

3. BILL FOR SECOND READING

**3.1. Charities Registration and Regulation Bill 2018 –
Second Reading approved**

Mr Thomas to move:

That the Charities Registration and Regulation Bill 2018 be read a second time.

1445 **The Speaker:** Item 3, Bill for Second Reading, Charities Registration and Regulation Bill 2018, and I call on Mr Thomas to move.

Mr Thomas: Thank you very much, Mr Speaker.

This important technical, modernising Bill is promoted by Her Majesty's Attorney General in his capacity as *de facto* guardian of Manx charities.

1450 Thus it was introduced into the Legislative Council on 4th December, having been published in draft for consultation last summer following a principles engagement the previous summer. As the Chief Minister stated a fortnight ago, this legislation is overdue.

Hon Members, the Bill has six main purposes. Firstly, to update the meaning of 'charity'. The definition of 'charity' is currently set out in section 14 of the Charities Act 1962, namely an:

... institution, corporate or not, which is established for charitable purposes, and is subject to the control of the Court in the exercise of the Court's jurisdiction with respect to charities.

1455 The 1962 Act provides that:

... 'charitable purposes' means purposes which are exclusively charitable according to the laws of the Isle of Man.

1460 The meaning of 'charitable' in the Island has primarily been developed by the courts, which have generally adopted the traditional four 'heads' of charity which had been derived in England and Wales from the Preamble to the Statute of Charitable Uses 1601, namely: the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community not falling under any of the preceding heads.

These purposes were widened by provisions in the Recreational Charities (Isle of Man) Act 1960 and the Charities Act 1962, reflecting legislative change in England and Wales.

1465 The definition of charity was expanded in England and Wales by the Charities Act 2006 by the adoption of 13 purposes or heads of charity, which extended the definition beyond that which applies in Manx law. The effect of this is that a *bona fide* charity established in England and Wales may not be able to carry on activities in the Island. The Bill before us today extends the definition of 'charity' so that it includes the English 13 heads of charity.

1470 The second purpose is to provide for a modern register of charities: the present legislation providing for the registration and regulation of charities is the Charities Registration Act 1989, which replaced the Public Charities Act 1922. The Bill will repeal the 1989 Act, albeit re-enacting certain of its provisions, in particular those which provide the Attorney General's regulatory functions.

1475 Although the 1989 Act does provide a requirement for a charity in the Island to register by filing a statement, it does not provide the clear *vires* for the establishment and operation of a registry, which are necessary in a modern world. Accordingly, the Bill makes provision for matters such as the information to be contained in the register, the notification of any changes to that information, the circumstances in which an institution should be removed from the register and the making available to the public of information contained in the register. To reflect the importance now placed on the privacy of an individual, the Bill provides for the

1480 making of regulations to provide restrictions on the publication of information which is held on the register.

The Bill also sets out the criteria for determination of an application to register a charity, which include matters such as: whether the institution is a charity under Manx law; the nature of its connection with the Island, whether its name can be considered to be undesirable or misleading and whether the governing instrument is fit for purpose; whether there is reason to be concerned about the suitability of the persons appointed to it as its trustees to undertake such role; and the risk of the charity being used for money laundering activities or of its property being used to finance terrorism.

1485
1490 Hon. Members, the reason why these matters need to be considered in detail at the time of registration is to ensure that a charity coming onto the register is not only suitable for registration but, with the principle in mind that 'prevention is better than cure', that it, and its trustees, have the necessary powers and understanding of how they should be used so that the charity can operate successfully both in regard to the achievement of its charitable purposes and the meeting of the necessary regulatory requirements.

1495 The Bill also preserves the requirement, first introduced in the Charities Registration Act 1989, that a charity wishing to register as a Manx charity must have a substantial and genuine connection with the Island. Such a requirement is important to prevent the Island being used, for example, by entities which have no intention to carry on charitable activities here and no presence here other than an accommodation address. Failure to register is one of the offences in the Bill.

1500 Also included in the Bill are provisions concerning the keeping of a register of mergers. The purpose of this is to provide a record of mergers of registered charities so that charities which would otherwise cease to exist as a consequence of the merger do not have to remain in existence, and on the register, merely to receive future bequests or gifts. Instead, the gift will be treated as a gift to the successor charity. This will be to the benefit of the relevant charities and also the registrar.

1505 Thirdly, to assist charity trustees in the proper delivery of their charity's objectives: a basic principle regarding the smooth running of an operation is that those charged with its management should have a clear set of rules to work to. This is even more important in the case of a charity where the trustees are required to use the charity's property for purposes which are subject to control by law as well as by the charity's constitution.

1510 There is presently no requirement that a registered charity has a written constitution. Even where existing charities do have a written constitution, problems frequently arise due to their inadequacy and/or lack of clarity as regards the powers of the trustees and, in many cases, the lack of a mechanism to make changes. In the absence of such a mechanism, or to enable a charity to adopt a written constitution, an application has to be made to court for approval of a scheme. To address these issues, which will assist the charities as well as the registrar and regulator, the Bill provides for adequacy of the constitution to be a condition of registration, a requirement for all charities, including those already on the register, to have a written constitution and for the Attorney General to be able to approve the adoption of a written constitution, or for its amendment where it does not provide the necessary mechanism. As is the case presently, model constitutional documents will be available for charities to adopt should they so wish.

