



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 3rd May 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, Mr J R Turner and Mr T P Wild,
with Mr J D C King, 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:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Order of the Day

1. Custody (Amendment) Bill 2016 – Third Reading approved

Mr Coleman to move:

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

The President: We continue this morning, Hon. Members, with the Custody (Amendment) Bill 2016. I call on the Hon. Member, Mr Coleman, to take the Third Reading.

Mr Coleman: Thank you, Madam President.

10 In moving the Third Reading of this Bill, it is my pleasure to summarise the main objectives behind the Bill as follows: firstly, to transfer the Prison disciplinary adjudication function from the Independent Monitoring Board to persons to be known as Independent Adjudicators; secondly, to update the powers to make custody rules; thirdly, to modernise other provisions in the Custody Act such as those relating to Prison security, the release of detainees and the testing of detainees for
15 drugs and other substances; and fourthly, to make consequential amendments to the Prisoner Escorts Act 2008, and make legal provision to support the work of court security officers.

Members were informed at the Clauses Stage last week of how the Bill had been further amended in the House of Keys, in respect of clause 8, to substitute the words ‘terms and conditions of office’ for ‘tenure’

20 This is to ensure the appointment of an Independent Prison Adjudicator could be properly made under appropriate terms and conditions provided. A further amendment was made to enable the appointing body to be changed by order, and make some necessary consequential amendments to the Legal Aid Act 1985, that had been missed when the Bill was drafted.

25 In this Council, Mr Crookall moved a number of amendments to the Schedule in relation to CCTV, in order to align those provisions more exactly with human rights requirements. Mr Crookall also moved amendments to clause 15 in respect of the Prisoner Escorts Act 2008 to enable contracted staff to escort detainees between additional premises specified in an order.

30 During the clauses stage last week, Mr Turner enquired in relation to the Schedule as to why the list of prohibited articles mentions mobile telephones but not other transmitting devices. The simple answer is that this list in paragraph 1 of the Schedule follows a similar list in the equivalent legislation enacted in the UK.

35 By way of reassurance, I would draw your attention to the fact the provision also enables other articles to be added to list B by means of custody rules; so we could list the likes of walkie-talkies or other transmitting devices that might become the latest means of illicit communication to attempt to bring into the Prison.

I would also draw your attention to paragraph 6(1)(b), which makes it an offence to transmit, or cause to be transmitted, any image or any sound from inside an institution by electronic communication for simultaneous reception outside the institution. The criminal penalties set out in sub-paragraph (5) are appropriate. The action of bringing in or taking out unauthorised articles or making unauthorised transmissions would also constitute offences against Prison discipline. I am satisfied, having consulted the officer of the Department in attendance, we have this matter covered. As with all legislation designed to meet operational needs, we will keep the legislation in relation to Prison security under review.

45 Madam President, I would like to correct something I said last week. We *do* intend in the future to empower the Prison to jam signals but, due to legal complexity, have not promoted the necessary legislation through this Bill.

50 Subject to reference back to the Keys in respect of the Council Amendments, the Bill has completed its legislative passage through the Branches and it only remains for me to thank Mr Henderson and Mr Crookall for seconding the various elements of this Bill – and Mr Crookall in particular, for moving the amendments to the Schedule and to clause 15, and to thank Hon. Members for their support.

Madam President, I beg to move that the Custody (Amendment) Bill be read for the third time and be returned to the House of Keys to consider the amendments made by Council.

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

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

The President: The Hon. Member, Mr Turner.

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

I do thank the mover for his reply in regard to my query regarding mobile phones being prohibited and his explanation of what can be done; because, if Hon. Members recall, my query was that it did not appear to ban other transmitting devices where communication could be made from legitimate devices that are brought in because they appear not to be banned, but the mover has explained that there is provision to ensure that those devices are covered under different provisions here and they do have the ability to add to those items when they are required to do so.

65 I do have a little bit of concern over – and I appreciate he said it is not within this, but it is plans coming forward and that is regarding jamming signals; because of course when you start jamming signals you can end up jamming your own signals, so it has to be, obviously, taken very carefully and of course they would have to know what sort of signals they are trying to jam, because a blanket jam on everything would mean that their own communications would not work.

70 So it is not a straightforward area and I think the best way to deal with these is to ensure that prisoners ... with the stringent checks that are done on persons and items being brought in and out of the facility, the best way is to ensure that those items do not get in in the first place.

I am sure the Member, who is the Member responsible for the Prison and the Department, has more knowledge of the operation of the Prison, but, to the outsider, I do find it quite remarkable how some of these prohibited items do actually get into the facility when there is the one door in and out and there is meant to be quite a stringent check.

80 So, to me, I think the way to deal with these things is to deal with it at the source and stop the items getting in in the first place. But I thank him again for answering the queries at this stage and the previous stages of the Bill, and will support the Third Reading.

The President: Care to reply, sir?

85

Mr Coleman: Yes, I thank Mr Turner for his remarks and I would not be indelicate enough to tell you how things actually get into the Prison!

A Member: Go on!

90

Mr Turner: I have no idea.

Mr Coleman: No, I will not.

95 Of course, we are not only speaking about signals to do with communication. There is a possibility that we could be dealing with having to jam signals to drones, which have been used in the UK for dropping things over the wall in prisons. Okay.

We also have walkie-talkies in use within the Prison, so selecting the wavelengths and how we do it or whether we need to have protected wavelengths – or codified – is very complex, which is why we have not brought it forward in here – because we are still working it out.

100

Mr Turner: That is my point!

Mr Coleman: But again, I thank Members for their support and I would like to move it through to the other place.

105

Thank you, Madam President.

The President: The motion is, Hon. Members, 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. Motion carried.

2. Equality Bill 2016 – Consideration of clauses 38 – 98

110 **The President:** Returning to the Equality Bill for continuation of the clauses stage, I call on Her Majesty's Acting Attorney General to take us on from clause 65.

The Acting Attorney General: Yes, thank you, Madam President.
As Hon. Members will recall –

115 **The President:** Sorry, from clause 38! *(Laughter and interjections)* You supported me there! *(Interjections)*
Right, 38 to 40.

The Acting Attorney General: Thank you, Madam President.

120 As Hon. Members will recall, last week we reached the end of part 4 of the Bill and I said at that sitting I envisage moving parts 5 to 8 of the Bill and the associated Schedules today, and the remaining provisions of the Bill next week.

So if I could move on then, with your leave, Madam President, to refer to clauses 38, 39 and 40.

125 Madam President, Part 5 of the Bill deals with discrimination in the field of employment. This is obviously a very important aspect of the Bill and is one where we have to make sure that the rights of the employees and other workers are protected from unfair discrimination, but employers are not unduly hindered in the legitimate running of their businesses and other organisations.

130 Taking clauses 38 to 40 as a group first, clauses 38 and 39 deal with the obligations on employers in respect of employees and applicants for employment, and clause 40 concerns the obligations on principles in relation to contract workers.

Under clause 38, it is unlawful for an employer to discriminate against or victimise employees and applicants for work. Specifically, subsection (6) provides that in respect of discrimination because of sex or pregnancy and maternity, a term in an offer of employment which relates to pay is treated as discriminatory where, if accepted, it would give rise to an equality clause or, if an equality clause does not apply, where the term constitutes direct or dual discrimination.

135 Madam President, equality clauses are dealt with further on in Division 3 of this part of the Bill, but, essentially, every woman's contract of employment is automatically read as if it contains a term or clause which has the effect of ensuring that her pay and all other contractual terms are no worse than a man's where they are doing equal work, unless the employer has a defence of a material factor. And, yes, for the avoidance of doubt, if there was a situation where a man's terms of employment were less favourable than those of a woman doing equal work, the sex equality clause would also apply in that case.

140 Clause 38 also confirms that the duty to make reasonable adjustments for disabled people applies to employers in respect of their employees and applicants for employment.

145 Madam President, clause 39 makes it unlawful for an employer to harass employees and people applying for employment.

150 Clause 40 imposes similar obligations on principles in relation to contract workers as those which are set out in clauses 38 and 39 for employers in relation to employees. A contract worker is a person who is employed by another person, usually an employment agency, who supplies the worker to carry out work for the principle. Contract workers are separately protected from discrimination by their own employer – typically, the agency for which they work – under clause 38.

Madam President, I beg to move clauses 38, 39 and 40 stand part of the Bill.

The President: The Hon. Member, Mr Coleman.

155

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

The President: The motion is that clauses 38, 39 and 40 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

160

Clause 41.

The Acting Attorney General: Thank you, Madam President.

165 Under the Bill, police constables and police cadets are to be treated as employees. Clause 41 confirms who is to be treated as their employer for the purposes of any discrimination against the constable or the cadet or any victimisation or harassment of them by their employer.

In each case, it depends on who is responsible for the unlawful treatment – it may be the Chief Constable or the Department of Home Affairs. But, for the specific provisions in this clause, constables and cadets will be treated as the holder of individual public offices.

I beg to move that clause 41 stand part of the Bill.

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

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.

175 Can I just ask the learned Attorney whether special constables would come under this at all?

The President: Learned Attorney to reply.

The Acting Attorney General: Thank you, Madam President.

180 Yes, they would, Hon. Member, if that is sufficient for you.

Mr Crookall: Thank you.

The President: The motion is that clause 41 stands part of the Bill. Those in favour, please say
185 aye; against, no. The ayes have it. The ayes have it.
Clause 42.

The Acting Attorney General: Thank you, Madam President.

190 Clause 42 sets out the obligations of a partnership towards its partners. These obligations are
analogous to those which apply to employers in respect of their employees.
I beg to move that clause 42 stand part of the Bill.

The President: Hon. Member.

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

The President: The motion is that clause 42 stands part of the Bill. Those in favour, please say
aye; against, no. The ayes have it. The ayes have it.
200 Clauses 43, 44 and 45.

The Acting Attorney General: Madam President, clauses 43 to 46, together with Schedule 6, deal
with the office holders – that is people who hold personal or public offices.

205 Clause 43 defines what is meant by ‘personal office’ and it sets out the obligations on those who
appoint such office holders which are in line with the obligations which apply between an employer
and their employees.

Clause 44 makes equivalent provision in respect of public offices with the meaning of that term
being explained in subsection (2); and clause 45 establishes that a person who has the power to
recommend who should be appointed to a public office also must not discriminate against, harass or
victimise people when making such recommendations.

210 Clause 46 contains further interpretation of the preceding clause and it also introduces Schedule
6, which lists a number of exclusions from the scope of those clauses.

Paragraph 1 of Schedule 6 confirms that an office or post is not a personal or public office if it is
covered by other provisions of the Bill. Paragraph 2 of Schedule 6 specifies certain political offices
which are not to be treated as personal or public offices for the purpose of the Bill. The Council of
215 Ministers can amend this list, with the approval of Tynwald. Paragraph 3 confirms that a dignity or
honour conferred by the Crown is not a personal or public office; and paragraph 4 would confirm
that the office of the Bishop is not a public office. That paragraph is, in fact, unnecessary because the
Bishop is appointed by Her Majesty the Queen, rather than a member of the executive in the Island.
The appointment is therefore subject to the UK Equality Act 2010 which contains a corresponding
220 provision introduced to deal with the fact that there is, at present, positive discrimination in favour
of female candidates for the episcopate.

