 14 and 16 on the application and implementation of certain EU related treaties and agreements. If, for example, the UK produces a piece of legislation to give effect to certain aspects of the Withdrawal Agreement or a future relationship agreement with the EU, the most convenient and effective way to implement it in the Island, to the extent it applies to the Isle of Man, may be to apply the UK legislation to the Island with any appropriate modifications.

This is a case of not seeking to reinvent the wheel if the UK has produced something that works and which can be adapted for our purposes. Of course, we are very familiar with using UK legislation in this way. UK Export Control and social security legislation is regularly applied to the Island with appropriate modifications.

Regulations under this clause require the approval of Tynwald. The regulations must have annexed to them a text of the applied UK legislation incorporating the exceptions, adaptations and modifications specified in the regulations.

Mr President, I beg to move that clause 19 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: I put the motion that clause 19 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

The Attorney General: Mr President, following the public consultation on the Bill, DEFA raised a concern about its ability to keep the Island's legislation in line with that of the UK, in areas within its responsibilities.

As Hon. Members know, at present a great deal of EU legislation on matters such as animal health and veterinary medicines, plant health, agricultural and fisheries products and food, amongst others, is considered to be within the scope of Protocol 3. The EU Regulations and Decisions in these areas therefore apply directly and automatically as part of the law of the Island by virtue of section 2(1) of our 1973 Act.

DEFA may need to make implementing regulations in some cases to deal with things such as offences, penalties and licensing. But generally the Department just needs to keep abreast of the legislation as it is currently in force.

If the Withdrawal Agreement is not approved, after Brexit that situation will come to an end. This will have significant resource implications for the Department, as the position will change from one where the Department has to keep a watching brief on relevant EU legislation to one where it has to actively keep the Island's legislation up to an appropriate standard. It will be important for the Island to be able to keep its legislation in these areas sufficiently in line with that in the UK, in an effective and timely manner, to avoid any barriers to trade in agri-food products between the Island and the United Kingdom.

Initially, consideration was given to inserting various new enabling powers into various Acts of Tynwald that are relevant to DEFA but, following discussion, it was considered preferable to have a single enabling power at this stage to cover all of the bases. However, it is intended that when time and resources allow, and there is a suitable Bill coming forward, these powers will be moved into a DEFA-specific Act or Acts. Singling DEFA out in this way is simply because it has the largest amount of EU legislation that is directly applicable to the Island under Protocol 3.

Obviously, there is also a significant amount of EU customs legislation that currently applies to the Island, but the Treasury already has broad enabling powers in the Customs and Excise Act 1993 to apply both UK and EU legislation to the Island. With the tweaks to that Act which are set out in Schedule 7 to this Bill, those powers should be largely sufficient for the Customs and Excise Division of Treasury to be able to adapt the Island's legislation to the changing circumstances in these uncertain times.

Where appropriate to do so, for example, if the UK commits to keep certain agri-food legislation in line with the EU under the future relationship agreement, DEFA will also be able to apply EU legislation to the Island in the areas covered by this clause.

Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 20 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Mrs Lord-Brennan:

Mrs Lord-Brennan: Thank you, Mr President.

I will still move this amendment. I feel I could repeat some of the main principles I mentioned earlier, but I will not, unless needed, as the things that I spoke about could also apply to this clause 20.

The amendment at clause 20 does take a longer-term view and the proposed amendment simply inserts at the end that no regulations may be made under this section after the end of the period of five years. So five years, we are looking down the line here, beginning with exit day but there is still a chance for extension if the Council of Ministers or the Department feels they need it, because the amendment adds that the Council of Ministers may by regulations amend

the period referred to in subsection (10) so as to increase the period during which the power may be exercised by not more than 12 months on any occasion.

Clause 20 deals with the application to the Island of UK legislation and EU legislation by DEFA. In a similar way I spoke about previously, the powers for the Department are broad to transpose with specified adaptations etc. UK and EU legislation relating to 11 key areas and include them with modifications as annexes to regulations.

If anybody is unclear that is kind of how we dealt with GDPR, so it is not very easy to do, although I accept it could be done maybe for a few years.

This does require Tynwald approval which is very welcome but I believe that we need some end point to this way of doing things. So I would ask the Legislative Council to consider, if you will, the idea of limiting these powers to a period of five years and the chance for the Council of Ministers to come back and asked Tynwald for an extension. I do not think that this would put any additional pressures in terms of time, because frankly if you have time to legislate on all these complicated ways, you probably have time to come back and ask Tynwald if you can continue to do so and so I think that there is an important principle of seeking that from parliament rather than just ceding the power to government to handle the legislative process in this way continuously.

