



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 12th April 2016**

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**Present:**

**The President of Tynwald (Hon. C M Christian)**

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),  
The Acting Attorney General (Mr J L M Quinn),  
Mr D M Anderson, Mr M R Coleman, Mr C G Corkish MBE, Mr D C Cretney,  
Hon. T M Crookall, Mr R W Henderson and Mr J R Turner  
with Mrs J Corkish, Acting Clerk of the Council.

**Business transacted**

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## Legislative Council

*The Council met at 10.30 a.m.*

[MADAM PRESIDENT *in the Chair*]

**The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie, Madam President.

5 **The President:** We are pleased the Lord Bishop is here to lead us in prayers after his operation.

**A Member:** Hear, hear.

**The Lord Bishop:** Thank you, Madam President.

### PRAYERS

*The Lord Bishop*

### Leave of absence granted

10 **The President:** Hon. Members, the Hon. Member Mr Wild has indicated that he is unwell, so he had been given leave of absence this morning.

## Order of the Day

### 1. Concessionary Travel Schemes Bill 2016 – Third Reading approved

Mr Corkish to move:

*That the Concessionary Travel Schemes Bill 2016 be read a third time and do pass.*

**The President:** Our first Item of business is the Concessionary Travel Schemes Bill 2016 for Third Reading.

I call on the Hon. Member, Mr Corkish.

15

**Mr Corkish:** Thank you, Madam President.

In moving this, the Third Reading of the Bill, I wish to thank my seconder, Mr Crookall.

The main objective of this Bill is to regularise the current position by conferring a statutory power on the Department of Infrastructure to enable that Department to make concessionary travel schemes for passengers travelling by public road or rail transport.

This objective will be achieved by the insertion of a new section 23A in the Isle of Man Passenger Transport Act 1982 so as to enable the Department to make concessionary travel schemes. The Department is currently working on the details of the travel scheme and hopes to be able to issue the draft scheme for public consultation in the near future. One of the objectives of the new scheme will be to ensure that any concessions will be targeted to those groups in society who are most in need. That is why the Department is currently working closely with the Treasury – the Social Security Division – to refine the details of the new scheme.

So by way of recap, I would like to emphasise to Hon. Members that this Bill is purely inserting new enabling powers in the Isle of Man Passenger Transport Act 1982 which will introduce new provisions which will allow the Department of Infrastructure to make concessionary travel schemes.

I can also advise Hon. Members that whilst the origins of the original travel concessionary scheme can be traced back to 1974, that scheme was classified as a non-statutory scheme although the scheme did require Tynwald approval. The original 1974 scheme was actually made by the former Board of Social Security and the scheme has been revised over the years to take account of the introduction of the Government Department system and subsequent name changes and restructuring of those Departments.

Madam President, I beg to move the Third Reading of the Concessionary Travel Schemes Bill 2016 and that it do pass.

**The President:** The Hon. Member, Mr Crookall.

**Mr Crookall:** Thank you, Madam President. I beg to second and reserve my remarks.

**The President:** The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The motion therefore carries, Hon. Members.

## 2. Preferential Payments (Amendment) Bill 2016 – Third Reading approved

Mr Anderson to move:

*That the Preferential Payments Bill 2016 be read a third time and do pass.*

**The President:** We turn to Item 2, the Preferential Payments (Amendment) Bill 2016 for Third Reading.

I call on the Hon. Member, Mr Anderson.

**Mr Anderson:** Thank you, Madam President.

Hon. Members, the Preferential Payments (Amendment) Bill 2016 will amend the Preferential Payments Act 1908 to give preferential creditor status to the eligible deposits within the rules of the Depositors' Compensation Scheme Regulations 2010, as amended, ahead of any other preferred creditor after Liquidator expenses and secured creditors.

The Bill will allow Treasury by order, subject to the approval of Tynwald, to add, to vary or reduce the types of debt which are to be afforded preference to other debts. It also provides Treasury with the power to recognise the depositors' compensation scheme of another jurisdiction as a preferred

creditor if the scheme is equivalent or similar to the Isle of Man's Depositors' Compensation Scheme.

60

I thank Mr Henderson, my seconder, on the passage of this Bill.

Therefore, Madam President, I beg to move that the Preferential Payments (Amendment) Bill 2016 be read for a third time.

65

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

**The President:** The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

70

The motion carries, Hon. Members.

### 3. Marriage and Civil Partnership (Amendment) Bill 2016 – Second Reading approved

Mr Cretney to move:

*That the Marriage and Civil Partnership (Amendment) Bill 2016 be read a second time.*

**The President:** Item 3, the Marriage and Civil Partnership (Amendment) Bill 2016.  
The Hon. Member, Mr Cretney.

75

**Mr Cretney:** Thank you.

I thank Hon. Members for their support at First Reading stage towards the Marriage and Civil Partnership (Amendment) Bill 2016.

I believe I responded to points raised during that debate as clearly as I could, so I will simply re-emphasise the key points. It will allow same-sex couples to be married on the Island by way of a civil ceremony, and in law those marriages will be equivalent to the marriages of opposite-sex couples.

80

The Church of England and marriage according to its rites is entirely excluded from the scope of this Bill. The Lord Bishop, I think, welcomed my clear clarification on this point, which I am pleased to reiterate.

The Bill will permit the marriage of same-sex couples according to religious rites and usages of other religious organisations *if* – and I emphasise again, *if* – the governing authority of such an organisation has opted in to that process. It provides that there will be no obligation or compulsion on religious organisations or individuals to carry out or participate in the religious marriage ceremony of the same-sex couple.

85

It makes some consequential amendments to the Sharing of Church Buildings Act; and it provides for recognition on the Island of the marriages of same-sex couples that were lawfully entered into outside the Island.

90

It amends the Matrimonial Proceedings Act 2003 to provide for same-sex couples to be able to divorce, and it amends the Civil Partnership Act so that those couples who wish to do so can in fact convert their civil partnership into a marriage.

95

Finally, thanks to an amendment in the Keys it extends the right to civil partnership to heterosexual couples on the same basis as homosexual couples.

With that clarification, I beg to move that the Marriage and Civil Partnership (Amendment) Bill 2016 be now read a second time.

100 **The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Lord Bishop.

105

**The Lord Bishop:** Madam President, I regret having to oppose the Second Reading of the Bill but I do so on the grounds that it is simply not fit for purpose.

Fundamentally, the Bill amends section 1 of the Marriage Act and the reason given by its supporters is that it does so on grounds of equality or, as is repeatedly said in the explanatory memorandum, by 'extending the concept' of marriage.

110 So why is the clause that is at the heart of the Bill – clause 5 – so coy about this purpose? If all that is proposed is to 'extend the concept' of marriage, that clause would read something like this: 'Marriage and civil partnerships shall henceforth be open to both heterosexual and same-sex couples.' However laudable, the reality is that 'extending the concept' on the grounds of equality is in fact impossible.

115 The gay campaigner, Peter Tatchell, in supporting this Bill says, 'Separate is not equal.' What kind of statement is that? Equality is separate toilets for men and women; equality is driving licences only for those who pass their driving test; separate is frequently the ideal of equality. So it is pure spin to cite fundamental principles like, 'Equality before the law' as Mr Tatchell and others have done to promote this Bill; and it is an insult to opponents who are equally committed to equality.

120 Madam President, the Bill, in contrast, enshrines inequalities. If we agree to consider the clauses we will find that much of the Bill is devoted to coping with the irradicable inequalities between two different concepts of marriage, such as the presumption of a child's legitimacy, consummation and adultery, to mention but a few.

125 We are proceeding to consider a Bill based on a rushed-through Act of the British Parliament, amended during its passage in another place, and to which there are yet more tidying-up amendments before us. Madam President, it is my belief that this is a rail crash waiting to happen.

There was an alternative that I discussed some time ago which would have resulted in genuine equality: two parallel states with equal status for single-sex and heterosexual couples. But such is the pressure to conform, this approach was rejected and this seriously unequal Bill was created, based on calling one thing the same as something else and redefining marriage.

130 I was impressed, Madam President, during the First Reading with the Old Testament scholarship of our hon. colleague, the proposer of the Bill, in relation to polygamy. Yet he failed to answer the question I raised about whether the state should – I know 'should' is a moral word – legislate to change the fundamental meaning of one of the bedrocks of social order. If the state can change what the word 'marriage' means in relation to gender, what is stopping us from changing what the word means in relation to number? In other words, if this Bill is passed, polygamy and polyandry cannot in future be ruled out because 'extending the concept' of marriage will have been agreed in principle.