1520 As the trustees of a charity, whether described in the constitution as trustees, directors, committee members, council members, are acting under a duty to discharge the charitable trusts on which the charity's property is held, the Bill provides that the restriction on the delegation of the functions by the trustees of a charitable trust, which are set out in the Trustee Act 2001, apply to all charities, irrespective of whether they are constituted as a company, a Foundation, an unincorporated association or as a trust.

1530 Fourthly, to ensure more effective regulation of charities: the Charities Registration Act 1989 provides for annual accounts of charities to be filed, which are subject to examination or audit if

1535 the income is above certain thresholds. Annual accounts provide only limited information as regards the activities of a charity and, to improve the ability of the regulator to identify potential problems as regards the running of a charity; the Bill makes provision for a report on the activities of the charity to be filed at the time of filing the annual accounts. The information to be contained in the report will be prescribed, meaning that the reporting requirement can be tailored to reflect the size of the charity. It is not anticipated that the reporting requirement will place any significant burden on trustees as, in most cases, they are already required to report on the previous year's activities at their charity's annual general meeting.

1540 In the case of foreign charities, the Bill will clarify that the accounts and reports to be filed are in respect of their activities in, or in connection with, the Island as the regulator clearly has no interest in their operations elsewhere. Further, to ensure accountability within the Island, unless at least one of the trustees is ordinarily resident in the Island, a foreign charity will be required to appoint a 'responsible person' in the Island who will be responsible for the charity's compliance with all the legislative requirements.

1545 The Bill makes provision for the automatic disqualification of individuals for acting as trustees of charities, for example, if convicted of dishonesty offences, disqualified as a company director or placed on the Sex Offender's Register. The effect of this will be to prevent unsuitable individuals from undertaking such a role. As part of the process of approving an application for registration, the Attorney General will be able to consider whether the trustees of a charity have the appropriate expertise and experience to ensure the successful delivery of that charity's objectives and also whether there is a substantial risk of the charity being used for money laundering activities or being involved in the financing of terrorism. These provisions should reduce the potential risks both to the charities themselves and to the Island's reputation.

1550 The Bill re-enacts the Attorney General's existing regulatory powers, which include powers to require specified information to be provided to the Attorney General, to institute inquiries and to make application to the court to remove or suspend a trustee from office. These powers will be augmented under the Bill by the power to obtain a search warrant from a Justice of the Peace. Further, the Bill enables the Attorney General to make regulations prescribing information with which the Attorney General may require to be provided. This will enable, for example, charities to be required to provide information concerning the adoption of, and compliance with, safeguarding policies. This is an amendment since the consultation version of the Bill, brought to the attention of the policy makers and the drafters by a good friend, Dr Alex Allinson, who is kindly seconding the Bill today. We had a very valuable consultation. That was one of the points raised in that consultation process. The Bill also provides for the disclosure of information between the Attorney General and public authorities for the purpose of enabling them to discharge their respective functions.

1560 Fifthly, to improve public service and administrative efficiency: the Bill provides for the functions of registrar to be conferred on the Attorney General, in addition to his existing functions as regulator. This will address the uncertainties which have long existed as to where the boundary lies between the functions of the registrar and those of the regulator. As the registrar presently routinely seeks advice from the Attorney General's Chambers, at present, as to the exercise of his functions under the 1989 Act, it will streamline the administrative process as well as assisting trustees and members of the public by providing a 'one-stop shop' for all matters concerning charities.

1575 A further advantage is that it will address the incorrect perception that, by not having a charity commission, the Island's regulation of charities is somehow inadequate.

1580 Sixthly, and finally, to provide a simplified mechanism for appealing decisions of the registrar and regulator by establishing a Charities Tribunal: the Bill increases the number of decisions which the Attorney General can make in relation to charities, including those which are related to the function of registrar. It also provides for the Attorney General to be able to exercise certain functions which currently fall within the jurisdiction of the High Court, such as the approval of the adoption, or amendment, of constitutional documents. As a public authority,

1585 decisions of the Attorney General are subject to judicial review by High Court by way of a
doleance claim. In order to provide a more straightforward and cost effective mechanism for
challenge, however, the Bill provides for the creation of a Charities Tribunal to hear appeals in
respect of decisions taken by the Attorney General, with the exception of decisions concerning
the exercise of his powers to inquire into the activities of charities, to make applications to court
for the protection of charities and to consent to a prosecution for non-compliance with certain
1590 requirements under the Bill.

The Bill also makes a number of other provisions, including enabling the Attorney General to
appoint a person employed in the Attorney General's Chambers to perform certain specified
functions which the Attorney General would otherwise have to undertake personally, and for
the Attorney General to enter into arrangements with the Registrar General for the provision of
1595 services in connection with the delivery of the Attorney General's functions under the Bill, which
will enable the register to be hosted within the Central Registry, thus taking advantage of
existing IT provision.

Mr Speaker, Hon. Members, it might be helpful if I emphasise at this point that it is not the
intention of this Bill to change the landscape concerning registration, i.e. to make any alteration
1600 to the nature of institutions which are able to register here in the Island. This is something the
Attorney General stressed upstairs in the Legislative Council when this Bill was going through the
other Branch.