Madam President, I beg to move clauses 43 to 46 and, if I may, Schedule 6, stand part of the Bill.

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

The President: I will move clauses 43 to 45 and then come to the amendment to the Schedule separately. So I, first of all, move clauses 43 to 45. Those in favour, please say aye; against, no. The ayes have it.

The Hon. Member, Mr Cretney.

230 **Mr Cretney:** Yes, I have got an amendment to Schedule 6 which is introduced by clause 46:

Amendment to Schedule 6

Page 183, leave out lines 5 to 11 (which comprise paragraph 4 of the Schedule).

235 As Her Majesty's Attorney General has just advised, the inclusion of paragraph 4 in the Schedule is unnecessary because the Bishop is appointed by Her Majesty the Queen, rather than a member of the executive in the Island. The appointment is therefore subject, as he explained, to the UK Equality Act 2010, rather than this Bill.

So I beg to move the amendment standing in my name, which will omit paragraph 4 of Schedule 6.

240 **The President:** Do we have a seconder?

The Hon. Member, Mr Corkish.

Mr Corkish: I beg to second, Madam President.

245 **The President:** if there is no debate I will move clause 46 and Schedule 6, and to that I have the amendment in the name of Mr Cretney, which I will put to you first. Those in favour of the amendment to Schedule 6, 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.

250 Now clause 46, embracing Schedule 6. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 47.

The Acting Attorney General: Thank you, Madam President.

255 Clause 47 establishes that qualifications bodies, which are responsible for conferring relevant – that is work-related – qualifications must not discriminate against, harass or victimise persons in doing so.

260 The duty to make reasonable adjustments for disabled persons applies to a qualifications body, but the application by such a body of a competent standard to a disabled person is not disability discrimination unless it constitutes indirect discrimination under clause 20, because it cannot be shown to be a proportionate means of achieving a legitimate aim.

Madam President, I beg to move that clause 47 stand part of the Bill.

The President: Hon. Member, Mr Coleman.

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

The President: The motion is that clause 47 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 48 and 49.

270 **The Acting Attorney General:** Thank you, Madam President.

Clauses 48 and 49 concern, respectively, employment service providers and trade organisations. It is unlawful for these businesses or bodies, as the case may be, to discriminate against, harass or victimise persons in the course of carrying out their functions.

275 The duty to make reasonable adjustments for disabled persons also applies. The provision of an employment service includes matters such as vocational training and guidance. A trade organisation is an organisation of workers such as a trade union or an employers' body such as the Isle of Man Employers' Federation or an organisation whose members carry out a particular trade or profession.

Madam President, I beg to move that clauses 48 and 49 stand part of the Bill.

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

The President: The motion is that clauses 48 and 49 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

285

Clause 50.

The Acting Attorney General: Thank you, Madam President.

Clause 50 is similar to the previous clauses but this time dealing with local authorities and treatment of the members of such bodies. A local authority must not discriminate against, harass or victimise members of the authority in relation to members' carrying out of official business.

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However, not appointing or electing a member to a particular office, committee or subcommittee does not constitute a detriment to the purposes of this clause. Local authorities are under the duty to make reasonable adjustments for disabled members.

Madam President, I beg to move that clause 50 stand part of the Bill.

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

The President: The motion is that clause 50 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

300

Clause 51.

The Acting Attorney General: Madam President, clause 51 is fairly lengthy and I believe that it needs a careful explanation.

The clause restricts the circumstances under which an employer may ask about disabilities that a job applicant may have, or about the applicant's health, until that person has either been offered a job on a conditional or unconditional basis. This includes when an applicant has been included in a pool of successful candidates from whom an employer intends to select a person to offer work when a suitable position arises.

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At first sight, it may seem that this provision could prevent an employer from finding the best person for the job. That is not the intention at all. It is about ensuring that disabled people are not unfairly and unnecessarily ruled out at an early stage of the recruitment process.

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As the definition of disability for the purposes of the Bill is rightly brought, including all physical and mental impairments that have a substantial long-term adverse effect on a person's ability to carry out normal day-to-day activities, it is appropriate for health questions to be limited. The limitation applies to an application form and during any interview. It is otherwise quite possible that an applicant who may be the most qualified and experienced and who perhaps has the most suitable disposition for the role will be rejected purely for health reasons which could be accommodated with reasonable adjustments.

315

However, it must be stressed that there are a number of legitimate grounds on which an employer can ask about an applicant's health. These grounds, set out in subsection (7), include: finding out whether a job applicant would be able to participate in an assessment to test his or her suitability for the work; asking whether reasonable adjustments may be needed to enable a disabled person to participate in the recruitment process; and finding out whether a job applicant would be

320

325 able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required.

Proceedings for the contravention of this clause can only be instituted before the tribunal by the Attorney General, but an applicant could also make a claim of direct disability discrimination. If an employer does ask an applicant, whose application is later rejected, questions which are prohibited by this clause and that applicant does subsequently make a claim of disability discrimination against the employer to the tribunal, it will be for the employer to show that the applicant was not discriminated against because of the prohibitive questions. It may be possible, for example, to show that a successful candidate was simply better qualified. It is therefore in the interest of employers not to ask such questions which might leave them open to claims of discrimination.

335 Madam President, I beg to move that clause 51 stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

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

I think all businesses want to employ the person who is best for the job – regardless of who they are, they want the top performance – but I just wonder if maybe the Attorney could outline the situation where if an employer ... The employer obviously has a duty of care as well towards the person who they are going to be giving the job to. Some of the examples in the accompanying notes are to do with manual lifting of heavy items. I just wondered, if the business's insurance company said that they would not cover that situation, even though the employer would be quite happy to give the job to somebody who has a declared disability ... because surely certain things will have to be declared in certain roles and I wonder how the employer would deal with a situation where they are in conflict with maybe a decision of the insurance company who traditionally can be quite cautious about such things and possibly even refuse cover, then leaving the employer without cover in the event of a claim against an injury.

The President: Learned Acting Attorney General to reply.

355 **The Acting Attorney General:** Yes, thank you, Madam President, and I thank Mr Turner for the very good point which he makes.

The position which would arise if an insurance company was to impose those conditions on the employer would result in the employer being able to decline offering employment to that person, because, if nothing else, he would not then be in a position to make reasonable adjustments to accommodate that.

360 This will come under – as I have mentioned already – one of the grounds set out in subsection (7) where it is legitimate to ask questions as to whether or not the job applicant would be able to participate in an assessment to test his or her suitability for the work.

I hope that is of assistance to you, Mr Turner and Madam President.

365 **The President:** The motion is that clause 51 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 52, 53 and 54.

370 **The Acting Attorney General:** Thank you, Madam President.

Clauses 52 to 54 concern discrimination in the context of occupational pensions.

Clause 52 deals with what is known as the non-discrimination rule. All occupational pension schemes must be taken to include a non-discrimination rule and have effect, subject to the rule. The rule prohibits a responsible person from discriminating against, harassing or victimising a member of an occupational pension scheme or a person who could become a member of the scheme. A

responsible person is a scheme trustee or manager, an employer and the person responsible for appointing a person to a public office where the office holder can be a scheme member.

380 The non-discrimination rule will not apply to pension rights built up or benefits payable for periods of service before the commencement of this provision. Where there has been a breach of a non-discrimination rule, proceedings may be brought against the person responsible for the breach. It will not be a breach of a non-discrimination rule if an employer or the trustee or managers maintain certain practices or make decisions in relation to age that are specified in an order made by the Treasury. The Treasury is obliged to consult before making any such order.

385 The non-discrimination rule does not apply where an equality rule applies as that rule applies instead. I will explain about equality rules in later clauses in this part of the Bill.

390 Madam President, clause 53 gives trustees and managers of an occupational pension scheme the power by resolution to alter their scheme rules to conform to the non-discrimination rule in clause 52. They may use this power if: firstly, they lack powers to alter the rules for that purpose; or, secondly, the procedures for altering the rules, including obtaining consent, are unduly complex or would take too long. For example, changes to the scheme rules of a large scheme may require consultation with all the members before they can be made. This may be impracticable, particularly if some deferred members cannot be traced, so the scheme trustees can make the necessary non-discrimination alterations to the scheme rules by relying on this power.

395 Madam President, clause 54 concerns communications about occupational pension schemes, including the provision of information and the operation of a dispute resolution procedure to disabled persons who are entitled to the present payment of dependents' or survivors' benefits under an occupational pension scheme or are entitled to a pension derived from a divorce settlement.

400 I beg to move, Madam President, that clauses 52 to 54 stand part of the Bill.

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

The President: The motion is that clauses 52, 53 and 54 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

405 Clauses 55 to 62.

The Acting Attorney General: Thank you, Madam President.

410 Division 3 of Part 5 of the Bill contains provisions which are designed to achieve equality between men and women in pay and other terms of employment where the work of an employee and that of a comparator of the opposite sex are equal.

415 Subdivision 1, consisting of clauses 55 to 62, deals with sex equality. It does so by providing for what is known as a sex equality clause to be read into the employee's contract of employment. This is designed to ensure parity of terms between the employee and his or her comparator. A similar provision, referred to as a sex equality rule, is implied into the terms of occupational pension schemes.

Clause 55 sets out the scope of this subdivision which applies where a person is employed on work that is equal to the work of a comparator of the opposite sex. It applies to personal and public office holders as well as to employees. This clause also confirms the comparator can be a person's predecessor in their employment or office.

420 Clause 56 sets out when the work of two people is taken to be equal so that an equality clause or equality rule can operate. For the work to be equal to that of a comparator, a claimant must establish that he or she is doing one of three things: firstly, like work; secondly, work rated as equivalent; or, thirdly, work of equal value. The first of these two comparisons are already possible in the Isle of Man under the Employment (Sex Discrimination) Act 2000 and, as they are not new concepts, I will not expand upon them today unless Hon. Members have any particular questions.

425 Equal pay for work of equal value is an extension of the Island's equal pay law, but it is not a new concept under international, European Union or United Kingdom law. It has operated in the UK for

more than 30 years and the Isle of Man is under an explicit obligation to implement it under the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

430 In essence, work of equal value is where two jobs may be very different at first sight but when analysed they are found to place equivalent demands on the employee. The question of whether two jobs are of equal value involves a weighing and balancing between the features of the different jobs. The comparison made in an equal value claim is similar to a mini job evaluation exercise. The clause refers to the exercise being made by reference to factors such as effort, skill and decision
435 making.

Of course this is a concept with which the Island's public service is already very familiar, as a level within its grade structure often encompasses very different roles. To allow time for employers to adapt, it is intended that equal pay for work of equal value will not come into operation until two years after Royal Assent.

440 Madam President, clause 57 and clause 58 respectively set out the sex equality clause implied into all employment contracts and the sex equality rule implied into occupational pension schemes that I mentioned in my opening remarks on this group of clauses.

Clause 59 gives trustees and managers of an occupational pension scheme the power to remedy unequal treatment in the scheme if either they lack the power to alter rules or the procedures for altering rules are unduly complex or would take far too long.

445 Madam President, clause 60 is important. It provides that neither a sex equality clause, nor a sex equality rule will apply if an employer can show that the difference in terms between the person and his or her comparator is due to a material factor which is relevant and significant. Such a factor must not constitute direct sex discrimination. It may, however, constitute indirect sex discrimination, but
450 only where this is a proportionate means of achieving a legitimate aim.