Again, I recognise that flex is needed, and it is apparent in this amendment that was put in the same form to Keys, but in my view without the amendment, we stand a chance of creating a new normal way of doing our law-making for the Island indefinitely. I think it is fine in the medium term, which is what the Council of Ministers needs, and they were they referred to a medium-term requirement in the Keys debate. But it is surely not too much to ask that Government comes back to Tynwald in five years' time after exit day to seek to extend the powers given in this Bill if needed.

I think it is an important legislative point to take a second look at, which is why I am bringing it to the Legislative Council. The amendment did have some support in Keys but obviously it would be quite hard to win that over completely. I am not sure that there was the fullness of debate on it, but there was a great deal to consider overall that day, I think.

In any case, I think the amendment improves the Bill and addresses a balance between the executive and parliament, and actually I would take that a step further and say, it addresses a balance between officers in Departments, who will often handle regulations, and parliament and it recognises the value of the powers that are given in this Bill without taking anything away from the Government's goal.

I would be interested for the Legislative Council to consider and beg to move the amendment in my name:

Amendment to clause 20:
Page 40, after line 14 insert —
«(10) No regulations may be made under this section after the end of the period of 5 years beginning with exit day.
(11) The Council of Ministers may by regulations amend the period referred to in subsection (10) so as to increase the period during which the power may be exercised by not more than 12 months on any one occasion.
Tynwald procedure – approval required.».

The President: Mr Cretney.

Mr Cretney: Yes, I am happy to second the amendment, on the basis of facilitating discussion and response.

Mr President, I think I would align myself with the various comments that were made at the time of the earlier amendment, about the importance of scrutiny in Tynwald and in terms of

Legislative Council having a key role in such scrutiny into the future. (**Mr Henderson:** Hear, hear.) I think these are important matters.

Two Members: Hear, hear.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Again, I would urge Members not to support the proposed amendment to this clause.

The clause is a medium-term power to allow DEFA to keep the Island's legislation in areas for which it is responsible in line with the UK or EU as appropriate. That Department prefers to use other powers in its own legislation and to the extent that it does not have equivalent powers to those in this clause, it is highly likely that this clause will be incorporated into DEFA primary legislation at some point in the future.

However, with a great deal of uncertainty about the future position and limited resources available to the Department, I believe that setting an artificial deadline is counterproductive and unnecessary. Such changes should be evolutionary in the context of the Department's competing priorities and not forced upon the Department.

Although additional resources have been found for the Department to get through Brexit, with the continued pressures on Government finances and competing priorities across all Departments, it cannot be guaranteed that it will be possible to maintain this enhanced legislation and policy resource indefinitely. Annual extensions to the power would involve the use of valuable and limited resources and could be seen as little more than a rubber-stamping bureaucracy.

Mr President, I do not believe that we should be creating additional processes and artificial deadlines for DEFA to replace the powers in this clause. The same amendment was debated and moved in the House of Keys, but was unsuccessful by 14 votes to 6. I would urge Hon. Members not to support this amendment in the name of Mrs Lord-Brennan.

Thank you.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you Mr President.

I would like to thank Mrs Lord-Brennan for bringing this subject up for debate, because it is an important one. However, I will not be supporting this amendment on the basis that Tynwald approval is required and also as a member of the Tynwald Standing Orders Committee, I am aware that there is work ongoing as regards secondary legislation, which I approve of the ongoing work and so that makes me content with this clause as it stands.

Thank you, Mr President.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would also like to associate myself with the remarks made by other Members of this Hon. Council and to thank Mrs Lord-Brennan for raising her amendments because it is important, I think, that we have full discussion and consideration of these issues.

I will not repeat remarks I made earlier when we debated the proposed amendment to clause 17. Again, this is very similar and I do understand the thinking between having some time limit and allowing the power to be renewed. I particularly sympathise with the complexity of reviewing the type of secondary legislation that we will see under this power. So Mrs Lord-Brennan highlighted the fact that this will be analogous to the situation we had with GDPR. It is complex and difficult legislation to scrutinise, typically in a very short window of time, and again

I will mention the fact that there is no ability to amend. So it is not desirable that it is a continuing situation.

However, I take comfort from the learned Attorney's remarks that this is intended to be a medium-term power. I also take comfort from Mrs Sharpe's comments that work is underway to look at how we can improve our secondary legislation scrutiny, precisely to deal perhaps with some of the more complex, detailed and lengthy instruments which may come before us in Tynwald.

I think ultimately if the intention is for DEFA in due course to have its own primary legislation, that primary legislation will receive full scrutiny through the Branches. I think if Members of Tynwald, whether the current Tynwald or future Members are in a position where they regularly see complex regulations coming before them under this power, then it will be for Tynwald to hold the relevant Ministers of the day to account, for when we will see that primary legislation.

