



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 28th March 2017**

*All published Official Reports can be found on the Tynwald website:*

[www.tynwald.org.im/business/hansard](http://www.tynwald.org.im/business/hansard)

*Supplementary material provided subsequent to a sitting is also published to the website as a Hansard Appendix. Reports, maps and other documents referred to in the course of debates may be consulted on application to the Tynwald Library or the Clerk of Tynwald's Office.*

**Volume 134, No. 12**

**ISSN 1742-2272**

## **Present:**

### **The President of Tynwald (Hon. S C Rodan)**

The Attorney General (Mr J L M Quinn QC),  
Mr D M Anderson, Mr M R Coleman, Mr C G Corkish MBE, Mr D C Cretney,  
Mr T M Crookall, Mr R W Henderson and Mr J R Turner,  
with Mr J D C King, Clerk of the Council.

## **Business transacted**

<b>1. Questions for Written Answer .....</b>	<b>145</b>
1.1. Food-selling establishments – Regulation of standards .....	145
1.2. Food-selling establishments – Visits by environmental health inspectors .....	146
<b>Order of the Day .....</b>	<b>147</b>
2. Beneficial Ownership Bill 2017 – Second Reading approved .....	147
Beneficial Ownership Bill 2017 – Clauses considered .....	148
Beneficial Ownership Bill 2017 – Standing Order 4.3(2) suspended to take Third Reading – Motion carried .....	172
Beneficial Ownership Bill 2017 – Third Reading approved.....	173
3. Equality Bill 2016 – Keys’ amendments considered and approved.....	175
4. Insurance (Amendment) Bill 2017 – Third Reading approved .....	183
5. Fraud Bill 2017 – Second Reading approved .....	184
Fraud Bill 2017 – Clauses considered .....	184
6. Income Tax Legislation (Amendment) Bill 2017 – First Reading approved .....	191
<i>The Council adjourned at 1.01 p.m. ....</i>	<i>192</i>

# Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

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

**Members:** Good morning, Mr President.

5 **The President:** The Chaplain of the House of Keys will lead us in prayer.

## PRAYERS

*The Chaplain of the House of Keys*

## 1. Questions for Written Answer

**The President:** Hon. Members, we turn to our Order Paper, Item 1: Questions for Written Answer. Two Questions in the name of Mr Henderson will be answered in writing.

### ENVIRONMENT, FOOD AND AGRICULTURE

#### 1.1. Food-selling establishments – Regulation of standards

The Hon. Member of the Council, Mr Henderson, to ask a representative of the Department of Environment, Food and Agriculture:

*What arrangements are in place to ensure that establishments selling food, cooked or otherwise, for human consumption either on or off the premises operate to minimum food hygiene, catering and health and safety standards?*

10 **A representative of the Department of Environment, Food and Agriculture:** The Department's Environmental Health Officers inspect food premises to ensure they are operating safely and hygienically and are compliant with Food Hygiene Regulations 2007 and the Health and Safety at Work etc. Act 1974 as applied to the Isle of Man.

Environmental Health Officers also provide food hygiene training to approximately 180 people employed in the food sector every year.

15 All premises used as a food business must be registered with the Department of Environment,  
Food and Agriculture. Registration enables the Department to keep an up-to-date list of all food  
premises in the Island so that visits can be made when required. The frequency of the visits will  
depend on the type of business. All businesses receive a visit when an application for registration is  
received.

20 The requirement to register includes those visiting the island for TT, Festival of Motorcycles, etc.  
Obviously there is a very short period prior to TT in which all mobile traders are inspected.  
Inspections are carried out during the TT, Festival of Motorcycles and Southern 100 periods.

25 Food businesses include any premises used to produce, prepare, store, distribute and sell food;  
examples being restaurants, cafes, shops, supermarkets, staff canteens, home caterers, milk  
producers, egg producers, warehouses, hotels, guesthouses and B&Bs, online retailers, market stalls  
and mobile food traders.

Currently there are 1,321 food businesses registered with the Department, which received  
170 routine inspections last year with a further 846 visits associated with complaints.

### **1.2. Food-selling establishments – Visits by environmental health inspectors**

The Hon. Member of the Council, Mr Henderson, to ask a representative of the Department of  
Environment, Food and Agriculture:

*Whether there is a programme of scheduled visits by the Department's environmental health  
inspectors to every establishment that sells food, cooked or otherwise, for human consumption  
either on or off the premises; if so, when the visits take place; and, if not, why not?*

30 **A representative of the Department of Environment, Food and Agriculture:** The programme of  
scheduled visits is determined using a risk-based system following guidance contained in European  
Union and UK Food Standards Agency Codes of Practice. Following inspection of a food business, a  
risk score is generated which determines the frequency of future inspections. Risk-based inspections  
typically range from six-monthly to five-yearly.

35 Occasionally premises are visited more frequently due to customer complaint and industry  
initiatives such as national food alerts. This can have an impact on the Department's ability to fulfil  
all programmed inspections. For instance, butchers shops selling raw and cooked products are  
considered high-risk premises, whereas a sweet shop selling wrapped confectionary is low risk.

The type of food business operation determines the frequency of inspection. Visits take place  
during normal operating hours of the food businesses which may occasionally include out of office  
hours.

40 Currently there are 1,321 food businesses registered with the Department, which received  
170 routine inspections last year with a further 846 visits associated with complaints.

## Order of the Day

### 2. Beneficial Ownership Bill 2017 – Second Reading approved

Mr Henderson to move:

*That the Beneficial Ownership Bill 2017 be read a second time.*

**The President:** Item 2: Beneficial Ownership Bill 2017.

I call on Mr Henderson to move the Second Reading, please.

45

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

As Hon. Members will recall, my First Reading introduction to this Bill was intentionally more in-depth than usual in order to provide Council with as much detail on this important subject as possible. Given the extent of the background that I provided, I would like to focus my brief

50

comments at Second Reading on some of the points which were raised during the previous debate. The Hon. Member, Mr Turner, raised the point that as the Exchange of Notes was signed by the previous administration it should not bind the current administration, particularly if adherence to its implementation means that our legislation has had to be rushed. Although the timetable is tight, I would like to just restate my view that I do not believe that we have proceeded with undue haste. Also, the Exchange of Notes was signed by the Isle of Man Government. It is only right and proper

55

that we should honour it and the timetable set out within it. In approving this Bill for introduction into the Branches, the current Council of Ministers has agreed to the commitment given by the Isle of Man to the United Kingdom last April. The Isle of Man has a strong record of honouring our international commitments and it is vital that we continue to do so on this important matter. The ongoing developments in the UK Parliament bear testimony to this importance, particularly the stout defence of our position by the UK Government based on our

60

commitment to introduce a central register of beneficial ownership. The Hon. Member also raised concerns about corresponding developments in overseas territories. As I confirmed, those overseas territories with financial centres signed an Exchange of Notes with the UK committing them to the same timetable of progress as ours. Like us, these territories have to progress their internal arrangements to establish a central Database of Beneficial Ownership accessible to UK law enforcement and intelligence agencies under the terms of the Exchange of Notes by 30th June 2017.

65

The Treasury has been monitoring the position in the Overseas Territories. The Cayman Islands have recently published legislation paving the way for their central beneficial ownership register. Also, last month the British Virgin Islands introduced a new electronic platform for the sharing of beneficial ownership information which will go live in June.

70

Although it has been difficult to ascertain from publically accessible means exactly what is happening across all of the territories in question, we have no reason to believe at this stage that each of the territories which signed an Exchange of Notes will not honour their commitment. Indeed, it is clear from what the UK Government has been saying in Parliament that it too is proceeding on this basis.

75

Finally and briefly, Eaghtyrane, I would like to mention the comments made by the Hon. Member, Mr Coleman, who advised that he was content with the solution which the Treasury has proposed in response to concerns about the Bill which were raised by industry.

80

As Hon. Members will be aware, there are amendments tabled to clause 6 of the Bill which Treasury is confident will allow for industry's concerns to be addressed. I will say more about Treasury's proposals in this regard when we discuss this clause shortly, Eaghtyrane.

85 I would also like to add that I will be asking the Hon. Council for permission, following the clauses stage, to see if I can follow up with the Third Reading. I just want to make Hon. Members aware of my intentions there as I do not want to take anyone by surprise. I did outline the reasons for this when I progressed the First Reading. I do hope you will be able to give me that flexibility at that time.

90 Eaghtyrane, I beg to move that the Bill be read for a second time.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I beg to second and reserve my remarks.

95 **The President:** I put the motion that the Beneficial Ownership Bill 2017 be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

### Beneficial Ownership Bill 2017 – Clauses considered

**The President:** We turn to the clauses stage.  
Clause 1, Mr Henderson.

100 **Mr Henderson:** Gura mie eu, Eaghtyrane.  
Clause 1 is purely formal and gives the short title to the Act which will result from this Bill.  
Eaghtyrane, I beg to move clause 1 stands part of the Bill.

**The President:** Mr Corkish.

105 **Mr Corkish:** Mr President, I beg to second and reserve my remarks.

**The President:** Clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
110 Clause 2.

**Mr Henderson:** Eaghtyrane, clause 2 provides for the commencement, and the Act will come into operation on such day or days as the Treasury may by order appoint.  
Eaghtyrane, I beg to move that clause 2 stands part of the Bill.

115 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

120 **The President:** I put the motion: clause 2. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 3.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
125 Clause 3 sets out the Bill's key interpretive definitions including those of 'external intelligence or law enforcement agency' and 'permitted purposes'.

The clause also defines 'registrable beneficial owner', which is a key concept in the Bill. It is only registrable beneficial owners who have to submit their required details onto the central Database.

130 In addition, the clause allows the Treasury, by order, to amend four definitions: those of  
'beneficial ownership information sharing agreement', 'external intelligence or law enforcement  
agency', 'permitted purpose' and 'registerable beneficial owner', including the percentage referred  
to within that definition.

Any order made under this clause must not come into operation without Tynwald approval.  
Eaghtyrane, I beg to move that clause 3 stand part of the Bill.

135

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

140

**The President:** Mr Anderson.

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

145 Could the mover at some stage try to allay my fears about the wrong sort of people getting this  
information? Obviously we have got a list of those who are able to get a list of beneficial owners;  
however, can I be reassured of what the penalties are for people leaking information to the press or  
whoever? Because no doubt there will be opportunities seen here for people to find out information  
that they should not have and put it in the public domain.

150

**The President:** Mr Henderson.

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

155 I cannot give an exact penalty in figures, but there are severe penalties for leaking information  
built into this and – how can I say it? – caveats to protect that information. All who use it or have  
access to use it will be fully aware of the repercussions if that is leaked or used in some  
inappropriate way.

I think as we go through the clauses stage, Eaghtyrane, you will see where it is outlined who is  
defined and who is not defined and the appropriate legislation will apply if they deviate from that.

160

**The President:** I put clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes  
have it.

Clause 4.

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

165 Clause 4 sets out the meaning of 'beneficial owner'.

The approach in the Bill has been to adopt a broad workmanlike definition of beneficial  
ownership based on the Exchange of Notes with the UK and drawing upon other international  
definitions. The Treasury can revise the meaning of 'beneficial owner' by order subject to Tynwald  
approval.

170 This definition is intentionally extremely broad. It seeks to capture all of those individuals –  
natural persons, flesh and blood persons who actually exist – who hold any defined interest,  
however small and through whatever means, in the legal entity concerned, or who are able to  
exercise control by whatever means of the entity concerned. It is essential that all such beneficial  
owners are identified at the outset so that these, or those individuals who are registerable beneficial  
owners, can be determined.

175 We have taken a different path to the UK – which has a much more detailed definition and set of  
criteria in its corresponding legislation – but this has been done deliberately to provide as much  
flexibility as possible. The Isle of Man is a finance centre that differs in many ways from the UK in  
terms of the ownership and management structures of legal entities. There are other mechanisms in  
the Bill – powers for Treasury to make regulations which can exempt entities from the Bill and order-

180 making powers to amend definitions – which, when considered with the ability to issue guidance,  
will help put the meat on the bones of the definition.

As noted, the clause allows for the Isle of Man Financial Services Authority to issue guidance on  
the meaning of certain terms, including ‘beneficial owner’, ‘control’ and ‘registrable beneficial  
owner’. It is important to highlight the scope of the FSA’s guidance-making powers: it can only issue  
185 guidance in relation to certain definitions. Whilst these definitions are important within the context  
of the Bill, the Bill does not give the FSA the *vires* to re-write or overwrite the primary legislation. It is  
ultimately for Tynwald to lay down the *vires* and powers that may be needed to give effect to this  
Bill.

This clause was amended by the House of Keys, Eaghtyrane. The FSA’s guidance will now have to  
190 be laid before Tynwald once it has been issued. Given the importance of this guidance, I can confirm  
to Hon. Members that a draft version has been circulated to the Association of Corporate Service  
Providers for a preliminary review and the FSA is considering which other stakeholders to actively  
engage with as it finalises the guidance in draft form.

