

HOUSE OF KEYS OFFICIAL REPORT

RECORTYS OIKOIL Y CHIARE AS FEED

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 30th October 2018

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Present:

The Speaker (Hon. J P Watterson) (Rushen);
The Chief Minister (Hon. R H Quayle) (Middle);

Mr J R Moorhouse and Hon. G D Cregeen (Arbory, Castletown and Malew);
Hon. A L Cannan and Mr T S Baker (Ayre and Michael);
Hon. C C Thomas and Mrs C A Corlett (Douglas Central);
Miss C L Bettison and Mr C R Robertshaw (Douglas East);
Hon. D J Ashford and Mr G R Peake (Douglas North);
Mrs K J Beecroft (Douglas South);
Mr M J Perkins and Mrs D H P Caine (Garff);
Hon. R K Harmer and Hon. G G Boot (Glenfaba and Peel);
Mr W C Shimmins (Middle);
Mr R E Callister and Ms J M Edge (Onchan);
Dr A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Secretary of the House.

Business transacted

Leave of absence granted	45
1. Questions for Oral Answer	45
1.12. Chief Secretary – Powers, functions and responsibilities; appointment and author to instruct	
Procedural – Circulation of lengthy Answers	48
1.3. Chief Secretary – UK tribunal communication	48
1.4. Dormant accounts – Amount held; and banking licence termination	49
1.5. Manx National Heritage sites – Security reviews	51
1.6. Isle of Man Food & Drink Festival – Plastics policy progress	52
Procedural – Use of props	53
2. Questions for Written Answer	54
2.1. Steam Packet Valuation – Low sulphur fuel cost increases included	54
2.2. Government workers – Numbers and employment costs	54
2.3. Planning breaches – Reports, outcomes and enforcement caseload	55
2.4. Planning breaches – Notification to individuals	55
2.5. Planning breaches – Outstanding, identified in 2018	56
2.6. Planning breaches – Still outstanding	57
2.7. Planning breaches – Timescales for visits	58
2.8. Log burners – Public health advice	58
2.9. Motor accidents – Old and New Castletown Roads	59
2.10. Prince's Half-Tide Dock – Negotiations	
Order of the Day	60
3. Consideration of Council Amendments	60
3.1 Abortion Reform Bill 2018 – Council amendments agreed as amended	60
The House adjourned at 10.48 a.m.	66

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House of Keys

The House met at 10.00 a.m.

[MR SPEAKER in the Chair]

The Speaker: Moghrey mie, good morning, Hon. Members.

Members: Good morning, Mr Speaker.

The Speaker: I call on the Chaplain to lead us in prayer.

PRAYERS

The Chaplain of the House

Leave of absence granted

The Speaker: Hon. Members, I have given leave this morning to Mr Malarkey, who has standing leave at the moment.

1. Questions for Oral Answer

CHIEF MINISTER

1.1.-2. Chief Secretary – Powers, functions and responsibilities; appointment and authority to instruct

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Chief Minister:

- 1. What the powers, functions and responsibilities of the Chief Secretary were, when the office was established in 1988 and since then what changes to the powers, functions and responsibilities; if any, have been made?
- 2. What the process is for the appointment of the Chief Secretary; who makes the final decision on the appointment; and who has the authority to give instructions to the Chief Secretary?

The Speaker: We turn to Questions for Oral Answer and, as per my email, Questions 1 and 2 will be grouped together, so if I could ask Mrs Beecroft to read Questions 1 and 2, please.

Mrs Beecroft: Thank you, Mr Speaker.

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I would like to ask the Chief Minister the following Questions.

Question 1: what the powers, functions and responsibilities of the Chief Secretary were when the office was established in 1988, and since then what changes to the powers, functions and responsibilities, if any, have been made?

Question 2: what the process is for the appointment of the Chief Secretary, who makes the final decision on the appointment and who has the authority to give instructions to the Chief Secretary?

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The Speaker: I call on the Chief Minister to reply.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

If I may start ... Further to my letter sent to all Keys Members last week, I would like to take this opportunity again to apologise for the comments that I made in error regarding Mrs Beecroft's attendance at the EU Trade Bill briefing.

Moving on, I would also like to apologise for the length of my response in answering Questions 1 and 2, but I feel it may be helpful to Hon. Members if I give some context in my reply.

The Chief Secretary is a civil servant and is appointed in his role in accordance with section 7(5) of the Public Services Commission Act 2015, which states:

Where a person is to be appointed as the Chief Secretary, the appointment may not have effect without the concurrence of the Chief Minister who must, before giving such concurrence, consult the Governor.

The current post-holder was appointed following advertisement and open recruitment to the role, and I understand that this followed interview by a panel of three, chaired by the then Chief Minister.

The creation of the post of Chief Secretary was a recommendation of the Poole Report of 1988, which, at the invitation of the then Isle of Man Civil Service Commission, reviewed the structure of the senior Civil Service in the light of the introduction of ministerial Government in 1987. Prior to the Poole Report, there were two officers who provided services to the Governor, the Chief Minister and the then Executive Council, now the Council of Ministers. There was a small Chief Minister's Office, which assisted the Chief Minister and the larger Government Office headed by the Chief Secretary, which provided a service to both the Governor and Executive Council.