Thank you, Mr President.

The President: Mrs Lord-Brennan to reply.

Mrs Lord-Brennan: Thank you, Mr President, and thank you to all the Hon. Members who have taken the time to speak on this part of the debate. I really do welcome the comments on scrutiny from Mr Cretney, Mrs Sharpe, and Mrs Poole-Wilson. It does emphasise that there needs to be a little bit more attention, so that Members can get comfort on how, in particular, secondary legislation is handled.

In response to the Attorney General's reply, I suppose I would say that if it is a medium-term power then I would not see the harm in the amendment. I do not think it is going to be agreed. I will just make that point. But I do take comfort from the fact that that has been stated that it would be used as a medium-term power, even if the Bill itself does not explicitly put any provision in place to support that.

I do not think that coming back to Tynwald should be something to be considered as being unnecessary or bureaucracy. I think if we go down that road, it is a sad one to go down, really, for parliament. I think it is a bit of a distraction that it is said to be about resourcing. I do not think it is, actually.

But thank you everyone for engaging with my amendments on this. I do appreciate it. I will still beg to move the amendment in my name at clause 20.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Again, if I could just make the point for the record, to record my thanks to Mrs Lord-Brennan for raising this amendment and certainly to the Members of Council for their consideration and contribution to the debates. It has been very useful.

In passing, I just mention Mrs Sharpe's point. I have already personally made my concern known and voiced my concern here that we do need or the Government does need to address the issue of a better framework to enable Members to look at secondary legislation, and I am sure that is something that is happening. (**Members:** Hear, hear.)

But beyond that I would thank Members for their support, hopefully, of my objection to the amendments.

Thank you, Mr President.

The President: Hon. Members, I put the amendment first. Those in favour of the amendment, say aye; against, no. The noes have it. The noes have it.

I put clause 20. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

The Attorney General: Thank you, Mr President.

Clause 21 is based on section 2C of our 1973 Act. It allows certain statutory documents made under this Bill to refer to provisions of EU or UK legislation as amended from time to time – this is what is known as an 'ambulatory reference'.

This clause is not a new power in itself. It simply confirms that the actual powers set out in other clauses can make use of ambulatory references. The most common use of ambulatory references at the moment is when EU sanctions Regulations are applied to the Island using the powers in the 1973 Act.

Although the main text of these EU Regulations is applied to the Island as it stands at the time of application, the annexes to these sanctions Regulations have effect in the Island as they are amended from time to time under EU law. This means that a new application order is not required each time, for example, a person is added to the list of people whose assets are frozen; or a person is removed from such a list in an annex to the applied Regulation. In other words, the Island's legislation keeps automatically and instantly in line with the position in the EU, including the UK.

Going forward, it is likely that the ability to use ambulatory references will continue to be useful. The ability to use ambulatory references is initially restricted under the clause to statutory documents made under clauses 13 to 20 and 23 of this Bill, but this can be expanded to other provisions by regulations made by the Council of Ministers. Such regulations are subject to the negative Tynwald procedure, which is the same as the equivalent provision in section 2C of the 1973 Act.

The ability to use ambulatory references exists in other Acts of Tynwald, such as the Airports and Civil Aviation Act 1987 and the Endangered Species Act 2010. Schedule 7 to the Bill will specifically insert the ability to use ambulatory references into the Customs and Excise Act 1993. However, other cases where they would be helpful may come to light in future – perhaps, for example, for some of the powers in the Fisheries Act 2012.

For the avoidance of doubt, regulations under this clause can only widen a power in other Manx legislation to enable statutory documents made under it to include ambulatory references to EU or UK legislation. The clause does not create new powers. The statutory document which includes the ambulatory reference will still need to be made under its original enabling power – not under this clause. Therefore if the original enabling power requires Tynwald approval for statutory documents made under it, this will not change.

Mr President, I beg to move that clause 21 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that clause 21 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

The Attorney General: Thank you, Mr President.

The UK's membership of the World Trade Organization (WTO) has included the Isle of Man since 1997, when the Marrakesh Agreement establishing the World Trade Organization was extended to the Island.

As I explained at First Reading, when a country joins the WTO it is bound by a range of multilateral agreements on trade which are attached as annexes to the main Agreement. So, for example, there is: the General Agreement on Tariffs and Trade (GATT); the Agreement on Agriculture; the General Agreement on Trade in Services (GATS); and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

At the time that the UK's membership of the WTO was extended to the Isle of Man, the UK did not require an in-depth analysis of how the Island complies with all of these agreements. The UK's requirements for the extension of international conventions are now more rigorous, as Jersey and Guernsey have found in seeking to have the UK's membership of the WTO extended to them.