For this reason, existing exemptions from registration have been included in the Bill, as well
as the requirement that an institution seeking registration should have a substantial and genuine
1605 connection with the Island.

A query was raised in the other place concerning the continuation of the exemption for
ecclesiastical charities, which has its origins in the Public Charities Act 1922. As I have said, it is
not the purpose of the Bill to change the landscape concerning registration. Moreover, the
public consultation did not result in any proposal to interfere with the exemption for
1610 ecclesiastical charities.

It might also be helpful to remind Hon. Members that ecclesiastical charities, as far as the
Island is concerned, are only those as set out in Schedule 3 to the Church Act 1992, namely
trusts of property established for charitable purposes which are or include any ecclesiastical
purpose, and in particular:

- (a) the benefit of any clerk in Holy Orders or ecclesiastical officer as such, or of the dependants of any such clerk
or officer;
- (b) the augmentation of the stipend of any benefice or ecclesiastical office;
- (c) the use of a building for any ecclesiastical purpose;
- (d) the provision, maintenance, repair or improvement of any land or building held for any ecclesiastical purpose,
or the maintenance of divine service therein;
- (e) any other purpose for the benefit of the Church of England in the Island.

1615 Any religious charity not falling within that list would be required to register unless exempted
under regulations, which is the case for the religious charities included on the list in the Schedule
to the Religious Charities Regulations 1999, namely in respect of the Church of England:

The Sodor and Man Diocesan Board of Finance.
Any parochial church council.
An incumbents or churchwardens ...

In respect of the Roman Catholic Church:

Liverpool Roman Catholic Archdiocesan Trustees Incorporated.

In respect of the Methodist Church:

The trustees for Manx Methodist Church Purposes.

The trustees of any property held for, or for purposes of, any circuit, district or local church of the Methodist Church.

1620 In respect of the United Reformed Church:

The trustees of any property held for, or for purposes of, any local church of the United Reformed Church.

And in the respect of the Society of Friends:

The trustees of any property held for, or for purposes of, any weekly or monthly meeting or preparative meeting of the Religious Society of Friends.

1625 Hon. Members, Mr Speaker, a second query was raised in another place as to whether under clause 10(4) the reference to 'substantial and genuine connection' ought to be defined in the Bill. The Attorney General replied that he did consider and advise on this but concluded that it would not be appropriate to seek to restrict how this might be interpreted other than to provide guidance.

1630 Thirdly, it was suggested upstairs that the Bill should contain provisions for a light touch regulation in respect of reputable foreign charities, including a fast track registration process. The registration process itself only requires completion of an application form which is submitted with the charity's governing instrument, both of which have to be checked to ensure that they comply with Manx law. When steps are taken to prescribe what the actual application form must contain, consideration can then be given to prescribing different information for differing categories of charity. There is no reason why there should be any delay in processing such applications provided the documentation submitted is in an acceptable form. In addition, 1635 as the Bill provides, there is ability for certain categories of charities to be exempted by regulations. This would enable an exemption from registration to be made in the case, for example, of an English charity which was registered with the Charity Commission in England and Wales, which has contracted to deliver specific services on the Island for a fixed period and which will not be raising any funds here.

1640 Finally, upstairs it was questioned whether small charities should be exempt from registration. This could be possible by making regulations under the Bill. However, there was no call for this during the consultation and so it has not been considered necessary. Indeed, at the recent presentation to Hon. Members about this Bill, Mr David Gawne MBE addressed the audience expressing full support for the Bill as drafted and he was there representing the Isle of 1645 Man Council of Voluntary Organisations which has previously had long involvement with the Manx charitable sector in respect of both small and larger charities. There is no *de minimis* provision on the face of the Bill as regulations can be made to address this if necessary and, of course, any such regulations would have to be approved by Tynwald.

1650 Mr Speaker, I beg to move that the Charities Registration and Regulation Bill be read for a second time.

The Speaker: I call on the Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1655 I beg to second and reserve my remarks.

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

Mr Shimmins: Thank you, Mr Speaker.

1660 Hon. Members, I have a number of queries and concerns on this Bill. Firstly, why was the Bill introduced into the Legislative Council first?

It has been confirmed that there is no urgent deadline for this Bill and as such, is it not the role of the Legislative Council to review and refine legislation, whilst the Keys determines policy. This seems an odd way of doing it

1665 And as it stands the Attorney General is promoting this Bill, which transfers functions to his Department. I would be interested in the Minister for Policy and Reform's views on any conflicts of interest here. So the Attorney General's Chambers are making the regulations; it is proposed that they will now also carry out the day-to-day administration of charity registration, which is being transferred from the Department of Enterprise and then they will also raise prosecutions if they consider that these are required. Is this healthy? Should there not be a separation of powers in this situation. The Minister for Policy and Reform referred to a 'one-stop shop', that could be dangerous in an operational, regulatory and legal environment.

1670
1675 A number of Isle of Man advocates feel that the points that they raised during the consultation process have not been taken on board. And in this regard it would be helpful if the Minister, when he responds, could advise what parts of the Bill have been changed following the consultation.

The Minister also highlighted the debates in the Legislative Council about the carve out for the church. The ecclesiastical exemption appears historical and it was helpful that the Minister explained the various previous Acts which have the regime that we have as it stands, but it does seem odd that a non-religious charity is required to comply with these regulations but church related ones are not, and I wondered if this was because the Tynwald Ecclesiastical Committee had fully considered this previously. Perhaps the Minister could clarify this.