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

195

**The President:** Mr Corkish.

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

200 **The President:** I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes  
have it.

Clause 5.

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

205 Clause 5 establishes the scope of the Bill by prescribing the legal entities to which it applies.

In order to fulfil our obligation under the Exchange of Notes to capture the widest possible range  
of corporate and legal entities incorporated in the Isle of Man, the Bill covers a company to which  
the Companies Acts 1931 to 2004 apply and a company to which the Companies Act 2006 applies.  
The Bill also covers a limited liability company to which the Limited Liability Companies Act 1996  
210 applies; a limited partnership to which section 4B of the Partnership Act 1909 applies – that is  
limited partnerships with legal personality – and a foundation within the meaning of the  
Foundations Act 2011.

This clause also sets out the entities which, by virtue of the foregoing, might be deemed to fall  
under its scope but will not. This short list includes entities which are listed on a stock or investment  
215 exchange recognised by the Treasury. Under the Companies (Beneficial Ownership) Act 2012, the  
Treasury already publishes a list of recognised exchanges for a similar purpose. This list will be  
reviewed and re-published with any necessary modifications.

The clause allows the Treasury, by order and with the approval of Tynwald, to add to, remove or  
otherwise revise the list of legal entities to which the Act applies. This order-making power is  
220 important given the commitment made by the Treasury Minister in the House of Keys in respect of  
certain collective investment schemes.

By way of background for Hon. Members, it may be helpful if I confirmed that the collective  
investment schemes were exempt from the version of the Bill which was consulted upon. However,  
the consultation period provided an opportunity for further internal reflection on the Bill and as a  
225 result the decision was made to include collective investment schemes within the Bill’s scope.

I am afraid this is the nature of attempting to deal with highly complex financial structures when  
faced with a diversity of views. There will inevitably be some chopping and changing and revision of  
those views.

Treasury remains of the view that collective investment schemes as a whole do not and should  
230 not receive the benefit of an exemption from the Bill’s requirements. Reduced to their core,  
collective investment schemes are simply Isle of Man companies or trusts which fall outside the

scope of this Bill, whose purpose is to invest capital to seek return for their investors. The Exchange of Notes does not carve out collective investment schemes and nor, in the main, does the UK's regime.

235 Notwithstanding our stated position for collective investment schemes as a whole, we are aware of an issue within anti-money laundering and countering the financing of terrorism legislation that is particularly problematic for some collective investment schemes and which could have a similar impact in this Bill. That issue relates to the problem some schemes are encountering when they have large regulated institutional investors such as pension funds or other collective investment schemes  
240 as their investors and they rely on the regulated institutional investor for customer due diligence. In certain limited circumstances we are aware that the underlying beneficial ownership information is not readily available from these institutions' investors.

While a concession was built into the AML/CFT Code to alleviate this issue – commonly known as the 'Acting on Behalf of Concession' – we understand that certain schemes continue to have  
245 difficulties even in complying with this concession.

Therefore, in spite of this concession, the requirements of the Beneficial Ownership Bill could produce problems similar to those mentioned above for certain collective investment schemes which have regulated institutional investors. We therefore recognise the need to address these problems alongside addressing the similar AML/CFT issue. That being said, I must stress that there  
250 has not been a decision to provide a broad, sweeping exemption from the requirements of the AML/CFT Code and it would be equally inappropriate to provide that same sort of broad, sweeping exemption in this Bill. The Isle of Man has various categories of scheme type along a spectrum that starts at typically retail and moves to typically institutional. For many of the schemes meeting the requirements of this Bill is seen to be achievable.

255 There is one scheme type in particular that was designed to be used by institutional investors, and that is the Specialist Fund. Therefore it may be appropriate, upon further consultation, for institutional schemes of this nature to benefit from an exemption. The exact details of the boundaries of that exemption and the conditions which may be applied will require further research, and therefore the Treasury has committed to using its powers in clause 5 of the Bill to produce an  
260 order to provide for an appropriate exemption to deal with the situation facing collective investment schemes with institutional investors.

Eaghtyrane, I can confirm that the fund industry is aware of the intention to produce an order and has indicated that such an order addresses their concerns in respect of the type of funds which I have highlighted.

265 Eaghtyrane, I beg to move clause 5 stand part of the Bill.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

270

**The President:** Clause 5: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 6, Mr Henderson.

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

275 Clause 6 creates the requirement for entities covered by the Bill to have a nominated officer. The officer must be either a natural person resident in the Island or the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity of providing corporate services. A legal entity can have more than one nominated officer where their functions and liabilities under the Bill are joint and several.

280 The Bill's savings provision at clause 45 seeks to simplify the process for appointment of a nominated officer. They allow nominated officers appointed under the 2012 Act and registered agents under, for example, the 2006 Companies Act to automatically become nominated officers

under this Bill, subject to the legal entity recording the nominated officer's written consent of their agreement to continue in post.

285 As Hon. Members know, the requirement to have a nominated officer has been strongly opposed by sections of industry primarily on the grounds of it being, in their view, an unnecessary administrative burden and a position not replicated in other jurisdictions.

Eaghtyrane, the Hon. Member, Mr Coleman, has tabled two amendments to this clause and I am pleased to indicate that Treasury is supportive of these amendments. I will say more about Treasury's proposed way forward once they have been moved at that point.

290 So, Eaghtyrane, I move that clause 6 stand part of the Bill.

**The President:** Mr Corkish.

295 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** Mr Coleman.

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

300 I would like to thank the Hon. Member for confirming his support for the amendments. I look forward to his further comments on how Treasury plans to put the amendments into effect, assuming of course that they are agreed by both Branches.

The hon. mover noted that the requirement in the Bill for all entities to appoint a nominated officer has been opposed quite vigorously by sections of industry, particularly the Association of Corporate Service Providers.

305 As I stated during the First Reading debate, I shared these concerns as did other Members of the Legislative Council. I am pleased that the Treasury Minister met us and having accepted the concerns which were surfacing, undertook to work towards a solution.

310 The amendments before us today are the first step to facilitating the solution which the Hon. Member has indicated he will say more about in his response. I would like to focus my brief remarks on the amendments themselves. I am, however, happy to confirm that I find the solution acceptable, as does the Association of Corporate Service Providers.

315 Taken together the amendments create a power for the Treasury, by order and subject to the approval of Tynwald, to exempt a legal entity or class of legal entities from the requirement to appoint a nominated officer without limiting the ability of an order to amend or modify the application of the Act or to include such consequential or other provisions as the Treasury considers necessary or expedient.

Any order made pursuant to the amendments may disapply provisions in Part 2 of the Bill in relation to a legal entity to which this Act applies or to a nominated officer.

320 Mr President, these proposed changes create the flexibility within the Bill which Hon. Members of Council have sought. I look forward to hearing the Treasury's next steps and I beg to move the amendments standing in my name:

*Amendments to Clause 6*

1. *On page 19, line 5, after 'nominated officer', add 'unless exempt under subsection (5).'*

2. *After line 15 on page 19, insert:*

*'(5) The Treasury may by order exempt a legal entity or a class of legal entities from the requirement under subsection (1).*

*(6) An order under subsection (5) may amend or modify the application of this Act and may include such consequential, incidental, supplementary, transitional or transitory provision as the Treasury considers necessary or expedient.*

*(7) Without limiting subsection (6), an order under subsection (5) may disapply a provision of this Part in relation to a legal entity to which this Act applies or to a nominated officer.*

*(8) An order under subsection (5) must not come into operation unless it is approved by Tynwald.'  
Renummer the succeeding subsections and the cross reference on page 19, line 17, accordingly  
Page numbers and line references are references to the reprinted version of the Bill which  
incorporates the amendments made in the Keys.*

**The President:** Mr Crookall.

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

I beg to second and can I just echo the sentiments of Mr Coleman in thanking Treasury and Mr Henderson for facilitating a meeting between us and the Members that were concerned on behalf of the industry and for listening to industry.

Thank you.

330

**The President:** Mr Turner.

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

335 I support the amendment; I think it is a good step. Certainly to look at the concerns that were raised we had considerable correspondence from the industry regarding this particular matter.

Of course it gives Treasury the power; what remains to be seen is exactly what they do with it. That is something I am sure Hon. Members and indeed industry will be looking closely at, and the mover of the Bill indicated he would be giving a little more detail to that shortly.

340 I do have a couple of comments to make with regard to clause 6; however, it also includes a bit of clause 7 so I am going to raise those points during the discussion of clause 7. But I support the amendments that Mr Coleman has moved.

**The President:** Mr Henderson.

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

In response to the Hon. Member, Mr Coleman's amendments, I would like to thank him for doing that. The Government's overriding policy objective has been to ensure that there is a single point of responsibility for compliance with the core spine of the Bill, submitting beneficial ownership to the central register. The position of nominated officer, which was established in the 2012 Beneficial  
350 Ownership Act, was viewed as the most appropriate way of achieving this objective.

355 As I have previously indicated, since the Bill was given its Third Reading by the House of Keys discussions have continued between officers and industry, particularly the Association of Corporate Service Providers, in an attempt to address these ongoing concerns. The Hon. Member, Mr Coleman, confirmed during First Reading that the Association has indicated that it is content with Treasury's proposed solution and I am happy to say that this is the Treasury's understanding of their position too.

360 Consideration of these amendments gives me the opportunity to provide further details about the Treasury's proposed way forward. If endorsed by the other place, the Treasury will utilise the flexibility created by the amendments to come forward with an order to exempt certain legal entities from the requirement to appoint a nominated officer.

It is proposed that the order would apply to legal entities in receipt of corporate services provided by holders of a Class 4 licence as prescribed by the Regulated Activities Order 2011. In effect it will cover those entities in receipt of corporate services provided by a licensed corporate service provider.

365 For the entities covered by the order and therefore exempt from the requirement to appoint a nominated officer, it is proposed that the responsibilities in the Bill which currently rest with the nominated officer would be transferred to the licensed corporate service provider providing those corporate services. The order would be moved so that it came into operation at the same time as the Act, subject to Tynwald approval.

370 To give effect to the order, the following provisions in the Bill would not apply to legal entities covered by it: Division 1 of Part 2; clause 45, Savings; the definition of 'nominated officer' in clause 3(1); and paragraph 8(2)(a) of Schedule 1.

Elsewhere across the Bill the order would make clear that references to 'nominated officer' would be read as references to the corporate service provider providing the Class 4 corporate services to the legal entity. I ask Hon. Members to bear this in mind with my subsequent references to 'nominated officer' when we discuss other clauses in the Bill.

375 So, for example, looking at Part 2 of the Bill the effect of the order would mean that the relevant corporate service provider has responsibilities in clause 9, taking receipt of information from legal owners; in clause 12, changes to required details; in clause 13, preserving those details; and in clause 380 14, being involved in the issue of a notice where the corporate service provider believes the legal owner has failed to comply with clauses 9 or 12 or made a false statement.

Eaghtyrane, in giving support to the amendments and outlining how Treasury proposes to move the matter forward, I have to add one small rider: although we are content that the exemption from the requirement to appoint a nominated officer along the lines which I have outlined is an acceptable and workable solution, Treasury may have to review the parameters of the exemption in the light of any compliance issues which could arise in future. To be clear, I am not trying in any way to pre-empt the use of the exemption, I merely want to restate the importance of maximising the accuracy of the information on the Database. It would be remiss of Treasury not to review any part of the Bill or secondary legislation made under it which may undermine the accuracy of the information submitted onto the Database.

385 390 Eaghtyrane, I trust that Hon. Members will find this proposed solution to industry's concerns acceptable and would urge them to support the amendments.

**The President:** Hon. Members, clause 6. I first put the amendments in the name of Mr Coleman. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 7, Mr Henderson.

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

400 If I might be bold enough, Eaghtyrane, I would just like to add a little further information to Mr Anderson's previous query on what protections are in place in case there is an inappropriate disclosure of information. I can advise that we are looking at custodial sentences of not exceeding two years and indeed fines not exceeding £5,000. So there are some strict caveats in place on that, and who can and who cannot. Certainly the other one on tipping-off information, that is also an offence which will carry similar severe penalties.

405 With that, Eaghtyrane, on clause 7 we require relevant entities to appoint a nominated officer and notify the Department of Economic Development of the appointment within one month of the section coming into force. However, under clause 45 those entities which make use of the savings provision in relation to the appointment of a nominated officer do not have to give notice of appointment.

410 In order to keep the information up to date, entities must give notice to DED within one month of a change in the details of their record of a nominated officer, a change in the officer and the subsequent appointment of a nominated officer. In all cases the notice must specify the date on which the appointment of any changes was made.