The fact that the UK is leaving the EU and is having to establish itself as an independent member of the WTO means that the UK's own compliance with WTO rules is under the spotlight internationally; and, because of that, our compliance has also been under much greater scrutiny.

A great deal of work has been done across Government looking at the Island's WTO compliance. There is also a close and effective working relationship with the UK on this issue, as with other issues arising from Brexit. If – and I stress the word *if* – any significant gaps in the Island's compliance with its WTO obligations should come to light, this clause will allow them to be addressed in an effective and timely manner. Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 22 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put clause 22 to the vote. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

The Attorney General: Thank you, Mr President.

Clause 23 allows other international trade agreements which apply to the Island to be implemented in Manx law. In addition to the WTO agreements that apply to the Isle of Man, trade agreements that have been entered into by the European Union currently apply to the Island to the extent that the content of those agreements falls within the scope of Protocol 3. This is generally to the extent that they deal with trade in goods and it is a direct result of the effect of Protocol 3.

For example, whelks from the Island have been exported to South Korea, benefiting from the reduced tariffs that apply to EU countries selling certain goods to that country under the free trade agreement. Following Brexit, the UK has made it clear that it hopes to be able to 'roll over' the effect of these EU trade Agreements and it is giving itself powers in its Trade Bill to implement them.

This clause is derived from the UK provision, although it is somewhat broader, in that it is not just limited to agreements that have already been entered into by the EU. So, if the UK is able to enter into its own trade agreements in the future – for example, with the United States or China – and it is considered appropriate for such an agreement to be extended to the Island, this clause would also allow for its implementation. It is envisaged that this provision would only be used if other Acts of Tynwald, such as the Customs and Excise Acts, did not have the necessary powers.

Of course, by virtue of the Customs and Excise Agreement with the UK, we are obliged to, and can, keep our legislation on issues such as tariffs and duties in line with that of the UK using our Customs and Excise Acts.

Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 23 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: The question is that clause 23 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

The Attorney General: Thank you, Mr President.

This clause allows the Treasury to make regulations for the purposes of obtaining information in relation to the export of goods and services from the Island in the course of a trade, business or profession. Such regulations may make provision about what is meant by export of goods and services from the Island; the type of information that may be requested; to whom a request for information may be made; and how a request may be made, for example in writing or on request by a customs officer.

Having such information may be important for the purpose of complying with international obligations and consideration of whether particular UK trade agreements that may be entered into are relevant to the Island.

Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 24 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: I put the question that clause 24 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

The Attorney General: Mr President, clause 25 allows the Treasury to make regulations to set out the detail of how it may disclose information for the purpose of: firstly, facilitating the exercise by the Treasury of the Treasury's functions relating to trade; and secondly, facilitating the exercise by an international organisation or authority, or by any other body, of its public functions relating to trade. So this may involve disclosure of information to the WTO or the UK's Trade Remedies Authority.

Mr President, for the avoidance of doubt, the clause cannot authorise a disclosure that would contravene the Island's data protection legislation.

Regulations under this clause require the approval of Tynwald.

Mr President, I beg to move that clause 25 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put the question that –

Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I apologise for my lateness in putting my hand up there. I do apologise.

It is just a quick question, if I might ask the Attorney General to clarify something for me. We regularly use the words, 'among other things' in certain parts of this Bill, and I understand the need for *inter alia* in other pieces of legislation, in terms of things 'not being limited to, amongst other things'. But I am wondering, in clause 25, for example –

(3) Regulations under this section may (amongst other things) —

(a) make provision about the use of any information disclosed; or
(b) make provision about the further disclosure of information.

what 'amongst other things' might mean.

The President: Mr Attorney.

The Attorney General: I am just going to the exact wording of that – which I have here.

Miss August-Hanson: It does appear in a number of other places: in clause 12(6), for example, and in clause 12(6) and in clause 10(3)(b).

The President: Just one moment.

The Attorney General: Yes, thank you, Mr President.
If you are looking at clause 25(3), where I can see, it jumps off the page:

(3) Regulations under this section may (amongst other things) —

and then it sets out what those regulations may provide for, those specific powers, the regulations themselves may actually refer to other matters. So 'regulations under this section may amongst other things make provision for' those matters, and other things. So it is just a general expression.

Miss August-Hanson: Is it simply there just to add greater flexibility to deal with matters that we do not yet know about? Just for clarity.

The Attorney General: Yes. The whole Bill is on the premise of the uncertainty which exists. So what we do not want to do in any provision of the Bill where it is not necessary is to actually confine the power. So because everything has got to be … not *everything*; because these regulations have got to be approved by Tynwald, this is saying that there is a power, there is the *vires* to make regulations which can deal with the question of information-sharing here. But those regulations could deal with other things which again, as I emphasise throughout, is subject to the approval of Tynwald.