1680
1685 So my slight concerns in this area were actually heightened by the remarks made by the Lord Bishop who stated that there must be several hundred Anglican Church Isle of Man trusts and that many unpaid officials may actually be unaware that they are trustees, and this kind of raised some alarm bells about good corporate governance. Surely any charity which receives regular substantial charitable donations from the public in the Isle of Man should have high standards of corporate governance and be required to comply with our charities legislation.

1690 In terms of the concept for substantial and genuine connection not being defined, I hear what the Minister said earlier, which he kind of repeated what the Attorney General had previously said. I just want to understand how he feels, in a bit more detail, how this ambiguity is helpful or would it not be better to have clarity on what constitutes a substantial and genuine connection, bearing in mind we are talking about a matter of law and an important Bill, as the Minister previously highlighted.

1695
1700 It is perhaps unfortunate that there is no acknowledgement of other charity regulation regimes. For example, a household named charity in the United Kingdom or other neighbouring places, with a commitment to full transparency, publishing their accounts with a large corporate governance team board of trustees is already subject to considerable regulation and scrutiny. In other areas of regulation here on the Island, a lead regulator approach is adopted to improve co-ordination and reduce duplicated bureaucracy. Particularly for charities, bureaucracy incurs cost and more cost results in less funds for charitable causes. So I would very much welcome the Minister's response in terms of why a lead regulator approach is not contained within this Bill.

1705 At the other end of the scale, he briefly touched on the concept of *de minimis* and, Hon. Members, you will be aware that the community organisations we have range greatly in size and scale. Some, for example, local toddler groups in our constituencies, may only have a few hundred pounds in the bank. Is it right that we treat them in the same way that we treat an established charity with multi-million pound turnover and over 100 employees?

1710 I would stress that both organisations are carrying out highly valued work in the community but I would submit that the size and nature of the risks are different. And again, other aspects of our regulatory approach here in the Island adopt a risk-based approach. So my question would

be why have we not adopted a more defined risk-based approach with this opportunity to review our charity's legislation?

So I look forward to receiving the Minister's response on these points.

1715 **The Speaker:** I call on the Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I am actually going to echo some of the comments that were made just there by the Hon. Member for Middle, Mr Shimmins. Firstly I would like to say broadly I think this Bill is moving us in the right direction. But I am slightly concerned it is not making the best use of some of our resources. We already have a Registrar General on the Island, who oversees the Central Registry and I think all of our other registries – the companies registry, for example, handles the registration requirements of over 26,000 companies and foundations under a range of different legislative frameworks. So it seems to me that that is the obvious and sensible place to centralise our charities registry, with the people that do this stuff day in, day out. The regulation itself might sit elsewhere but the registration, the processing of forms, the processing of renewal paperwork, all of that seems to be the bread and butter of what our Registry does for 26,000-27,000 other entities that already exist on the Isle of Man.

My concern of putting the regulation of charities within the Attorney General's office actually raises a query of appropriate oversight. I would be grateful if the Minister could advise how he sees executive and parliamentary oversight of this function being exercised over this regulator. Our other regulators, whilst all independent of Government, broadly fall under the remit of a Minister, but primarily the Treasury Minister; but the Attorney General has no such executive oversight. As a Crown appointee he is not really even answerable to Tynwald in respect of his regulatory functions.

So this Bill, in my view, does not really look properly at the way we regulate and register charities because the fundamental question of what might be best in the Island just has not really been asked. It has just been assumed that the Attorney General is the right place for all this and it has simply just been accepted without too much question. I am, however, willing to accept that I cannot make such fundamental change to the direction of this Bill at this point so I will not be attempting to do so.

One of the requirements in this Bill, as the Minister has already outlined, is to register a charity it needs to have a substantial and genuine connection to the Isle of Man. Now quite a number of the consultation responses raised this as a query as to why a substantial connection is still necessary. I would appreciate some clarity from the Minister on why he thinks that a substantial connection as well as a genuine one is still required. The response the Attorney General seemed to give in the consultation document was simply, 'This is as relevant today as it was in 1989,' without explaining any further as to why this might be so. I do thank the Minister, however, for confirming that guidance will be issued in respect of what might be considered substantial and genuine.

I would like to turn to some of the very specific provisions within the Bill itself. There is no specific exemption for the smallest of charities; in the UK charities with a gross income of less than £5,000 are completely exempt from the regulation and registration requirements, although they can voluntarily register.

The Bill, in my view, places quite a large increased administrative and regulatory burden on these small charities, and that is right in some cases, but I do not understand the logic in overburdening the very smallest of charities with these requirements. The Minister, however, is incorrect in his earlier statement that no concerns were raised in the consultation, because concerns about this were raised during the consultation.

Firstly, that this would result in fewer people being willing to act on behalf of these small charities. And secondly, a concern was raised: the statement in the consultation document is simply, 'There should be a more clear means of exemption for small local charities.' Right there

1765 in the consultation. This was just simply dismissed by the Attorney General without any real explanation, just a statement to the fact we do not intend to do this at this time. It is not an answer that is just 'I do not want to do it'. So I will be bringing an amendment myself to the Bill to exclude the smallest of charities from the potentially onerous requirements this Bill would place on them.