Subject to Tynwald approval, the Department of Economic Development will be able to make regulations to give further clarification about what is or is not a proportionate means of achieving a legitimate aim.

To avoid overlap between the equal pay provisions and other provisions on sex discrimination within the Bill, clause 61 ensures that the sex discrimination provisions of the Bill do not apply where
455 a sex equality clause or rule operates, or would operate but for a defence of a material factor or the specific exceptions set out in Schedule 7.

Finally, in this group, Madam President, clause 62 creates an exception to the rule in clause 61, excluding equal pay claims from sex discrimination provisions in the circumstances where the
460 treatment of the person amounts to direct discrimination by virtue of either clause 14 or clause 15.

Madam President, I beg to move that clause 55 to 62 stand part of the Bill.

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

465 **The President:** The motion is – did you wish to speak? – that clauses 55 to 62 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 63 to 67.

The Acting Attorney General: Thank you, Madam President.
470 Clauses 63 to 67 concern pregnancy and maternity equality.

Clause 63 sets out that the following provisions apply where a woman is employed or where she holds a personal or public office.

Clause 64 requires that the terms of a woman's contract must be read as including a maternity equality clause.

475 Clause 65 sets out how a maternity equality clause affects a woman's pay. The main purpose of the clause is to provide a right for women to benefit from pay rises in the calculation of contractual maternity pay.

Clause 66 introduces a maternity equality rule into all occupational pension schemes. The effect of the rule is that any period when a woman is on maternity leave should be treated as time when

480 she is not on such leave. In particular, in relation to any rule of an occupational scheme which can be applied in respect of scheme membership, accrual of scheme rights and determination of benefits.

Clause 67 provides that the pregnancy and maternity discrimination provision of the Bill does not apply where a maternity clause or rule operates. It sets out the relationship between the two sets of provisions and it is intended to ensure that they provide seamless protection against pregnancy- and
485 maternity-related inequality.

Madam President, I beg to move that clauses 63 to 67 stand part of the Bill.

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

490 **The President:** The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

I have an amendment:

Amendment to clause 65

Page 77, for lines 31 to 36 substitute – '(3) The second condition is that the maternity-related pay is not what her pay would have been had she not been on maternity leave'.

The amendment substitutes a new subsection (3) to replace the existing subsection in which the
495 second condition had two discrete limbs. This amendment was requested by officers from Treasury's Social Security Division who have advised that because the structure in maternity benefits of the Island does not precisely mirror the structure in Great Britain, the second of the current provisions is inappropriate.

I beg to move the amendment standing in my name.

500

The President: Do we have a seconder for the amendment?

Mr Henderson: I will second that, Eaghtyrane, if I might and reserve my remarks.

505 **The President:** I will move the group of clauses in smaller groups, Hon. Members. So we will take, first, clauses 63 and 64. Those in favour of clauses 63 and 64, please say aye; against, no. The ayes have it. The ayes have it.

Clause 65 – and to that we have an amendment in the name of the Hon. Member, Mr Cretney. I put to you the amendment, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it. The amendment carries.
510

I now put to you clause 65 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 66 and 67. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. We move on now to clauses 68 and 69.

515

The Acting Attorney General: Thank you, Madam President.

Clauses 68 and 69 deal with issues concerning information about pay.

Under clause 68, any provision in a person's terms of employment or appointment which seeks to limit the person's ability to disclose their pay to others or to ask others about their pay is unenforceable provided that the purpose of the disclosure is to establish a connection between a
520 person's pay and that person having or not having a protected characteristic.

Any action taken against an employee as a result of conduct protected by this clause is treated as victimisation by the employer for the purposes of the Bill. However, for the avoidance of doubt, there is no obligation on any person to discuss their pay if they do not wish to do so.

525 Clause 69 enables the Department of Economic Development to make regulations to require larger employers in the Island to publish information about the differences in pay between their

male and female employees, often called the 'gender pay gap'. This is a contingency power as the Government would prefer larger employers to provide information on a voluntary basis on the gender pay gap of their employees.

530 Madam President, I beg to move that clauses 68 and 69 stand part of the Bill.

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

535 **The President:** The motion is that clauses 68 and 69 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 70 and 71 with Schedule 7.

The Acting Attorney General: Thank you, Madam President.

540 Clause 70 sets out the situations in which two jobs or offices can be compared for equal pay purposes.

Clause 71 provides for the interpretation of the preceding equality of terms clauses of the Bill; it also gives effect to Schedule 7 of the Bill which sets out some exceptions to the general effect of those clauses.

545 Part 1 of Schedule 7 provides that equality clauses will not affect any terms of employment, appointment or service as are governed by laws regulating employment of women. A few of these remain, mainly for health and safety purposes. The sex equality clause also has no effect on terms giving special treatment to women in connection with pregnancy or childbirth.

550 Part 2 of Schedule 7 sets out certain cases where a sex equality rule does not have effect in relation to occupational pension schemes. So in prescribed circumstances it is lawful for payments of different amounts to be made to comparable men and women if the difference is only because of differences in state retirement benefits to which men and women are entitled. Payments of different amounts are also permitted where those differences result from the application of prescribed actuarial factors for the calculation of the employer's contributions to an occupational pension scheme. The Schedule contains a regulation-making power for the Treasury with the
555 approval of Tynwald to vary, add or omit provisions about cases.

Madam President, I beg to move that clauses 70 and 71 and Schedule 7 do stand part of the Bill.

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

560 **The President:** The motion is that clauses 70 and 71 and Schedule 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 72.

The Acting Attorney General: Thank you, Madam President.

565 As with the Equality Act 2010, the provisions of Part 5 of the Bill concerning discrimination in employment and related matters do not automatically apply to offshore work.

570 Madam President, the Island does not have any offshore installations, for example, oil or gas rigs or renewable energy installations, in its territorial waters. This clause allows the Department of Economic Development to extend protection to workers on any such installations in the future, with any modifications that may be necessary to take account of the demands of that particular type of work.

I beg to move that clause 72 stand part of the Bill.

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

575 **The President:** The motion is that clause 72 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 73.

The Acting Attorney General: Thank you, Madam President.

580 Clause 73 disapples Part 5 of the Bill in relation to a personal or occupational pension scheme approved under section 5(b)(2) of the Income Tax Act 1970 which relates to international pension schemes administered from the Island with respect of persons who are outside the Island.

I beg to move that clause 73 stands part of the Bill.

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

The President: The motion is that clause 73 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 74 and Schedules 8 and 9.

590

The Acting Attorney General: Thank you, Madam President.

Clause 74 provides further interpretation of certain matters relevant to Part 5 of the Bill, in particular, the meaning of 'employment' which is widely defined. It also gives effect to Schedule 8, which deals with reasonable adjustments for disabled persons in the context of work, and Schedule
595 9 which sets out a number of exceptions to the work equality requirements of the Bill.

Schedule 8 is split into three Parts. Part 1 provides that the duty to make reasonable adjustments applies to employers and others. Part 2 of the Schedule deals with who is an interested disabled person in relation to employers and the categories of persons to whom Part 5 of the Bill applies. Part 3 of the Schedule ensures that the duty to make reasonable adjustments does not apply to an
600 employer or other relevant persons if they do not know, or could not realistically be expected to know, that a person has a disability for the purposes of the Bill.

Madam President, as I have mentioned, Schedule 9 contains exceptions from the requirements of Part 5 of the Bill and the first Part of the Schedule concerns occupational requirements.

Paragraph 1 of this Schedule sets out a general exception where there is an unavoidable occupational requirement for a person to have a particular protected characteristic in relation to work and the application of that requirement is a proportionate means of achieving a legitimate
605 aim.

Paragraph 2 then deals with specific exceptions for religious organisations in respect of sex, marriage, sexual orientation and related matters, such as the requirement of a Catholic priest to be
610 a man and not married.

Paragraph 3 permits a person with an ethos based on religion or belief to discriminate in relation to work by applying a requirement to be of a particular religion or belief if being of that religion or belief is a general occupational requirement for the role and applying the requirement is a proportionate way of achieving a legitimate aim.

615 Paragraph 4 of Schedule 9 deals with how the exceptions set out in the first three paragraphs apply to employment service providers and paragraph 5 defines certain terms used in the first Part of the Schedule.

Part 2 of Schedule 9, consisting of paragraphs 6 to 13, covers work-related exceptions in respect of age. The exceptions concern benefits which are based on: a person's length of service; the
620 minimum wage for young workers and apprentices; redundancy; insurance; childcare; and contributions to personal pension schemes.

Paragraphs 14 to 17, which make up Part 3 of the Schedule 9, then deal with miscellaneous other exceptions concerning: non-contractual payments to women on maternity leave; benefits dependent on marital or civil partnership status; provision of services to the public; and for
625 insurance contracts which rely on certain actuarial factors.

Madam President, I beg to move that clause 74 and Schedules 8 and 9 stand part of the Bill.

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

630 **The President:** The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

635 I would like to ask the mover about Schedule 9, section 2(4), and whether there should not be a requirement not to be married to, or the civil partner of, a person of the same sex? Because that certainly would be something that I, as Bishop, would have to insist upon and it does not appear to be here.

The President: The Hon. Member, Mr Wild.

640 **Mr Wild:** Just for clarity then, does that mean that a Catholic priest could have a male partner?

The Lord Bishop: May I?

The President: Yes, you may.

645 **The Lord Bishop:** Just to elucidate, I think the problem would be only, for instance – and I think the same would apply to a Catholic Bishop as to an Anglican Bishop – if I were to say to somebody – a priest looking for a job in this diocese who is married to someone else of the same sex or, as you say, in the Catholic Church ... could I be subject to legal action, or could the Catholic Bishop be subject to legal action?

650 I think that is the issue.

Mr Wild: Yes, thank you.

The President: Hon. Member, Mr Anderson.

655 **Mr Anderson:** On a more straightforward note maybe, could the mover explain a little bit about this 'reasonable adjustment'? Would it be for the tribunal to determine what is 'a reasonable adjustment' if there is an appeal, and therefore does it rely on there being reasonable representation from various organisations on the tribunal? Will he determine what is 'a reasonable adjustment'?

660

The President: Learned Acting Attorney to reply.

The Acting Attorney General: Thank you, Madam President.

665 If I could perhaps, with your leave, seek some guidance from my officers, but if I could mention, firstly, I can deal with Mr Anderson's enquiry if I may.

670 Certainly the issue of reasonable adjustment is a matter for the tribunal's decision and, as I have explained as I have gone through the Bill, it is the tribunal where people are directed to resolve any issues or disputes as to any matters which arise under the Bill. We will come on later, if we may, Madam President and Mr Anderson, to deal with the constitution and workings of that tribunal, but in general terms, as I have mentioned, the dispute or issue would be referred to the tribunal for its determination and decision.

675 **The President:** Would you like your officer to speak, sir?

The Acting Attorney General: If I may, Madam President.

680 **The President:** Yes. Can I invite you to give us your name and office for the purposes of *Hansard*, please?

Mr Connell: William Howard Connell, legislative drafter in the Attorney General's Chambers.