415 The DED has the power to charge a fee to legal entities which fail to comply with the timeframes in this clause. It is intended that the Department will look to introduce a late filing fee similar to existing arrangements for other returns; however, any such fee would require Tynwald approval before it is introduced.

A legal entity which fails to comply with this section commits an offence.

420 Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

425

**The President:** Mr Turner.

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

430 Of course we know – we have had the background as to why we are here, dealing with this Bill – the finance and investment industry worldwide has been, over the years, riddled with various dubious goings on: money-laundering, tax evasion and all sorts of other things. But one thing I would like to comment on, on this particular issue, is the appointment of a nominated officer – declaring an interest as a small business owner.

435 Something I have championed is small businesses. They are the life blood of Britain and indeed the Isle of Man. I have asked Questions in another place about small businesses. They are also the biggest employers. They are husbands and wives, they are friends and partners who run small businesses, and obviously what is filtering down to those small businesses is the added bureaucracy being imposed on them because of the goings on of some of the bigger institutions and the wealthy.

440 What I would like to know when I read clauses 6 and 7 is that ... Clearly many of these small businesses are incorporated, most probably under the 1931 Act if they are limited companies, and this is obviously an additional requirement. So I would like to know what the Department is going to be doing to make that process as least bureaucratic as possible, because it says in the appointment that the legal entity must, when they have appointed the officer, give notice to the Department within a month of coming into operation. It goes on about ‘the notice must be in such form as the  
445 Department requires’ etc.

The question I am asking is ... It is all very well for corporate service providers who are doing this day in, day out, but the majority of companies on the Island, that are in effect everyday people, are small businesses, as I said, employing less than five people. They do not have corporate departments dealing with all of this; they obviously have their accountants. What is the Department going to do  
450 to make this process painless for small businesses? And is it going to be tied in with, for example, annual returns so that this is not an additional form, process, filing, and, if they get it wrong, slapped wrists and fines? Will the Department undertake to make this process as straightforward as possible, in particular for small businesses on the Island?

455 **The President:** Mr Henderson.

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

460 In answer to the Hon. Member Mr Turner’s query, yes, the Department will be working on practical assistance with small businesses. It is interesting to note that, under the current 1931 Act, small businesses have to have a nominated officer already – just to make that point – so that is already something they have to do anyway. DED are working on practical guidance now and it intends to write to all businesses directly to tell them what they have to do in easy, readable terms.

465 It is also my understanding that any return to be made under the auspices of this Act can be made with the returns already, as the Hon. Member has indicated, so it should not need to be a second, separate exercise. It may require an extra form, as prescribed by DED, to go with that, but again my understanding is – and we have to work through this – the form will be relatively easy to fill out and it would take approximately a minute or a couple of minutes at most to fill out the required details. It is not a long-winded, complicated process that covers reams of paper – far from it. We are trying to make it as easy as possible to maximise the accuracy of information in the first  
470 place.

I hope that is sufficient explanation, Eaghtyrane.

**Mr Turner:** And the fees will go up!

475 **The President:** I put clause 7. Those in favour, say aye; against, no. The ayes have it. The ayes  
have it.  
Clause 8.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
If I might just add to the previous query, it is hoped in the very near future that the information  
480 will all be able to be submitted online as well, which will make it even more easy, and certainly for  
small businesses.

But returning to clause 8, this requires all relevant entities to keep a record of their nominated  
officer, including written confirmation of the officer's consent to the appointment.

485 In the case of a nominated officer who is a natural person, the officer's name and home address  
on the Island must be recorded. For nominated officers who have legal personality but are not  
natural persons, a record must be kept of the officer's corporate firm or name and the officer's  
registered office or place of business in the Island.

A legal entity which fails to comply with this section commits an offence.

490 Eaghtyrane, I beg to move clause 8.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

495 **The President:** Clause 8: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 9.

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

500 Clause 9 imposes a duty on legal owners, shareholders in a basic company structure, to ascertain  
the beneficial owner of their interest in the legal entity.

If a legal owner of a company or other entity covered by the Bill receives a written notice from a  
nominated officer, they must respond within one month with the required details of each beneficial  
owner of the interest which they legally own, accompanied by relevant verifying information.

505 Following post-consultation discussions with industry, the clause was amended to remove the  
express requirement to obtain the required details of all beneficial owners, regardless of the size of  
their interest. In making the change, the intention is that in many circumstances nominated officers  
who have obligations under the AML/CFT Code will now be able to better rely upon the work that  
they must already undertake to satisfy the Bill's requirements in relation to non-registrable  
beneficial ownership. A nominated officer would not need to send a notice to a legal owner if they  
510 are already satisfied that a beneficial owner is non-registrable.

The requirements in respect of nominated officers who have no obligations under the AML/CFT  
Code remain unchanged; the Bill is the mechanism to ascertain the required details of the beneficial  
owner and in all cases the required details of registrable beneficial owners are needed for  
submission onto the Database.

515 A legal owner who fails to comply with this section commits an offence, although it is a defence  
to show that they took reasonable steps to avoid the commission of an offence. It is also an offence  
if a legal owner recklessly or knowingly makes a false, deceptive or misleading statement to a  
nominated officer.

520 The DED may make regulations to further provide for the giving of notices and the Treasury,  
subject to Tynwald approval, can by order amend the specified timeframe.

Eaghtyrane, I beg to move that clause 9 stands part of the Bill.

**The President:** Mr Corkish.

525 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

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

Clause 10 places obligations on persons in the chain between a legal owner and the beneficial owner and on the beneficial owner themselves to assist the legal owner to fulfil their obligations to ascertain the beneficial owner of their interest. This obligation is relevant given that ownership can be traced through any number of persons or arrangements of any description.

535 Failure to comply with this section is an offence, although as with clause 9 it is a defence to show that the person took reasonable steps to avoid the commission of an offence.

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

**The President:** Mr Corkish.

540

**Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

545 Clause 11.

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

Clause 11 sets out the details in respect of each beneficial owner that are required to be submitted onto the central Database.

550 The Exchange of Notes requires the Database to hold adequate, accurate and current beneficial ownership information. With this obligation in mind, the House of Keys, with the full support of Treasury, accepted an amendment to remove the gender, occupation and place of birth from the required details of beneficial owners.

555 In supporting the amendment, however, the Treasury Minister made one proviso. The clause allows for the Treasury, by order and with the approval of Tynwald, to amend the required details. If circumstances change in the future, the Treasury may have to move such an order to amend the required details under this clause.

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

560 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

565 **The President:** I put clause 11. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

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

570 Clause 12 provides that where a legal owner is required to give notice to a nominated officer of the required details of the beneficial owner of their interest, they must also give notice to the nominated officer if they know or have reasonable cause to believe that a change in required details has occurred.

575 Notice has to be given within one month of the legal owner learning of the change or when they first have reasonable cause to believe that the change has occurred. The notice must detail the changes and be accompanied by information from a reliable and independent source which verifies them.

A legal owner who fails to comply with this section commits an offence.

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

580 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

585 **The President:** I put clause 12. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

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

590 Clause 13 prescribes obligations on the nominated officer in respect of the preservation of required details and information.

Nominated officers must ensure that all required details and the information which verifies them are maintained and preserved. The required details must be maintained so as to be capable of disclosing the beneficial ownership of the legal entity at any time. The details and verifying information must be preserved for a minimum of five years from the end of the period to which the information relates, and longer if there is an ongoing investigation.

595 In the event of an entity ceasing to exist, the person who was nominated officer immediately before one of the above occurring must comply with the requirements of this section.

600 The five-year retention period in the clause coincides with the current standard under the AML/CFT Code. It should be noted that there are other international standards, both set and evolving, which may be relevant to the length of time for which records need to be preserved in the future.

Failure by a nominated officer to comply with this section is an offence.

Eaghtyrane, I beg to move clause 13.

605 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

610 **The President:** I put clause 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

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

615 Clause 14 provides for further consequences for legal owners of the failure to disclose beneficial ownership.

The consequences become relevant if a nominated officer is of the opinion that a legal owner has, without reasonable excuse, failed to provide relevant details or changes thereto or has made a misleading statement.

620 Once notified by a nominated officer, the entity must serve notice on the legal owner and the beneficial owner of their interest to inform them that a notice has been received and that action might be taken. The recipient has 14 days to make representations to the entity, which must be considered by the entity.

625 After due consideration, the legal entity may take such action as it thinks fit in respect of the legal owner's interest in the entity. The actions are specified in the clause and include, for example, limiting voting rights.

If it takes any action, the legal entity must inform the FSA within two weeks of so doing. The legal owner can appeal to the High Court.

Eaghtyrane, I beg to move clause 14.

630 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

635 **The President:** I put clause 14. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

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

640 Clause 15 provides for the disclosure of beneficial ownership information by a nominated officer where they receive a notice from one or more competent authorities. The clause is adapted from the Companies (Beneficial Ownership) Act 2012.

The provision relates to information which is not on the central Database; for example, in relation to non-registrable beneficial ownership information as well as supporting information in relation to all beneficial owners.

645 Competent authorities must state in the notice what information is required and that it is required for a permitted purpose. If the notice relates to a registrable beneficial owner, a nominated officer has seven days to reply to a notice. In all other cases, the response time is 30 days.

If a nominated officer fails to comply with this section they commit an offence.

Eaghtyrane, I beg to move clause 15.

650

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

655 **The President:** I put clause 15. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

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

660 This places restrictions on the further disclosure of information provided by a nominated officer to competent authorities via a notice.

Information cannot be further disclosed except for a permitted purpose; it can be used by the recipient as evidence in criminal, civil and regulatory proceedings.

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

665

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

670 **The President:** I put clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

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

675 Clause 17 applies specifically to disclosure of information obtained from a nominated officer by the Financial Intelligence Unit when responding to requests from an external intelligence or law enforcement agency.

In such circumstances, disclosure is permitted if it is made in response to a request made by a relevant agency in the furtherance of the agency's functions and in a manner required by the FIU.

680 As the disclosure of beneficial ownership information by the FIU under this Bill is in addition to its statutory functions as set out in the Financial Intelligence Unit Act 2016, the section of that Act which deals with restrictions on disclosure needs to be disapplied by this clause.

Eaghtyrane, I beg to move that clause 17 stands part of the Bill.

685 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 17. Those in favour, say aye; against, no. The ayes have it. The ayes

690 have it.  
Clause 18.

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

695 Clause 18 makes it an offence for a person who knows or suspects that a notice has been issued under clause 15 and who discloses to any other person information or any other matter connected to the issue of the notice which may prejudice any criminal, civil or regulatory investigations or proceedings.

700 Within defined parameters, disclosure by an advocate or legal adviser is not an offence and it is a defence to prove that a person did not know or suspect that the disclosure was likely to be prejudicial.

Eaghtyrane, I beg to move clause 18.

**The President:** Mr Corkish.

705 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 18. Those in favour, say aye; against, no. The ayes have it. The ayes

710 have it.  
Clause 19.

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

715 Clause 19 creates the Isle of Man Database of Beneficial Ownership Information, with a duty on the Department of Economic Development to establish and maintain it and for the Database to contain the required details and any changes thereto of all registrable beneficial owners.

Eaghtyrane, I beg to move clause 19.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

720

**The President:** I put clause 19. Those in favour, say aye; against, no. The ayes have it. The ayes

725 have it.  
Clause 20.

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

730 Clause 20 provides that a nominated officer must take all reasonable steps necessary to ascertain whether a legal entity has a registrable beneficial owner. Under the clause, the nominated officer must submit the required details of the registrable beneficial owner, details of any relevant changes and, where the legal entity has no registrable beneficial owner, a statement to confirm that fact.

As noted when we considered clause 11, the Exchange of Notes requires the Database to hold adequate, accurate and current beneficial ownership information. Clause 20 sets out the timeframes

735 for the submission of information onto the Database. For those entities already in existence when the Act comes into force, the information must be submitted in the first instance either by the date on which the entity's next annual return falls due following the nominated officer receiving the required details from the legal owner or 30th June 2018, whichever is the earlier.

As some nominated officers may not be able to align the first submission of information to the date on which the annual return is due because of the time required to meet obligations elsewhere in the Bill, submission of information must be as soon as reasonably practicable.

740 The clause also sets out the timeframe for submission of relevant changes and covers circumstances for legal entities which come into existence after this section comes into operation.

There are offences in this clause for nominated officers and other persons for failure to comply with its provisions. Given the central importance of submitting beneficial ownership information, this clause also contains an obligation to rectify any instances where information has not been submitted and prosecution proceedings commenced.

745 Eaghtyrane, I beg to move that clause 20 stands part of the Bill.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

750

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

Clause 21.

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

Clause 21 allows nominated officers, where the beneficial owner consents, to submit required details of beneficial owners other than registrable beneficial owners onto the Database.

760 The provision aims to provide flexibility in circumstances where, for their own reasons, beneficial owners are content to have their details submitted onto the Database even though the Bill does not require them to be.

