

## Order of the Day

### 1. Dormant Assets Bill 2018 – First Reading approved

Mr Henderson to move:

*That the Dormant Assets Bill 2018 be read a first time.*

*This Bill was amended in the Keys. An updated version including the Keys amendments is available.*

**The President:** Hon. Members, the business before us today is the First Reading of the Dormant Assets Bill and I call upon the mover, the Hon. Member Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

10 The Dormant Assets Bill establishes the basis for the transfer of specified dormant assets held in the Island to a central fund managed by the Treasury, and for the distribution of surplus amounts from that fund to good causes in the Island.

The Bill has 44 clauses in total arranged over eight parts with an additional Schedule.

15 Before I begin to talk in detail about the purpose of the Bill today, I would like to highlight amendments that were made in the House of Keys by Members during the passage of the Bill in that Chamber.

Firstly, the Hon. Member for Ramsey, Mr Hooper, made amendments that have provided clarification on how the Bill will operate and which also tidied up the drafting in places.

20 The Hon. Member for Douglas Central, Mrs Corlett, introduced an amendment which made requirements in respect of the content of an asset holder notification, which made some clear stipulations so that the recipient of that notice basically would be very clear in what was being requested.

25 Finally, the Minister for the Treasury, Mr Cannan, made the following changes via amendments: introduction of an ability for the compensation of any asset holder who has suffered financial disadvantage owing to the treatment of their asset under the legislation; introduction of requirements that deal with the repayment of specified fees and charges to an asset holder upon a repayment claim arising; and correction of a drafting error in respect of penalties for offences arising under the Bill.

30 The amendments have provided Members of the House of Keys with substantial comfort regarding their initial concern upon this Bill's introduction to that place – concerns which no doubt Hon. Members of this Council will have picked up on but which I can now state have been fully addressed. I will come back to discuss each of these amendments in more detail during the Second Reading.

35 The principles behind a dormant asset regime have been in place in many other jurisdictions for a number of years. The Treasury has monitored the operation of such schemes and, in conjunction with counterparts in the UK, Jersey and Guernsey, has worked closely with locally licensed banks who are keen to see this legislation developed, which while consistent in its application is also bespoke to suit the specific needs of the Isle of Man. The licensed deposit takers whom this legislation may affect are very supportive of this Bill and its principles are something they would like  
40 to see in operation.

Most dormant assets legislation applies to bank accounts. Although this Bill also focuses initially on the same dormant bank accounts, it is structured in such a way that additional dormant assets

classes can be added through separate schemes if future research identifies these, and providing there is sufficient support and benefit from doing so.

45 The Bill provides for a central dormant assets fund to be established. This fund will be administered by the Treasury, which will be responsible for its oversight and a report on activities within the fund will be laid before Tynwald each year. The duties and responsibilities of the Treasury in respect of the fund are clearly set out in the Bill in order to provide consistency and probity in how the fund will be operated over time.

50 The Bill also defines the assets to which the legislation will be applied and provides a definition of a 'dormant' account. Dormant bank accounts will, in general terms, include any account held by a bank where contact has been lost with the owner of the account for a period of at least 15 years. This is an equivalent dormancy period to that in our neighbouring jurisdictions and represents a significant period of inactivity.

55 The Bill includes safeguards to minimise the likelihood of accounts being misclassified as dormant. It also includes procedural arrangements to ensure that, whenever possible, customers are given an opportunity to reclaim their accounts before they are transferred to the central fund.

The Bill sets out arrangements for the transfer of dormant accounts from banks to the central fund. These arrangements deal with the transfer of both newly dormant accounts and accounts that became dormant in the past. The arrangements in respect of both types of dormant account are identical, although the applicable timescales vary to take into account the difference between the regular annual transfers and the one-off transfer of historical accounts. For instance, prior to any dormant account being transferred to the fund, a licence holder must take steps to contact a customer to try to reunite them with their account.

65 As this legislation introduces the concept of a 15-year dormancy period, it is important to note that some banks may not have the means to identify their dormant accounts immediately. The Bill therefore permits a transitional period of up to five years for banks in this scenario. Therefore, whilst some banks may be able to begin their transfer obligations immediately, others may require a greater period of time before they are able to begin their transfers.