1770 When it comes to publication of items on the register itself that was not particularly clear for me either; clause 9 simply states the register will be 'public'. Personally, I think the right to inspect documents needs to be much more robust in this Bill as well as the requirement the register be publicly accessible at all times instead of simply allowing the Attorney General to determine how this might work in practice, and as such I will be bringing some amendments to this effect.

1775 Clause 15 in the Bill relates to the publicising of the removal of a charity from a register. Again it is also quite vague, it just simply allows the Attorney General to publish these things in such a manner as he sees fit. Now we have got a perfectly good process for publicising the removal of companies from the register, which is the administrative dissolution procedure, and it is my intention to bring an amendment to this Bill to bring it in line with those requirements. The Attorney General stated in response to this particular issue being raised in the consultation
1780 that removal of a charity from the register has no effect on the existence of the charity. But actually I would suggest that seeing as all charities will be required to register under this Bill, being taken off the register actually is quite a serious issue and would probably only result either because the charity has ceased to exist or because it has suffered some severe regulatory failing, both of which the public I think should be entitled to know.

1785 Clause 16 in the Bill also causes me some concern. It requires every charity to have a written instrument, which I am absolutely fine with, but then it excludes all existing charities from this requirement until a date prescribed. So I would like the Minister to please provide confirmation that this date is going to be prescribed in the Appointed Day Order so as not to leave all of our existing charities hanging in limbo with this requirement. I would also like him to confirm that
1790 guidance will be issued to help the smaller charities deal with adopting written constitutions if they do not already have them.

1795 In respect of enabling charities to make changes to their own governing instruments, there are two clauses in the Bill, 17 and 21, that require the Attorney General's approval for this, but the Bill does not provide that he must not unreasonably withhold his consent. So again I will be bringing some small amendments to ensure this is done.

1800 Turning to the accounting side of things, there is no requirement in the Bill itself for charities to keep financial records. There is a requirement in the Bill for the charities to produce accounts, but that is not the same as being required to keep day-to-day transactional accounts, transactional records. There is a regulation-making power to this effect, but I think it is of such importance that the high level requirements should be placed in the Bill in exactly the same way they are for companies under the Companies Act. Regulations can then set out any further detail that is required. There is also no reference in the Bill for a requirement for charities to preserve these records, which is not particularly good from an anti-money laundering perspective. And so, again, I will be bringing amendments to rectify these two oversights.

1805 Lastly, I am going to talk briefly about the ecclesiastical charities, because the exemption is specified in the Bill itself; and as the Minister has rightly pointed out, this is not all religious charities and this seems quite strange to me because all the other exemptions are included in the regulations – the religious charities exemptions being the case in point here. None of these other exemptions are included in the Bill itself. And even when drafting the amendments for the
1810 small charities, I was advised the best place to put those is in section 46, which is the regulations section, not in the Bill itself.

So if Tynwald at some point wants to debate the appropriateness of any of these exemptions it is pretty straightforward because it is all in secondary regulation, but ecclesiastical exemption

1815 actually is much harder to change because it is in the Bill as a primary Bill. So if Tynwald does want to have that debate it is very hard to have that.

And so I am going to be bringing some amendments very similar, if not identical to the ones that were raised in LegCo, to move this exemption into the Religious Charities (Exemption) Regulations to sit alongside all the other exemptions, just so that if in the future Tynwald is minded to have a debate on this, they can do without having to resort back to changing the primary law. Now I want to be very clear that at this time I am not proposing that we have that debate, and I am not suggesting that even such a debate might be desirable; all I am trying to do is place all the exemptions in the most appropriate place should Tynwald decide to have that debate in the future.

1825 The amendment, in the words of the Attorney General, would achieve the following, these charities would:

... continue to be exempt from registration but such exemption would be on the same basis as those of the other exempt religious charities ... Thus there would be a parity of treatment.

1830 The Attorney General has confirmed in the Upper Chamber that this amendment will make no fundamental change to the regulatory landscape, which is absolutely key. We do not want to change the landscape at this point; that is not the purpose of this Bill. But when I was looking at this amendment, something the Attorney General has said in the debate made me think a little bit. In the debate he stated that:

As regards the churches referred to in the Regulations, they are not operating in the Island on a standalone basis but, instead, are part of larger organisations with a clear structure and accountability.

He went on to say:

I would suggest that the existence, and degree, of financial oversight are matters that would be taken into account in considering whether to add or remove a particular religious charity from the list of those exempted from registration.

1835 But in his consultation response the Attorney General stated, 'It is not relevant to its regulation in the Island whether a charity is subject to regulation by another comparable authority'.

1840 So it is completely contradictory. On one hand it is okay and on the other it is not. For me, this raised an interesting point in relation to foreign charities because there are a lot of international charities who are in exactly the same boat. They are already operating under a degree of regulation by, for example, the UK Charities Commission but these charities will still be subject to the requirements of our Bill.