Miss August-Hanson: I would like to thank you. I appreciate that.
Thank you, Mr President.

The President: I would agree that the English is a bit ambiguous because it does not imply that other things may be done other than make provision about the use of the information and no doubt the drafters will take on board at that point, but your explanation stands on the record, sir.

The Attorney General: Thank you, sir.

The President: Thank you.
I put the question that clause 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 26, Mr Attorney.

The Attorney General: Thank you, Mr President.
Clause 26 gives effect to Schedule 3 which deals with the rules of evidence.

The two paragraphs in Schedule 3 are based on Part 2 of Schedule 5 to the UK's Withdrawal Act.

Paragraph 1 of our Schedule 3 is also derived from section 3(1) of our 1973 Act, which provides that:

> For the purpose of all legal proceedings any question as to the meaning or effect of any of the provisions of the Treaties having effect in the Isle of Man, or as to the validity, meaning or effect of any EU instrument having effect in the Isle of Man, shall be treated as a question of law …

When something is a question of law, a court can determine the meaning of that law for its own purposes. Foreign law is normally a question of fact to be pleaded and then proved, often by recourse to expert evidence.

However, as in the UK, we want to allow a question as to the meaning, effect or validity of EU law to continue to be treated as a question of law after exit day, if this is necessary for the purpose of interpreting retained EU law in legal proceedings.

Paragraph 2 of Schedule 3 provides that the Council of Ministers may make regulations which provide for judicial notice to be taken of a relevant matter, and for the admissibility in legal proceedings of evidence of both a relevant matter and instruments or documents issued by or in the custody of an EU entity. This will ensure that appropriate evidential rules can be put in place to reflect the new legal landscape after exit day.

This paragraph is based on paragraph 4 of Schedule 5 to the UK Act, which in turn is based on subsections (2) to (5) of section 3 of the UK's European Communities Act 1972. Those subsections deal with EU-related matters which are to be judicially noticed and sets out how such matters may be admitted as evidence in any legal proceedings. As in the UK provision on which it is based, the power to make regulations in paragraph 2 is subject to the affirmative procedure. That is, they can be made and come into operation but Tynwald approval must then be obtained as soon as practically possible afterwards or they cease to have effect.

I hope that Hon. Members found the note that the Chief Minister had circulated setting out the advice from my Chambers on this provision prior to the clauses stages of the Bill in the House of Keys to be helpful. Before making any regulations using this provision the intention would be to consider any regulations made under the equivalent power in the UK Act; and it is now a requirement for the Deemsters to be consulted before making any such regulations.

Mr President, I beg to move that clause 26 and Schedule 3 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: The motion is that clause 26 and Schedule 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

The Attorney General: Thank you, Mr President.

Clause 27 just gives effect to Schedule 4, which contains general provisions about the powers to make statutory documents under the Bill.

Paragraph 1 applies to all powers in the Bill to make a statutory document. It provides that any power in the Bill to make a statutory document: firstly, may be exercised to modify retained EU law or other Manx legislation; secondly, includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision; to permit a person to exercise a discretion; and to require compliance with standards or the adoption of practices recommended by a specified person or body.

So, for example, the power to make regulations under clause 12 to deal with deficiencies in retained direct EU could also make necessary consequential amendments to Manx legislation.

This paragraph also confirms that a power in the Bill to make a statutory document does not affect the extent of any other power in the Bill, or in retained EU law or in other Manx legislation to make a statutory document.

Mr President, paragraph 2 of this Schedule deals with the scope of consequential and transitional powers. It provides that the law saved and retained by clauses 6 to 10 may be modified by the power to make consequential provision under clause 28(1) of the Bill. It also clarifies that the consequential amendment power in the Bill can, for example, be used to modify retained EU law if the changes are consequential on the repeal of the 1973 Act.

In addition, this paragraph confirms that the power to make statutory documents under clauses 2(2) or 28(4) includes the power to make consequential, incidental, supplemental, transitional, transitory or saving provision in connection with the repeal of the 1973 Act or the withdrawal of the UK from the EU.

The power to make regulations under clause 28(1) includes the power to make transitional or saving provision which is in connection with any repeal made by such regulations of any Manx legislation which is consequential upon the repeal of the 1973 Act or the withdrawal of the UK from the EU.

Mr President, before exit day, the Island cannot bring into operation any legislation which modifies EU law which applies directly to the Island under Protocol 3. However, paragraph 3 of Schedule 4 confirms that regulations to do this can be made before exit, as long as they do not come into operation until on or after exit day.