Eaghtyrane, I beg to move that clause 21 stands part of the Bill.

**The President:** Mr Corkish.

765 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 21. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

770

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

Clause 22 requires beneficial ownership information to be submitted online, mirroring similar provisions in the Income Tax Act 1970.

775 The default position under the Bill is the submission of registrable beneficial ownership online through the Government website. The Government Technology Service is working with partners to design and build the necessary system, and work in this regard is at an advanced stage.

There is provision for entities to apply to the DED for an exemption from this requirement, and it is an offence to fail to comply unless an exemption is granted. There is also an appeal mechanism against any resultant decision by the DED.

780 Eaghtyrane, I beg to move that clause 22 stands part of the Bill.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

785

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

Clause 23.

790

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

Clause 23 specifies that access to the Database, and the further disclosure of information obtained from it, is only permissible in accordance with Part 3 of the Bill.

Eaghtyrane, I beg to move that clause 23 stands part of the Bill.

795

**The President:** Mr Corkish.

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

**The President:** Mr Turner.

800

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

Can I just ask the mover ...? It relates to the access to the Database 23 and also to the previous submitting online. I assume that those submitting the data will not just be able to submit the data but will be able to also see their own data to ensure it is up-to-date? Like you mentioned the Income Tax system, so you can retrieve your own information that is on the Database, (**Mr Henderson:** Yes.) but obviously this is about who accesses the wider Database.

805

**The President:** Mr Henderson.

810

**Mr Henderson:** The answer is yes, Eaghtyrane.

**The President:** Thank you.

I put clause 23. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

815

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

Clause 24 establishes the power for the Department of Economic Development to allow access to the Database by such means and in such manner as it determines.

The DED can, by regulations, make further provision about access to the Database other than in relation to the persons or bodies who may access it. Access in this regard is controlled by Treasury under clause 26.

820

Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

825

**Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 24. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

830

Clause 25.

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

Clause 25 confirms that the DED is not liable for the accuracy of information submitted onto the Database.

835 There is a requirement for legal entities to include on their annual returns a statement that all the information submitted for entry on the Database is up to date and correct.  
Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

840

**Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 25. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

845

Clause 26.

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

Clause 26 sets out the parameters for persons who may access the Database, both in terms of who can access it and for what purposes.

850

In addition to the competent authorities listed in clause 15 who are able to access the Database for a permitted purpose, a small number of other persons or bodies also have access, albeit mostly on a more restricted basis. Tight control over access to the Database is crucial to reassure beneficial owners whose details are contained within it.

Eaghtyrane, I beg to move.

855

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

860 **The President:** I put clause 26. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

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

865

Clause 27 specifies the restrictions on further disclosure of information accessed from the Database. The exact nature of the restrictions differs slightly depending upon the purposes for which access is permitted.

Information accessed by a competent authority must not be further disclosed except for a permitted purpose and, in the case of the FIU, disclosure also has to be in accordance with clause 28. For all competent authorities, information disclosed may be used by the recipient in criminal, civil or regulatory proceedings.

870

For the DED and Gambling Supervision Commission, the information cannot be further disclosed except for the limited purposes for which they can access the Database.

A person who fails to comply with this section commits an offence.

875

Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

880

**The President:** I put clause 27. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

885

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

Clause 28 permits the disclosure of information from the Database by the FIU when responding to external requests from intelligence and law enforcement agencies with which we have a beneficial ownership sharing agreement. To be clear, this is just the UK at the moment.

890 It is through this clause that the sharing arrangements and the Exchange of Notes can be put into effect with the FIU required to respond to requests from such agencies in furtherance of the agency's functions within the timeframe set out in the notes – 24 hours typically and within one hour in urgent cases.

Section 25 of the Financial Intelligence Unit Act 2016 which deals with further restrictions on disclosure does not apply to information disclosed under this clause.

895 Eaghtyrane, I beg to move clause 28.

**The President:** Mr Corkish.

900 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** Clause 28: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 29.

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

905 Clause 29 creates a provision in respect of tipping-off resulting from access to the Database. Accordingly, a person commits an offence if they know or suspect that information on the Database has been or is going to be accessed and they disclose prejudicial information connected with such access.

910 Within defined parameters disclosure by an advocate or legal adviser is not an offence and it is a defence to prove that a person did not know or suspect that disclosure was likely to be prejudicial.

Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

915 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 29. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 30.

920

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

Clause 30 confers the oversight functions of the FSA.

925 Schedule 1 sets out additional powers; for example, in respect of inspections and investigations and requests for information. The FSA will be responsible for assessing compliance with the Act by relevant persons including a nominated officer and a legal entity.

It is important to recall that the oversight role of the FSA is required by the Exchange of Notes with the UK, so it is something which we have had to introduce within the new regime.

930 It is also the case that the Bill confers powers on the FSA only in relation to compliance with this Act. It creates no additional powers under any other piece of legislation, some of which provide the FSA with more powers than are conferred by this Bill.

935 The existence of these powers should be seen in context; for example, there are areas where compliance with the Bill will cover similar ground to compliance with the AML/CFT Code. The FSA has indicated that it will take a similar, pragmatic approach to oversight of this Act as it does to oversight of that Code. Wherever possible, depending upon the seriousness of any breach and taking a risk-based approach the FSA will seek to focus on remedial actions to assist relevant persons in complying with their obligations under the Bill.

940 Importantly, the Bill provides the FSA with flexibility in its oversight role; for example, although  
there are criminal penalties in relation to a number of offences in the Bill, there are also powers for  
the Authority to impose civil penalties on relevant persons. The Authority can do so if it is satisfied  
that relevant persons have committed an offence in connection with oversight; if they have  
contravened certain provisions in the Bill – for example, the preservation of required details – or if  
they have furnished it or the Department of Economic Development with false or misleading  
information. In such circumstances the relevant person who has contravened the section in question  
945 can be penalised by the imposition of a civil penalty rather than one of the criminal sanctions  
outlined in the Bill.

Eaghtyrane, I beg to move that clause 30 and Schedule 1 stand part of the Bill.

**The President:** Mr Corkish.

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

**The President:** Clause 30 and Schedule 1: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.

Clause 31.

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

Clause 31 provides for an entity to be struck off a relevant register if there is reasonable cause to  
believe that it has failed or is failing to comply with its obligations under the Act. The striking off  
provision is included as a backstop power and it should be viewed as such, particularly in the context  
960 of the Bill's other offences and penalties.

Schedule 2 sets out the necessary legislative amendments required to facilitate this clause.

Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

965 **Mr Corkish:** I beg to second and reserve my remarks again, sir.

**The President:** I put clause 31 and Schedule 2. Those in favour, say aye; against, no. The ayes  
have it. The ayes have it.

970 Clause 32.

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

Clause 32 provides the legal authority for the Treasury, DED and FSA to make regulations under  
the Act. The Treasury is able to make regulations for the general efficacy of the Act, which could  
975 provide for the exemption of certain bodies from the effect of specified provisions. Prior to making  
any regulations the Treasury must consult the FSA and the DED.

The clause allows for regulations; for example, to permit a person to exercise discretion in  
respect of any matters specified in the regulations and require compliance with standards or the  
adoption of practices recommended or specified from time to time. All regulations under this clause  
980 require Tynwald approval.

Eaghtyrane, I beg to move clause 32.

**The President:** Mr Corkish.

985 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** Clause 32: those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 33.

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

990 Clause 33 permits the DED to set fees in respect of the legal entity's requirement to notify the Department of the appointment of a nominated officer and in respect of the nominated officer's obligation to submit beneficial ownership information.

It is anticipated that fees charged under this clause will operate in a similar manner to the current late filing fees charged by the Companies Registry. An order to introduce fees requires Tynwald approval.

995 Eaghtyrane, I beg to move clause 33.

**The President:** Mr Corkish.

1000 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** Mr Turner.

**Mr Turner:** Well here it is! This is what I was irking at earlier on: fees!

1005 So we create all the bureaucracy; we make all the agreements; then we lamp more fees on the businesses. Surely to add this extra information should not be incurring businesses with extra fees! This is just another excuse to charge businesses more.

1010 The filing fees and returns here are already excessively more expensive than the UK and lots of other jurisdictions and we are just putting a load more on them. I do not think, for the information that is meant to be given, which he said would be alongside the returns, they can justify charging more fees for this when they are already charging more than many other jurisdictions. It is just another excuse!

**The President:** Mr Crookall.

1015

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

Just to note there: it does say 'the Department *may*' – (**Mr Turner:** May!) 'may', and it does have to come to Tynwald first, but I take on board Mr Turner's comments.

1020 **The President:** May I add a comment? On page 6 of the explanatory memorandum is set out the financial implications for Government over three years, which come to well over £200,000. Is it the intention that these set-up costs will be recouped through the fees in any way?

1025 **Mr Henderson:** Eaghtyrane, can you just repeat your query for me, just so I have got the full context of it?

1030 **The President:** In the explanatory memorandum, on page 6, the financial implications are set out, as is normal for any Bill. Over a three-year period, for establishment of staff plus other costs, it comes to well over £200,000 – the costs of implementing this legislation in other words. Is it intended that the fee structure will recoup any of that cost?

1035 **Mr Henderson:** Righto, Eaghtyrane; I will give it my best shot on the various queries; however, I would like to ask your permission in a moment whether I could ask one of our officers to add further –

**The President:** What a good idea.

1040 **Mr Henderson:** – background, especially to what you are asking because it is quite complicated for myself. I have got the upshot of it, but I think a more in-depth ...

**The President:** We will invite the officer.

Good morning, and if you could state your name and position please, when we are plugged in.

**A Member:** Testing, testing!

1045

**Mr Turner:** One, two; one, two!

**Mr Anderson:** You should be electrified now!

1050 **Mr Quayle:** Mr President, my name is Stuart Quayle. I am Director of Policy and Legislation for the Treasury. Good morning, Mr President, Hon. Members.

1055 I just want to reiterate a point that the Hon. Member, Mr Crookall, made: this is a permissive power that the DED has, so no decision has yet been made on fees and certainly the money that has been spent or allocated, as set out in the explanatory memorandum, has not been predicated on the basis that it will be recouped by fees, and that money has already been allocated and spent.

There are only a couple of provisions that the fees would be charged under the Bill: for the notice of appointment for nominated officer and the compulsory submission of registrable beneficial ownership information.

1060 Speaking to colleagues in DED, they are very much looking at it using the model that they already have for late filing fees for other company law filing for use under this Bill, and they say that actually acts as an incentive for filing to be done in a timely basis. So it is entirely in the gift of DED what fees they charge, and it does have to come back to Tynwald for approval and debate at a later stage.

**The President:** Mr Henderson.

1065

**Mr Henderson:** Could I just ask, Eaghtyrane, if Mr Quayle could outline that this is actually aiming at the late filing of papers rather than the point I think Mr Turner was driving at that just for putting your submission in on time you were going to get charged additionally on that? I think we are aiming it to discourage late filing, so it is not an additional ...

1070

**Mr Quayle:** Yes, that is certainly my understanding of how it will work in operation.

**The President:** Mr Turner.

1075 **Mr Turner:** Yes, Mr President. It might well be the intention, but of course the power is there and we all know what happens when you give a Department the power to charge fees. They say, 'Well, we have got no plans to charge fees' and then in it comes. We have now got fees for everything from tree felling to all sorts of other things that they have had the powers to do.

1080 I think it is quite interesting that everything is going computerised yet we need more staff. I would have thought, with the automation of these processes, you should be needing, surely, less staff if a lot of the inputting is being done by the businesses themselves.

It is just a comment, Mr President, that once you give a Department the power to charge the fees, ultimately the fees do come.

1085

**The President:** Mr Henderson.

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

1090 I think Mr Turner is being somewhat deliberately mischievous here with some of that. It is not applicable to clause 33. However, I think we have established beyond doubt what the intention of this is to achieve in the charging of fees, and it is not the introduction of general charging all over the place or to hamper small business. It is, rather, an incentive to encourage timely information.

If I can leave it at that, Eaghtyrane, I beg to move.

**The President:** And we are obliged to Mr Quayle for your assistance to Council. Thank you.  
I put clause 33. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
1095 Clause 34, Mr Henderson.

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

1100 Clause 34 creates an appeal route to the Financial Services Tribunal against decisions made by the DED in respect of whether a nominated officer is exempt from the requirement to submit beneficial ownership information online. The Tribunal can also hear appeals against the imposition of civil penalties by the FSA. A decision of the Tribunal is binding, although a further appeal lies to the High Court on a point of law.

Eaghtyrane, I beg to move.

1105 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1110 **The President:** I put clause 34. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

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

1115 Clause 35 clarifies that when an offence is committed by a legal entity – for example a company rather than by a natural person; so that is to say when it is a body corporate committing an offence rather than a flesh and blood person – and it is proved that one of the entity’s officers was complicit, the officer – the natural person – as well as the legal entity is guilty of the offence and is liable to the penalty provided for the offence.