135 Thank you, Madam President.

**The President:** The mover to reply.

145 **Mr Cretney:** I would like to thank the Bishop for his comments and I understand his position on the Bill. I think as we said last time despite the complete non-inclusion of the Church in this piece of legislation I believe that the vast majority of people on the Island, not only those who were consulted and made their responses but also those who did not respond, are in favour of the proposals before us.

On that basis, I beg to move this Second Reading.

150

**The President:** The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The noes have it.

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

<b>FOR</b>	<b>AGAINST</b>
Mr Turner	The Lord Bishop
Mr Coleman	Mr Anderson
Mr Cretney	Mr Corkish
Mr Henderson	
Mr Crookall	

**The Acting Clerk:** Madam President, that is 5 votes for, and 3 against.

155 **The President:** The motion therefore carries, Hon. Members.

**Marriage and Civil Partnership (Amendment) Bill 2016 –  
Consideration of clauses commenced**

**The President:** We move now to the clauses stage of the Bill and the Hon. Member wishes to take clauses 1, 2 and 3 together.

**Mr Cretney:** Thank you very much, Madam President.

160 Clauses 1 to 3, which make up Part 1 of the Bill, are opening provisions; and with your permission I would like to move them together.

Clause 1 states the short title that the Act will have if the Bill is passed.

Clause 2 provides for its commencement.

165 Clause 3 enables the Council of Ministers to make any additional amendments to other Manx legislation which may be needed as a result of the Bill.

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

**The President:** The Hon. Member, Mr Coleman.

170 **Mr Coleman:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it, the ayes have it.

Clause 4.

175 **Mr Cretney:** Clause 4 simply introduces the amendments which are made by the Bill to the Marriage Act 1984. In moving the subsequent clauses of the Bill I will simply refer to that Act as ‘the 1984 Act’.

I beg to move that clause 4 stands part of the Bill.

180 **The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

185 **The President:** The motion is that clause 4 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

190 **Mr Cretney:** Clause 5 makes a small amendment that goes to the heart of this Bill – almost everything else in the Bill in respect of allowing same-sex couples to marry is basically consequential to this clause. Section 1 of the 1984 Act sets out the conditions under which a marriage between two people is void. At present one of those conditions is if the two people are of the same gender. This clause removes that condition.

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

195

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** Lord Bishop.

200 **The Lord Bishop:** Madam President, thank you.

As I said in my speech a few moments ago, as the hon. mover has clearly indicated this is the crucial clause in the Bill. The placing of it at this point clearly indicates that here is the point at which the Island makes a fundamental change to its understanding of marriage, and allows for the possibility that in the future marriage can be further redefined.

205 I think this is a serious mistake.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Thank you, Madam President.

210 I totally align my thoughts on this with the Lord Bishop and I think he has eminently put the case over. However, I would like to put on record at this stage a response to the hon. mover in his opening remarks.

I think he suggested that there was a vast majority of people on the Island in favour of this legislation. I would not take that view. On the consultation process it was marginal in favour of the Bill. However, if you take the representatives that responded and the number of people they represent you would find a majority against.

215 I think it is very difficult for people to put their head above the parapet on this subject for different reasons and therefore I do not think you have had an overwhelming response from the man in the street. However, I would take issue with the hon. mover in suggesting that there is a vast majority of people in favour of this Bill. I believe there is not.

220

**The President:** The Hon. Member, Mr Corkish.

**Mr Corkish:** Thank you, Madam President.

225 Purely not to prevent a repetition but certainly align myself with the remarks by the Lord Bishop especially, it was a word and a phrase that I was looking for in my original remarks – and I oppose the Bill too – that this is an unequal Bill and it is destroying the bedrock of social order as we know it. I maintain my stance.

Thank you, Madam President.

230

**The President:** The mover to reply.

**Mr Cretney:** I would strongly disagree with the comments that have just been made in terms of destroying the bedrock of society. I think that is a completely over-the-top comment.

235 I would say to my friend and colleague, Mr Anderson, that if the views of the younger man or woman in the street were taken on board I think there is a clear view about the future. And in relation to my friend again, the Lord Bishop, I did make clear at an earlier stage and I will make clear again there is no indication that this legislation will be further extended to cover other areas such as those described.

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

**The President:** The motion is that clause 5 stands part of the Bill. Those in favour, please say aye; against, no. The noes have it.

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

<b>FOR</b>	<b>AGAINST</b>
Mr Turner	The Lord Bishop
Mr Coleman	Mr Anderson
Mr Cretney	Mr Corkish
Mr Henderson	
Mr Crookall	

**The Acting Clerk:** Madam President, that is 5 votes for, and 3 against.

245 **The President:** Hon. Members, the motion therefore carries.  
Clause 6.

**Mr Cretney:** Madam President, clause 6 amends section 3 of the 1984 Act.

250 At present, if a young person aged 16 or 17 marries with the necessary parental consent and their spouse then dies, if the young person wishes to remarry whilst still under the age of 18 parental consent is not required for the second marriage.

The amendment made by this clause will mean that a surviving civil partner who subsequently wishes to get married whilst still under the age of 18 will also not require parental consent for the marriage.

255 I beg to move that clause 6 stands part of the Bill.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** I beg to second and reserve my remarks.

260

**The President:** The motion is that clause 6 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 7.

265 **Mr Cretney:** Madam President, clause 7 can perhaps be considered the other side of the coin to the amendment made by clause 5. That clause amended Manx legislation so that a marriage between two people of the same gender is not automatically void and this clause confirms that such a marriage is lawful.

270 This is achieved by inserting new section 4A into the 1984 Act. In addition to declaring that the marriage of same-sex couples is lawful, this clause sets out the position of the Church of England as the Established Church in the law of the Island.

275 As the Lord Bishop has explained, the Church of England is very clear that it does not support or recognise the marriage of two people of the same gender. I may not agree with the view of the Church but I respect the right of the Church to hold that view and, as Hon. Members know, the rights to freedom of religion and freedom of expression are enshrined in the Human Rights Act 2001.

Under the 1984 Act as amended, a same-sex couple cannot enter into a marriage according to the rites of the Church of England. They can only marry under a registrar's certificate or a Deemster's licence. In other words, the only form of marriage ceremony which may be contracted, unless a religious body has consciously opted in to providing them, is a civil marriage ceremony.

280 In addition, a new section 4A of the 1984 Act confirms that the common law duty on the clergy of the Church of England to marry parishioners is not extended to same-sex couples. If the Church of England were to change its position on the marriage of same-sex couples at some point in the

future, additional primary legislation would be required both here in the Island, and in England, to give effect to that decision.

285 I beg to move that clause 7 stand part of the Bill.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

290

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

295 I would just like to make a comment on supporting the Bill. But in doing so I would like to echo the comments made by the mover that those people who are supporting this Bill should respect the views of those who do not.

300 I think it has been very unfortunate that a certain element of the pro-lobby have acted in quite an aggressive way towards people who have an opposing view to this, and surely we live in a society where we are all entitled to our own opinion. We might not like someone's opinion, we might not agree with it, but they are entitled to hold it; and what I would say is that again in supporting this Bill I would hope that the element who are very vocal do at least start to respect the views and cease verbally attacking those who have an opposing view.

305 When reading some of the comments that have been levelled at, certainly, Members of Tynwald and others in society who have opposed this Bill ... for those who are supporting the Bill it is a challenge whether you want to be party to that sort of attack. So I would echo the comments of the mover, Mr Cretney, in saying that reviews should be respected. But I will be supporting the clause.

**The President:** Do you want to comment, Mr Cretney?

310 **Mr Cretney:** Just that I thank the Hon. Member for his comments and agree with his sentiments. And I beg to move.

**The President:** The motion is that clause 7 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

315 Clause 8.

**Mr Cretney:** Clause 8 inserts new section 4B into the 1984 Act.

320 This new section provides that if a same-sex couple has been lawfully married in a country outside of the Isle of Man, that marriage will be recognised as a marriage in the law of the Island. This applies whether the marriage was entered into before or after the Bill comes into operation.