Paragraph 4 provides that the powers in the Bill may be used to make different provision, in particular cases, from the changes made by Schedule 5, which contains general consequential provisions, and the amendments made to the Interpretation Act 2015 and the Legislation Act 2015 by paragraphs 2 and 3 of Schedule 7.

Paragraph 5 provides that where a statutory document modifies earlier statutory documents made under the Bill, the rules for choosing the Tynwald procedure apply afresh. So, for example, DEFA may use clause 20 to apply a piece of UK animal health legislation to the Island. This would require Tynwald approval. In future DEFA may wish to amend or repeal the application of that UK legislation using a different enabling power in one of its own Acts. This power may be subject to the Tynwald affirmative procedure. Normally, if you amend or repeal a statutory document you use the same Tynwald procedure that was used to make it. But in this example the affirmative Tynwald procedure would apply instead.

Paragraph 6 provides that regulations made under this Bill can amend other retained EU law or Manx legislation that had been made by way of a different type of statutory document, such as an order. For example, there is a power in the Airports and Civil Aviation Act 1987 to voluntarily apply EU instruments relating to civil aviation to the Island by order. This new paragraph confirms that the powers to make regulations under clause 12 to correct deficiencies in retained EU law and other Manx legislation can be used to amend EU instruments applied to the Island by an order made under that Act.

Mr President, under paragraph 7 of this Schedule, if the Council of Ministers is satisfied that the need to make the statutory document is urgent, the 'affirmative' Tynwald procedure can apply, rather than the 'approval required' procedure. As Hon. Members know, under the 'affirmative' procedure a statutory document must be laid before Tynwald as soon as practicable after it is made and if Tynwald approval is not obtained at that sitting or the next sitting the statutory document ceases to have effect. Any statutory document made in reliance on this provision must include a declaration that the Council of Ministers considers the matter to be urgent and therefore that the affirmative procedure should apply.

An example of where this procedure might be used could be as follows. In a no-deal scenario, regulations under clause 7 to specify the direct EU legislation that is to be retained might be submitted to the March sitting of Tynwald, and hopefully those regulations would be approved. But following that sitting and before exit day, the EU might publish an important new Regulation that is applicable to the Island under Protocol 3 and DEFA would probably wish it to be retained

as part of the law of the Island after Brexit. We would, however, have missed the last Tynwald sitting before exit day. Relying on the urgent procedure, regulations could be made under clause 7 to retain the new EU legislation and those regulations could come into operation on exit day and be submitted to the following sitting of Tynwald for approval. In practice, Mr President, I expect that this power will be used very rarely, if at all. As with much of the Bill it is included for contingency purposes.

Mr President, I beg to move that clause 27 and Schedule 4 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President. I beg to second and reserve my remarks.

The President: The motion is that clause 27 and Schedule 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

The Attorney General: Finally, Mr President, we come to clause 28 and the Schedules which are given effect by it. I apologise in advance for the length of my speaking notes here as I need to explain a number of detailed Schedules.

The clause itself provides that regulations can make appropriate amendments in consequence of this Bill. Such regulations require Tynwald approval and they cannot modify an Act of Tynwald that is passed after the end of the Session in which the Bill is passed.

Regulations under this clause can make incidental, supplemental, transitional, transitory or saving provisions in connection with the coming into operation of any provision of the resulting Act, including its operation in connection with exit day. This power supplements the power to make such provisions under clause 2 in Appointed Day Orders.

The power in this clause could, for example, be used in connection with the coming into operation of provisions of the Bill that come into operation on the day the Act is passed – so for which there would be no Appointed Day Order. However, unlike the usual Tynwald procedure for Appointed Day Orders, which is laying only, regulations using the power in this clause are subject to the affirmative Tynwald procedure.

The clause also confirms for the avoidance of doubt that the automatic revocation of the European Union (Changes in Terminology) Order 2012 made under section 1A(1) of our 1973 Act when that Act is repealed, does not affect the continuing operation of article 3(3) of the Order, which was a saving provision.

Turning now to the Schedules that are given effect by this clause, Schedule 5 contains general consequential provisions.

Paragraphs 1 and 2 of this Schedule deal with what happens to existing ambulatory references after exit day. As I have explained, ambulatory references are references to EU instruments as amended from time to time. The effect of paragraph 1 is that existing ambulatory references to EU Regulations, Decisions and tertiary legislation which are to be retained as Manx law under clause 7 will, on exit day, become references to the retained versions of those instruments as they are modified from time to time in the future by Manx law.

Paragraph 2 provides that any existing ambulatory references to EU instruments that do not fall within paragraph 1 do not continue to update after exit day. In such cases the references are to be treated as references to the EU legislation, Treaty or document as it had effect immediately before exit day. However, with Tynwald approval, regulations made under this paragraph may provide for certain such ambulatory references to continue to have effect.