70 The Bill protects the rights of asset holders to reclaim any money transferred into the fund in full and indefinitely. The value of any asset transferred is frozen whilst it is held in the fund, but in the event of a reclaim, the Treasury will have the power to compensate any asset holder who has been significantly financially impaired by the treatment of their asset under this legislation.

75 The Bill provides arrangements for the distribution of any surplus amounts identified by the Treasury to the local community.

The role of dealing with applications for dormant assets funding and for determining successful applicants will fall to a third-party distribution organisation which will operate independently from the fund. The Treasury intends to bring forward proposals for the distribution organisation shortly after the Bill receives Royal Assent and the appointment will be subject to the approval of Tynwald.

80 Whilst the designated organisation will make its own decisions regarding distribution, the Bill defines a range of permitted charitable purposes.

Council Members will be aware that during the clauses reading of the Bill in the House of Keys the Treasury made a commitment that it would align the list of charitable purposes in the Bill with those that will be applicable in the Island when the Charities Registration and Regulation Bill 2018 is introduced, thus assuaging Keys Members' concerns and undoubtedly those of my hon. colleagues here today. Having reviewed the options on how best to achieve this outcome with the Attorney General's Chambers, I am pleased to report that an amendment to this Bill will be moved by my colleague Mrs Poole-Wilson during the clauses reading of this Bill in this Council. This amendment will fully align the list of charitable purposes in the Bill to those given in the existing Charities Act 1962 for the time being. The Treasury will then bring forward secondary legislation immediately following the enactment of the Charities Registration and Regulation Bill to realign with the revised definition of 'charitable purposes'. This is the simplest and most convenient way of achieving this objective – again allaying concerns raised in the House of Keys. Undoubtedly, Hon. Members here will have had similar concerns.

95 At this time, it is not possible to clarify the extent of any assets that will become available, or when an initial distribution may be made. However, the framework of responsibilities and duties outlined in the Bill will ensure operational costs associated with the regime are minimised, thus making best use of any amounts that can be made available for distribution to good causes in the future.

100 At this stage I would also add that it is not known how much liquidity should be allowed in the fund as a reserve to cover any claims. This will be calculated over time, once the Treasury has acquired some repayment claim experience which will provide information about the profile of accounts that are more or less likely to be subject to a repayment claim.

105 I would just like to finish with a query I have had with regard to providing some clarity on the 15-year minimum to class an account as dormant, and I can confirm that it is our intention and that of the Act once in force that an account that has not been accessed for any length of time cannot be deemed as a dormant account for Dormant Assets Bill purposes unless it is at least 15 years dormant and that can be proved by the licence holder.

110 It has also been brought to my attention that other jurisdictions have different time limits on what constitutes a dormant asset account and I can confirm that the Isle of Man has gone with our neighbouring jurisdictions to be consistent with the 15-year period and, above all, to ensure a more lengthy period of time so that a dormant asset or account that looks likely to be a dormant asset is going to be far less likely to be subject to reclaim after a 15-year period. So it is as a matter of safety and probity that we have opted to go for the 15-year period. But just to ensure that Hon. Members are aware, it does have to hit that 15-year period first before then it can be classed as a dormant asset under our legislation under scrutiny here today.

115 With that, I beg to move that the Dormant Assets Bill 2018 be read for the first time.

**The President:** Miss August-Hanson.

120 **Miss August-Hanson:** Thank you, Mr President.

I would like to second because I firmly believe in the necessity and value of the Bill following eminently important changes put by those in another place.

125 It is unrealistic, I believe, to think that dormant assets do not materialise over the passing of time in perpetuity, that companies do not have out-of-date contact details for their customers and individuals do not lose focus on their assets. The UK, Jersey and Guernsey have found the need for government, industry bodies and firms to minimise dormancy, creating pathways to good causes for any surplus for the benefit of the people we serve. Consider the potential in dormant financial and non-financial assets. This Bill gives us the enabling freedom, should we wish to make use of it, to look at the full spectrum of assets down the line.