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

**The President:** The Hon. Member, Mr Coleman.

325 **Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

**The President:** The motion is that clause 8 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

330

**Mr Cretney:** Thank you.

Clause 9 inserts new section 4C into the 1984 Act. This new section provides that there is no compulsion on persons to participate in a marriage ceremony according to religious rites if the parties to be married are of the same sex. It thus permits same-sex marriage ceremonies according

335 to religious rites, but does not compel participation in them. Of course, the marriage of a same-sex couple according to religious rites can only take place at all if the governing authority of the religion or denomination in question has consented to opt in to such ceremonies. Opt-in by religious bodies other than the Church of England is possible without further primary legislation.

340 It is perhaps worth reiterating here why the position of the Church of England is different to that of other religions and denominations under the Bill. The reason for this is quite simple of course: only the Church of England is the Established Church in the Island, and only the Church of England has a statutory role under the Marriage Act 1984.

Madam President, I beg to move that clause 9 stand part of the Bill.

345 **The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

350 **The President:** The motion is that clause 9 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

**Mr Cretney:** Thank you.

355 Clause 10 makes a minor amendment to section 5 of the 1984 Act, which concerns the methods of authorising marriages according to the rites of the Church of England. The amendment is to recognise the fact that such a marriage may now be celebrated at any time.

This provision is unconnected to the introduction of marriage for same-sex couples; it is included because the Bill is a convenient legislative vehicle to make the amendment.

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

360

**The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President, I beg to second and reserve my remarks.

365 **The President:** The motion is that clause 10 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

**Mr Cretney:** Thank you.

370 Clause 11 replaces the existing section 17 of the 1984 Act with a new section 17.

The new section includes specific provision stating that any purported Church of England marriage between persons of the same sex is void. This provision reflects the view of the Church of England on same-sex marriage, and it is necessary because of the removal of the general provision from section 1 of the 1984 Act that currently makes all same-sex marriages void.

375 Section 17 is replaced rather than just amended as the opportunity has been taken to make the section as a whole more readable.

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

**The President:** Hon. Member.

380

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

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

385 Clause 12.

**Mr Cretney:** Clause 12 of the Bill replaces the existing section 19 of the 1984 Act with a new section 19.

The new section replicates the existing section 19 for marriages between a man and a woman and in addition it authorises marriages of same-sex couples by civil ceremony in non-religious buildings.

It does not deal with religious marriages of same-sex couples where the religious organisation in question has decided to recognise such marriages. That issue is dealt with by new provisions which are to be inserted into the 1984 Act by clauses 13 and 14 of this Bill.

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

**The President:** Hon. Member.

**Mr Coleman:** Thank you, Madam President, I beg to second and reserve my remarks.

**The President:** The motion is that clause 12 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Welcome to Scottish Parliamentary guests**

**The President:** At that point, may I welcome Sir Paul Grice and Ms White to our Chamber.

You are very welcome. I hope you find your observation of our practices in parliamentary setting different – and interesting!

**A Member:** Hear, hear.

### **Marriage and Civil Partnership (Amendment) Bill 2016 – Clauses concluded**

**The President:** Clause 13.

**Mr Cretney:** Thank you.

Clause 13 of the Bill inserts new section 19A into the 1984 Act. The new section will permit religious denominations, other than the Church of England, to opt in to the celebration of same sex marriages on their premises.

Religious buildings can only be used for same-sex marriages if they have been registered for such ceremonies, and registration can only be applied for with the consent of the governing authority of the relevant religious organisation.

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

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

**The President:** The motion is that clause 13 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

425 **Mr Cretney:** Clause 14 inserts new section 19B into the 1984 Act. This new section will allow religious organisations to opt into conducting same-sex marriages according to their religious rites in the home of a person who is housebound, or in the place where one of the couple is detained, for example in a hospital or prison.

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

430

**The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

435 **The President:** The motion is that clause 14 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

**Mr Cretney:** Thank you.

440 Clause 15 amends the existing section 21A of the 1984 Act. That section concerns a registrar's powers to require evidence in respect of the marriage of housebound and detained persons. The amendment expands the registrar's powers in such cases to require evidence that the governing authority of a relevant religious organisation has consented to the participation of its members in the marriage of same-sex couples.

445 I beg to move that clause 15 stand part of the Bill.

**The President:** Hon. Member.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

450

**The President:** The motion is that clause 15 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

455 **Mr Cretney:** Clause 16 inserts new section 21B into the 1984 Act. The new section provides for the giving of additional evidence in connection with same-sex marriages where a member of the couple is either housebound or detained. This evidence includes confirmation of where the marriage will take place, a medical statement confirming that a person is housebound, and confirmation that an institution where a person is detained is content for the marriage to take place.

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

**The President:** Hon. Member.

**Mr Coleman:** Thank you, Madam President. I beg to second and reserve my remarks.

465

**The President:** The motion is that clause 16 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

470 **Mr Cretney:** Thank you.

Clause 17 amends section 29 of the 1984 Act. That section concerns the registration of buildings for marriages and the amendment limits it to only dealing with the registration of buildings for marriages between a man and a woman.

475 Separate provision for the registration of buildings for same-sex marriages is inserted by the next clause of this Bill.

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

**The President:** Hon. Member.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

480

**The President:** The motion is that clause 17 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

485

**Mr Cretney:** Clause 18 inserts new sections 29A to 29E into the 1984 Act. All of these new sections relate to the registration of buildings for the marriages of same-sex couples.

Section 29A sets out the main registration procedures and section 29B concerns the cancellation of a registration; whilst section 29C allows for regulations to be made to supplement the provisions in 29A and 29B.

490

Section 29D deals with the procedures required for the registration for same-sex marriages of church buildings which are used by more than one religious denomination. In essence, the building can only be registered if all of the churches that share the building consent to same-sex marriages.

Section 29E concerns the cancellation of such registrations.

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

495

**The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

500

**The President:** The motion is that clause 18 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Cretney:** Thank you.

505

Clause 19 amends section 30 of the 1984 Act. That section deals with the cancellation of the registration of a religious building when it is no longer used for the purpose of public religious worship; and it provides for the possibility of substituting a different building that is now used for such worship.

The effect of the amendment is to extend the provision to take into account that religious buildings may be registered for the purpose of solemnising same-sex marriages.

510

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

**The President:** Hon. Member, Mr Coleman.

515

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 19 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

520

**Mr Cretney:** Thank you.

Clause 20 makes a minor amendment to clause 31 of the 1984 Act which deals with the procedures for the solemnisation of marriages in a registered building. The amendment is consequential on the fact that a building may be registered for the purpose of conducting the marriages of same-sex couples.

525

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

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

530 **The President:** The motion is that clause 20 stands part of the Bill. Those in favour, please say  
aye; against, no. The ayes have it. The ayes have it.  
Clause 21.

**Mr Cretney:** Clause 21 inserts new section 34A into the 1984 Act.  
This new section makes similar provision in respect of void same-sex marriages to that which is  
535 already made by section 34 of the 1984 Act for marriages between a man and a woman. In each  
case, the marriage will be void if the couple have knowingly and wilfully married in the absence of  
the required consent to the marriage.

A marriage will also be void under this new section if it is purportedly solemnised between two  
persons of the same sex according to the rites of the Church of England.  
540 I beg to move that clause 21 stand part of the Bill.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

545 **The President:** The motion is that clause 21 stands part of the Bill. Those in favour, please say  
aye; against, no. The ayes have it. The ayes have it.  
Clause 22.

**Mr Cretney:** Thank you.  
Clause 22 amends section 36 of the 1984 Act. That section concerns marriage under the authority  
550 of a licence issued by a Deemster, of a person who is seriously ill and who is not expected to recover.  
The amendments made by this clause ensure that a Deemster can only authorise a religious  
marriage ceremony of a same-sex couple if the relevant governing authority has consented to  
marriages of same-sex couples.

The clause also amends section 36 so that a deathbed marriage of a man and a woman according  
555 to the rites of the Church of England cannot be authorised under a Deemster's licence. This is to  
bring the provision in the Island into line with that in England. In England such marriages may be  
authorised by a special licence issued on behalf of the Archbishop of Canterbury. In the Island such a  
marriage may be authorised by a special licence issued by the Lord Bishop under his hand and  
episcopal seal.  
560 I beg to move that clause 22 stand part of the Bill.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

565 **The President:** The motion is that clause 22 stands part of the Bill. Those in favour, please say  
aye; against, no. The ayes have it. The ayes have it.  
Clause 23.

**Mr Cretney:** Clause 23 amends section 39 of the 1984 Act. That section deals with the  
circumstances where a marriage under a licence issued by a Deemster is not valid.  
570 The amendment adds the condition that the marriage of a same-sex couple under a Deemster's  
licence is not valid if it is solemnised in accordance with the rites of a religious organisation, but the  
governing authority of that organisation has not given its consent to same-sex marriages.  
I beg to move that clause 23 stand part of the Bill.