Madam President, the learned Bishop's ... sorry, the Right Reverend Prelate's observations – on the basis that that is how you would be addressed in the House of Lords – relate to a point which actually we cannot deal with yet. The reason why we cannot deal with it is because at the moment we do not have the concept of same-sex marriage. It is because the two Bills are moving in parallel. I accept that, should the Same Sex Couples Act or the Marriage and Civil Partnership (Amendment) Act, as it now is, come into operation, there will be a need for a consequential amendment in this Bill, but because the two are moving through the Branches at the same time, it is not technically possible to include the amendment yet. I envisage that that would be moved by a change made by order by CoMin before the Act is brought into operation substantively. Clearly, it is a matter of some importance for the Church of England, as the Bishop and I both recognise.

The President: Thank you.

Is there anything you wish to add, sir?

The Acting Attorney General: No. *(Laughter)*

A Member: Open and shut.

The President: The motion is then that clause 74 and Schedules 8 and 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 75 to 79 and Schedules 10 and 11.

The Acting Attorney General: Thank you, Madam President.

Part 6 of the Bill concerns the application of the Bill to the field of education and Division 1 of this Part, consisting of clauses 75 to 79, deals with schools.

Clause 75 simply confirms, for obvious reasons, that this Division does not apply to the protected characteristic of age.

Under clause 76 it is unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or prospective pupil by not admitting him or her because of a relevant protected characteristic or to do so in respect of the terms on which admission is offered or in the way a pupil is treated once admitted. The responsible body for a maintained school is the Department of Education and Children or the school's governing body; and for an independent educational institution or a non-maintained special school it is the proprietor. This clause also imposes on the responsible body of a school the duty to make reasonable adjustments for disabled pupils and prospective disabled pupils.

Clause 77 protects children in schools from being victimised as a result of a protected act, such as making or supporting a complaint of discrimination by a parent or sibling of the child in question. The aim of this clause is to prevent parents being discouraged from raising issues of discrimination with a school because of concerns that their child may suffer retaliation as a result.

However, if a child has acted in bad faith, by way of example, making a false allegation of discrimination to his or her parents or sibling, he or she is not protected.

Clause 78 simply gives effect to Schedule 10 which deals with accessibility of schools for disabled pupils. Schedule 10 consists of just two paragraphs. The first paragraph requires the Department of Education and Children to prepare, publish and implement an overall accessibility strategy in respect of disabled pupils in its provided and maintained schools. The second paragraph requires a responsible body for each school to prepare, publish and implement an accessibility plan for the school.

Madam President, clause 79 gives the meaning of the main terms used in Division 1 of Part 6 of the Bill. It also confirms that the provisions of this Division do not apply to anything done in relation to the content of the school curriculum. This ensures that the Bill does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to present pupils

with thoughts and ideas of all kinds. Clause 79 also gives effect to Schedule 11 which provides some exceptions to the provisions of this Division.

735 Paragraph 1 of Schedule 11 allows schools which have been specified in an order made by the Department of Education and Children as having a religious character, to discriminate because of religion or belief in relation to access to any benefit, facility or service. It means that these schools may conduct themselves in a way which is compatible with their religious character. It does not allow faith schools to discriminate because of any other of the protected characteristics such as sex, race or sexual orientation; nor does it allow them to discriminate because of religion in other respects such as by excluding a pupil, or subjecting him or her to any other detriment. In the Island at present it is likely that only St Mary's and St Thomas's schools will be designated for this purpose.

740 Paragraph 2 of this Schedule disapplies the prohibition on religious discrimination from anything done in relation to acts of worship or other religious observants organised by or on behalf of a school whether or not it is part of the curriculum. This exception applies to any school, not just those which have been specified as having a religious character. It reflects the need to avoid any conflict within the existing legislative framework in respect of religious education and worship in schools, which is generally required to be of a broadly Christian nature.

745 Paragraph 3 of Schedule 11 permits the Council of Ministers to amend or repeal or supplement these religious discrimination exceptions if it considers it appropriate to do so in the future, after consulting appropriate persons and with the approval of Tynwald.

755 Paragraph 4 provides that schools will not be discriminating against disabled children when applying a permitted form of selection. Permitted forms of selection are the selective admission arrangements operated by the Department of Education and Children, such as in respect of children with special educational needs and selection criterion operated by independent schools which may be based on ability and aptitude.

Madam President, I beg to move that clauses 75 to 79 and Schedules 10 and 11 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

765 It is just a point really for debate – and it is obviously useful that we have got the Education Minister as a Member of this Council. I appreciate the comments the Acting Attorney has made.

I just wonder whether we could have situations here where everybody is so twitchy about offending somebody these days, it is very easy just not to do something rather than to put something on, and we do hear of cases where – this is across the whole of Britain now; I am not being specific to the Isle of Man – schools do not put on a nativity play at Christmas because it might offend somebody somewhere. I really hope that we are not going to get to that situation.

775 I also hope that what this is about is being inclusive – which it is – and what we do not have is teachers' or headteachers' own personal views deciding that there are not going to be concerts, carol services and nativity plays and all sorts that the children enjoy taking part in. It is more for the purposes of debate, as this is the subject we are dealing with here, that what we should be doing is encouraging study of all of these things, but not allowing individual teachers' views to dictate the running because they do not particularly agree with something. I just make that part of the debate ... and whether other Members have comments to make on that.

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

The Minister for Education and Children (Mr Crookall): Thank you, Madam President.

I think the word that the Hon. Member used there was 'inclusion' and it is more about inclusion than not, if the case may be.

785 Certainly, the head has the right in the schools, but we would strongly recommend that it is about the whole school and if, for any reason, parents do not want their children to participate, then that is for them to take up with the head. But the curriculum is set by the Department for the schools and for the head to enforce.

790 **Mr Turner:** As long as they do not all miss out.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

795 It is unfortunately, sadly, true in today's age that there can be schools where those determining the policy – whether it be the headteacher or others – do implement a kind of anti-religious tradition in the school and I think that is regrettable, as much as anything because it betrays the origins of our society for the last 1,600 years and attempts to write the future on the basis of rewriting the past. That is very regrettable. I do not have any problem with what is here in this Bill or
800 in this Schedule.

The President: Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

805 I was just going to give my hon. colleague, Mr Turner, my full support and I agree entirely with the Minister. To me, it is about inclusion and when Mr Turner and I were in Education we did come across instances where something like Hop-tu-naa was ignored and I think you can discriminate against culture as well and that, to me, is quite important. To me, Hop-tu-naa is very much a feature of the Isle of Man. In the UK it is Halloween but our Hop-tu-naa is quite unique.

810

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, I just wanted to welcome this section. Although the Department has been going in the right direction in relation to disabled pupils' inclusion in the last few years, those of us who
815 have been around a long time can remember, at primary school, youngsters going through primary schools then having to be bussed out of the town in which they lived to go to secondary school, and I really welcome the movement that is taking place and will continue with this in statute.

The President: The Hon. Member, Mr Henderson.

820

Mr Henderson: Gura mie eu, Eaghtyrane.

I just wish to strongly associate with the commentary from the Lord Bishop on this matter and have come across, in the past, instances of the anti-behaviour, if you like, and I did make representations to the school in question and the following year they had a full carol service at
825 Trinity Methodist Church at Rosemount, which was excellent.

The President: The learned Acting Attorney General to reply.

The Acting Attorney General: Yes, thank you, Madam President.

830 Very briefly, if I could thank Mr Turner for raising the issue and for the debate which Hon. Members have taken part in.

If I could just simply confirm that I entirely agree with Mr Turner's proposal that the principle of it being inclusive, as far as these provisions in the Bill are concerned, is absolutely the basis upon which the legislation has been framed. There was no intention whatsoever of preventing the likes of
835 carol services and nativity plays of that nature taking part. Certainly, there is nothing in the Bill which

would enable any person to come forward and make a claim for discrimination under the Bill if such carol services and nativity plays and so on were performed.

I, in particular, would like to thank Mr Crookall, as the Minister for Education, for his contribution to the debate to confirm the position.

840 Thank you, Madam President.

The President: The motion is that clauses 75 to 79 and Schedules 10 and 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 80 to 83 and Schedule 12.

845

The Acting Attorney General: Thank you, Madam President.

Clause 80 to 83 and the associated Schedule 12 deal with further and higher education which, for this purpose, include the use of recreational and training facilities. Clause 80 makes it unlawful for the Isle of Man College or a university to discriminate against, harass or victimise a student, or someone who wants to become a student, in the arrangements it makes for deciding who to admit, the terms on which a person is admitted and the way a person is treated when admitted. Under this clause, the responsible body is under a duty to make reasonable adjustments for disabled students and prospective students.

850

Clause 81 prohibits discrimination in the offering of further and higher education courses and it again requires a reasonable adjustment to be made for disabled students.

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Clause 82 makes a similar provision for the use of recreational and training facilities.

Clause 83 gives the meaning of certain terms used in Division 2 of Part 6 of the Bill. It also provides that the requirements of this Division do not apply to anything done in relation to the content of the curriculum. This ensures that the Bill does not inhibit the ability of higher and further education institutions to include a full range of issues, ideas and materials in their syllabus and to be able to present their student with thoughts and ideas of all kinds.

860

Finally, Madam President, this clause gives effect to Schedule 12 which contains a number of exceptions.

Paragraph 1 of Schedule 12 allows a higher or further education institution to treat a person differently based on a protected characteristic in relation to providing training which would only fit that person for work which could lawfully be restricted under Part 1 of Schedule 9.

865

Paragraph 2 gives the Department of Education and Children the power to designate a higher or further education institution as having a religious ethos. The institution may then operate in a manner which is consistent with that ethos. It is not envisaged that any such designation will be required at present.

870

Under paragraph 3 of Schedule 12 a higher or further education institution which confines any benefit, facility or service to married people and civil partners will not be discriminating because of sexual orientation against people who are unmarried or not in a civil partnership.

Paragraph 4 of the Schedule allows the Department of Education and Children to continue to apply age-related criteria for providing financial support to students.

875

Paragraph 5 provides that a higher or further education institution is permitted to provide or make arrangements for the care of the children of students, which is restricted to children of a particular age group.

Madam President, I beg to move that clauses 80 to 83 and Schedule 12 stand part of the Bill.

880

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

The President: The motion is that clauses 80 to 83 and Schedule 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

885

Clauses 84, 85 and 86.

The Acting Attorney General: Thank you, Madam President.

Clauses 84 to 86 make up Division 3 of Part 6 of the Bill which deals with the requirements on general qualification bodies.

890 By virtue of clause 84, this Division does not apply to the protected characteristic of marriage or civil partnership.

Clause 85 makes it unlawful for a qualifications body to discriminate against, harass or victimise a person in the arrangements it makes for deciding on whom to confer qualifications and the terms on which those qualifications are conferred.

895 This clause also places a duty on qualifications bodies to make reasonable adjustments for disabled people but it includes a power for the Department of Education and Children to designate an appropriate regulator which may then specify matters which are not subject to the reasonable adjustments duty. For example, it could be specified that the requirement to achieve a particular mark to gain a particular qualification is not subject to reasonable adjustments. The appropriate
900 regulator may also specify which reasonable adjustment should not be made. For example, depending on the circumstances, it may be appropriate to allow additional time for a disabled person to complete an exam, but not to give an exemption from completing part of an exam. In doing so, the appropriate regulator must have regard to the need to minimise the extent to which the disabled persons are disadvantaged, but also the need to protect the integrity of the
905 qualification and public confidence in it. Before specifying any such matter, the regulator must consult such persons as it thinks appropriate and must publish specified matters.