130 It does not seem right that dormant assets reside indefinitely with firms. In its present form this Bill will encourage banks and building societies to identify dormant assets and make reasonable efforts to reunite them with their owners; and if they fail, this mechanism as it stands would ensure that where it is not possible to find those owners they be used toward good causes and public benefit. It will drive a level of transparency in the level of dormant assets within the industry sector, which will no doubt work co-operatively with Government to ensure a smooth and successful transition.

135 It is possible for the scheme to cope with a more complex group of assets in future via this Bill and I hope research will begin to create respective set-ups for effective and moral working, so that we are not applying one definition of dormancy across multiple different assets, which I believe this Bill enables.

140 Thank you, Mr President.

**The President:** I take it you are seconding.

145 **Miss August-Hanson:** I am seconding.

**The President:** Mrs Lord-Brennan.

**Mrs Lord-Brennan:** Thank you, Mr President.

150 I am fully supportive of this Bill. I will be raising a query to do with clause 8(2) with the hon. mover because I have just got a need for some greater clarity on that.  
Thank you.

**The President:** Mr Cretney.

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**Mr Cretney:** Could I ask the mover why the period of five years for banks or institutions – how that timescale was arrived at?

Also, when assets subsequently come into the public realm, is there a fixed fee that the bank can withdraw from those assets before they so do?

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**The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

165 First off, I am quite happy to answer any queries offline. Should the Hon. Member Mrs Lord-Brennan have questions for me, I am only too happy to consult on those matters.

With regard to Mr Cretney's questions, the five-year transitional period was arrived at in consultation with the licence holders and concerns that they raised that it may take them some considerable time to go through all the accounts and give it the dormant assets sieve, or microscope, to see which accounts could have the potential of falling in, and that could take some considerable  
170 time. So, to be fair, we agreed with them that we should have a five-year transitional period for them. But certainly it will be kept under review as we are going along to see how it is progressing.

The Hon. Member mentioned in regard to ... If I could just ask, Eaghtyrane – if your second question, Hon. Member, on the fixed ...?

175 **Mr Cretney:** Yes. If the assets subsequently come into the public realm to be distributed to good causes, is the bank, or the financial institution or whatever, able to take a slice off the top before that happens?

180 **Mr Henderson:** No is the straightforward answer to that. Any adjustments that the financial institution may be able to make would be at the point of closing that customer's account, if I can put it like that, at the point of registering it to Treasury as a dormant asset if there are any outstanding commitments to the bank at that point, but once it travels into Treasury realms then that is it – there will be no further charges or recourse from the bank in that respect.

185 **The President:** Does any other Member wish to speak? Mrs Maska.

**Mrs Maska:** Mr President, again I will be very supportive of this Bill. I think it is going to play a very important part in ascertaining the level of dormant assets.

190 Just one matter that in due course I would seek clarification on, and that is the capacity of a party in whom the asset is vested. I have in mind matters such as dementia, where someone might have no living relatives who can advise them. Under Part 3, Notices and Transfers, section 15, it just seems to require a notice to be sent to the last known address that the licence holder has, and I wonder if it might be possible to seek to give notice in a wider context, such as sometimes happens with estates where an advertisement is placed seeking the last-known whereabouts of a person. In  
195 my experience, people can live without proper capacity for a considerable time and it is just something I will be seeking clarification on.

Thank you, Mr President.

**The President:** Mr Henderson.

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**Mr Henderson:** Eaghtyrane, if I may put some context to that: if we are talking about somebody who is suffering from Alzheimer's or other forms of dementia, obviously for the account which could be in their name they will receive the notice – that is quite true. The point you raise about advertising as a wider notice is something we can take back and have a look at certainly, but current thinking says that if an account has been dormant for more than 15 years it is unlikely to be reclaimed under those circumstances.