575 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 23 stands part of the Bill. Those in favour, please say  
aye; against, no. The ayes have it. The ayes have it.  
Clause 24.

580 **Mr Cretney:** Clause 24 makes a minor amendment to section 40 of the 1984 Act. That section deals with who is responsible for the registration of various categories of marriage, and the amendment is consequential to the substitution of section 19 of that Act by clause 12 of the Bill.  
I beg to move that clause 24 stand part of the Bill.

585 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 24 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 25.

590 **Mr Cretney:** Thank you.

Clause 25 amends section 55 of the 1984 Act, which deals with the interpretation of certain terms used in that Act. A consequential amendment is made to the definition of 'registered building' to take into account the fact that a building can be registered for same-sex marriages.

595 A new provision is also inserted to confirm that if the governing authority of a religious organisation has given its consent to marriages of same-sex couples, the validity of that consent is not affected only because there is a change in the person or persons constituting the relevant governing authority. However, for the avoidance of doubt, there is nothing to prevent the new person or persons from changing their position on same-sex marriage and deciding to opt out when  
600 the governing authority had previously opted in.  
I beg to move that clause 25 stand part of the Bill.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

605 **The President:** The motion is that clause 25 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 26, and Schedules 1 and 2.

**Mr Cretney:** Thank you.

610 Clause 26 confirms the effect of the extension of marriage to same-sex couples in the law of the Island. Generally, the marriage of a same-sex couple is to be treated the same as the marriage of an opposite-sex couple, and Manx legislation is to be interpreted accordingly.

The clause also makes specific provision to avoid conflict with the Measures and Canons of the Church of England and other ecclesiastical law.

615 In addition, this clause introduces Schedules 1 and 2 which contain further provision on the effect in Manx law of the extension of marriage to same-sex couples.

Paragraph 1 of Schedule 1 requires references in existing Manx legislation to marriage, married couples and married persons are to be read as including the marriages of same-sex couples.

620 Paragraph 2 of Schedule 1 confirms that references in existing Manx legislation to couples who are not married, but living together as if they were, are to be read as including same-sex couples who are not married but living together as if they were.

Paragraph 3 of Schedule 1 explains the situation where existing Manx legislation treats unmarried couples who are living together differently, depending on whether it is a heterosexual couple or a same-sex couple.

625 Paragraph 4 of Schedule 1 simply confirms that the specific provisions in the preceding paragraphs of the Schedule do not limit the general effect of subsections (1) and (2) of clause 26.

Paragraph 5 of Schedule 1 explains how new Manx legislation is to be read as a result of the extension of marriage of same-sex couples.

630 Paragraph 1 of Schedule 2 confirms that the introduction of marriage of same-sex couples will not affect the meaning of any marriage-related reference in private documents, such as wills, which are made before the Bill comes into operation.

Paragraph 2 of Schedule 2 confirms that the common law presumption under which a child born to a woman during her marriage is presumed to be the child of her husband is not extended to the marriages of same-sex couples.

635 Paragraphs 3 to 8 of Schedule 2 amend the Matrimonial Proceedings Act 2003 in respect of divorce and the annulment of marriage in consequence of the extension of marriage to same-sex couples.

Paragraph 9 deals with those areas of Manx law where, despite the extension of marriage to same-sex couples for almost all purposes, the concept may be restricted by contrary legal provision.

640 I beg to move that clause 26, Schedule 1 and Schedule 2 stand part of the Bill.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

645

**The President:** The Lord Bishop.

**The Lord Bishop:** Thank you, Madam President.

650 The Schedules in this clause are where the rubber hits the road. In particular, this is where the whole idea of extending the concept of marriage becomes effective; and this is where clearly it is revealed that this is not a matter of extending the concept at all, but changing the concept.

I have argued before that there is a better way of doing this than using this particular method; and we get to the point in section 2 of Schedule 1 that we have two parallel systems that have been proposed and then a complete opt-out with all three systems having more or less the same effect.

655 The result of it is that I get the sensation that I am down the rabbit hole now and any moment now I shall see somebody with a hat and a label on it saying 'ten-and-sixpence'.

We now have these three states. They are not equal, manifestly they are not equal because the two schedules make that point over and over again, and the states are in triplicate.

660 When we go to part 2 of Schedule 1 we have a series of definitions which, taking you back to the speech I made at the First Reading, quite clearly are saying that our two cups of drink – our cup of tea and our cup of coffee – in future shall be cups of tea and cups of coffee, but that the language we use to describe those two cups is now going to be the same. So now we must call both things the same thing even though they are different.

665 So I am very concerned that this schedule and in fact the following schedule as well, are all the proof that one needs that this Bill is not about equality.

You have to look in Schedule 2, part 1: you now have two parallel institutions, and over and over again it emphasises that there is, in fact, no equality between the states of heterosexual marriage and same-sex marriage. It leads me back again and again to saying that this Bill is seriously not fit for purpose; and we know why, because it is more or less copied from an English Bill that also was not fit for purpose.

670 There is a better way, but I do not suppose we will think of going that way.

Thank you, Madam President.

**The President:** The Hon. Member, Mr Coleman.

675

**Mr Coleman:** Thank you, Madam President.

I really enjoy the Lord Bishop's analogy with tea and coffee, but they are both beverages and therefore in my view the analogy is not a good one. In fact it does harm to your case rather than benefits it, in that you can have many forms of beverage – and what they are saying here is that the various constituents of marriage as a collective can be different as well.

680 Thank you, Madam President.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Thank you, Madam President.

685 I would just like to put on record again at this stage that I also believe we are dealing with defective legislation and I guess only time will tell if our interpretation of the legislation before us is defective.

690 We are changing the concept of marriage by progressing this Bill. I recognise that dictionaries are already changing the definition of marriage. But in relation to comments made by the mover at an earlier stage I would like to just refer to this what is termed as progressive legislation – I do not believe this is progressive legislation.

695 Once again I would like to say that I believe there is a silent majority on this issue for the reasons that Mr Turner alluded to earlier, who are not necessarily voicing their opinions. It is unfortunate this major social legislation is coming at the end of this administration and it was not in the legislation programme. The hon. mover has made comment to that in response to comments I made at an earlier reading, that many Bills come into the programme that are not in the original programme. However, this is not a run-of-the-mill Bill, this is major legislation and I would have thought that at least we would have had the full consultation on it with such a major legislation. (**A Member:** Hear, hear.)

700 It is difficult for me to comprehend that that opportunity was not taken and I would just ask the mover maybe to respond to how we can compare this Bill as he compared the Bill I moved earlier in this sitting – the Preferential Payments Bill – which is as the result of certain economic circumstances which have changed. This is a major piece of social legislation that should have been given proper consultation and due process.

705

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** If I may, I would just briefly speak in support of some of the points made by my colleague Mr Anderson.

710 I think what we have seen, particularly with the way that this Bill has gone on to the agenda, is not really ... and it is possibly something that the next administration should look at, that when as a collective in another place we vote for whoever is going to be the Chief Minister then they should set out – (*Interjection*) If we do, of course! That is coming along shortly. They should be setting out clearly what their policies are in all areas.

715 We accept that with changes in the economy and certainly with world trade and things, that it is not possible to look at everything, but this was a matter that has been mulling around for a while and therefore should have been in a definitive legislative programme. We have seen other Bills fall by the wayside that were in the programme, that have not had the appropriate time to be pursued in various Departments – not just one or two, but in various Departments.

720 So I would support the comments from my hon. colleague, Mr Anderson, with regard to priorities in the legislative programme.

**The President:** The mover to reply.

725 **Mr Cretney:** Yes, thank you.

I think it is a good thing that we can respect each other's views during a process such as this, and respect that we do have differing positions on various things. I would argue that the Bill *is* fit for purpose and, as Mr Anderson said, time will tell on that.

730 The Lord Bishop mentioned a better way and I think he did have conversations, but the Government decided to take a certain route and this Bill has been very well supported in the directly-elected House by those who are about to go out to elections in many cases. I would argue that despite the fact that the Chief Minister gave all his Ministers a free vote in the Lower House, the Bill was substantially supported.

735 In relation to Mr Anderson's point about the consultation and due process, I did explain at an earlier stage that when the consultation was announced the circumstances around that, and the

reasons why it was one week less than might normally be the case, were fully explained. I read them out and if he wishes I can read them out again, but I have already answered that point.