Clause 86 explains what is meant by terms used in clause 85.

Madam President, I beg to move that clauses 84 to 86 stand part of the Bill.

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

The President: The motion is that clauses 84 to 86 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 87 and Schedule 13.

915

The Acting Attorney General: Thank you, Madam President.

Clause 87 just gives effect to Schedule 13 which provides further detail about the duty to make reasonable adjustments for disabled people in the field of education.

920 Paragraph 1 of Schedule 13 is introductory and paragraph 2 sets out how the duty to make reasonable adjustments applies to schools.

Under clause 21, the duty comprises three separate requirements. Although the responsible body of a school is not required to make changes to the physical features of the school, the other two requirements of the duty will apply.

925 Paragraph 3 of Schedule 13 concerns how the duty to make reasonable adjustments applies to higher and further education institutions, and in this case, alterations to physical features of an institution may be required.

Paragraphs 4, 5 and 6, respectively, then explain who is a relevant or interested disabled person for the purposes of the Schedule, how the duty applies to higher and further education courses, and how it applies to recreational and training facilities.

930 Paragraph 7 provides, for the purpose of deciding whether it is reasonable for any particular adjustment to be made, that regard must be given to any relevant code of practice issued under clause 154 of the Bill.

935 Paragraph 8 establishes that certain requests for reasonable adjustments to be made must be treated as confidential. For example, if a parent does not wish other pupils to know that their child has a disability.

Finally, paragraph 9 of the Schedule explains how the duty to make reasonable adjustments applies to qualification bodies.

Madam President, I beg to move that clause 87 and Schedule 13 stand part of the Bill.

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

The President: The motion is that clause 87 and Schedule 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 88.

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The Acting Attorney General: Madam President, clause 88 provides that trust deeds or other instruments concerning educational charities which restrict available benefits to a single sex may be modified by the Attorney General upon an application from the Department of Education and Children or the trustees or the governing body, if it is considered that the modification would assist with the advancement of education without sex discrimination.

950

A modification cannot be made within 25 years of the trust being created without the consent of the donor or the donor's or testator's personal representatives. The Attorney General must publish the particulars of the proposal and invite representations before making any modification. This provision might be used if a trust provided for an educational benefit to only be made available to male or female pupils, but it was considered appropriate at some point in the future for all pupils to be able to benefit.

955

Madam President, I beg to move that clause 88 stand part of the Bill.

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

960

The President: The motion is that clause 88 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 89 to 93 and Schedules 14 and 15.

965 **The Acting Attorney General:** Thank you, Madam President.

Clauses 89 to 93, together with the accompanying Schedules 14 and 15, form Part 7 of the Bill. This Part deals with the effect of the Bill on associations.

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Although the definition of an association is set out in the last clause of this group, I think it may be helpful to begin by explaining that, for the purposes of the Bill, an association is a body with at least 25 members, with membership that is controlled by the rules and which involve a genuine selection process.

For example, a private members' golf club where applicants for membership are required to make a personal application, be sponsored by other members and go through a selection process, would be an association under the Bill; but a book club run by a group of friends which had no formal rules governing admittance or whose membership was less than 25 people would not be an association for the purposes of the Bill.

975

Madam President, clause 89 provides that this Part of the Bill does not apply to the protected characteristics of marriage or civil partnership as a result. It would be lawful for an association to only allow single people to be members or indeed only allow people who are married or in a civil partnership to be members.

980

This clause also confirms that if an act of discrimination, harassment and victimisation would be unlawful under the Parts of the Bill dealing with services and public functions, premises, work or education, then those provisions, rather than the association provisions in this Part, are to apply.

Madam President, clauses 90 and 91 prohibit discrimination, harassment or victimisation by an association against its members, whether full members or associate members, and against members' guests.

985

Clause 92 requires associations to comply with the duty to make reasonable adjustments for disabled people and clause 93 gives the meaning of certain terms used in this Part of the Bill, including, as I have mentioned, the definition of an association.

990

The clause also gives effect to schedules 14 and 15.

Schedule 14 gives more detail about how the duty to make reasonable adjustments for disabled people applies to associations. In essence, the full scope of the duty applies to an association. However, in complying with the duty, an association is not required to take any step which would fundamentally alter the nature of the association or the nature of a benefit, facility or service provided by it, nor in the case of associations which may meet in members' homes does the duty require any changes to be made to the physical features of a member's house.

995

Madam President, Schedule 5 contains some exceptions that apply to associations.

Paragraph 1 of the Schedule permits associations to restrict membership to persons who share a protected characteristic. Examples of such lawful associations would include a private members' club just for men, or indeed just for women, a debating society just for people with Manx ancestry and a self-help society for people with a particular type of disability.

1000

Paragraph 2 of Schedule 15 allows exceptions from age discrimination in respect of concessions and in relation to various forms of special treatment by association. For example, it would be lawful for an association to waive its annual membership fee for members over the age of 65.

1005

Paragraph 3 of the Schedule ensures that it is not unlawful to treat a pregnant woman differently in the terms upon which she is admitted as a member or is given access to benefits as a member, but only if the association reasonably believes that this is necessary on the grounds of her health or safety, and the association would take similar measures in respect of persons with other physical conditions. The equivalent provision is made in respect of associates and guests.

1010

Madam President, I beg to move that clauses 89 to 93 and Schedules 14 and 15 stand part of the Bill.

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

1015

The President: The motion is that clauses 89 to 93 and Schedules 14 and 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 94 to 98.

The Acting Attorney General: Thank you, Madam President.

1020

Part 8 of the Bill contains a number of ancillary provisions concerning prohibited conduct.

Clause 94 makes it unlawful to discriminate against or harass a person after a relationship covered by the Bill has ended. This covers any form of relationship where the Bill prohibits one person from discriminating against or harassing another, such as in employment or in the provision of goods and services. For example, if an employer refused to give a reference to an ex-employee because he or she was Jewish this would still be direct discrimination on the grounds of religion or belief even though the employment relationship had ended.

1025

Clause 95 makes employers and principals liable for acts of discrimination, harassment and victimisation carried out by their employees in the course of their employment or by their agent acting under their authority. However, employers who can show that they took all reasonable steps to prevent their employees from acting unlawfully will not be held liable. In addition, the employers and principals cannot be held liable for any criminal offences under the Bill that are committed by their employees or agents.

1030

Clause 95 confirms that an employee is personally liable for unlawful acts committed in the course of his or her employment where, because of the previous clause, the employer is also liable or would be, but for the defence of having taken all reasonable steps to prevent the employee from committing the unlawful act. An agent would also be personally liable under this clause for any unlawful acts committed under a principal's authority.

1035

However, an employee or agent will not be liable if he or she has been told by the employer or principal, as the case may be, that the act is lawful and the employee or agent reasonably believes this to be true. It is an offence punishable by a fine of up to £5,000 for an employer or principal to knowingly or recklessly make a false statement about the lawfulness of an action.

1040

Clauses 97 and 98, respectively, make it unlawful to instruct, cause or induce a person to discriminate against, harass or victimise another person and to assist a person in contravening the provisions of the Bill.

1045 Madam President, I beg to move clauses 94 to 98 stand part of the Bill.

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

1050 **The President:** The motion is that clauses 94 to 98 stand 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 that part of the Bill. The remainder will be considered at our next sitting.

3. Local Government and Building Control (Amendment) Bill 2016 – Second Reading approved

Mr Corkish to move:

That the Local Government and Building Control (Amendment) Bill 2016 be read a second time.

The President: We turn now to Item 3 on our Order Paper, the Local Government and Building Control (Amendment) Bill 2016 for Second Reading and clauses stage.

1055 I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

In moving the Second Reading of this Bill, I will be brief in light of the fact that it is a short Bill.

1060 As I highlighted in the First Reading of the Bill, it will seek to amend several enactments in relation to local government and building control, and provides for the introduction of fixed penalties in connection with certain statutory notices and following contravention of certain byelaws.

The proposals are aimed at enhancing the management and control of land and buildings that have a detrimental impact on the appearance of local communities.

1065 The Bill provides for an increase the maximum fine that can be imposed by the courts for failing to comply with a statutory notice to carry out improvements to a building or on land. As well as increasing court fines, the Bill also provides for the introduction of fixed penalties, to be issued by authorised officers of local authorities, in such cases where an owner or occupier has not complied with a statutory notice requesting improvement works to be undertaken.

1070 Additional powers will also mean that owners and occupiers not only have to remedy the original problem, but also take action to ensure their building or land is properly maintained to avoid the issue reoccurring.

1075 The Bill has been the subject of extensive consultation with interested parties and the proposals have received the overwhelming support from the majority of those persons and organisations who responded to the consultation document.

During the First Reading of this Bill, Mr Anderson asked:

Can he just confirm for my interpretation that the amendment, I think, that was moved – or the new clause put in in another place – does mean that ruinous buildings will have to pay rates in the future now, or is that dependent upon that local authority making that determination?

The new clause will not apply retrospectively to existing ruinous buildings; after the commencement of the clause any dangerous or ruinous buildings, where they have been served a

1080 notice or order under the Building Control Act will be subject to the provision and will be expected to pay rates.

Madam President, I beg to move that the Local Government and Building Control (Amendment) Bill 2016 be read for a second time.

The President: The Hon. Member, Mr Henderson.

1085 **Mr Henderson:** I beg to second, Eaghtyrane, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1090 I ask the mover: am I right in thinking the Bill is being promoted by the Department of Infrastructure, who are responsible for local government, but is the enforcement of this under Building Control going to be the role of DEFA, because obviously the Department of Infrastructure has a huge conflict of interest here because it owns all the Government property? Quite a few sites are derelict or an eyesore and really should be first in the queue for enforcement. I did mention the Summerland site, for example, which is an incredible eyesore at the end of the promenade, but the excuse is that, 'Oh, well it is very complicated because the cliffs are unstable'. I just wonder, if that
1095 was a privateer would they be coming down on them quite heavily? So I just wonder how this is going to work and whether the Department intends to practice what it preaches, and not just target the privateer but also ensure that Government complies fully; because we have already seen
1100 examples of Government not complying fully with legislation in other areas, such as listed structures, listed buildings.

So I just wonder how this is going to be operated and whether it will be DEFA that will be handing out the fixed penalties and the prosecutions and everything else that is going to go with this Bill.

1105 **The President:** The mover to reply.

Mr Corkish: In answer to Mr Turner – and I thank him for his observations – it will lie, to the best of my knowledge, with DEFA, where the environmental officers take responsibility for that. I am fairly certain of that, but I will certainly seek confirmation – but I am 99% certain of that, Mr Turner.

1110 I beg to move.

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

Local Government and Building Control (Amendment) Bill 2016 – Clauses considered

The President: We turn to clauses. Clauses 1, 2 and 3.

1115

Mr Corkish: Thank you, Madam President.

Clause 1 gives the Act resulting from the Bill its short title.

Clause 2 sets out that sections 1, 2 and 3 will come into force upon the passing of the Act. The remaining provisions will come into force on such day or days as appointed by the Department of
1120 Infrastructure.