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Having said that, if it becomes knowledge later on – say, for instance, in years to come, in the example, that person passes on and there is a family member down the line – there is an in-perpetuity clause in the Act that will allow somebody to make a reclaim indefinitely as long as they can provide the correct proof and documentation and so on. So, in a way, that is covered but in a circuitous way rather than putting it in the paper for people's personal details to be advertised. Nonetheless, down the line, as long as proof and documentation are produced, then Treasury will look or the bank will look at a legitimate claim to that account. So that person's family a generation down the line would, in theory, be able to reclaim that amount of money from that account. I hope that assists.

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**Mrs Maska:** Thank you, Mr President, I am obliged.

**The President:** Mrs Poole-Wilson.

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**Mrs Poole-Wilson:** Thank you, Mr President.

Just carrying on from Mrs Maska's query – and if the Hon. Member does not have the answer now, perhaps if he could provide it at our next reading of this Bill – I am very supportive of this Bill, but on the point about somebody who perhaps has lost capacity to act in their own right but perhaps has an enduring power of attorney in operation that has been registered in order to allow the attorney to act on behalf of that individual, is the Hon. Member able to give reassurance that part of any bank's due diligence before they treat an account as dormant would be to check whether there is somebody who now acts on behalf of the account holder; and would that be the relevant person who is contacted in relation to this?

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**The President:** Mr Henderson.

**Mr Henderson:** In the case that Mrs Poole-Wilson mentions, of a person who has been nominated power of attorney to act for the person incapacitated, that person would be notified through that process to that bank anyway because that person presumably then would have access to the bank account in question to make payments or cover any bills or whatever was coming in. So, to that effect, that account, if so used, could not then be classified as dormant because the person with the power of attorney would have access from time to time to that account to operate whatever personal business needs to be taken care of on behalf of the person they were acting for. There would be account activity registered, so on that point it could not be classed as a dormant asset.

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If there was no account activity and the person with power of attorney had no reason for at least 15 years to access that account, even so, the bank should have a record of that person being the power of attorney. By virtue of the office that they agreed to hold, the bank must have a notification on file; otherwise, that person would not be able to act for the person they were agreeing to have power of attorney for. There must be some sort of official notification process. On the accounts I have seen with power of attorney, obviously the bank knows, with documentation in place, that there is person X who has power of attorney over that account and can act, if necessary, in the payment of anything for that person. So there must be some documentation there, I would have thought. The bank would see that in assessing the account if they realise it has not been accessed for

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15 years, and at that point – I would suspect, but I can clarify on Second Reading – having seen that, it would be their duty to send a notice to the person with the power of attorney. So they would in fact receive notification via that process by virtue of being power of attorney and being on file at the bank as having power of attorney.

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**The President:** Mr Crookall.

**Mr Crookall:** Thank you, Mr President.

260 Just to follow up on that, and looking at some of the quizzical faces around the Chamber here, I am not too sure. That probably would be the case – I would like to think it would be the case on those accounts, but I am not too sure it would be in that case. Somebody might have had accounts that go back 10 or 12 years when somebody then comes and takes over the estate for them, and it may well be there is no documentation and they might not find out about it.

265 So, my question to the Hon. Member is: will it be in the future that Treasury will have a list of those dormant accounts that people can come and look at, for people who are acting on behalf of other people, and then make a claim, if needs be, on behalf of those people they are looking after? Obviously, I do not expect him to have an answer today, but –

**Mr Henderson:** Yes, I can answer.

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**The President:** Mr Henderson.

275 **Mr Henderson:** These scenarios were covered in the House of Keys debate on the passage of this Bill. The whole point of the Bill is that any account classified as dormant after the 15-year qualification period of inactivity criteria set out in the Bill transfers to Treasury's central dormant asset fund – which, incidentally, is ring fenced so it cannot be confused with any other Treasury matters. That is held there and there is a guarantee in place that at any point in time – or in perpetuity, as I said – someone with the right documentation may come along and say, 'Actually, that account is not dormant and here is the proof – we just did not know that it had been transferred because Mr or Mrs X has passed on and we have only just come back from living in Australia,' or something like that. So that part is taken care of.