For example, there are many ambulatory references in orders made under our 1973 Act which apply EU sanctions Regulations to the Island. These Orders apply to the Island the Annexes to these EU Regulations as they are amended from time to time. This means that each time a person is added to the sanctions list, or removed from it, that change has automatic and

immediate effect in the Isle of Man. It is likely that the Treasury will wish these ambulatory references to continue to have effect until the EU sanctions regimes are replaced in the UK and the Island by domestic measures.

Paragraph 3 of Schedule 5 deals with the effect of the Bill on existing powers to make statutory documents.

Paragraph 3(1) provides that any existing powers to make statutory documents in pre-Brexit legislation that are capable of amending Manx legislation can also amend retained EU legislation. Under paragraph 3(2), the Tynwald procedure would be the same as set out in the enabling Act.

For example, if a power in the Animal Health Act 1996 to make statutory documents could be used to make consequential modification to Manx legislation, it could also amend retained direct EU legislation dealing with animal health matters.

Paragraph 3(3) provides that pre-exit day powers can be used to legislate in a way that would not have been compatible with directly applicable EU law before exit day.

Paragraph 3(4) confirms that subparagraphs (1) to (3) do not restrict the conferral of wider powers by other enactments and they are subject to other provisions of this Bill and other Manx legislation.

Paragraphs 3(5) and (6) provide further clarification about the powers under paragraph 3(1).

Mr President, paragraph 4 of Schedule 5 provides that powers to make statutory documents in Acts of Tynwald passed after this Bill is passed are capable of amending retained EU legislation, unless otherwise provided.

Paragraph 5 of this Schedule provides that retained direct EU legislation is to be treated as if it were an Act of Tynwald for the purposes of the Human Rights Act 2001. This means that any retained direct EU legislation is to be treated as primary legislation for the purposes of challenges under the Human Rights Act 2001, so that if the legislation is found to breach that Act, a court may issue a declaration of incompatibility but may not strike down the legislation.

Mr President, Schedule 6 contains further transitional, transitory and saving provisions. Paragraph 1 provides that anything done or in operation before exit day, or in the process of being done, and which relates to any element of retained EU law is preserved. For example, licences lawfully issued before exit day in accordance with a piece of retained EU law would continue to have effect after exit day.

Paragraph 2 provides that rights, etc. which arise under EU Directives and which are recognised by a court or tribunal in the Island or the UK in cases which have begun before exit day but are decided after exit day are saved by clause 8 of the Bill – insofar as they relate to EU-related legislation that we have saved or retained or Manx legislation that implements EU obligations.

Paragraph 3 makes further provision about the exceptions to the saving and retention of EU law set out in clause 9 and Schedule 2.

Under paragraph 3(1) the exceptions to the saving and retention of EU law set out in Schedule 2 to the Bill apply in relation to anything occurring before exit day as well as anything occurring after exit. However, this is subject to the remaining provisions of paragraph 3 and also to any provision made by the Council of Ministers under clause 2 or 28(4) – both of which deal with incidental, supplemental, transitional, transitory or saving provisions in connection with the Bill coming into operation.

Paragraph 3(2) provides that the exceptions for the EU Charter, claims in respect of the validity of EU law or the EU general principles and claims in the *Francovich* cases do not apply to cases decided before exit day.

Paragraph 3(3) provides that the exceptions for the EU Charter, the general principles of EU law and *Francovich* claims will not apply in respect of proceedings which have begun before exit day but are not decided until on or after exit day.

Paragraph 3(4) provides that the exceptions for claims in respect of validity, general principles of EU law and *Francovich* will not apply in relation to any criminal conduct which occurred prior to exit day.

Paragraph 3(5) provides that the restriction on challenges based on incompatibility with any of the general principles of EU law does not apply in respect of certain proceedings begun up to three years after exit day. In order to fall within the scope of this sub-paragraph, any challenge must relate to something that occurred before exit day.

Paragraph 3(6) provides that a court, tribunal or other public authority will, on or after exit day, still be able to disapply any Manx legislation or rule of law, or quash any conduct on the basis of incompatibility with the EU general principles where it is a necessary consequence of a decision made by a court or tribunal before exit day, or a decision in proceedings commenced during the three-year period after exit day provided for under paragraph 3(5).

Paragraph 3(7) delays the bar on seeking *Francovich* damages until two years after exit day. Paragraph 4 of Schedule 6 confirms for the avoidance of doubt that regulations made under clauses 13 and 14 before the expiration of the time restriction on the use of those powers will continue to operate after the time restriction has expired.

Schedule 7 makes specific consequential amendments to certain Acts of Tynwald.