Clause 3 provides for the expiry of the Act after it is fully in operation.

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

The President: The Hon. Member, Mr Henderson.

1125

Mr Henderson: I am happy to second, Eaghtyrane, but also in the knowledge that I have an amendment to this as well –

The President: Well, you are not seconding that one just yet. *(Laughter)* We will deal with that when we come to it. You are seconding clauses 1, 2 and 3.

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.

1135

Mr Corkish: Thank you, Madam President.

Clause 4 introduces the amendments that are made to the Local Government (Miscellaneous Provisions) Act 1984 by clauses 5 and 6.

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

1140

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 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.

1150

Mr Corkish: Thank you, Madam President.

Clause 5 amends section 14 of the Local Government (Miscellaneous Provisions) Act 1984 which deals with the maintenance of open land.

Section 14 currently confers a power on a local authority to serve a notice on the owner or occupier of a garden or vacant or other land requiring that person to take action where the land is in such a condition as seriously to injure the amenities of the neighbourhood.

Subsection (2) substitutes a new section 14(1) and the new subsection will effectively lower the test for service of the notice. Local authority ‘authorised officers’ will now be able to serve a statutory notice in cases where the land is in such a condition as to be ‘detrimental to the amenities of the neighbourhood’ rather than being in such a condition as ‘seriously to injure the amenities of the neighbourhood’.

The new section 14(1) also clarifies the circumstances in which the notice may be served. The notice may be served when the land is in a detrimental condition by virtue of lack of cultivation, the presence of anything on the land or any other reason. The use of the term ‘presence of anything on the land’ will be particularly helpful to local authorities when it comes to enforcement of the legislation.

The new section 14(1) also allows a notice to be served to prevent an occurrence or a recurrence of the detriment and confers on a special authority more control over the steps that must be taken to remedy the problem. These new provisions should also be helpful to local authorities as the provisions will facilitate the on-going management of the land to help prevent the detriment from recurring.

Subsection (3) inserts a new section 14(4) which will specify that a statutory notice is not invalid simply because other land in the neighbourhood may also be in a condition that could be classed as being ‘detrimental to the amenities of the neighbourhood’. This extra clarification will also be helpful to local authorities as they endeavour to enforce the legislation.

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

1175

The President: Hon. Member, Mr Henderson.

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

The President: Hon. Member, Mr Turner.

1180 **Mr Turner:** Thank you, Madam President.

I just wonder whether the Member could enlighten me a bit on who will decide on what is the 'lack of cultivation'. I can see what this is trying to do here. There could be things dumped on land really bringing down the enjoyment of the area – eyesores and things – but I just wonder how you are going to decide on 'lack of cultivation'. The beauty is in the eye of the beholder and you could have people who like to have wildflowers in their garden and others who have it nicely cultivated with trimmed lawns and neatly pruned privet hedges. So I just wonder quite how that is going to work.

1185 I do have a comment on clause – we are not on clause 6 yet, are we? (**The President:** No.) No – which builds on that. So I am just interested to know about the 'virtue of lack of cultivation' phrase that is in here that I find quite interesting.

1190

The President: Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

1195 Just from clarification from my hon. colleague for farming, is my understanding correct – that a field should be either cut or ploughed on an annual basis?

The President: No. (*Laughter*)

Hon. Member.

1200

A Member: Hon. Member for farming!

Mr Anderson: I do not know, Madam President, who the Hon. Member was mentioning – it could be two or three of us in here – but I understand, if my interpretation is correct, that it would be for DEFA to decide on these sorts of issues. If the land was under the new Agricultural Development Scheme it would be for them to interpret whether this act was against that.

1205

As far as the Hon. Member, Mr Wild, is concerned, no, nothing has to be cultivated or chopped down. There is a Weeds Act which DEFA loosely impose and I understand the mover's Department will be looking to DEFA for interpretation in this area.

1210

The President: The Hon. Member, Mr Cretney.

Mr Cretney: I just wanted to welcome the intervention of Mr Turner who is always good to cultivate a debate! (*Laughter*) (*Interjections by Mr Turner and Mr Anderson*)

1215

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

1220 I am grateful to so many Members for their observances and I particularly thank my good friend and colleague, Mr Anderson, for his intervention too, bringing my agricultural knowledge into question, which is very sparse. I thank you. He was quite right: the resultant definition would lie with DEFA.

1225 In relation to Mr Turner, I think we mentioned in the First Reading what was meant in the legislation by 'dilapidation'. That, of course, is open to conjecture and perhaps land that is detrimental to the environment in which it lies ... that maybe perhaps that land which before has been in good condition has been left to deteriorate, which does then have a not nice effect on the

environment in which it lies. The purpose of the Bill, of course, is to tidy up the land and the buildings around, and part of the whole regeneration of the Isle of Man.

Madam President, I beg to move.

1230

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

Clause 6.

1235

Mr Corkish: Thank you, Madam President.

Clause 6 inserts a new section 14A into the Local Government (Miscellaneous Provisions) Act 1984. Hon. Members will recall that section 14 deals with the maintenance of open land.

1240

The new section 14A will allow local authority 'authorised officers' to take prompt enforcement action in cases where there has been a failure to comply with a notice served under section 14. Instead of having to pursue lengthy and costly action through the courts, authorised officers will now be able to take action by means of fixed penalty notices. The fixed penalty will be £200, although that amount could be amended by an order made by the Department. In order to avoid further proceedings, the person is required to pay the full amount of the fixed penalty within 21 days, although the penalty could be deemed as having been paid if a lesser amount is paid earlier than 21 days. I can also confirm that the new subsection (7) states that the fixed penalty is 'payable to the local authority'.

1245

The Department recognises that the option of using fixed penalty notices should provide local authorities with an additional enforcement mechanism for tackling unsightly land. In most cases, in accordance with guidance issued by the Department, a local authority will have previously issued warning letters to the owners advising that a fixed penalty notice is likely to be issued if action is not taken to improve the condition of the land.

1250

The fixed penalty will offer the person the opportunity of discharging any liability to conviction for an offence under section 58(7) of the Local Government Act 1985 by payment of a fixed penalty. In the event of non-payment of a fixed penalty, an authority may recover that amount as a civil debt. If the work required to remedy the condition of the land has not been undertaken, the authority could also use the powers under section 58(7) of the 1985 Act and either undertake the remedial work, or proceed to full prosecution.

1255

Madam President, I beg to move that clause 6 stands part of the Bill.

1260

The President: Hon. Member, Mr Henderson.

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

The President: Hon. Member, Mr Turner.

1265

Mr Turner: Thank you, Madam President.

1270

I do not like this one bit. What we have here is local authorities – we have got 24 of those – all with different views, inconsistency of application of them; and of course we have what could be a moneymaking scheme here for local authorities issuing fixed penalties, where the person on the receiving end – and we have seen this before in other things ... to save the cost of going to court, will just slap the £200, or other such amount as may be specified, onto the person and they have got to then jump through hoops to go and defend themselves.

1275

As I said before, I can see what we are trying to do – we are trying to ensure that we do not have eyesores in our community – but where my concern comes in is that this is being devolved down to all the local authorities, some of which are tiny, some of which could not even get enough people to stand as members for their authority – as we have seen in the past week. There is a real disconnect between people in their community with their local authorities and what we could have is it is seen as another way of raising revenues.

1280 But I wonder: is this going to apply to local authority housing as well? Because we see some of the best kept gardens in local authority housing and also some of the worst. So who is going to be issued the fixed penalty? Is it going to be the tenants or is it going to be the owners of the property, which is the local authority or the Department of Infrastructure?

1285 I just think this is quite a draconian power that is being created here. It is open to abuse when really some of these things should be carried out by qualified officers in the Department, who can make proper judgements across the whole Isle of Man where we are going to have numerous people all applying different rules. I just think we are a small Island – 80,000 people – and we are devolving all these little things out piecemeal to all these tiny authorities all applying different standards; and when the penalty is payable to them, well, I can almost hear the ka-ching of the till going because they will be getting handed out for all sorts of things to people who cannot defend them or have not got the funds to start going to court and arguing with them. I think it is not the direction we should be going when we are trying to centralise services and be more efficient.

The President: Hon. Member, Mr Wild.

1295 **Mr Wild:** Thank you, Madam President.

I would probably take the opposite view. I think this is very effective legislation when you look at the condition of some buildings and land across the Island.

I just was going to ask the mover whether there are any plans to issue standards across the local authorities?

1300

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

1305 I think we really are nit-picking here and picking arguments out of where they do not exist, to be quite honest.

This legislation is desperately needed and improved upon and, speaking from a former constituency point of view, I can advise, Eaghtyrane, that the problems that this new legislation is trying to address were almost insurmountable at times in North Douglas and in other areas in the town of Douglas, and I think this is a good pragmatic way forward.

1310 I would take issue with the Hon. Member, Mr Turner, in respect of ‘there will be 24 different variations of this, that and the other’. I think that is scaremongering, because I think all local authorities will have come across this almost on a weekly, if not daily, basis in some areas, and they are eminently qualified, I would say, to determine what is detractable to an area and what is not, and to a level where they can apply this legislation in a common sense way – not in an arbitrary way, as the Hon. Member is suggesting.

1315 I think local authorities, especially, have been crying out for something like this for a long time, because the previous legislation and orders have been particularly ineffective. I think this is a good way to move forward and I am sure that the LAs will bring this forward when they are examining issues in a pragmatic and common sense way.

1320 However, the issue that the Hon. Member, Mr Turner, does raise with regard to devolvement of further issues to local authorities – I concur with his observations there inasmuch as perhaps the whole remit of local authority reform should be looked at in the round in any case, but that is a discussion for another day, Eaghtyrane.

1325 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Madam President.

1330 I am very happy with this legislation, except for the fact that it does seem to be unduly complex for what it is trying to achieve. It strikes me that it feels a little bit like taking a sledgehammer to crack a nut.

Mr Turner: Absolutely!

The President: Hon. Member, Mr Anderson.

1335 **Mr Anderson:** Madam President, can the mover confirm my understanding that smaller local authorities that have not had experience of dealing with these issues will seek guidance from the Department in this respect?

1340 **Mr Henderson:** I am sure they will. *(Interjection by Mr Turner)*

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Dealing with the item raised by Mr Anderson, the answer to that simply is yes.

1345 Mr Turner, as usual, has his concerns and observations regarding the work of the Department. In particular, he mentions a moneymaking scheme, which I think is a little bit narrow perhaps. **(Mr Turner: Potential.)**

1350 If I move to the remarks made by Mr Henderson, an ex-constituency Member – and indeed I, before being elevated to this Hon. Chamber, was a constituency Member too – we can both ... and those here who were constituency Members would agree with me that this issue has been very difficult in the past to rectify. I feel very sorry for local authorities, and in particular, people living in areas that have been blighted by buildings and land which could very easily be rectified.

1355 Local authorities, Madam President, I would say, know their people with respect to bringing forward rectification of land and buildings and I have already said that there will be plenty of notice given in this respect.

This legislation, or work to rectify what is a blight on the Island, has to start somewhere. I can accept the Bishop's remarks that it is unduly complex; however, this is legislation which is badly needed, as the result of consultation has proved.