740 The provisions of Schedules 1 and 2 are identical in their effect to those in the English Act. The Bill changes the scope of marriage. Whether one calls that extension 'redefinition' is irrelevant – and is in any case a matter of personal taste.

I beg to move that clause 26 and the Schedules 1 and 2 stand part of the Bill.

**The President:** The motion is that clause 26 and Schedules 1 and 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

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

<b>FOR</b>	<b>AGAINST</b>
Mr Turner	The Lord Bishop
Mr Coleman	Mr Anderson
Mr Cretney	Mr Corkish
Mr Henderson	
Mr Crookall	

745 **The Acting Clerk:** Madam President, that is 5 votes for, and 3 against.

**The President:** Hon. Members, the motion therefore carries.  
Clause 27, introducing Schedule 3.

750 **Mr Cretney:** Thank you.

Clause 27 gives effect to Schedule 3, which contains amendments to Manx legislation as a result of the extension of marriage to same-sex couples.

Paragraphs 1 to 3 of this Schedule deal with the amendment of the Sharing of Church Buildings Act 1986.

755 Paragraph 4 of Schedule 3 amends the definition of 'partner' in section 8 of the Disability Discrimination Act 2006 as a consequence of the existence of civil partnerships.

Paragraph 5 of Schedule 3 amends the Civil Partnership Act 2011. As Hon. Members are aware, a number of these amendments were inserted in the other place with a view to extending civil partnerships to opposite-sex couples.

760 In addition, this paragraph inserts new section 27A into the 2011 Act to enable a same-sex couple to convert a civil partnership entered into in the Isle of Man into a marriage. If a civil partnership is converted into a marriage the resulting marriage is to be treated as having existed since the date on which the civil partnership was formed.

I beg to move that clause 27 and Schedule 3 stand part of the Bill.

765 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The learned Acting Attorney General.

770 **The Acting Attorney General:** Yes, Madam President, with your leave I beg to move the amendment standing in my name which has been circulated with reference to paragraph 5 of Schedule 3.

775 If I could possibly note that in the amendment circulated, unfortunately in paragraph 2 with reference to 2(c) there is a typing error where the words 'can constitute' have been repeated. So if I could seek leave, Madam President, to delete those words in consideration –

**The President:** Yes, we will note that they are simply a typographical error.

780 **The Acting Attorney General:** I would be very grateful, Madam President.  
If I could speak very briefly to the amendment?

**The President:** Indeed, please.

785 **The Acting Attorney General:** These amendments, Hon. Members, are necessary because of  
some drafting errors which were made. The provisions of paragraph 5 of Schedule 3 deal with  
amendments to the Civil Partnership Act 2011.

790 The first item which we seek to amend which is on page 38, after subparagraph (2), is to insert a  
subparagraph (3) which reads: 'In section 2(3) in the Index of defined terms after the definition of  
"acquired gender" insert "adultery" section 42(6) Chapter 2 of Part 2' – that is necessary to insert a  
reference to the definition of the term 'adultery' in the right place in the Index in Section 2(3) of the  
Civil Partnership Act 2011.

795 The second amendment which is referenced at page 40 on the Bill: at the end of subparagraph  
(7) which has been renumbered (6) in the reprinted Bill but renumbered (7) in consequence of the  
amendment to 1 above, is to add a new subparagraph (c) and at the end insert '(6) for the purposes  
of this Chapter only, conduct between the respondent and a person of the opposite sex can  
constitute adultery for the purposes of this Act'.

800 Then the final amendment which I am moving is on page 41, which is to omit subparagraph (16),  
numbered (15) in the reprinted Bill but renumbered in consequence of the amendment 1 above.  
That needs to be omitted because, in blunt terms, the amendment is meaningless because it refers  
to a provision which is not in fact to be found in the 2001 Act, for which I apologise.

Thank you.

So I beg to move that amendment standing in my name.

*Amendments to Paragraph 5 of Schedule 3*

*References to page and paragraph numbers are to the pages of the Bill as reprinted following the  
amendments in the Keys.*

1. On page 38, after subparagraph (2) insert —

'(3) In section 2(3) in the Index of defined terms after the definition of "acquired gender" insert —

"adultery"	section 42(6)	Chapter 2 of Part 2'
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*Renumber the following sub-paragraphs of the paragraph accordingly.*

2. On page 40, at the end of subparagraph (7) (numbered (6) in the reprinted Bill but renumbered  
as (7) in consequence of amendment 1 above) add —

'(c) at the end insert —

"(6) For the purposes of this Chapter only conduct between the respondent and a person of the  
opposite sex can constitute adultery for the purposes of this Act.".'

3. On page 41 omit subparagraph (16) (numbered (15) in the reprinted Bill but renumbered in  
consequence of amendment 1 above).

*Renumber the following subparagraph of the paragraph accordingly.*

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

805 **The President:** A little unconventional to be a seconder to the clause *and* to the amendment —

**Mr Coleman:** This had not been pre-arranged.

**The President:** Well it is not ... I would prefer if we had another seconder.

810 **Mr Crookall:** I beg to second, Madam President.

**The Acting Attorney General:** I am very grateful.

**The President:** The Lord Bishop.

815

**The Lord Bishop:** Madam President, I am not quite sure where to begin.

I believe that what took place in another place of the extension of civil partnerships to heterosexual couples was a serious mistake. It has not been thought through properly. It is one of the reasons – possibly the most serious reason – why I believe that if this Bill is passed it will end up being a most unsatisfactory piece of law; and I am very concerned about it.

820

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Likewise, I would like to align my feelings along with the Lord Bishop's comments and also to say that we both fully supported the introduction of that legislation when it came through; and it is unfortunate that the legislation is now becoming eroded by this legislation.

825

**The President:** The mover to reply.

**Mr Cretney:** Yes, my position is completely the reverse. I warmly welcome the move that took place in the House of Keys on this matter. I believe different people should have the right to choose the arrangements that they enter into, and I think this places us ahead of the United Kingdom.

830

I welcome that and I think the United Kingdom will not be far behind us in terms of extending this as well.

835

I beg to move that clause 27 and Schedule 3 stand part of the Bill.

**The President:** The motion is that clause 27, introducing Schedule 3, stands part of the Bill. To that we have the amendments tabled in the name of the learned Acting Attorney General.

840

I will put the amendments *en bloc* to you, Hon. Members, because nobody has commented on them individually. Those in favour of the amendments please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the Schedule as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

845

I now put to you clause 27 in its entirety. Those in favour, please say aye; against, no. The ayes have it.

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

**FOR**

Mr Turner  
Mr Coleman  
Mr Cretney  
Mr Henderson  
Mr Crookall

**AGAINST**

The Lord Bishop  
Mr Anderson  
Mr Corkish

**The Acting Clerk:** Madam President, that is 5 votes for, and 3 against.

**The President:** The motion therefore carries, Hon. Members.  
Clause 28.

850

**Mr Cretney:** Finally, Madam President, clause 28 contains consequential and minor repeals of Manx legislation.

Before I beg to move that it stands part of the Bill, can I thank all Hon. Members for their contribution to the clauses stage and Second Reading today.

855 I think we recognise that there are differences and that was always going to be the case, but I welcome the civilised manner in which this matter I hope from my side, and certainly from the other side, has been taken through this Branch.

I beg to move that clause 28 stands part of the Bill.

860 **Mr Coleman:** I beg to second and reserve my remarks.

**The President:** The Lord Bishop.

865 **The Lord Bishop:** Madam President, I would echo the proposer's sentiments about being civilised about this.

I would be very grateful if, at the Third Reading, he could look at the table in subsection (3) and tell this Council how many of these states that have same-sex marriage also have a parallel system of same-sex and heterosexual partnerships, so that we can determine whether a large number of states are following our lead, or might follow our lead, and how many clearly have not; and whether they have been ahead of us in creating same-sex marriage.

870

**The President:** The mover to reply.

875 **Mr Cretney:** Yes, I am happy to endeavour to get the information required by the Lord Bishop for Third Reading stage.

**The Lord Bishop:** Thank you.

880 **The President:** Hon. Members, the motion is that clause 28 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of the Second Reading and clauses of that Bill.