Eaghtyrane, I beg to move clause 35.

1120 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1125 **The President:** I put clause 35. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

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

1130 Clause 36 specifies that a requirement imposed under this Bill has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

1135 Therefore, a disclosure made or the sharing of information in accordance with the Bill does not breach any obligation of confidence or any other restriction on the access to or disclosure of the accessed information, subject to the Data Protection Act 2002.

Eaghtyrane, I beg to move that clause 36 stands part of the Bill.

**The President:** Mr Corkish.

1140 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 36. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 37.

1145 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Clause 37 provides that the Data Protection Act 2002 is not affected by this Bill, so nothing in this Bill authorises a disclosure in contravention of that Act of personal data which is not exempt from its provisions.

Eaghtyrane, I beg to move clause 37.

1150

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1155 **The President:** I put clause 37. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 38.

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

1160 Clause 38 makes explicit that the existing exemption under the Freedom of Information Act 2015 for information – the disclosure of which is restricted by law – applies to information prohibited from disclosure under this Bill.

The effect of this clause is that applications will not be able to obtain information from the Database via a Freedom of Information request to the DED.

1165 Eaghtyrane, I beg to move that clause 38 stand part of the Bill.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1170

**The President:** I put clause 38. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 39.

1175 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Clause 39 provides that nothing in the Act compels the production or divulgence by an advocate or other legal adviser of an item subject to legal privilege, but an advocate or legal adviser may be required to give the name and address of any client.

Eaghtyrane, I beg to move clause 39.

1180

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1185 **The President:** Clause 39: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 40.

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

This clause ensures that the operation of this Act does not limit or otherwise restrict any other statutory provision concerning beneficial ownership and sets out some examples thereof.

1190 Eaghtyrane, I beg to move clause 40.

**The President:** Mr Corkish.

1195 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 40. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 41.

1200

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

Clause 41 provides that the operation of a power or duty in this Bill to disclose information does not affect the operation of any other power or duty to disclose information which exists in this Bill or any other enactment or any restriction on such disclosure.

1205

Eaghtyrane, I beg to move.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1210

**The President:** I put clause 41. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 42.

1215

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

Clause 42 requires that legal entities must include a statement of compliance in annual returns. The statement must confirm that the legal entity and its nominated officer have each complied with their respective obligations; the required details in respect of any registrable beneficial owners have been submitted; and all information submitted is up to date and correct. Because the statement is solely in relation to obligations under this Act, it must be countersigned by the nominated officer. Schedule 3 sets out the necessary legislative amendments to facilitate the statement of compliance in annual returns as required by the clause.

1220

Eaghtyrane, I beg to move clause 42.

1225

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1230

**The President:** I put clause 42 and Schedule 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 43.

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

Clause 43 provides for the online submission of annual returns for companies. Unfortunately, the online filing of annual returns is not yet technologically feasible and work to enable its future delivery will commence in earnest once the central Database of Beneficial Ownership has been established. To be clear, this clause will not be brought into force until the technology is in place to facilitate it. Schedule 4 sets out the necessary legislative amendments and will be brought into force alongside clause 43.

1235

1240

Eaghtyrane, I beg to move clause 43.

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1245

**The President:** I put clause 43 and Schedule 4. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 44.

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

1250 Clause 44: this clause extends the remit of the Financial Services Tribunal to cover appeals under this Bill further to clause 34, and adds this Bill to the list of other Acts which confer functions on the FSA. As noted earlier, the only additional powers granted to the FSA by this Bill are in relation to the oversight of this Bill.

Eaghtyrane, I beg to move clause 44.

1255

**The President:** Mr Corkish.

**Mr Corkish:** I beg to second and reserve my remarks, sir.

1260 **The President:** I put clause 44. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 45.

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

1265 Clause 45 provides for the continuation of appointment, subject to the written consent of the officer, of nominated officers appointed under the Companies (Beneficial Ownership) Act 2012. It also provides for a similar position in respect of registered agents under the Companies Act 2006 and associated Acts.

1270 A nominated officer who carries their appointment through to the new Act must comply with the Act as if they were appointed under it.

Eaghtyrane, I beg to move clause 45.

**The President:** Mr Corkish.

1275 **Mr Corkish:** I beg to second and reserve my remarks, sir.

**The President:** I put clause 45. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 46, Mr Henderson.

1280

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

1285 The final clause, and, Eaghtyrane, if I could just revert to some earlier queries from Mr Turner in relation to clauses 6 and 7 and small companies: it is the 2012 Companies (Beneficial Ownership) that creates the requirement to have a nominated officer. I just wanted to clarify that. The 2012 Act covers most 1931 companies, which are mainly the locally owned, small businesses. Nominated officers appointed under the 2012 Act can transition over to being nominated officers under this Bill. I just wanted to clarify that, Eaghtyrane.

The final clause, Eaghtyrane, clause 46, repeals the Companies (Beneficial Ownership) Act 2012 and the Companies (Beneficial Ownership) (Exemptions) Order 2013.

1290 Eaghtyrane, I beg to move clause 46.

**The President:** Mr Corkish.

**Mr Corkish:** Mr President, finally I beg to second and reserve my remarks, sir.

1295

**The President:** I put clause 46. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That concludes the clauses stage of the Beneficial Ownership Bill.

**Beneficial Ownership Bill 2017 –  
Standing Order 4.3(2) suspended to take Third Reading –  
Motion carried**

**The President:** I call Mr Henderson.

1300

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

Eaghtyrane, I have given yourself and Hon. Members advanced warning of my intention to move the motion on the Order Paper to suspend Standing Order 4.3(2) to enable the final reading of this Bill to be taken today.

1305

As Hon. Members know, the timetable for progressing this important Bill has been extremely tight – perfectly manageable, but tight. Given the amendments which have just been approved, the Bill has to return to the House of Keys for consideration, thus adding a further parliamentary stage to the process.

1310

In order to give industry as much certainty as possible ahead of the introduction of the new central Database on 30th June 2017, the Treasury is very keen, if possible, for the Bill to have completed its legislative passage by 11th April. If the 11th April target is missed, Eaghtyrane, then the next sitting is not until 2nd May 2017. Obviously completing its passage by 2nd May makes Royal Assent by 30th June very ambitious, even without factoring in the secondary legislation which has to be drafted and approved to give full effect to the new regime.

1315

Eaghtyrane, I beg to move that Standing Order 4.3(2) be suspended to enable the remaining stage of this Bill to be taken today.

**The President:** Mr Corkish.

1320

**Mr Corkish:** I beg to second, Mr President.

**The President:** Mr Turner.

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

1325

We did have an inkling this was coming; the Member mentioned it at a previous sitting. But I think we should be sending a message to Government Departments that there is a parliamentary timetable and when they are going away agreeing all these things with whoever, they should be mindful of the fact of the parliamentary timetable instead of just agreeing to things and assuming they can just come to the Branches and have multiple readings done at the same sitting.

1330

On this occasion we have had quite a lengthy discussion about the concerns of industry. Mr Coleman moved the amendment earlier and industry appear to be happy with it, so I am not going to vote against the suspension of Standing Orders on this occasion – although it does grate me somewhat – because I think it would just be pointless when they are trying to get this through. But I do think that the more this provision is ... I will not say abused because obviously it is in the hands of Members whether they support it or not, but Departments coming and expecting they can meet timetables by having multiple readings in the same session when they are fully aware of the parliamentary timetable I do not think is on. But on this occasion we have gone through the Bill in quite some detail; we have answered the controversial points which we hope are satisfactory to industry, so I will support it in an effort to get this through. But I think we should be sending the message to Departments that it is not really acceptable.

1340

**The President:** Thank you.

Mr Anderson.

1345

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

Just taking a counterview on this really: I think we have made an important amendment to this Bill and therefore it has to go back to another place; that being so, the timetable is compromised, so therefore I think we should unanimously accept this.

1350 **The President:** I put the motion that Standing Order 4.3(2) be suspended to enable the remaining stages of the Bill to be taken today. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Beneficial Ownership Bill 2017 –  
Third Reading approved**

**The President:** Mr Henderson.

1355 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Eaghtyrane, I must thank the Hon. Council both for their support at clauses stage for this complicated but very important matter, and again I must thank the Hon. Council for their support in the suspension of Standing Orders – which I am grateful for – to allow the progression of this Bill to meet our deadlines and international obligation.

1360 Eaghtyrane, I would also like to thank Mr Coleman and the other Hon. Members for the interest in working towards an acceptable solution to the issues which were raised in respect of the requirement to appoint a nominated officer. I am confident that in finding a solution to these issues the Bill has been improved and I am pleased that the additional flexibility which has now been created has been welcomed by the affected parts of the industry.

1365 Eaghtyrane, I have highlighted at previous sittings the importance of progressing this Bill given the developments which are happening at this very moment in time in Westminster. We should be in no doubt about the pressure that exists for Crown Dependencies to introduce public registers of beneficial ownership. It is very likely that next week the House of Lords will be asked to vote on an amendment to the Criminal Finances Bill placing a duty on the UK Secretary of State by  
1370 31st December 2018 to provide all reasonable assistance to the Governments of the Crown Dependencies to enable them to establish a publicly accessible register of beneficial ownership and I trust that makes the point that I have been establishing all along, Eaghtyrane, especially to Mr Turner in particular.

The UK Government continues to support our current position largely on the basis of the  
1375 commitment that we have given through the Exchange of Notes, thus providing further evidence, if needed, of the importance of this Bill.

Eaghtyrane, the Bill has been drafted to recognise that beneficial ownership is a live and ongoing international issue which will almost inevitably evolve further in the coming years. Indeed, the Exchange of Notes itself is something of a living document with an inbuilt review mechanism after  
1380 six months of operation, and then annually thereafter.

It is also becoming clearer how other jurisdictions which are bound by an Exchange of Notes will implement the commitments into their domestic arrangements. To help futureproof the Bill and afford maximum flexibility as quickly as possible, the Bill contains a number of order-making powers. Provisions can be amended by Treasury and there are powers under which Treasury or the  
1385 Department of Economic Development can make regulations to support the detail in the Bill, with Tynwald approval where necessary.

Eaghtyrane, I beg to move that the Beneficial Ownership Bill 2017 be now read a third time.

**The President:** Mr Corkish.

1390

**Mr Corkish:** I beg to second, Mr President.

**The President:** Mr Anderson.

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

1395 Obviously I am very supportive of the Bill. In moving the clauses stage the Hon. Member mentioned the collective investment schemes that had not been consulted on when originally within the consultation period and which now are being incorporated within the Bill. Can he give me some reassurance that other jurisdictions will have the same legislation included within their Bills?

1400 **The President:** Mr Henderson.

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

1405 I would need to refer to my officer in the Gallery again to answer the specifics of that. My understanding is that they will be working up their own initiatives towards something similar, but if we could hand over to Mr Quayle just to see if he has got any update.

**The President:** Mr Quayle.

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

1410 All other jurisdictions that sign the Exchange of Notes are bound by their terms and, as Mr Henderson said, collective investment schemes as a total are not exempt from the Exchange of Notes. So we would expect other jurisdictions to follow our lead in terms of their inclusion.

1415 There is some indication that there is a carve-out in one or two territories for all of the collective investment schemes and that is something that Treasury is keeping a watching brief on, because the exemption powers in this Bill would allow us to expand or contract any exemption around those collective investment schemes.

1420 So at this point in time it is still a watching brief, but we would hope to be in a much better position when the order comes to Tynwald once this Bill has got Royal Assent to see what other jurisdictions are doing in this regard. But we have control over the scope of that exemption.

**Mr Anderson:** Thank you.

1425 **The President:** I wonder if Council would permit me to ask Mr Quayle: just for the record, could you advise the status of the United Kingdom legislation in respect of a public register of beneficial ownership and the degree to which it goes beyond, or is not the same as, the legislation before Council?

1430 **Mr Quayle:** Yes, I think the important point, Mr President, when we talk about the United Kingdom is that they are one of the few jurisdictions across the world that has a publicly accessible register. They call it a Register of Persons with Significant Control, so it is slightly different in terms of definition and scope, but the ambition is that from the United Kingdom point of view they are gold standard on this type of register – the publicly accessible element to it will be replicated across all jurisdictions. We are not there yet and they are not pushing us to be there yet, but the United Kingdom certainly goes further than the Bill that is before Council today in that important respect.

1435 **The President:** Thank you.  
Mr Henderson.

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

1440 I would just like to respond to the Third Reading motion. Again, I would like to thank all Hon. Members for their support and patience in the progression of this. I would like to thank my seconder, Mr Corkish. (**A Member:** Hear, hear.) And I would certainly like to thank Mr Coleman for championing the cause from the other side, as it were – (**A Member:** Ooh!) and for the work that has

1445 gone on in the background in getting to this point where we have a pragmatic and an agreeable way forward on that. I thank him for his efforts on that.