Paragraph 1 amends the Customs and Excise Act 1993. These amendments are to ensure that the Treasury has sufficient powers to deal with all possible scenarios when the UK leaves the EU and all of the EU customs legislation which currently applies directly and automatically to both the UK and the Isle of Man no longer applies.

Paragraphs 2 and 3 amend the Interpretation Act 2015 and the Legislation Act 2015 consequentially to the Bill and the repeal of the 1973 Act. The effect of the amendments is to ensure that these Acts work correctly in respect of matters relating to the EU and retained EU legislation after exit day.

Paragraph 4 of Schedule 7 amends the European Communities (Amendment) Act 1994, which gave effect to the European Economic Area Agreement in the Isle of Man – to the extent that its provisions are within the scope of Protocol 3. Although the UK will leave the EEA Agreement when it leaves the EU, the remaining provisions of this Act will continue to deal with the correct interpretation of related matters after exit day.

And, finally, Schedule 8 lists Acts of Tynwald which are repealed by the Bill. These Acts are largely amending Acts which have amended the 1973 Act over the years.

Mr President, in closing I would particularly like to thank my seconder, Mrs Poole-Wilson, simply for seconding throughout, but also for her most valued contributions to the Bill.

I would also like to thank Hon. Members of Council for their support in progressing this nationally important Bill to deal with the unprecedented circumstances that the Island has had thrust upon it.

With that, Mr President, I beg to move that clause 28 and Schedules 5, 6, 7 and 8 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Now, Hon. Members, does any Hon. Member wish to speak?

In that case, I put to the Council the motion that clause 28 with Schedules 5, 6, 7 and 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the Second Reading and clauses stage of the European Union and Trade Bill 2018.

European Union and Trade Bill 2018 –
Standing Order 4.3(2) suspended to take Third Reading

The Attorney General: Mr President, could I beg your leave?

The President: Mr Attorney.

The Attorney General: Mr President, having spent a substantial amount of time looking at the clauses of the Bill in detail, I wonder if Hon. Members might be willing to agree to the suspension of Standing Orders to allow the Third Reading of the Bill to be taken today.

This would be with a view to getting the Bill and its supporting documentation over to the Ministry of Justice this week to maximise the chances of obtaining Royal Assent in time for it to be announced at the January sitting of Tynwald.

The President: Is that seconded? Is there a seconder to the motion to suspend Standing Orders?

Mr Henderson: I am quite happy to second, Eaghtyrane.

The President: Mrs Poole-Wilson?

Mrs Poole-Wilson: I will second the motion.

The President: Does any Member wish to speak on the motion for suspension?

In that case, I put to the vote that Standing Orders be suspended to allow the Third Reading to be taken. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, Mr Attorney, depending on how long your remarks are, I do not wish to curtail debate – we can adjourn until 2.30.

The Attorney General: That would be very useful, sir. Thank you.

The President: We will adjourn to 2.30 p.m. Hon. Members, Council will adjourn and resume at 2.30 p.m.

May I remind Hon. Members about the presentation in the Barrool Suite.

The Council adjourned at 1.08 p.m.
and resumed its sitting at 2.30 p.m.

European Union and Trade Bill 2018 –
Third Reading approved

The President: Hon. Members, having suspended Standing Orders, we take the Third Reading of the European Union and Trade Bill. I call on the learned Attorney.

The Attorney General: Thank you, Mr President, Hon. Members. I am very grateful for your agreement to the suspension of Standing Orders.

In moving the Third Reading of the Bill, I would simply like to once again stress the importance of the Bill, which will allow the Island to deal with the unprecedented circumstances with which it is faced as a result of Brexit, and I do thank Hon. Members for your support.

I would also like to take this opportunity to thank the officers in Chambers who have worked on the Bill, along with the officers in External Relations.

Of course, while it is a significant milestone, passing this Bill is not the end of the story. The work on Brexit legislation will continue and it will almost certainly be several years before a new relationship with the EU will be in place, both for the United Kingdom and for the Isle of Man.

Mr President, I move:

That the European Union and Trade Bill be now read a third time.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to second the Third Reading of this important Bill. I would also like to echo the comments just made by the learned Attorney about the approach of all the officers involved with this Bill and their open and constructive interest in engaging with contributions from Members in another place, as well as Members of this Legislative Council. It is greatly appreciated that when people come with their questions and perspectives, they are considered and thoughtfully debated. So I think that has been very helpful and I think amendments that have been made to this Bill through its journey through the Branches certainly have improved the Bill (**A Member:** Hear, hear.) and been reflective of scrutiny through the Branches working well. (**Miss August-Hanson:** Hear, hear.)

Thank you, Mr President.

Mrs Hendy: Hear, hear.

The President: Hon. Members, I put the motion that the European Union and Trade Bill be read for the third time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.