280 With regard to power of attorney, as far as I understand it, to become an official, legally recognised person to have power of attorney, there are certain papers that require to be signed, flagged up and registered. I will clarify that next time round, but that is my overview understanding; and from experience, certainly to have power of attorney over a bank account, the bank has to have documentation in place showing that and they have to know the various particulars and identification of that person and so on. To me, that would be formal power of attorney, and therefore if something happened to the person they were acting for and years down the line they suddenly realise and go to the bank and say, 'Look, we have missed this because we have had to go away or live away for whatever reason,' as long as they can supply the documentation and providing this family member is still alive who could take care of the estate, or the person with the power of attorney could contact ... There would have to be some sort of legal procedure in there outside of our remit, but it should still be possible, as long as someone supplies the correct documentation, to reclaim that account either for themselves or acting on behalf of someone else – but showing, again, the relevant documentation.

295 There is no intention of an account grab going on here. The main principle at the heart of this legislation is that an account that has been designated as dormant will be accessible forever. Somebody who realises that for some reason, whatever, the account has been moved into the dormant assets account can come along with the right documentation and they can reclaim that at any time. That is specifically enshrined in the Act, so I suspect even for somebody acting with power of attorney on behalf of a family, as long as they have the relevant papers and it is not just some informal arrangement, there should not be much problem in organising that between themselves

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and the family to make a reclaim. To be absolutely safe on that – because that is my loose understanding – we can supply a little further the next time round with regard to power of attorney.

305 But with regard to the main tenet of the Bill it is very clearly laid out that a claim on that account that has been put into the dormant assets can be made at any time going forward into the future as a very specific safety factor in case these kinds of situations arise, and ensures that the right thing is done at the right time.

310 **The President:** Mrs Lord-Brennan.

**Mrs Lord-Brennan:** Thank you, Mr President.

I think the matter of capacity and enduring power of attorney is something that is worthwhile exploring a little bit further, because my understanding is that a family member could have an enduring power of attorney and then quite a separate process is required to have power or  
315 signatory to do with another person's bank accounts. So I think it would be quite possible for an enduring power of attorney to be in place but for that person to maybe not know about bank accounts held by somebody else in the case of their limited or reduced capacity, as the Hon. Member Mrs Maska has mentioned.

320 I suppose it is about looking at whether there is a gap between those processes – the powers over the bank might not necessarily follow the enduring power of attorney – and making sure that we are comfortable in that respect.

I am not sure if the learned Attorney can give us a brief outline to do with enduring powers of attorney; perhaps it is not the right time for that.

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**The President:** Mrs Poole-Wilson.

**Mrs Poole-Wilson:** Just to build on the point that Mrs Lord-Brennan has made – and I thank the hon. mover for the explanation he has given so far and the reassurance that he can come back and give some clarity – I currently do hold an enduring power of attorney for an individual. My  
330 understanding is that at the moment I am not using that enduring power of attorney but should that individual lose their capacity, it would be my duty to register that power of attorney. However, that is not necessarily – is my understand – a notification to each institution that I would then transact with on behalf of the person that I hold the enduring power of attorney for.

335 So I suppose the clarification is not necessarily something for the Bill but just clarification that any institution is obliged to check whether an enduring power of attorney exists, and is in operation once it is registered, before they reach the conclusion that an account is dormant. I think the Hon. Member has put his finger on it: if the power of attorney is transacting business on behalf of someone using the account, then it would not be dormant anyway; but if they are sitting there with  
340 power over all assets for an individual and one of those assets is an account that just is not touched, for whatever reason, how do we make sure that the power of attorney holder receives the notification? I imagine that is part of the bank's due diligence process, but his reassurance on that point perhaps next time when we meet would be helpful.

Thank you, Mr President.

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**The President:** Mr Henderson.

**Mr Henderson:** If I could answer Mrs Poole-Wilson first, I think we are looking at an extremely rare occasion of something like that happening, because it is my understanding – still, not with the  
350 Hon. Member's own experiences, as currently demonstrated – that if you have a power of attorney for somebody, then you have the power to act for them and therefore you will need to let whatever institution that you may be acting for that person for ... they will need to know, at some time in the future if accessing whatever particular service it is, that you have the power of attorney to do so. Much the same as if somebody acts for a person in relation to benefits, to the Social Security

355 Division a letter has to be sent, and documentation and so on, that person X will be acting for  
person Y and that Social Security are fully aware of it. So there is a notification process in train –  
normally, anyway – so that should an account, under the example being illustrated, exceed 15 years’  
dormancy and inactivity, there should have been a notification at the outset to notify the bank that  
360 person X has the power of attorney and may well be acting for person Y. So there should be a  
notification trail somewhere on that.