**4. Council of Ministers (Amendment) Bill 2016 –  
For First Reading –  
Motion lost**

Mr Cretney to move:

*That the Council of Ministers (Amendment) Bill 2016 be read a first time.*

885 **The President:** We now turn to Item 4 on our Order Paper, the Council of Ministers (Amendment) Bill 2016; and I call on the Hon. Member, Mr Cretney, to take the First Reading.

**Mr Cretney:** Yes, I specialise in non-controversial matters! *(Laughter)*

The Council of Ministers (Amendment) Bill 2016 was supported unanimously in the House of Keys at Second Reading and without a vote being called at the Third.

890 It is a Private Member's Bill brought forward by Mr Cannan, Member of the House of Keys, and its purpose is very straightforward in terms of ensuring the primacy in relation to the election of the Chief Minister stands squarely with the directly-elected branch of Tynwald, the House of Keys.

I would suggest that as the primary role of Legislative Council at present – and likely into the future – is one of legislative scrutiny, an element of independence and detachment from any

895 perceived allegiance would be a good thing. Legislative Council must be seen to be acting without fear or favour.

The Bill received three successful amendments in the House of Keys, moved by the Hon. Member for Rushen, Mr Watterson. Firstly, that 13 Members of the Keys rather than a majority of those present would be required for a Chief Minister to be elected. Secondly, that in the event of an unsuccessful first ballot a further ballot could be held without waiting for two weeks. It would be at the Speaker's discretion with an adjournment on the same day, or the day following, for fresh nominations.

The third amendment is a procedural one. The Governor, in the event of the Chief Minister resigning, is required to notify the President. The amendment adds the Speaker, as that office would be co-ordinating arrangements for any replacement.

905 I recommend that all three amendments be included.

In the House of Keys on 22nd March this year the Chief Minister gave a written update on the review of Tynwald which Lord Lisvane is to undertake following on from the June 2015 Tynwald motion. Such a review to:

- examine the functions of the branches of Tynwald
- assess their efficacy
- consider the scrutiny structure required by the Parliament
- recommend any options for reform

and to report to the sitting of Tynwald on 19th July 2016 ... Under the Inquiries (Evidence) Act 2003 ...

910 The Chief Minister indicated that the noble Lord is planned to be on the Island in April and May 2016 and is likely to hold more than one public inquiry session so that he can obtain a wide range of views from the public and Tynwald Members.

It is no secret that I believe the possibility of reform is to be welcomed. For years Tynwald Members have sadly made little progress despite allegedly being signed up in both Branches, so I was very happy to endorse this independent overview. On that basis Members may say if such an inquiry is underway *at last*, why are the House of Keys and now Legislative Council considering this Private Member's Bill?

920 Well, I would argue that this move stands on its own despite what may ultimately flow from the inquiry. This is clearly a matter for the directly-elected Chamber to decide upon, and by decisive vote they have determined that the election of Chief Minister should exclusively be with those who have been returned by the electorate, not by those who constitute the revising Chamber.

I agree; and seek the support of Council to illustrate recognition of the distinct roles of each of the branches of Tynwald in this matter.

I beg to move that the Bill be read a first time.

925 **The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Henderson.

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

As far as I am concerned this is a move which, if successful, will have very little effect and will benefit the Island very little in any particular way; and as far as I can see it has certainly grabbed the headlines of the press where none existed previously. My view is that it is a political gimmick – which were the words used by Mr Speaker in another place – and I will give my reasoning why I believe that is such shortly, Eaghtyrane.

935 The current system we have has proved without doubt time and time again over the recent years in holding this Island in very good stead, through all the threats both internally and externally, and

940 internationally, and we have been able to manage our way through that. There is little evidence to support what has been put forward today, Eaghtyrane, other than the mover has consistently pushed out that the measures were unanimously supported in the Keys. Fair enough. However, that does not give us an evidence base to work off here and I think the mover has quite roundly argued against himself by giving us the issue of the Parliamentary Review that is underway.

945 I see this as central to the argument here this morning whereby if there is a parliamentary review underway with almost a unanimous vote within Tynwald approving that review, then it is incumbent on us here not to support this; but to let the review carry on, undertake its work and make such recommendations as it may, or may not do, going forward. It is not for us to interfere in the primacy of Tynwald, I would argue, inasmuch that a vote has been taken, an approved procedure in principle has been progressed from that; and I would almost see it as a breach of Tynwald procedure if we  
950 carry on in this fashion this morning, Eaghtyrane, as we are pre-empting what the review may find, or we could influence what the review is trying to undertake at the minute – which is not good politics or good Legislative Council work.

I would also point out that another reason I see for not supporting this action this morning is that all previous general serving Chief Ministers – if I can put it like that – have been chosen from the  
955 Keys, and both Keys and LegCo as far as I can see take full cognisance of the fact that nominees would generally come from House of Keys, except under the exceptional circumstances where we found ourselves in 2005. I would say at that time the Island was nearly cast into political disarray with the resignation of our then Chief Minister.

Luckily, and for the sake of experience, stability and security reasons, we were able to nominate  
960 an acting Chief Minister – or Chief Minister *pro tem* – in the form of former Member, Donald Gelling. That procedure was *unanimously* supported by Tynwald at that time. It secured the political stability, the Government and the Cabinet going forward into the next election. It also, I can assure you, caused a huge sigh of relief in the business community in all its shapes and forms, as the stability and security of our political system was allowed to move forward in its current format.

965 What I would say, Eaghtyrane, is that we need to be very careful in closing doors down that do not need be closed down, and cutting the options down that we have at the minute; the more irons in the fire, I would say, the better, and the greater the choice of how we manage our political system and situations that could very well arise again in the future due to one reason or another. We need to have all options open.

970 I think at the time, in 2005, both Keys and the Legislative Council operated with diplomatic aplomb, if I can put it like that, in securing a managed situation and way forward with that option. As I say, it is the only time it has ever been used under special circumstances so I do not think in reality the public of this Isle of Man need to be worried about some sort of subversive Legislative Council takeover of the Council of Ministers – far from it. I think the cognisance and common sense that this  
975 Chamber shows and has shown in the past speaks for itself without any doubt.

I would also say that, really, here we are again navel-gazing as far as I am concerned. We are taking up the legislative procedures here which would be better served examining other legislation coming through; and other matters, given the threats and challenges that we are facing at the minute. I do not need to trot them all out, Eaghtyrane, but public services pensions, balancing the  
980 books, international threats, the Panama incident ... to list but a few that are coming our way, and may be coming our way even with a heavier headwind. We need to be focused on the job in hand.

In all my years served in the House of Keys and in here, I have never once had one member of the public confront me with this issue as a point of principle. In fact, I have never had a member of the public or a constituent confront me with this or any particular issues about Legislative Council. What  
985 the public are concerned about – and what I am continually berated about – is the fact of increasing charges, balancing the books and ‘What are you going to do to grow the economy?’ ‘How are we going to see off the international threats?’

And especially, how is the Island going to fly its flag in various forums and meetings in the UK and elsewhere, selling our good news story and promoting our good name? Those are the issues I am  
990 regularly regaled with, Eaghtyrane – and this is not one of them.

I would also say that this move will limit the electoral college for the Chief Minister, and it would place the Council of Ministers in an unacceptable position of virtually being able to determine the outcome of the election, even if there were competing factions within the Council supporting two candidates. I think we need to be careful what we are doing here on that score alone.

995 I would urge Hon. Members to think very carefully about what is going on. Mr Cannan, the Hon. Member who is promoting this Bill, has actually let the cat out of the bag with a statement which was purported to be his on Manx Radio whereby he is quoted as saying this may add weight to arguments for changing Legislative Council. So there lies the crux of the matter as far as I am concerned. I would urge Hon. Members to think about that statement, because what we are really  
1000 dealing with here is a Trojan horse.

If this Bill is passed then some of the functionality of LegCo is moved and it strengthens the *minority* – and I use that word carefully – argument, to generate more concern about LegCo. This is reform by stealth. It is quite plain to see and Mr Cannan has now admitted as much.

1005 The actual move will not achieve anything in real terms, only in perceptuality – if I can say that. But it is a serious attack on LegCo by way of pushing ill-considered reform through the backdoor – and this is dangerous. The press soundbites are good but the effects have far more serious ramifications, as I have demonstrated.

I would urge Hon. Members to think carefully on this matter because there is a parliamentary review underway at the minute – underline that – and also I view it as reform by stealth measures, and we need to be careful about that. At the end of the day as I opened my speech, the current system ... and if there were some fundamental flaws, Eaghtyrane, I would be completely supportive of the Hon. Member, Mr Cretney, if there were errors occurring or a situation that had caused something negative to occur – fair enough. But that is not the case.