1845 Take the Royal British Legion, for example, they have a rather complex charitable structure that I am sure Mr Speaker will give you chapter and verse on if you are having trouble sleeping, but these structures can make the production of local Isle of Man based accounts quite difficult. And yet when this point has been raised with the Attorney General's Chambers at consultation it was simply brushed aside. This charity and charities like it are already regulated by the Charities Commission in the UK and so putting them under the same quite onerous requirements as other charities that are not regulated elsewhere seems a little bit unusual. So the consultation response, as Mr Thomas has correctly stated, the regulator is not interested in a global report. That there may be some additional costs involved cannot be a reason for avoiding the relevant regulatory regime. In any case, detailed figures should be available of the operations here as part of its ordinary financial records.

1850 So, on the one hand, the Attorney General feels that religious charities should be exempt from some of these requirements because they are part of larger, well-regulated international structures, but on the other hand, foreign charities regulated in a similar vein should not. In

1855 actual fact, depending on the exact structure of the local charity, the statement about availability of accounting records might not even hold true.

So to my mind this is quite a fundamental issue about foreign charities, how they are registered and how our regulator should interact with those charities that are regulated elsewhere that may have activities on the Island. I do not think this is being properly considered.
1860 I do not think it has been properly considered because it was raised in the consultation response and no appropriate response was given. (**A Member:** Yes.) It was not properly considered in the Upper House and it really has not been properly considered in the Minister's opening remarks, it has simply been pushed to one side.

I do not have a proposed solution for this. In all likelihood it can probably be dealt with through the regulation-making powers that exist in the Bill. But I would suggest that we need a remedy for this. And we should know what is going to be proposed in respect to some of these more complex, foreign registered charities, before this Bill gets finalised and makes its way on to the statute books.
1865

It is quite disappointing for me that this issue and many of the other issues that I have raised, being quite technical matters, not matters of policy, were not addressed by the Legislative Council. I would suggest that had this Bill come to this House first, or even if the very valuable consultation responses had been properly circulated or published in advance of the Legislative Council debate, then that Council would now have time to go away and investigate and look into some of these more technical issues that, in my view, have not been properly thought through such as the treatment of foreign charities.
1870
1875

I wonder if the Minister would comment on this in his summing up.
Thank you, Mr Speaker.

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

1880
Mr Baker: Thank you very much, Mr Speaker. I will be very brief.

I would just be grateful if the Minister for Policy and Reform could draw out some of the nuances around the ecclesiastical charities and trusts, because I think it would be helpful for us to understand what we are actually looking at with these organisations.

1885 The Hon. Member for Middle referred to any organisation who receives donations from the public should be covered by legislation. I am not clear in my own mind to what extent a lot of these ecclesiastical charities do receive donations from the public, and I think – and this is just a personal view – a lot of these are very much historical organisations that were maybe established by a deceased person bequeathing funds for a certain purpose, for example, and the income from those assets may be being used for charitable purposes.
1890

That is a very different scenario from a charity going out and raising funds for its purposes. I do not have a sense of the scale of the number of charities, although anecdotally I think there are quite a lot and I think there is a lack of clarity around actually how many organisations would fall into any such legislative provision around these ecclesiastical charities.

1895 So I think, similar to some of the comments that have been made by Hon. Members who have already spoken, there is just a little bit more thought and clarity needed around this, because clearly a lot of thought has gone into this Bill and we do not want to delay it moving forward. I think there is a recognition that we do need to improve what we are doing, but we need to make sure we are not having some unintended consequences for either the national charities or some of these smaller organisations that are caught effectively by default in the provisions that we make, or indeed the smaller charities that have already been raised.
1900

So I think we need some clarity. I do not know whether the Ecclesiastical Committee is able to shed any light on this, but I think if it is not we do need to find out a little bit more before we take too much action that may have a long-term impact.

1905 Thank you.

The Speaker: I call on the mover to reply.

Mr Thomas: Thank you, Mr Speaker, and to my seconder and the three Hon. Members who have spoken and contributed to the debate.

1910 I am not sure it is really appropriate to address the first question from Mr Shimmins about the role of the Legislative Council relative to the role of the House of Keys in dealing with legislation, because that is such a huge debate. But I would just say a couple of things.

1915 The first point is that Legislative Council Standing Orders, at 4.5, clearly deal with the procedure for Bills first being introduced into the Council. There is a Standing Order entitled Procedure for Bills first introduced into the Council. That was confirmed as recently as June 2018 when that Standing Order was amended to introduce the sub-clause which caused a bit of controversy a couple of weeks ago because it was amended such that the Bill to which this Standing Order applies shall be transmitted to the House of Keys immediately, unless the President determines that its transmission should be delayed. As I said two weeks ago, it is not
1920 my intention to debate that issue in this House but I will be bringing this to the Standing Orders Committee's attention.

The second point I would make is that between 2013 and 2016 the role of the House of Keys and the role of the Legislative Council often came up in terms of legislation and it was very clear, and it was always made very clear, that legislation should not leave the House of Keys until it was perfect, until it was perfect in the eyes of the Legislative Council. So it is not right to think that we leave imperfect legislation for the Legislative Council to sort out. We have to make sure it is perfect before it leaves this House before it goes to the Legislative Council.

1925 The reason why this particular Bill went to the Legislative Council is it is a technical Bill. Two years ago the process for this Bill sped up. We had our principles consultation; there was a widely circulated principles consultation and it was decided during that process that there are so many things that we need to do in terms of charities law and in terms of gathering together information and changing the way that we deal with charities, that we could not possibly do it in this Bill, which has already got 12 Parts, 68 clauses and one Schedule.