1360 Mr Wild, there is no provision being made for standards mentioned in the Bill. There is plenty of recourse available to local authorities by members of the public who feel downed by this legislation, and it is meant to make the whole system easier and effective.

Madam President, I beg to move.

1365 **Mr Turner:** Madam President, the Member did not answer the question about who is responsible for the local authority houses – their own houses that may be ...

Two Members: The tenant? *(Interjection)*

1370 **Mr Corkish:** The tenant enters into an agreement with the local authority, surely. *(Interjections)*

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.

A division was called for and voting resulted as follows:

FOR

Mr Anderson
The Lord Bishop
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
Mr Wild

AGAINST

Mr Turner

- 1375 **The Acting Clerk:** Madam President, that is 8 votes for and 1 vote against.
- The President:** With 8 votes for and 1 against, Hon. Members, the motion therefore carries. Clauses 7 and 8.
- 1380 **Mr Corkish:** Thank you, Madam President.
Clause 7 introduces the amendments that are made to the Local Government Act 1985 by clauses 8 and 9.
- The President:** Sorry, clauses 8 and 9 together? Okay. You want to move clauses 7, 8 and 9?
- 1385 **Mr Corkish:** No, I do not think I asked ...
- The President:** Okay, sorry, I misunderstood you.
- Mr Corkish:** I am happy to move clauses 7, 8 and 9.
- 1390 **Mr Cretney:** She just offered you –
- The President:** That is what I was asking you.
- 1395 **Mr Corkish:** – separately.
- The President:** Separately, okay. Well, clause 7 is very brief and introduces 8 and 9, but by all means.
- 1400 **Mr Corkish:** Sorry, Madam President.
Clause 7 introduces the amendments that are made to the Local Government Act 1985 by clauses 8 and 9.
Madam President, I beg to move that clause 7 stand part of the Bill.
- 1405 **The President:** The Hon. Member, Mr Henderson.
- Mr Henderson:** I second, Eaghtyrane, and reserve my remarks.
- 1410 **The President:** The motion is that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8.
- Mr Corkish:** Do you wish me to move clauses 8 and 9 together, Madam President?
- 1415 **The President:** It is entirely up to you if you wish to move them separately.
- Mr Corkish:** I will move clauses 8 and 9 separately then, Madam President, thank you.
Clause 8. This new section will allow authorised officers of a local authority or the Department to issue fixed penalty notices of £100 if it appears to that officer that a person has contravened a
1420 byelaw made by the authority or the Department, and where specific fixed penalty provision is not otherwise made in other legislation. In order to avoid further proceedings, the person is required to pay the full amount of fixed penalty within 21 days, although the penalty could be deemed as having been paid if a lesser amount is paid earlier than 21 days. I can also confirm that the new subsection (7) states that the fixed penalty is payable to the local authority.

1425 The fixed penalty would apply in cases where a person has contravened a byelaw made under a relevant enactment and provide the person the opportunity of discharging any liability to conviction for an offence under the byelaw by payment of a fixed penalty. ‘Relevant enactment’ means an enactment conferring power to make byelaws on the Department or a local authority and for which specific provision is not otherwise made. Local authorities are already able to issue fixed penalty notices in respect of offences committed under dog control byelaws and the Litter Act 1972. The new powers will also allow authorities and the Department to issue fixed penalty notices for offences under, for example, general byelaws made under sections 28 or 29 of the 1985 Act. I can also confirm that the new subsection (9) states that the fixed penalty is payable to the local authority or the Department. It will depend on whether the Department or the local authority has made the byelaws.

1435 Madam President, I beg to move that clause 8 stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1440 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

1445 **Mr Turner:** Thank you, Madam President.

Like the previous clause, which I voted against, this is about ... I think what we have to understand is what we are doing here, and the provisions are there to deal with these proceedings ... and what this is doing, like the previous clause, clause 6, is bringing in a way of dealing with them by fixed penalties. We have seen this in other legislation we have had through this place, where the Police were saying, ‘We are going to deal with all of these particular matters now by fixed penalties because it is a nuisance to have to try and bring all these things to court.’ I would have thought that if some of these matters are so serious that they are blighting the neighbourhoods, they should be dealt with through prosecution channels and not just slapping the fixed penalties on, because like the previous clause, where I queried about local authority housing and they said that it would be down to the tenants – they enter into the agreement – it is quite often the case that *(Interjection by Mr Henderson)* some of these tenants would be unable to pay the £200, or other such amount, and it is the same with ... Okay, this particular clause is dealing with byelaws, but it is the same principle we are discussing here.

1450 So what I would like to know from the mover is ... I assume – like in the case of fixed penalty for motoring offences, there will be the appeal process, where you can say, ‘No, I’m not paying the fixed penalty; I’m requesting the court hearing,’ in which case the local authority then presumably will have to take the individual to court – this is going to put much more cost on to that local authority. The individual still may not be in a position to pay, so I can see the whole thing really is open to degenerating into a bit of a farcical situation and still not dealing with the situation that the clause is intended to deal with. This is why I do not agree with simply sticking in a new clause saying we will now make that a fixed penalty situation.

1460 Clearly, there are lots of other instances in law where fixed penalties are a sensible way of dealing with it, but when we are coming to the issues raised in this Bill I am not entirely sure of the motives of the Department here, and certainly when it comes to the local authority going round and slapping these tickets on their own whim – and we have already heard there are no standards going to be introduced, so we do have 24 different views on how it is going to operate – I think that this really is not the way they should be dealing with the problem. If they have got genuine problems, they should be bringing proper action and they already have the powers to do so.

1470 Like the previous clause, we have in this one £100. This is for the byelaws, so this is the one where – the byelaws, of course – you could be singing in the street on a Thursday afternoon after three o’clock, because that is banned. We have seen all these silly byelaws that have come out,

where they could be going round issuing these things willy-nilly. We hope that common sense comes about, but that is all going to be in the hands of the person who has got the uniform on, who has got the ticket book and is issuing these tickets.

1480 I still think that some of these matters are serious and are a blight on the community, and the powers are there to deal with them. They should be using those powers and not almost fobbing it off on to fixed penalty systems, if they are so serious. And I do dislike this, that seems to be coming in in lots of legislation now, where we will use fixed penalties and almost push the problem to the person on the receiving end instead of action being taken by the authority who has the grievance with the individual.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

1490 I do detect the former Member to speak is slightly against this; however, I think this measure is a halfway house, so you are not actually going down the legal channel that you could end up down, which would actually cost the defendant an awful lot more money, (**Mr Corkish:** Absolutely.) and also sends a very powerful signal –

1495 **Mr Turner:** If they are guilty.

Mr Anderson: – for other people to put their house in order.

Mr Turner: If they are guilty.

1500

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

1505 I do not think that going down the legal act is necessarily going to be there, because if you look at the Local Government Act that can come in, at 12(5)(b) they will just go in and do the work and recharge for it.

Mr Cretney: Or won't.

1510 **Mr Turner:** Where are your rights of appeal?

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

1515 I think one of my hon. colleagues mentioned two words: 'common sense'.

Going back to the constituency part of the job, again, yes, in the Local Government Act there are ways to sort this. In short, they have not worked, and I have tried to get them to work – I am sure other constituency Members here have tried to get them to work as well. It does not work. Fixed penalties are easier and, in a lot of ways, more flexible, in a way, to sort this problem out and bring it to a head.

1520

I agree with Mr Anderson, this is a halfway house and a good way of trying to make what is sensible legislation work through the local authorities, who know their people, and with plenty of warning and help being available.

1525 I take on board totally what Mr Turner says and it is a valuable contribution. To say that this could degenerate to farce I think is a little bit on the strong side. What has tried to be done here is a common sense, flexible approach to problems that are concerning to local authorities and to people living within the community. There are already powers there; the powers have not worked. This is

one way to try and get it to work – again, with common sense, flexibility and knowledge of the problems within the areas which are concerned.

1530 Madam President, I beg to move.

The President: The motion is that clause 8 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:

FOR

Mr Anderson
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
The Lord Bishop
Mr Wild

AGAINST

Mr Turner

1535 **The President:** With 8 votes for the motion and 1 against, the motion therefore carries, Hon. Members.
Clause 9.

Mr Corkish: Thank you, Madam President.

1540 Clause 9. This clause amends section 58 of the Local Government Act 1985 by increasing the maximum level of fines imposed by the courts in respect of non-compliance with statutory notice requesting the execution of works from £2,500 to £5,000 and the daily fine from £40 to £50 for each day the default continues.

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

1545 **The President:** The Hon. Member, Mr Henderson.

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

1550 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Could I just query, Madam President, then ... Obviously, if this is to do with fines, it is to do with action that is taken. These fines, am I right in thinking, would be paid into general revenue and not to the local authority, if applied?

1555 **The President:** The mover to reply.

Mr Corkish: Thank you, Madam President.

1560 I said earlier that the fines would be payable to the local authority in this respect. I cannot be certain on where this fine will be paid, and if I can come back to you with that I will be happy to do that.

The President: The motion is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
1565 Clause 10.

Mr Corkish: Thank you, Madam President.

Clause 10 introduces the amendments that are made to the Building Control Act 1991 by clauses 11 and 12.

1570 Madam President, I beg to move that clause 10 stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

1575 I beg to second.

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

Clause 11.

1580

Mr Corkish: Thank you, Madam President.

Clause 11. This clause introduces similar amendments to the legislation relating to dilapidated or neglected buildings as those relating to the maintenance of open land that were moved as clause 5.

1585 In particular, subsections (2) and (3) amend section 24 of the Building Control Act 1991 by the insertion of additional powers which will require the owner or occupier to take steps not only to remedy the detriment to any dilapidated building but also to prevent the detriment from occurring or recurring. The revised provisions should facilitate the ongoing management of the building and help prevent the detriment from recurring.

1590 The new subsection (4) inserts a new section 24(4A), which will specify that a statutory notice is not invalid purely on the grounds that any other building or structure in the neighbourhood is in a condition where it could be classed as being detrimental to the amenities of the neighbourhood.

1595 The new section 24(4A) will cover situations where a whole area may be run down and several buildings or structures appear, in the authorised officer's view, to be detrimental to the amenities of the neighbourhood. This new provision will clarify that a notice is not invalid simply because other buildings or structures in the neighbourhood may be in a detrimental condition.

Hon. Members will note this clause was amended in the other place to allow the Department of Environment, Food and Agriculture to give guidance on the meaning of the expression 'dilapidated'. Furthermore, local authorities must have regard to such guidance when exercising their functions under section 24 of the Building Control Act 1991.

1600 The guidance may provide for degrees of dilapidation to be assessed by reference to a scale and require the local authority to exercise its functions under section 21(1) of the Building Control Act 1999 where a certain level on the scale is reached.

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

1605 **The President:** The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1610 **The President:** The Hon. Member, Mr Crookall.

1615 **Mr Crookall:** Madam President, can I just ask the Hon. Member moving this in regard to old tholtans, which are obviously dotted around the Island. While out in the middle of the countryside, I can accept those to some extent, there are some that are on roadsides, and while I do not expect him to be able to answer this now, certainly when he comes back next time, if he would be able to give us some clarification as to how they would feature with regard to this ...

Mr Henderson: A landmark.

1620 **The President:** The mover to respond.

Mr Corkish: Thank you, Madam President.