1015 I think we need to be careful what we are tinkering with here where we have a system that has proven its worth – both Branches and combined in Tynwald every month – which is able to steer the Island generally on a good course through thick and thin, and face off the threats that we have to deal with.

**The President:** Hon. Member, Mr Corkish.

1020

**Mr Corkish:** Thank you, Madam President.

In another place the mover of this Bill, the Hon. Member for Michael, described it as:

... a simple change to legislation that sees the election of Chief Minister become purely a matter for the House of Keys.

1025 Whilst the mover believes that this is good for democracy and accountability – and, in principle, I am always in support of such ideals – I feel that I cannot support it because I do not think it is a good Bill.

1030 It may appear to some to be simple, but this is a serious move and a constitutional change to our legislative system – a system that has stood us in good stead so far; and such an action should be well-considered and certainly not taken lightly. It could be considered by some to be a populist move but, if it is, it is not to my mind practical. It occurs to me that there are much more important matters to exercise both him and others that crucially affect our Island in the run-up to a general election.

1035 The election of a Chief Minister at the start of a new political term is a crucial step in the formation of a government to guide and govern wisely, in what is increasingly a very difficult and trying time for our Island, as world parliamentary systems also feel the weight of more and more regulation and scrutiny – as indeed we surely will in our little corner of the world, and following the general election.

In such circumstances I would like to think that whoever a new Chief Minister may be, they would be better girded by having the confidence of all Tynwald with them. Would not a Chief Minister feel

1040 more comfortable and confident following a vote of confidence from both Branches when seeking such an appointment?

It is very important to good governance in this place that Tynwald – *Tynwald* – has confidence in that choice; and that conversely the Chief Minister has that conjoined, united confidence going forward. And I, like my hon. colleague who has just spoken, will mention in passing the rare but valuable illustration of some years ago, 2005, when it fell to a Member of this Council to step into the Chief Minister’s position to maintain stability. What would happen if that scenario were to occur again if this Bill were passed? However, I do note the comments made concerning this state by the mover today.

1050 I will also mention the fact that there is at present a review being undertaken looking at our inner workings during which this matter – which is so concerning to the Member of Michael, and apparently also for my good friend and colleague in Council, Mr Cretney – will probably be addressed. Madam President, this being the likely case it would appear to me that this Bill before us, and being introduced for whatever reason, is a little premature.

1055 We are approaching a general election and we will not know what shape the new House of Keys will take in its membership. There may be little change, or there could be a significant change. There could be a large number of new Members choosing the new Chief Minister, and amongst their number some who have no political experience or understanding of what a Chief Minister represents, or the qualities expected. Perhaps this is why the times of Legislative Council and House of Keys election periods are different.

1060 Madam President, we are elected Members of Tynwald and I hope we bring to the Court of Tynwald experience and independent views, and knowledge carried forward from one House to another. I will not stand in the way of modernity or moving forward to the benefit of enhanced good government, but not at the behest of one Hon. Member who believes that the public are crying out for the purpose of this Bill. The review I mentioned earlier will address this and other matters.

1065 Madam President, we tinker and dismantle tried and tested ways at our peril. Stability of Government and its proven effectiveness has stood us in good stead, as we continue to welcome parliamentarians from various parts of the world who revere and envy the way we conduct ourselves in the parliament that we have.

1070 As mentioned earlier, I await the results of the independent review now taking place; and, Madam President, I will not be supporting this Bill for what I believe are practical and honest reasons – and for no other purpose.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

1075 I can see all the attraction in the Bill for the media, and those that are interested, and live the politics as a personal interest; but as the previous speaker has said, this is not actually reducing some of the powers of this place but it is actually taking away a function of Tynwald – because it is *Tynwald* that appoints the Chief Minister. And again I do not think that is being fully understood by those who are championing the cause.

1080 As Mr Henderson said – and we can see by the thousands of people that attended the public gallery in the other place and here today – this is obviously a huge burning issue (**A Member:** Absolutely!) that people feel very strongly about ... we can almost hear the demonstrations outside!

1085 I think what people are really wanting to know is that the whole process of appointing a Chief Minister is not in their hands at all, because when we come to election – and we are all voters – the manifestos come through the door, the people come round to visit us and they tell us all about the things that they feel matter in the constituency. But of course we will then vote for them, or vote for the next person, or whoever, but really we are not voting for a Government with any policies because we do not know who is actually going to be running the show!

1090 So whereas people can know ... I know there are parties, and our colleague Mr Cretney here is a member of the Manx Labour Party – and Mr Coleman, I believe? Are you a member of the Labour Party?

**Mr Coleman:** I am!

1095 **Mr Turner:** There are published policies for those, but generally there is no real groundswell of party politics when people go to the polls around the various constituencies.

So there is not a clear direction as to what the next five years is going to bring. And I would imagine when we come to the general election this year we will have more of the same. There will be lots of personalities fighting it out based on their own issues, and then when the new House is formed ... well, then the horse-trading starts, doesn't it? Because the various persons interested in becoming the Chief Minister will be doing all the talking and gathering the support from the various Members who have been returned.

1100 But taking that back to the voter, they still do not have any idea or any influence *really* as to who that is going to be. I know we have just changed all the boundaries on the constituencies but previously we had constituencies with a relatively lower number, and yet the Chief Minister has been picked from a constituency from the other end of the Island, over which they had no say whatsoever.

1105 So really, what does this Bill actually achieve in terms of making the whole process more democratic, as the promoters of this Bill say? I do not actually think it has anything. Okay, remove this Council from taking part in the process – but of course the process is taking place in Tynwald Court. It means that we do not turn up and vote for a sitting; but, again like Mr Henderson said, it is not going to achieve anything.

1110 It is eroding the powers and positions of Tynwald, and if we are going to do that then we need to look at what the *whole* process is for: what the two Branches are for, how they operate, how they interact. We of course know that the two Branches, when they meet together in Tynwald Court, do not have equal status because the Standing Orders dictate on certain voting, and about how that goes – if it comes to the casting vote of the President there are procedures there. So there is not the equality of the two Branches in that respect.

1115 Surely it is sensible to see ... this review may come out and decide that we should scrap the whole lot and look at putting in something brand new for the next millennium together. It could be based on a Scottish parliament model, the Northern Ireland Assembly model – we do not know.

I just think it is great words, it looks absolutely brilliant, you could sell this to the man in the street and say, 'Oh yes, of course, they are the directly-elected Chamber so absolutely ...'. Is it going to affect them? Is it going to benefit them?

1125 I do not think it will. And I think, as you say, it is all the right words but not for the right reasons.

**The President:** The Hon. Member, Mr Crookall.

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

1130 Just a few words to add on to what has already been said, I think, really.

I would just say that while we are having the review about the functions of Tynwald, why would you want to do this and pre-empt what might be bringing in some changes at a later date? Tynwald backed that review of Tynwald by Lord Lisvane and I think we should wait and see what happens there.

1135 I believe personally that we have a system that is tried and tested at the moment, that works. Why would you want to close your options down in case of an emergency – as has been proved once before – and take away an option that was needed at the time? It proved that it worked and gave the Island an 'out', if you like, in time of need.

1140 Why would you take that away? It costs nothing to have that option there and yet it could be very damaging to take it away.

I just think we are jumping the gun here and I think we ought to wait until we have had the review and then see; and then let the new House decide, and indeed let Tynwald decide the way forward after we have had that review, Madam President.

1145 There is a lot of experience, and there always has been, in the Legislative Council. Indeed at the moment there are five ex-Ministers, or Ministers, in here and that will be the case into the future. You will always have so much experience here, why would you take away that option that may be needed again one day, Madam President?

I will leave it there, thank you.

1150 **The President:** The Lord Bishop.

**The Lord Bishop:** Thank you, Madam President.

1155 Unlike the previous speakers I do not have any problem with this really. I do have a problem with what lies behind it, which is the question of how any body can elect a Chief Minister and therefore, in consequence, a Council of Ministers, without there being a popular mandate?

I realise there is a problem when you do not have a party system, because with the system in the United Kingdom Parliament obviously the party manifesto applies to the Prime Minister. But we have seen today earlier in the case of a Bill being presented to us of a serious nature, that would not have occurred to anybody when we were electing the present Chief Minister.

1160 Now, what is there preventing a future Chief Minister from nominating a Council of Ministers and then pushing through policies for which there is no popular mandate?