1930 So therefore a decision was made after the principles to limit this to technical aspects of charities' registration and regulation. That was confirmed when the Bill was published seven or so months ago when the Bill was put forward for a second consultation in perfect model style for people to comment on the legislation. Then it was brought in good faith by the policy department responsible for charities, the Attorney General's Chambers, so that the Attorney General could actually argue in good faith about this technical Bill and make sure that it was
1940 suitable for purpose.

So that leads on to the second question – second good question – that Mr Shimmins gave me the chance to address. He expressed a concern that functions are being transferred to the Attorney General's department and that was built on a bit later by Mr Hooper in respect of talking about the wonderful organisation which is the Central Registry in the Department for Enterprise.

1945 The point I would make is that one of the major reasons why charities registration is being linked together more closely with charities regulation, which was always with the Attorney General's Chamber, is because the amount of advice, the level of advice, the frequency of advice, that was needed from Chambers by the Registry people, it is much better just to have that in one place, in the same way that we combined payroll and other aspects of HR to do with that in one place. It just is more efficient and effective.

1950 I am not at all worried about conflict of interest, which is the specific question I was asked, and I will actually use two examples for why I am not worried. The first one is from Mr Shimmins' world of regulation of financial services. The Financial Services Authority in the Isle of Man and in other places, both registers membership for supervision by the Financial Services Authority and then basically supervises them and even takes enforcement action according to the regulation process. The Charities Commission set up in Jersey, in Northern
1955

Ireland, in England and Wales and Scotland, has the same characteristic of bringing together registration and regulation in one place. So it is completely the norm to actually do that. It is much more efficient and effective. So I am putting back the argument of efficiency and effectiveness to the Hon. Member to answer his question.

Building on that, obviously as the Hon. Member for Ramsey, Mr Hooper, has outlined, there is now developing a great expertise and a great specialism in IT systems and the process of registration in the Central Registry, and that will be used. There is no intention for that skill to be reinvented in the Attorney General's Chamber. I remember from school, people who became lawyers were very bright but they were not very good at adding things up and running computer systems and that is why they became lawyers. That is why we are not in any way going to try and get them to start running the computers. I am sure they will be delegating the functions. As I laid out in my opening speech, the law actually allows for that function to be delegated to the Central Registry.

So basically the Central Registry is where we are registering legal entities and companies. We are also regulating civil matters, we are also looking at deeds and land, but charities are different; charities are a status. It is about legal interpretation of status and that is different and that is why we need a process like the one that exists in the Charities Commission in England and Wales.

That obviously leads on to answer – I have answered my own question – ‘Why do we not need a charities commission in the Isle of Man?’ We could have an Isle of Man charities commission but that would be growing the size of Government. Our Attorney General obviously does more than it does in bigger countries because it needs to; and we are just talking about one and a bit people here, and it is much more efficient to actually have that done as part of a function.

Moving on to Mr Hooper's question about political oversight, both from Government and so on, arrangements will be made and I am absolutely sure his Committee will be making sure that we have in place arrangements to make sure that the pay and rations aspect of the regulation and registration of charities is subject to good Government oversight and, through that, to parliamentary oversight.

Okay, moving on to some of the other points that Mr Shimmins raised. Advocates – we ‘had not taken on board some of the suggestions’, ‘queries were still being raised’. I have asked the Law Society in my quarterly meetings with the Law Society to be very specific because three advocates submitted consultation responses – Cains, Appleby and Mr Rimmer, and fourth, oh, yes, Peter Cannell as well – and I have asked each of them individually to raise concerns with me if those concerns have not been addressed and I have also asked the Law Society more generally to submit evidence. I absolutely assure this House and everybody else that we will do everything we can to address questions.

That feeds on to another specific question that Mr Shimmins asked, which was about how we had actually responded to suggestions in the consultation. I mentioned one about safeguarding; it was mentioned by Dr Allinson and several others. Mr Speaker made a very helpful submission and brought to our attention that examiners were not covered in the right way that they should have been. So we changed clause 28 to bring in the examiners as being in their proper place, relative to auditors in the legislation. The Land Registry made lots of helpful suggestions and the FSA made helpful suggestions. We included all of that into our Bill as presented here before this House today.

We come on now to the case about substantial and genuine connection. There is already guidance that is used in making that case. This all goes back to the 1980s; perhaps even the 1970s was when the problem was around that needed to be addressed with a new law.

I can absolutely assure this Hon. House that this question might have gone either of two ways. The first one is the way it has gone, which is that we are making too much about substantial connection, but I do not think that to be the case because I also was prepared to answer the other assertion that in the light of substance requirements, which were taken

2010 through upstairs, the other place, in December, we might need to tighten up some of the issues
around the substance. So we can debate that more when it comes to the clauses stage, but I do
not think the argument is one-way and that is certainly something that I will endeavour to make
sure that those responsible for the policy in this area endeavour to look at further, and I will
answer more specifically in terms of both of those two angles.

2015 That leads on to foreign regulation and the concept of lead regulation, perhaps even group
regulation, that we might apply to charities. Let's just remind ourselves of the scale of what we
are talking about here. We are talking about two or three charities a month needing registration;
we are talking about 700 charities. It does not take very long to actually assess the form when
the application is made properly to decide whether or not to allow a foreign charity to be on the
2020 register.