1450 It would be extremely remiss of me, Eaghtyrane, and it might be unusual, but I feel I should certainly put thanks on record for the *big* help and support I have had in progressing this Bill, both publicly and behind the scenes, from Mr Stuart Quayle in particular from the Policy Section of Treasury, who I am indebted to. Also to the Attorney General's Department, who I am indebted to, who again behind the scenes have done an extraordinary amount of work to this Bill – Christopher Parker, David Bermingham and Helen Helfrich. And also to the External Relations Division because again there was a load of work done behind the scenes to get to this actual point today, and providing the Hon. Council with the information they wanted, and that goes to Della Fletcher, Sara Jones and Sam McCauley, if I might, Eaghtyrane.

1455 So with that, I beg to move.

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

Thank you, Hon. Members.

### 3. Equality Bill 2016 – Keys' amendments considered and approved

HM Attorney General to move:

*That the Council do concur with the Keys in their amendments numbered:*

*7, 11, 28, 49, 57, 59 and 60*

*9, 12, 13, 14, 15, 18, 21, 52, 53 and 94*

*4, 5, 6, 38, 42, 50, 54, 55, 56 and 66*

*22 and 23*

*24 and 61*

*16, 17, 33, 43, 67, 68, 69, 70, 71, 72, 73, 75, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91 and 92*

*1, 2, 3, 8, 10, 19, 20, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 39, 40, 41, 44, 45, 46, 47, 48, 51, 58, 62, 63, 64, 65, 74, 76, 77, 80, 89 and 93*

1460 **The President:** We turn to Item 3 on our Order Paper, consideration of the Keys' amendments to the Equality Bill which started its life, you will recall, in this place.

I call on the learned Attorney General.

**The Attorney General:** Thank you, Mr President.

1465 Hon. Members of Council, it may seem a long time since Council last saw this Bill, although it was not formally transmitted to the other Branch until after the General Election last year. It will be obvious that there have been a number of changes to the text in the other Branch. I nevertheless hope to be fairly brief in my comments this afternoon, because the amendments that have been made were all either moved on behalf of the Council of Ministers, or were accepted by that body. I  
1470 also hope that the documents that have been circulated to Hon. Members are of assistance, and I am sure that the officers who are present this morning will be happy to assist with any questions that Members of Council may have.

1475 Mr President, the amendments fall under a series of identifiable heads as follows: firstly, there is a small cluster of amendments updating the Bill to reflect legislative change elsewhere in the statute book, for example in the area of marriage and civil partnership, where the new concepts of same-sex marriage and opposite-sex civil partnership have been introduced into Manx law since the Bill began its passage in the Council last year.

1480 There is a new Division inserted into the provisions on work to deal with any discrimination in the context of limited liability companies under the Limited Liability Companies Act 1996, for which there is no UK counterpart.

1485 There is then a cluster of amendments updating terminology relating to the treatment of transgender people. This group of amendments involves replacing references to 'transsexual' with the more contemporary term 'transgender', making changes to the Bill which have been recommended to be made to the Equality Act 2010 in the UK by the report of the Women and Equalities Committee of Parliament on Transgender Inequality, a copy of which report has been circulated to Hon. Members. Those provisions incorporate a power to amend the Act in accordance with the recommendations in that report to replace the protected characteristic of 'gender reassignment' with a broader protected characteristic of 'gender identity'. The intention behind this amendment is to enable the protected characteristic to be broadened at some point in the future and after appropriate consultation from covering only those who have or are perceived to have undergone, or be about to undergo gender reassignment surgery to include those who may have no intention to undergo such surgery, but whose individual and internal experience of gender does not correspond to their assigned sex at birth.

1495 There is then a pair of amendments which reflect the renaming of the Isle of Man College as University College Isle of Man.

There is also a pair of amendments which respectively insert a new clause and a new Schedule aimed at securing disabled access in the further and higher education sectors which mirrors those for younger students.

1500 There are some policy changes especially, but not exclusively, in the field of employment law. The employment law changes, which would have formed a separate Bill if resources within the Department of Economic Development had permitted, are contained in Schedules 21 to 23.

Finally there is a group of minor and technical corrections to the Bill which were identified after the Bill had left the Council, mainly correcting cross-references or making minor improvements in the language and the flow of the Bill.

1505 Mr President, with your approval, I have provided you and Hon. Members and the Clerk with a grouping note which shows how I propose to categorise the amendments made in the other Branch by reference to those seven categories; and with your leave, sir, I will address each of those separately. Thank you.

1510 **The President:** If the Council is content?

**Members:** Agreed.

**The Attorney General:** Thank you, Hon. Members and Mr President.

1515 Group 1: Mr President, whilst the Equality Bill was introduced before the Marriage (Same Sex Couples) Bill last year, the latter made much faster progress than the former. The Marriage Bill was comprehensively transformed by amendments moved by Mr Singer in the other Branch and agreed there, becoming the Marriage and Civil Partnership (Amendment) Act 2016 in consequence. This broadening of scope, bringing with it same-sex marriage and opposite-sex civil partnership, gives rise to the need for the amendments set out at numbers 7, 11, 28, 49, 57, 59 and 60.

1520 I beg to move that the Council do concur with the Keys in those amendments.

**The President:** Mr Coleman.

1525 **Mr Coleman:** I beg to second, sir.

**The President:** I put the motion that the amendments in Group 1, as advised by the learned Attorney, be agreed to. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Mr Attorney.

1530 **The Attorney General:** Thank you, Mr President.

Turning then to Group 2, as I have identified: this group of amendments to which I propose to speak concerns limited liability companies which are unknown to English law. These companies operate in many ways like partnerships, but the participating members are not exposed to the unlimited liability which attaches to partners. As a result of a series of amendments moved by Mr

1535 Hooper in the other Branch, the Bill now makes proper provision for the treatment of members and prospective members of limited liability companies.

Mr President, I beg to move that the Council concur with the Keys in the amendments set out at numbers 9, 11, 13, 14, 15, 18, 21, 52, 53 and 94 in the marshalled list.

1540 **The President:** Mr Coleman.

**Mr Coleman:** I beg to second, sir.

**The President:** I just clarify, Mr Attorney, you said amendments 9, 11 ...

1545

**The Attorney General:** I beg your pardon, 9 and 12.

**The President:** And 12, thank you.

1550 **The Attorney General:** I beg your pardon. Thank you, Mr President.

**The President:** I put the motion that Group 2 of amendments, as advised by Mr Attorney, be agreed to. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Attorney.

1555

**The Attorney General:** Thank you, Mr President.

I now turn to Group 3. Amendment 5 extends the definition of 'sexual orientation' in clause 13 to include a person not being romantically or sexually attracted to persons of either sex. The other amendments reflect recent changes in the approach to gender and gender recognition issues.

1560 Amendments 4, 6, 38, 42, 50, 54, 55, 56 and 66 in the marshalled list all relate to this theme. For the most part they replace references to transsexual people with references to transgender people or make the changes to the Bill which were advocated in the Women and Equalities Committee report.

Amendment 42 inserts new clause 4, which appears in the version of the Bill incorporating the amendments as clause 164. This will enable the Council of Ministers to amend the Bill to replace the existing protected characteristic of gender reassignment with one of gender identity to reflect the new understanding of issues associated with gender identity. I should perhaps explain that it was concluded that to consider all of the issues associated with this topic and include provision about it on the face of the Bill would have caused an unacceptable delay in the Bill's progress. Accordingly,

1570 the compromise solution of including a Henry VIII power to amend the resulting Act, subject to Tynwald's approval, seemed to produce the best result possible in the circumstances.

Accordingly, Mr President, I beg to move that the Council do concur with the Keys in the amendments set out at 4, 5, 6, 38, 42, 50, 54, 55, 56 and 66 in the marshalled list.

1575 **The President:** Mr Coleman.

**Mr Coleman:** I beg to second, sir.

**The President:** Mr Anderson.

1580

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

I am not familiar with the phrase ‘a Henry VIII power’ so maybe the learned Attorney could explain to me what that is all about?

1585 **The President:** Mr Henderson.

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

I was just wondering when the AG is summing up if he could give us another overview of what we are driving at here, with this tranche of clauses?

1590

**The President:** Mr Attorney.

**The Attorney General:** With your permission, Mr President and Hon. Members, I would like to defer to one of my officers, if I may?

1595

**The President:** That is agreed.  
Mr Connell.

**The Attorney General:** An overview, Mr Connell, please.

1600

**Mr Connell:** Yes, indeed. *[Inaudible]* I am going to stand.

William Howard Connell, Legislative Drafter, Attorney General’s Chambers.

One of the problems of ‘Manxlating’ something that is old in English Law is that obviously things change subsequent to the Bill’s passage in England. It is quite clear that in the past six years, the dynamics in relation to gender identity have changed dramatically and the three of us actually, together with Mr Thomas, met with people from the relevant sector of Manx society, who wanted to make it clear that if we simply copied what the English had we would not be reflecting the current state of the understanding of these issues.

1605

To put it politely, the original approach to gender recognition was purely medical; it was whether or not certain surgery had occurred, or not. Clearly, however, there are people who are unsure as to their identity. I mean if one takes the former Bishop of Durham, he described himself as being ‘in that grey area’ where he did not understand about sexuality – which was quite honest in his case – that was Bishop Turnbull. People like that do not wish to be tagged with any particular label and it is to deal with that sort of issue that we have put the power in.

1610

Now, the question is what is a Henry VIII power? As you will know, Henry VIII, that great monarch, was famous for saying, ‘The law is what I say it is.’ It is not quite as bad as that here, it will not be the law as the Attorney says it is, it will be the law as what Tynwald says it is, but it will be executed by a slightly shorter method than would be required in the case of a Bill. Effectively what would happen is, an order would be placed before Tynwald having been approved by Council of Ministers and would then be approved by Tynwald, and it would have the effect of amending the legislation as if it were contained in an Act of Tynwald itself.

1615

Is that sufficient, sir?

**The President:** Thank you, Mr Connell.  
Are Members of Council content?

1625

**Mr Anderson:** Content.

**The President:** Thank you very much for your advice and your assistance.

1630

**Mr Connell:** You are welcome, sir.

**The President:** Mr Attorney.

1635 **The Attorney General:** Sir, I have invited Council to concur with the Keys' amendments as I have read out. That perhaps needs to be put to them.

**The President:** I put Group 3 of amendments, as advised by Mr Attorney. Those in favour that these be agreed to, please say aye; against, no. The ayes have it. The ayes have it.  
Mr Attorney.

1640

**The Attorney General:** Thank you, Mr President.

Turning then to Group 4, which is the two amendments concerning the Isle of Man College. During the course of the passage of the Bill, the Isle of Man College changed its name and in consequence it is now necessary to update the Bill to refer instead to the University College Isle of Man. Amendments 22 and 23 in the marshalled list make the necessary adjustments.

1645

I beg to move that the Council do concur with the Keys in those amendments.

**The President:** Mr Coleman.

1650

**Mr Coleman:** I beg to second, sir.

**The President:** I put the motion that the Group 4 amendments, with the Keys' amendments, be agreed to. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Mr Attorney.

1655

**The Attorney General:** Thank you, Mr President.

I shall now deal briefly with two amendments, number 24 and 61 in the marshalled list, which were moved in the other Branch in order to secure parity of treatment between the different educational sectors on the Island. The first is simply a paving amendment inserting a new clause off which the new Schedule 12, contained in the second, is to hang. The Schedule makes provision for accessibility plans for disabled students in the higher and further education sector.

1660

Mr President, I beg to move that Council do concur with the Keys in those amendments.

**The President:** Mr Coleman.

1665

**Mr Coleman:** I beg to second, sir.

**The President:** I put the motion that Group 5 of amendments, as advised by Mr Attorney, be agreed to. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Mr Attorney.

1670

**The Attorney General:** Thank you, Mr President.

We now come to the largest group of amendments, which relates to a series of adjustments to the Island's employment law and includes some policy changes.

1675

Amendments 16 and 17 remove restrictions on DED's powers to make regulations requiring the publication of gender pay gap information. It was pointed out in the debate in the other Branch that the restriction to private sector employers with over 250 employees ruled out the vast majority of the Island's employers. The power to make provision for different cases in regulations which applies automatically to any regulation-making power on the Island by virtue of section 26 of the Interpretation Act 1976, the substance of which is re-enacted as section 88 of the Interpretation Act 2015, already provides the necessary flexibility to avoid burdensome requirements on small employers.

1680

Amendment 33 gives DED the power to amend the time limits in Division 2 of Part 9 of the Bill, which concerns enforcement of rights before the Employment and Equality Tribunal. The background to this is that the Bill provides in some cases for substantially shorter periods in respect

1685

of which arrears of pay in equal pay cases may be claimed than the comparable periods in the UK. In the event, therefore, that experience of their operation here proves that those periods are too short, DED will be able to adjust them.