So I do not have a problem with this and it does not worry me frankly either way, but I do think there is a serious issue that underlies it that needs dealing with in terms of how we determine the right person to be a Chief Minister.

1165

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President.

1170 Before I start, let me say that the mover is fully aware of my views on this and they do not agree with his – and I will be voting against it. I agreed to second it because I felt that we had to give the courtesy of what happened in the other place an airing with full debate here, rather than maybe just have it voted down straight away – or not seconded. And so I agreed to second it, and he is aware that those are my views.

1175 **The President:** There is some very odd behaviour here this morning!

**Mr Coleman:** Well, I am odd! *(Laughter)*

**A Member:** Self-confessed!

1180

**A Member:** Hear, hear!

**Mr Coleman:** Again, with reference to what has been said previously I, too, agree that we should be waiting for the outcome of the inquiry.

1185 Even in Westminster the people in the Upper House – those who are not cross-benchers or on the religious side of things – vote for the party leader; Liberal, Conservative, Labour – they vote for the party leader. They still vote even though they are up in the Lords, but they vote as members of the party that elects it, so it is a much wider mandate but they do have a minute input into it.

1190 The next thing really is that with the boundary changes ... and the Hon. Member of Council, Mr Turner, said we could have quite a few new people in after 22nd September; and what we are saying is that ... and again the Hon. Member of Council, Mr Crookall, alluded to this as well. And I exclude myself from this as I think I am the newest politician in this Chamber, really.

1195 There is a wealth of experience up here and there is a wealth of knowledge of working with the potential candidates, knowing how they operate; and also knowledge of whether they think they could be a good Chief Minister – as opposed to possibly a large number of people coming into House of Keys for the first time. And they will be touted for and offered various inducements of whatever sort, to vote for a particular Chief Minister. *(Interjection)*

Well, it is inevitable, anyway.

1200 I think to do away with that wealth of knowledge of people that might be proposed is again just doing away with another option, isn't it? As is doing away with the option of having a Chief Minister appointed from within the Legislative Council, bearing in mind that it has still got to be voted for by House of Keys anyway. *(Interjection)*

It is just short-sighted and, quite frankly, mean-spirited; and I shall be voting against it.

1205 **The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Thank you, Madam President.

Strangely, I find myself agreeing with the seconder of this Bill *(Laughter)* which I did not expect to be doing this morning. He has outlined his reasoning for seconding the Bill and I accept those.

1210 I agree with other Members that have stated this is premature at this time. We have a review going on and in some way it would influence that review, I believe, if we accepted what is before us today.

It is premature and I think we can just dismiss it.

1215 **The President:** The mover to reply.

**Mr Cretney:** Well, thank you; a stout defence of the status quo.

1220 Can I just say I have been here 31 years this month; and how often I have heard 'more important matters', 'premature', 'detrimental effect on stability' in this context? But this is not going as far as previous things that have been spoken about.

1225 What we are talking about here is that the Members who are directly elected by the public should be the people who have the vote on who is going to lead to the Island. And I understand we do not have party politics in the manner that is normally associated with elsewhere, but we will have 24 Members who will be returned to House of Keys. They will have been to the hustings, they will have been and spoken to people, and the potential names of the potential Chief Minister will be in the ether – they always are. And Members will have an idea from those who they represent, or are seeking to represent – they will have had a conversation with them.

1230 We, in here, will not be having any conversations – and Mr Henderson is saying that he has not heard any of this from his electorate. I certainly have over the years in terms of reform of Legislative Council, and one of the reasons I agreed to come here was because I do believe reform is necessary.

And yes, I welcome the review which is being undertaken presently, but I see this as a separate issue. The Members of the House of Keys, and potential new candidates, will be going out and they will be speaking to the electorate and they will have at first hand the views of the electorate, and will be able to have a conversation with them about this matter.

1235 I think it just makes it more democratic than the system that exists.

And yes, Mr Gelling came back as caretaker Chief Minister in 2005; but are we seriously saying that there would be no alternative Members out of the other Members of the House of Keys who could be considered to be a Chief Minister? Are we seriously saying that?

1240 **Mr Corkish:** It's what happened the last time.

**Mr Cretney:** What happened then in my opinion was a different scenario altogether. There was an election in 2006; Mr Gelling came into position in 2005. He was a caretaker, it is a different position altogether.

1245 I am not sure I am going to win this vote, (*Laughter*) but I am ever the optimist; and I beg to move that this matter be considered for the first time.

**The President:** Hon. Members, the motion is that the Bill be read for the first time. Those in favour, please say aye; against, no. The noes have it.

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

<b>FOR</b>	<b>AGAINST</b>
The Lord Bishop	Mr Turner
Mr Cretney	Mr Coleman
	Mr Anderson
	Mr Corkish
	Mr Henderson
	Mr Crookall

1250 **The Acting Clerk:** Madam President, that is 2 votes for, and 7 against.

**The President:** Hon. Members, on that basis the motion fails to carry.

**Mr Crookall:** Madam President, sorry, can I just clarify something?

1255 **The Clerk:** Sorry, it was 6 against.

**A Member:** Thank you.

1260 **The President:** It was 6 to 2?

**The Acting Clerk:** Yes.

### 5. Custody (Amendment) Bill 2016 – First Reading Approved

Mr Coleman to move:

*That the Custody (Amendment) Bill 2016 be read a first time.*

**The President:** We turn to Item 5, the Custody (Amendment) Bill 2016. I call on the Hon. Member, Mr Coleman.

1265 **Mr Coleman:** Thank you, Madam President.

Madam President, in moving the First Reading of this Bill, I can inform Hon. Members it came about because the Independent Monitoring Board have expressed the view for some time that their role is to monitor the welfare of detainees and hear their complaints or requests. They currently also have a disciplinary role and we agree with them that this function is inconsistent with their welfare and monitoring role.

1270 Rather than prepare a Bill dealing only with this issue, it seemed sensible to address a number of other matters relating to the detention of persons in the Prison.

1275 Clause 7 clarifies the powers of the Independent Monitoring Board to monitor the welfare of detainees, whether held in the Prison, Cronk Sollysh, a police station or in court cells.

Clause 6 will ensure the Department has appropriate and sufficient legal powers to issue guidance or give direction as to how people with responsibilities under the Act perform their functions; and in turn will enable the Independent Monitoring Board and the Parole Committee to regulate their own procedures.

1280 Clause 6 also provides for the regulation of arrangements for the provision of healthcare through the custody rules which underlie the custody edict.

Clause 9 and the Schedule modernise provisions designed to ensure prison security and the safety of all within the prison environment; and clause 10 extends provision for testing for drugs to include tobacco and psychoactive substances.

1285 It might assist if I just overview the clauses in sequence, perhaps.

Clauses 1 to 3 are just purely introductory; and clause 4 provides for the expiry of the Act.

Clauses 5 to 12 amend the Custody Act 1995, and I summarised the major elements of those earlier.

1290 Clause 13 will restrict the ability to pass an additional sentence of an extended licence period on persons unless they are already serving four years or more.

1295 Clause 14 is a series of provisions requested by the General Registry to provide legal backing to the security staff operating at the door to the court building. Although it is not related directly to the rest of the Bill, the provisions have been incorporated because there may be links between the escort of detainees to and from premises, including court premises and the work of security officers in court premises. In other words there may be potential for the current separate contracts – one by the Department and the other by the General Registry – to become one contract, and at some future date with the staff able to work interchangeably.

Clause 15 amends the Prisoner Escorts Act 2008 as a consequence of earlier provisions about monitoring boards, and clarifies the list of premises a prisoner may be escorted to or between.

1300 In closing, I give notice that during the clauses stage of the Bill there will be four amendments moved to the CCTV provisions at the end of the Schedule to the Bill, as required on the advice of Chambers, in order to comply with a human rights judgment delivered in the UK Supreme Court, which was recently communicated to the Department. The amendments will have the effect of stating in further detail the purposes for which CCTV may be used in prison.

1305 Madam President, I beg to move that the Custody (Amendment) Bill 2016 be read for the first time.

**The President:** Hon. Member, Mr Crookall.

1310 **Mr Crookall:** Thank you, Madam President. I beg to second and reserve my remarks

**The President:** The motion is that the Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1315 Hon. Members, that concludes consideration of our Order Paper today. Council will now adjourn until Tynwald next week; following that, in this Chamber on 22nd April.

*The Council adjourned at 12.18 p.m.*