I just wanted to remind Hon. Members the situation across is not quite the one that
Mr Hooper described. There is not a Charities Commission for the UK; there is a Charities
Commission for England and Wales. There is another one for Scotland, another one for Northern
Ireland; and when an English charity goes to Scotland they have to register with the Charities
2025 Commission.

All I want to say about this is I am very happy that we need to make sure that we treat the
process efficiently, we make it effective; but we are a separate country. Before you know it,
people will start arguing we do not need a legal system and if you do not need a legal system
that is Manx why do we need a Manx parliament? We are a separate nation with our own
2030 separate laws and it is very important that we have our own Attorney General making our own
arrangements for Manx charities. That is fundamental in all of this and I can continue arguing
about that later.

In terms of small charities, which is an issue raised by both Mr Shimmins and Mr Hooper, I
think it was Mr Teare, former Treasury Minister, who was the person being quoted. There are
2035 lots of very good people like Mr Teare around who spend a lot of time filling in accounts for lots
of charities. Clearly, accountants who do that and get asked to do that, have it in their interest to
do it as little as possible. It might well be interesting to make an exemption, but the point that
was being made in the consultation responses was that there has been no demand from the
public or from actual charities – no huge demand. There has just been one person who
2040 submitted. Other people have expressed the same idea, but there has not been a huge demand.

If we are going to make this change, that is a policy decision and we ought to be considering
that as a policy decision and we ought to be consulting about that as a policy decision before we
come to make the exemption. So the right way to do it would be in secondary legislation, if we
are going to do it. I am not adverse to that, but it is massive because I can assure you that from
2045 the coalface most of the biggest offences are caused quietly by smaller charities, through
ignorance perhaps. But that is no defence when it comes to the law. So there are many issues to
be considered and I certainly think we need consultation about this.

So risk-based approach is the one that is adopted already. We already have different
accounting regimes for smaller charities. As I understand it, the Attorney General's Chambers
2050 staff are very keen on treating charities appropriately to their size and their complexity and their
risk. The Hon. Member, Mr Shimmins is right: there is no formal statement about risk-based
approach inside the legislation, but it took financial services 20 or 30 years to get to that position
and we have not got to that position as yet in fire and safety law and risk-based. It is not actually
the sort of approach that is liked by smaller people, in my experience; smaller people want to
2055 know exactly what they have got to do. They do not want, 'It depends on the risk, is the answer,'
they want to know exactly what they have got to do and exactly when they have got to do it,
and exactly on what form they have got to do it. So we need to have a further discussion if we
are going to move more towards a risk-based approach.

I think I have dealt with most of the issues raised by Mr Shimmins and Mr Hooper, except to
2060 acknowledge some good suggestions about publication of the register, about how we
disseminate information on removal, about assurances on the ADO and about guidance. What I

would say is that our thinking was that this was the sort of thing that was appropriate for secondary regulation. I have not seen the amendments that the Hon. Member has apparently drafted, but I look forward to discussing those with officers and then making up our mind whether they are helpful to provide some flexibility. But I would stress we want that this whole piece of legislation and the regulations under it are made on the basis that the transition will be carefully managed. From a policy point of view and from a management point of view, the Attorney General is a public officer and is required as a matter of constitutional law and public law to act reasonably. So therefore I can assure this Hon. House and the hon. questioner that we will be looking into these things.

That brings me on to the Church issues to close. I think the hon. questioner looked to me to draw out nuances, but I would suggest that the questions that Mr Baker and Mr Robertshaw asked at an earlier stage in the discussion were the right questions to be asking. It is massive. We work on cleaning up ecclesiastical charities and the whole business needs further investigation. It is not the sort of thing that you rush in to. We need to know the facts. We need to know exactly what is involved.

So if we are going to make changes we should be putting this into the secondary legislation and then beginning the investigation through the Ecclesiastical Committee, if that is the appropriate place, through a consultation, through actually engaging with all the church leaders to find out what is involved. It is not the sort of thing we can rush through in any way. I do not think that is a legislative priority. I do not think there are masses of risks, as was suggested by the questioner. We have only got a scarce amount of resources that we can apply to secondary and primary legislation, so we decided bringing this Bill forward was not the priority for the moment; the priority was technical changes rather than policy changes about the relationship between the Church and the state. But of course it is in the will of this House and the will of the other place. We could begin the process of reviewing how we treat ecclesiastical charities and we could prioritise that for work. That is our choice collectively, it is not a decision that we have made previously.

Then, finally, I just want to rise to the challenge set to me by Mr Shimmins about the consultation. I do believe the consultation was of a certain type. Essentially, we had a 20-page document of suggestion, response and what we did, which we circulated to all Members who asked for it, but we had decided not to publish that. We only published that on 12th February, but there was a very detailed legal-type response document published on the website from a month or so before that, which actually went through exactly what had been suggested and what we had done as a consequence of the suggestions. So to my mind, as the person responsible for consultation as well, the public aspects of consultation, in no way am I not defending this consultation and the way it was handled.

I beg to move.

The Speaker: The question is that the Charities Registration and Regulation Bill 2018 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.