1690 Amendment 43 replaces clause 162 in the Bill which was sent from Council. It inserts new clause 5 in order to reflect the changing relationship of the Island with the European Union and to simplify the process for changes to keep our equality legislation in step with that of the UK, and to the extent that it is appropriate to do so, the EU. As with the majority of orders and regulations which may be made under the Bill, statutory documents made under these provisions require the approval of Tynwald to come into operation.

1695 We now come to a series of amendments to Schedule 21, which contains what I described on an earlier occasion as ‘a Bill within a Bill’.

Amendment 67 replaces the text of the existing paragraph 6 of the Schedule as a result of a change of policy on the part of DED in respect of the treatment of holiday pay.

1700 Amendment 68 makes the method of calculating the amount of a basic award in an unfair dismissal case simpler to understand. Amendment 69 amends the maximum amount of the compensatory award in such a case: the amount presently shown in the Bill has been overtaken by the Employment (Maximum Amount of Awards) Order 2016 which was approved in Tynwald last July.

1705 Amendment 70 makes void any term in a zero-hours contract which would prevent the worker from working for, or providing services to, a third party.

Amendments 71 and 72 prevent a potentially adverse effect on the rights of those manual workers who became employees of the Public Services Commission by virtue of article 4(3) of the Public Services Commission (Classes of Employees) Order 2015.

1710 Amendments 73 and 75 are consequential upon the new section 11A which is inserted into the Redundancy Payments Act 1990 by amendment 79. Amendment 73 amends the meaning of ‘successor’ in relation to the employer of an employee, in order to take account of the new section 11A which deals with service provision change; while amendment 75 applies the rule that a service provision change does not break continuity of service when computing the period of employment of an employee who transfers from one service provider to another in consequence of such a change.

1715 Amendment 82 makes an amendment to Schedule 5 of the 1990 Act which is also consequential on the insertion of new section 11A.

Amendment 78 makes another change required because *maxima* have increased since the Bill began its passage.

1720 Amendment 81 simplifies the way in which the computation of the amount of a redundancy payment is expressed.

Amendments 83 to 88 all relate to changes made to the Control of Employment Act 2014 to give DED greater flexibility in the operation of the work permit regime. It is worth emphasising that any potential use of the new powers conferred by the amendments will require Tynwald approval before it comes into operation.

1725 We then come to a small number of amendments to Schedule 23, which deals with repeals. Amendment 90 repeals the Employment Act 1954, while amendments 91 and 92 repeal provisions in the Employment Act 2006. Neither the 1954 Act nor the provisions of the 2006 Act are required.

Mr President, I beg to move that Council do concur with the Keys in the amendments which I have just enumerated.

1730 **The President:** Mr Coleman.

**Mr Coleman:** I beg to second, sir.

1735 **The President:** Mr Henderson.

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

1740 I would just like to ask the learned Attorney two points. One was right at the beginning of his presentation to this section of clauses where we are looking at what information can be supplied – and employers of over 250 and above – and there was a mention of exemption as it might be too onerous on employers below that.

1745 I was just wondering if he could recap on the information that would be required, or what we are discussing there. If I have got it right, why would employers just by virtue of being smaller than 250 employees be exempt? Would that in itself have any impact on trying to be meeting the ethos of this Bill in all its senses? Would that not go against that? If he could clarify on that.

1750 Then we have the issue of awards and backdating. He made reference to what the UK do and how we were going to do it. If he could just clarify the situation of where we are up to because I was most interested that we were having a cut-off point. Is that still the same now with the introduction of this clause where retrospective payments can only go back so far?

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President.

1755 With your leave and with that of Council Members, if I could ask the officer to help us with this, please?

**The President:** Is that agreed? (**Members:** Agreed.)  
Mr Connell.

1760 **The Attorney General:** Mr Connell again.

**Mr Connell:** Mr President, with your leave, I will deal with the first point which deals with the 250 employees but my colleague, Mr Clague, is much better placed than I am to deal with the two-year/six-year dialogue and he will deal with that.

1765 Mr President, the reason for removing the 250 limit is because in the UK, of course, there are a large number of employers who have more than 250 employees, and it was therefore thought in the UK perfectly sensible to use that as a threshold for introducing the requirements as to gender pay information.

1770 However, if you apply that rule on the Island basically you are left with about three employers, I suspect – apart from Government you would probably catch the Steam Packet, Tesco and M&S, and probably nobody else. That, frankly, would not give you any useful information.

1775 There is another reason, rather boring and rather technical for removing the requirement: unlike the UK where you have to specify whether regulations can make different provision for different cases and whether you can include exceptions, that is not the case on the Island. Our Interpretation Act always provides that a power to make regulations or orders includes a power to make different provision for different cases and to make exceptions. So we can in fact approach the whole issue much more flexibly. We could put in a requirement which was equivalent to the 250 employees threshold or we could vary it according to circumstances as the experience developed. That is one of the reasons for removing the provision, sir.

1780 **The President:** Thank you.  
Mr Henderson.

1785 **Mr Henderson:** If I could ask Mr Connell a further question? So, just for my clarification, what we are doing here is catching more appropriate businesses, basically –

**Mr Connell:** We are trying to do so, sir, yes.

**Mr Henderson:** Excellent, thank you.

1790 **The President:** Thank you, Mr Connell.  
Mr Clague, please. Thank you.

**Mr Clague:** Thank you.

Jonathan Clague, Legislation Officer, Department of Economic Development.

1795 Under the Sex Discrimination Act 2000, in equal pay cases where somebody wins an equal pay case they are entitled to arrears of up to two years at present. The Sex Discrimination Act covers two scenarios: where two workers are doing the same work, and where they are doing what is called 'work rated as equivalent' where there has been a job evaluation study. So, if a woman proves that her work is of equal pay to that of a comparator, she could get up to two years' arrears at the moment.

1800 The Equality Bill goes further than the Sex Discrimination Act in that it introduces a third limb to the equal pay provisions. It provides for work of 'equal value' as well as 'like work' and 'work rated as equivalent'. The Bill, as it was originally drafted, allowed for two years' arrears to be paid where the complainant was successful. In the UK six years' arrears can be payable – that was a result of the European decision.

1805 The intention of the Department was really to modernise the legislation without making it too onerous on employers and so we originally provided for the two-year period – the same as in the Sex Discrimination Act. When the Bill was in the other place, Mr Hooper wanted the arrears period to go up to six years originally, but then he decided that an enabling power would be sufficient so that in the future we could alter the length of period if Tynwald approved that. So it is only an enabling power and it does not actually alter anything in that no payment will be retrospective before the Bill comes into force.

1815 **The President:** Thank you, Mr Clague.  
Mr Henderson.

**Mr Henderson:** I would like to thank Mr Clague for that clarification, Eaghtyrane. Perfect, thank you.

1820 **The President:** Thank you.  
Mr Attorney.

**The Attorney General:** Yes, Mr President. I have moved the amendments set out in Group 6, if they could be put.

1825 **The President:** I put the motion that the amendments in Group 6 be agreed to. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Mr Attorney.

**The Attorney General:** Thank you, Mr President.

1830 I now turn to the remaining amendments on the Order Paper which are all minor, technical or are spelling corrections which are needed to improve the operation of the Bill.

I beg to move that the Council do concur with the remaining amendments, that is to say numbers 1, 2, 3, 8, 10, 19, 20, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 39, 40, 41, 44, 45, 46, 47, 48, 51, 58, 62, 63, 64, 65, 74, 76, 77, 80, 89, and 93.

1835 **The President:** Mr Coleman.

**Mr Coleman:** I beg to second, sir.

1840 **The President:** I put the motion that the amendments in Group 7, as stated by Mr Attorney, be agreed to. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That concludes Item 3, consideration of Keys' amendments to the Equality Bill.

**4. Insurance (Amendment) Bill 2017 –  
Third Reading approved**

Mr Henderson to move:

*That the Insurance (Amendment) Bill 2017 be read a third time and do pass.*

1845 **The President:** We turn now to Item 4 on our Order Paper: Insurance (Amendment) Bill. I call on the mover, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
Could I divest myself of my jacket, Eaghtyrane?

1850 **The President:** Yes, any Hon. Member that wishes to do so, please do.

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

As described in the clauses stages, the Insurance (Amendment) Bill 2017 amends the Insurance Act 2008, which provides the necessary powers to enable regulation of insurance business by the Isle of Man Financial Services Authority.

1855 In moving the Third Reading of this Bill I would like to thank Hon. Members for their support in taking the legislation thus far. The amendments proposed by the Bill provide for the implementation of an enhanced regulatory regime which reflects relevant international standards in insurance regulation while taking into account the nature of the Island's insurance industry; clarify and update existing provisions where necessary; enable the Authority to be more flexible and responsive to the need for change; enhance the Authority's power to deal with fit and proper matters and also provide consistency in this respect with the Financial Services Act 2008; reduce the administrative burden in certain areas and address any anomalies.

1860 These changes are important as they will help ensure that the Island has a robust and up to date insurance regulatory framework, which will in turn help maintain the Island's reputation as a well-regulated and responsible jurisdiction.

1865 Eaghtyrane, I would just like to, before I close, thank my seconder on that occasion, Mr Coleman, and I would also like to thank officers for their input in assisting thus far.

With that, Eaghtyrane, I think I have outlined the Bill in detail through the clauses stages and without any further ado I wish to move the Third Reading, sir.

1870 **The President:** Mr Corkish.

**Mr Corkish:** I beg to second, Mr President.

1875 **The President:** The question is that the Insurance (Amendment) Bill be read for the third time. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.

**5. Fraud Bill 2017 –  
Second Reading approved**

Mr Coleman to move:

*That the Fraud Bill 2017 be read a second time.*

**The President:** Item 5: Fraud Bill, Second Reading.

1880 I call on the mover, Mr Coleman.

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

1885 Mr President, in my First Reading speech on 14th March I set out the context and background to the Bill and gave an overview of its contents. In moving the Second Reading of the Fraud Bill this afternoon, I propose in short form to reinforce why the Fraud Bill is considered to be an appropriate and timely piece of legislation.

1890 The purpose of the Fraud Bill is to implement a recommendation made by the Public Accounts Committee in relation to the case of Dr Hoehmann; call fraud by its name and tackle it in specific legislation rather than via the Theft Act 1981; enact legislation that is comparable to legislation in the UK and Guernsey that will enhance the Island's reputation as a well-regulated jurisdiction where it is good to do business.

Mr President, I beg to move that the Fraud Bill 2017 be read a second time.

**The President:** Mr Crookall.

1895

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

I beg to second and reserve my remarks.

**The President:** Hon. Members, the motion is that the Fraud Bill be read for the second time. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

**Fraud Bill 2017 –  
Clauses considered**

**The President:** We turn now to the clauses stage, Mr Coleman.

1900

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

Clauses 1 and 2. Mr President, Part 1 is introductory and I propose to move clauses 1 and 2 together, with your permission.

1905 Clause 1 gives the short title as the Fraud Act 2017; and clause 2 empowers the Department to bring the Act in either in whole or in part by Appointed Day Order.

In the event the Bill is passed by the Branches it would be the intention of the Department to bring the entire Act into operation within six months of Royal Assent to the Act being announced to Tynwald.

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

1910

**The President:** Mr Henderson.

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

I beg to second, sir.

1915

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

Clause 3, sir.

1920 **Mr Coleman:** Thank you, Mr President.

Part 2 consists of clauses 3 to 11 and sets out the main provisions relating to fraud. I will move and speak to each clause individually.

Clause 3 is fundamental because it creates the offence of fraud and states that a person is guilty of fraud if the person is in breach of any of the next three sections.

1925 Subsection (3) sets out the maximum penalty for persons convicted of any of the offences set out in sections 4, 5 and 6.

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

**The President:** Mr Henderson.

1930

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

I beg to second.

**The President:** I put the motion: clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1935

Clause 4.

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

Mr President, clause 4 sets out how fraud may be committed by false representation.

1940

A representation is false if it is untrue or misleading and the person making it knows that it is or might be untrue or misleading. In making the false representation, the person must be dishonest and intend to either make a gain for himself or another person, or intends that another person suffers loss or is exposed to the risk of loss.

The offence is also committed if the false representation is made or given in any form to any electronic device.

1945

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

**The President:** Mr Henderson.

1950

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

I beg to second, sir.

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

1955

Clause 5.

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

Mr President, clause 5 provides that fraud is committed where a person dishonestly fails to disclose information to another person which the person is under a legal duty to disclose, with the intention of gain or loss as indicated in clause 4.

1960

Mr President, I beg to move that clause 5 do stand part of the Bill.

**The President:** Mr Henderson.

1965

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

I beg to second, sir.