I thank Mr Crookall. Old tholtans are often used – as the Member, Mr Cretney, may agree with me – in Department of Tourism brochures as being items of quaint heritage and beauty around the
1625 Island. I cannot answer the question, Mr Crookall, but I am quite happy to follow that through.

I beg to move clause 11.

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

1630 Clause 12.

Mr Corkish: Thank you, Madam President.

This clause inserts a new section 24ZA in the Building Control Act 1991 Act and introduces similar provisions for buildings as those provided for land in clause 6.

1635 The new section will allow local authority authorised officers to take prompt enforcement action regarding dilapidated buildings by means of fixed penalty notices.

The fixed penalty will be £200, although that amount could be amended by an order made by the Department.

1640 The fixed penalty will apply in cases where a person is guilty of an offence under section 58(7) of the Local Government Act 1985 as a result of failure to comply with a statutory notice under section 24 of the 1991 Act.

The fixed penalty notice will offer the person the opportunity of discharging any liability to conviction for an offence under section 58(7) by payment of a fixed penalty.

1645 In the event of non-payment of a fixed penalty, an authority may recover the amount as a civil debt.

If the work required to remedy the condition of the building has not been undertaken, then the authority could implement the powers under section 58(7) of the 1985 Act and either undertake the remedial works, or proceed to full prosecution.

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

1650

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1655

The President: The Hon. Member, Mr Turner.

1660 **Mr Turner:** Madam President, I would like to ask the mover again about the right of appeal in this situation, because there does not appear to be one. I did not quite get an answer when I said, for example, fixed penalties on traffic-related items you can say, 'No, I don't agree with this; I'm requesting a court hearing.'

Would then the authority just go and do the work and send the bill to the owner, therefore removing all rights of appeal, which surely is contradictory to people's human rights, that they should be getting a fair appeal?

1665 But also, if the notice is served for the individual to do something with the property, could they not argue that they are actually getting on with improving the property – put a little bit of scaffolding up and board a couple of windows up? That is where it becomes farcical, the situation, because the aim of this is to actually get the thing tidied up.

1670 So I would like to know exactly, from the mover, how this is going to be operated, because I am still not convinced. The fixed penalty issue is not the correct way of dealing with these things, whereas the procedures which he said have not worked ... I would be interested to know why they

1675 have not worked. Is it because Departments have not taken action? That might be why they have not worked. Have they taken court action under the powers they have got? And if the individuals have still not done anything due to court action ... I am aware of cases in Douglas where there has been action to actually take down properties in regard to planning matters, where things have been built without planning permission, and still nothing has happened. If they are not going to take any notice of that, they are not going to take any notice of fixed penalties. So, again, I do think that this is lip service. It is not going to sort the problem out.

1680 I would like to know where the right of appeal is. Also, I do welcome the fact that these orders do have to be approved by Tynwald, because it does say that the Department may specify the amount, so I think it is important there is a check on those, because although it is set at £200, quite often fixed penalties may be £200 but if you pay them within 21 days it will be £50, for example. But again it says the Department can adjust them.

1685 So, again, a similar theme to the previous clauses we have mentioned, but I think if Members think this is going to solve the problems, it is not, and I think it is not the right way that these problems should be dealt with, by this fixed penalty.

So, again, the same theme, but I would like to know, because we still have not had the answer, what the right of appeal is for those who are issued with a fixed penalty notice.

1690 **The President:** The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

1695 I would just like to agree with the sentiments expressed by my hon. colleague, Mr Henderson, in that I believe this is a good starter for 10. Maybe in the next two or three years there will have to be adjustments according to experience, but at least this is going somewhere towards tackling what is a real problem out there.

The President: The mover to reply.

1700 **Mr Corkish:** Thank you, Madam President.

The main thrust of Mr Turner's question really was the right of appeal. I understand that they can appeal against a notice, and I will certainly confirm that at the next reading. I think he perhaps answered his own question: this legislation is a great effort to remedy what has been going wrong in the past and there has been no real way to fight it.

1705 Mr Wild mentions a starter for 10. This is going down a road, because it has to be done. This has happened so many times before, where the legislation has not worked in the way that local authorities and the Department think it should work.

1710 The orders are approved by Tynwald, of course. Nevertheless, they have not worked in the past. This is one way of moving this further along the road so that the problems that are occurring all the time can be addressed much better than they have in the past.

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

Clause 13.

1715 **Mr Corkish:** Thank you, Madam President.

1720 Clause 13. This clause will help to prevent buildings from becoming ruinous and/or dangerous, as the clause will require owners to pay rates where an order under section 22 or a notice requiring work under section 24(1)(a) or (b)(i) of the Building Control Act 1991 has been served. Therefore, there will be no incentive for owners to allow their properties to get into such a condition that they are able to avoid paying rates by seeking by a zero rating.

The President: Sorry, may I just interrupt?

Mr Corkish: Sorry, Madam President.

1725

The President: Printed on page 8 of your Order Papers, Hon. Members. (**Mr Corkish:** Sorry.) A lot of noise in the background while they looked for it.

Okay. Carry on, sir.

1730

Mr Corkish: Thank you, Madam President.

We should be encouraging owners to keep their properties in a condition which is not detrimental to the amenity of their neighbourhoods and keep them in beneficial use. This clause will assist in achieving this aim.

1735

I note that the Hon. Member, my good colleague, Mr Henderson will be moving an amendment to this clause so as to correct an administrative error that has occurred in the other place.

Madam President, I beg that clause 13 stand part of the Bill.

The President: The Hon. Member, Mr Anderson.

1740

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

The President: The Hon. Member, Mr Henderson.

1745

Mr Henderson: Gura mie eu, Eaghtyrane.

I have been asked by the Department of Infrastructure to move this amendment, which I move purely to correct an administrative error that has occurred in the House of Keys in respect of an amendment moved by the Hon. Member for South Douglas, Mr Malarkey.

1750

The purpose of the amendment is to insert a new section 75A into the Rating and Valuation Act 1953. It should be noted that the Treasury does not, as a matter of practice, rate property which is derelict or incapable of habitation.

The new section provides for such buildings to be rated either where an order under section 22 of the Building Control Act 1991 has been made or where a notice has been served under section 24 of the Act.

1755

The new provision only applies to buildings that have been previously rateable; this is not intended to penalise new buildings in the process of construction.

The Building Control Act 1991 allows for appeals against either of the order or a notice under section 22 or 24 of that Act. This new provision will allow for a court to give directions about the liability to rates when setting aside an order or notice.

1760

The final two subsections in this clause give the Treasury the right to amend subsection (2) by order, which would need Tynwald's approval.

Also, I would like to point out that the amendment has the support of the Treasury.

Eaghtyrane, I beg to move the amendment standing in my name:

New Part

1. In substitution for the amendment made by the Keys on the 12th April 2016 on Page 14, line 29, at the end insert —

'PART 5 – AMENDMENT TO THE RATING AND VALUATION ACT 1953

13 Rating of dangerous or ruinous buildings

In the Rating and Valuation Act 1953 after section 75 (unfinished buildings or extensions not to pay rates) insert —

«75A Rating of dangerous or ruinous buildings

(1) A building which has been rateable but which has ceased to be capable of occupation must notwithstanding any rule of practice to the contrary continue to be treated as a rateable hereditament for the purposes of any enactment relating to rating where any of the circumstances mentioned in subsection (2) apply.

(2) *The circumstances are that —*

(a) *an order under section 22 of the Building Control Act 1991 has been made in relation to the building or any part of it; or*

(b) *a notice requiring the carrying out of work under section 24(1)(a) or (b)(i) of the Building Control Act 1991 has been served in relation to the building.*

(3) *Where following an appeal an order or notice mentioned in subsection (2) is set aside, the court setting the order or notice aside may give directions about liability to rates under this section.*

(4) *The Treasury may by order amend subsection (2).*

(5) *An order under subsection (4) may not come into operation unless it is approved by Tynwald.».*

The President: The Hon. Member, Mr Crookall.

1765 **Mr Crookall:** I beg to second, Madam President, and reserve my remarks.

The President: Thank you.

The Hon. Member, Mr Turner.

1770 **Mr Turner:** Just a brief comment. I think this is a sensible amendment, and if we are trying to solve some of the problems that are out there, these are the kind of things we need to be looking at, so I give this, the clause that was added in the other place and the amendment, my full support.

Mr Cretney: It may be unanimous! *(Laughter)*

1775

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

1780 I would like to thank Mr Henderson for moving the amendment, and also thank Mr Turner for his recognition of what is trying to be done here certainly through this amendment, and, I hope, the rest of the Bill.

I beg to move, Madam President.

1785 **The President:** The motion is that clause 13 stand part of the Bill. To that we have an amendment, in the name of Mr Henderson, which substitutes a new clause 13. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

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

That concludes consideration of the clauses stage, Hon. Members.

**4. Road Traffic Legislation (Amendment) Bill 2016 –
For Second Reading and clauses stage –
Item not moved**

Mr Corkish to move:

That the Road Traffic Legislation (Amendment) Bill 2016 be read a second time.

1790 **The President:** We revert to our Order Paper.

You will have been advised, I think, that Item 4 will not be moved today.

**5. National Health and Care Service Bill 2016 –
First Reading approved**

Mr Coleman to move:

That the National Health and Care Service Bill 2016 be read a first time.

The President: We go on to Item 5, the National Health and Care Service Bill 2016 for First Reading.

I call on the Hon. Member, Mr Coleman.

1795

Mr Coleman: Thank you, Madam President.

I am pleased to move the First Reading of the National Health and Care Service Bill for the Department of Health and Social Care.

1800

The Bill is a framework for the delivery of the Department's obligations in respect of healthcare, and will allow the Department to deliver its five-year Strategy for Health and Social Care.

1805

The Bill has six key deliverables, which are: an integrated Health and Care Service; provision for a Health and Care Service charter which will set out the Department's general commitments around standards, values and behaviours in respect of the National Health and Care Service (NHCS); provision to create NHCS schemes to provide more detail about how services will be provided; a revised approach to charges and contributions which specifically requires the Department to have regard to the funds available; a strengthened position with regard to commissioning and contracts; and a strengthened role for the Department's committees and complaints process.

1810

New provisions in the Bill include: the ability for the Department to charge for the occupation of any of its facilities – this will facilitate the movement of individuals who become 'stranded' in the acute Hospital to accommodation which is more appropriate for their health and care needs; extending the potential for Department facilities to be used for other purposes when they are not needed for NHCS care; and a requirement for the Department to arrange for regular and independent monitoring and review of the NHCS schemes.

The remainder of the Bill simply re-enacts and updates existing provisions.

1815

Madam President, I beg to move that the National Health and Care Service Bill be read for the first time.

The President: The Hon. Member, Mr Henderson.

1820

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 first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**6. Road Transport, Licensing and Registration (Amendment) Bill 2016 –
For First Reading –
Item not moved**

Mr Corkish to move:

That the Road Transport, Licensing and Registration (Amendment) Bill 2016 be read a first time.

1825

The President: Item 6 is not being moved, Hon. Members, and so that concludes our business for this morning. The Council will now adjourn until 10th May in this Chamber.

Can I just remind you, please, that we are all due back here at two o'clock for the Council photograph. Thank you.

The Council adjourned at 12.58 p.m.