If a person having power of attorney has not actually done anything about it, which would be  
such a rare occurrence, then obviously after 15 years the bank would certainly send out a notice to  
the last-known account holder. If there was a notice of power of attorney, yes, they would get that,  
obviously; if there was not, in the background, I cannot see how the bank could achieve that.  
365 Nonetheless, we will look into it – unless the Attorney General, who is looking at me, may provide a  
little further clarification on that.

Just to say, though, as a backstop situation, if it was ever discovered in the future and there was a  
power of attorney and for some reason the bank did not know about it – and maybe there are very  
good reasons why a bank would not know about it and not be informed that there is a power of  
370 attorney – then the situation can still be salvaged because the account under question is recoverable  
in perpetuity anyway. So, if it was realised by person X, again acting with power of attorney, that  
something has gone awry and it has gone into the Dormant Assets Fund, then as long as they can  
demonstrate and put through the correct documentation, that account can be retrieved. So that is  
the backstop position anyway. Under the scenarios that are being presented, it is not quite a fait  
375 accompli that Treasury just get that money, that is the end of it and if somebody pops up at some  
future date all is lost. Quite the contrary, if it can be proved through documentation, a reclaim can  
be made at any time at all.

**The President:** I will ask the learned Attorney to comment on powers of attorney.  
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**The Attorney General:** Thank you, Mr President and Hon. Members.

There is not a lot more I can say which has not already been addressed, but what is clear is that  
something could slip through the net, and I think that is the important part, so that you could be  
holding a power of attorney or you could be holding an enduring power of attorney – and I know my  
385 colleague Mrs Poole-Wilson has referred to what the law says with regard to the donor of that  
power of attorney: if they lose their capacity, then the attorney is under an obligation in law to  
register it. But of course a licence holder may have no knowledge whatsoever of a power of  
attorney, an enduring power of attorney or whatever being in existence. Certainly there would be a  
duty on a licence holder as part of its due diligence to check its records to see whether a power of  
390 attorney had been lodged with them; but if it had not, they would not have any opportunity of  
identifying that a power of attorney exists, and there is very little that any legislation can do if the  
attorney has in fact failed in their duty to act in accordance with the powers that have been given to  
them.

So you are quite right, Hon. Members, to look at this and be concerned, but at the end of the day  
395 what can the licence holder do? It can simply, as a part of its due diligence, check its records. If it had  
been lodged with them, I am sure it would have acted appropriately and dealt with the attorney; if it  
had not, then it would have no knowledge of that. The saving here is, of course, as the Hon. Member  
Mr Henderson has pointed out, that there is no restriction in time for a reclaim being made if the  
circumstances arise later on where a family member or whatever becomes aware of an account that  
400 is there.

Thank you, Mr President.

**The President:** Mr Henderson, do you wish to reply to the debate?

405 **Mr Henderson:** Only inasmuch that I thank Hon. Members for their questions, which have been  
most interesting.

410 Certainly with respect to following up on the power of attorney, I can add a little further perhaps on the Second Reading, but from my personal knowledge of how that works and from what the Attorney General said, and the fact that no matter what there is a backstop in the Bill that ensures there is no time limit as to when somebody can come back and make a claim on a particular dormant asset account, there is a robust safety mechanism in the back of that.

I thank my seconder, Miss August-Hanson, for her assistance in this and with that, Eaghtyrane, I beg to move the First Reading.

415 **The President:** Hon. Members, I put the question that the Dormant Assets Bill be read for the first time. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That concludes the business on the Order Paper. The Council will now stand adjourned until our next sitting on 5th March at 10.30.

*The Council adjourned at 11.11 a.m.*