**The President:** I put the motion: clause 5. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1970 Clause 6.

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

Clause 6 is about the offence of fraud by abuse of position. The offence is set out in subsection (1) and consists of three elements which the prosecution must show.

1975 Firstly the accused must occupy or have occupied a position which carries with it the expectation the accused would have safeguarded or at the very least not acted against the financial interests of another person. This person can include company, partnership, charity, etc. Secondly, the accused must have dishonestly abused that position; and thirdly, the accused must have intended by virtue of the abuse of that position on the one hand to make gain for himself or herself or indeed any other  
1980 person, or on the other hand to cause loss to another or at least expose that other person to a risk of loss.

What subsection (2) does is to clarify that the accused may be regarded as having committed the offence of abuse of position, set out in subsection (1), just as effectively by what the accused did not do or say – for example, keeping something back when giving financial advice – as by what the  
1985 accused did do or say.

Given the latter two of the three elements of the offence outlined in subsection (1), both dishonesty and intent must be proved and therefore it is self-evident any omission will have been deliberate.

Dishonesty is a matter for the court to determine on the facts of a particular case. It is for the  
1990 prosecution to prove dishonesty and intent. Once the prosecution has proved those two points, it will have proved the offence of abuse of position was committed either by what was done or what was not done or said and that should have been.

The act of omission: I will reaffirm what was said in another place. Where Manx case law does not exist in the matter, the prosecutors and other parties in a case before a court will look to relevant case law elsewhere for assistance. In this instance, the UK case of *R v Ghosh* is relevant and will be highly persuasive in determining whether a person was dishonest.  
1995

The judgment in that case set a two-stage test. The first question is whether a defendant's behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people. If answered positively, the second question is whether the defendant was aware that his or her conduct was dishonest and will be regarded as dishonest by reasonable and honest people.  
2000

I would reaffirm that if the second part of the test is proved, then intent is proved equally.

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

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

2005 I beg to second, sir.

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

2010 Clause 7.

**Mr Coleman:** Mr President, clause 7 defines references to gain and loss in clauses 4, 5 and 6.

Subsection (2) defines 'gain' in terms of gain in money or other property, whether temporary or permanent. 'Gain' includes keeping what one has as well as getting what one does not have.

Conversely, 'loss' includes not getting what one might get as well as parting with what one has.  
2015 *(Laughter)* **(A Member:** Well said!)

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

**The President:** Mr Henderson.

2020 **Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second, sir.

**The President:** I put the motion: clause 7. Those in favour, say aye; against, no. The ayes have it.  
The ayes have it.

2025 Clause 8.

**Mr Coleman:** Mr President, clause 8 provides that a person is guilty of an offence if the person has in his or her possession or under his or her control any article for use in connection with fraud.

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

2030

**The President:** Mr Henderson.

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

I beg to second, sir.

2035

**The President:** I put clause 8. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

2040 **Mr Coleman:** Mr President, clause 9 sets out the offence and penalties for making, adapting, supplying or offering to supply any article knowing or intending that it will be used in connection with fraud.

I beg to move that clause 9 do stand part of the Bill.

2045 **The President:** Mr Henderson.

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

I beg to second, sir.

2050 **The President:** I put clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

2055 **Mr Coleman:** Mr President, clause 10 clarifies that references to articles in clauses 8 and 9 include any program or data held in electronic form.

For the purposes of section 1(7)(b) of the Police Powers and Procedures Act 1988: power of a constable to stop and search persons, vehicles, etc., an article includes any article for use in connection with fraud.

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

2060

**The President:** Mr Henderson.

**Mr Henderson:** I beg to second, sir.

2065 **The President:** I put clause 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

2070 **Mr Coleman:** Mr President, clause 11 makes it an offence to knowingly be a party to the carrying on of a business with the intention of defrauding creditors or for any other fraudulent purpose.

'Fraudulent purpose' has the same meaning as in section 259 of the Companies Act 1931.

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

**The President:** Mr Henderson.

2075

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second.

2080

**The President:** I put clause 11. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 12.

**Mr Coleman:** Mr President, Part 3 of the Bill consists only of clause 12, which makes it an offence to obtain services dishonestly, and defines the particulars of the offence in subsection (2).

2085

Dishonesty and how it is proved or tested was, as Hon. Members will recall, discussed in connection with clause 6. My hon. colleague, Mr Turner, referred during First Reading to the issue of individuals who deliberately obtain goods when they have no means to pay for them.

2090

As with all matters involving policing, the investigation of crime is an operational matter for the Constabulary. I am informed that, if a matter has already been investigated or if it is found to be a civil rather than a criminal matter, it may be that the Police determine no investigation will be made.

2095

I would comment that in terms of loss suffered by an individual as a result of services obtained by another through deception, it must be borne in mind a criminal prosecution primarily is about establishing guilt or innocence and, in the case of the former, handing down a penalty. Whether or not the court makes a compensation order or a costs order to the benefit of the victim of the crime, a person could still find themselves needing to take civil action to recover their outlay or loss from the offender. What this provision does is to enable justice to be sought through a criminal prosecution.

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

2100

**The President:** Mr Henderson.

**Mr Henderson:** I beg to second, sir.

2105

**The President:** Mr Turner.

**Mr Turner:** Yes, Mr President. Could I thank the mover for clarifying that.

2110

I think it is quite important because certainly, having spoken to a number of the Coroners over the years, they were saying that they have had individuals on their books who seem to have a string of debts behind them; and whilst I appreciate that this is about prosecuting them for the act of obtaining those services dishonestly rather than the debt recovery, I think it sends out a clear message to those people who are owed money that the individuals can be dealt with and prosecuted.

2115

I would hope, though, that in operating this provision the Police do, when people make complaints, give proper consideration to investigating them and not just fob people off as, 'It is a civil matter', which certainly irritates a lot of people. There is no doubt about it that there are people obtaining services and goods and not paying for them time and time again and getting away with it because there is no clear way of dealing with it.

I hope this provision comes in and that those people are dealt with in due course.

2120

**The President:** Mr Coleman.

**Mr Coleman:** I fully appreciate the Hon. Member for Council, Mr Turner's comments and I would agree with him wholeheartedly that there are people out there who are serially defrauding people

2125 and seem to be getting away with it – basically, the ones I am aware of are quite wealthy people that are doing it, not poor people, so I fully concur with Mr Turner.

**The President:** I put clause 12. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

2130

**Mr Coleman:** Mr President, Part 4 of the Bill consists of clauses 13, 14 and 15 and deals with jurisdiction inside or outside the Island.

2135 Clause 13 concerns conspiracy to commit fraud outside the Island. There are three ways a person may be guilty of this offence. Firstly, if a party to the agreement constituting the conspiracy, or the party's agent, does anything in the Island in relation to this matter before the agreement's formation. Secondly, a party to the agreement relating to the conspiracy became a party on the Island either in person or through an agent. Thirdly, a party to the agreement, or a party's agent, did or omitted to do anything in the Island in connection with the conspiracy.

2140 This provision applies where the conspiracy would otherwise be triable in the Island but for the fact the parties to the offence had not intended it to take place in the Island.

Subsection (3) clarifies that this provision does not affect the more general provisions relating to conspiracy set out in section 330 of the Criminal Code 1872.

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

2145 **The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second.

2150 **The President:** I put clause 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

2155 **Mr Coleman:** Mr President, clause 14 provides that if a person within the Island aids, abets, counsels or procures the commission by another person of an offence in another jurisdiction that would be an offence under this Act if committed in the Island, then the person will be liable on conviction to the same penalty as applies under this Act.

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

2160 **The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second, sir.

2165 **The President:** I put clause 14. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

2170 **Mr Coleman:** Mr President, clause 15 provides that any action taken by a resident outside the Island that would, if it took place on the Island, be an offence under this Act would constitute an offence under this Act. Proceedings may be taken in the Island as if the offence had been committed in the Island. It does not matter if some or all parts of the offence took place in the Island or elsewhere.

2175 Subsection (4)(b) defines 'resident' as an individual who is ordinarily resident on the Island, or a body corporate or partnership that is incorporated or formed under the laws of the Island.

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

**The President:** Mr Henderson.

2180 **Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second, sir.

**The President:** I put clause 15. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2185 Clause 16.

**Mr Coleman:** Mr President, the last part of the Bill, Part 5, is supplementary and consists of clauses 16, 17 and 18.

2190 Clause 16 is about evidence. Subsection (1) says that a person is not excused from answering any question or complying with any order made in proceedings relating to property on the grounds that he or she may incriminate his or her spouse or civil partner of an offence under this Act or a related offence.

2195 Subsection (2) provides that in proceedings under this or a related Act any statement or admission made by the person in answering a question or complying with an order is not admissible in evidence against the person or his or her spouse or civil partner. This does not apply where they married or became civil partners after the making of the statement or admission.

Subsection (3) defines proceedings relating to property; and subsection (4) explains that a related offence is any other offence involving conspiracy to defraud and any form of fraudulent conduct or purpose.

2200 Mr President, I beg to move that clause 16 do stand part of the Bill.

**The President:** Mr Henderson.

2205 **Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second, sir.

**The President:** I put clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2210 Clause 17.

**Mr Coleman:** Mr President, clause 17 sets out the liability for an offence under the Fraud Act of bodies corporate and says that the officer as well as the body corporate is liable for an offence.

Subsection (3) defines 'officer' in sufficiently broad terms so as to catch any and all who are, legally speaking, to be held responsible for the affairs of the body corporate.

2215 Mr President, I beg to move that clause 17 do stand part of the Bill.

**The President:** Mr Henderson.

2220 **Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second, sir.

**The President:** I put clause 17. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2225 Clause 18.

**Mr Coleman:** Mr President, clause 18 introduces Schedules 1, 2 and 3.

Schedule 1 makes consequential amendments to the Theft Act 1981, the Criminal Law Act 1981, the Limitation Act 1984 and the Police Powers and Procedures Act 1998.

2230 Schedule 2 repeals certain provisions of the Theft Act 1981; and Schedule 3 contains some transitional and saving provisions.

Mr President, I beg to move that clause 18 and Schedules 1, 2 and 3 do stand part of the Bill.

**The President:** Mr Henderson.

2235 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second, sir.

**The President:** I put clause 18, with Schedules 1, 2 and 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2240 Thank you, Hon. Members. That concludes the clauses stage of the Fraud Bill.

## 6. Income Tax Legislation (Amendment) Bill 2017 – First Reading approved

Mr Henderson to move:

*That the Income Tax Legislation (Amendment) Bill 2017 be read a first time.*

**The President:** We turn to the final Item: the Income Tax Legislation (Amendment) Bill.  
Mr Henderson.

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

2245 This Bill confirms four Temporary Taxation Orders, and amends the Income Tax (Instalment Payments) Act 1974, the Income Tax (Modified ITIP) Regulations 1987 and the Income Tax Act 1970. It modifies the interpretation of certain Social Security legislation and makes one amendment to the Tribunals Act 2006. The Bill itself contains 17 clauses and is divided into five Parts.

2250 The four Temporary Taxation Orders confirmed by the Bill, deal with amending the application of a temporary tax exemption; the tax treatment of a person with no tax liability; the tax treatment of trivial commutation lump sum pension payments; the introduction of a penalty to help deter the avoidance or reduction of a person's tax liability; adding a restriction to the payment of a personal allowance credit; and enabling closer working of Treasury Divisions.

2255 The Bill amends the Income Tax (Instalment Payments) Act 1974 by enabling regulations made under it to provide for a new offence. As a result of the above amendment, it goes on to make a number of changes to the Income Tax (Modified ITIP) Regulations 1987 to bring the Income Tax treatment of an employer ITIP debt into line with the treatment for a similar National Insurance debt.

2260 The Bill also makes a number of amendments to the Income Tax Act 1970. These amend one of the non-resident requirements for Isle of Man incorporated companies; introduce a requirement to pay any outstanding amount when an appeal against an assessment is notified to the Income Tax Commissioners, unless the commissioners decide otherwise; introduce changes requested by the Income Tax Commissioners to their composition and proceedings; enable the Lieutenant Governor or the Crown to send a special birthday message to an Island resident in recognition of them  
2265 reaching a significant age; and enable the Assessor and the Department of Education and Children to exchange certain information.

The Bill goes on to modify the interpretation of certain provisions in Social Security legislation in order to give effect to changes it makes to the Income Tax (Modified ITIP) Regulations 1987. Finally,

2270 it makes one amendment to the Tribunals Act 2006 as a result of changes it makes to the Income Tax Commissioners.

Eaghtyrane, I beg to move the First Reading.

**The President:** Mr Corkish.

2275 **Mr Corkish:** I beg to second, Mr President.

**The President:** I put the motion that the Income Tax Legislation (Amendment) Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2280 Thank you, Hon. Members. That concludes the business before Council this morning. Council will now stand adjourned until our next sitting which will take place on 4th April.

*The Council adjourned at 1.01 p.m.*