The Poole Report recommended that the functions of Government Office and those of the Chief Minister's Office be combined under the new post of Chief Secretary. The powers, functions and responsibilities of the Chief Secretary when the office was established in 1988 were divided into four main areas of responsibility. These were: (1) adviser to His Excellency the Lieutenant-Governor; (2) chief adviser to the Chief Minister; (3) head of the Isle of Man Civil Service; and (4) the strategic direction of the Chief Secretary's Office, which was to replace Government Office.

Ten years later, in 1998, the Council of Ministers' report on the constitutional status and responsibilities of HM Attorney General, the Chief Secretary and the Chief Financial Officer examined these roles in detail. In respect of the role of the Chief Secretary the report looked at two options of providing a service for the Chief Minister, the Council of Ministers and the Lieutenant-Governor.

The report recommended the retention of the status quo but also stated the need for a change of job description for the Chief Secretary to clearly refine and focus the differing requirements since the post of Chief Secretary was created in 1988, to which there had been many changes in that time.

First and most important, the functions of the Governor had been reduced as more and more responsibilities had been assumed by the Isle of Man Government. These transferred functions

were now discharged either by the Council of Ministers, the Governor in Council or directly by Departments of Government.

Secondly, it had become the practice for all communications, whether formal or not, from Her Majesty's Government to the Isle of Man to come from the Home Office, which at that time was responsible for the Crown Dependencies. This communication would be transmitted to the Isle of Man authorities via the Chief Secretary. This arrangement had been established with the Home Office as the channel of communication at Civil Service level, as it was simply not possible, given the volume of work involved, for the Home Office Minister to deal personally with all of the business which is currently conducted between the Isle of Man and the Home Office. Therefore, the Home Office Minister to Chief Minister communication had to be ruled out for the day-to-day conduct of business.

The job description of the Chief Secretary dating from 1988 was updated. The main purpose of the update was to provide a more comprehensive statement of the role but also to make explicit the fact that the Chief Secretary's primary purposes were to provide support and advice to the Chief Minister, the Council of Ministers and His Excellency the Lieutenant-Governor in his role in leading the exercise of the Crown functions and duties within the Island. Therefore, the Chief Secretary is accountable to more than one person or entity, but in practice the main person with authority to give instructions to the Chief Secretary would be the Chief Minister.

In 2004 the workload of the staff of the Chief Secretary's Office was reviewed. There were no principal changes to the role of the Chief Secretary, although the role of the Director of External Relations was established to support the ever-growing External Relations portfolio arising out of the Isle of Man's aim of evolving constitutionally.

In 2010 and again in 2014 further reviews were undertaken and job descriptions reexamined. While some updates were made, the primary purpose of the role of Chief Secretary did not alter and has not had any radical alteration since, although the volume and complexity of the workload of this role continues to increase.

I have provided Members with a copy of the current job description for the Chief Secretary.

The Speaker: Supplementary question, Mrs Beecroft.

Mrs Beecroft: Yes, thank you, Mr Speaker.

May I first, before I move on to my questions, thank the Chief Minister for clarifying that he actually had made a mistake and he has apologised to the House. I am slightly disappointed that I did not receive a personal apology from him, but I hope that will be the end of the matter. I am going to leave it there, anyway.

With regard to my supplementary question, could I ask the Chief Minister ... It is about who can give instructions to the Chief Secretary, because in his Answer I think he said there was more than one person but the primary person was the Chief Minister. Could he confirm whether or not the Home Office can still give instructions to the Chief Secretary?

The Speaker: Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

I am just trying to clear my head. What I think the Hon. Member is trying to say is does the Home Office give instruction to the Chief Secretary. The only person who gives instruction to the Chief Secretary is myself as Chief Minister, as I mentioned before, or working with the Council of Ministers or the Governor. Maybe if the Hon. Member could clarify.

The Chief Secretary deals with the Home Office in negotiations but does not take instruction from them.

The Speaker: Supplementary question, Mrs Beecroft.

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Mrs Beecroft: Thank you, Mr Speaker.

I am quite content to clarify why I am raising that query, because certainly in 1998 the Chief Secretary was taking instruction from the Home Office. It is in *Hansard*, 'In 1998 when the Chief Secretary at the time was acting on behalf of the Governor and the Home Office', and I am wondering what changes have been made to correct that constitutional anomaly since then – or does it still exist; and if it does exist, what actions the Chief Minister is going to take?

The Speaker: Chief Minister to reply.

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The Chief Minister: Thank you, Mr Speaker.

I have not got the exact information with me. I am more than happy to circulate a letter to all Members with that information.

Procedural – Circulation of lengthy Answers

The Speaker: Before moving on to Question 3, I would just remind Ministers who intend to give long Answers of the provisions of 3.6(2)(b) about lengthy Answers and circulating them in advance for the benefit of Members.

Mrs Beecroft and another Member: Hear, hear.

1.3. Chief Secretary – UK tribunal communication

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Chief Minister:

How many times since September 2016 the Chief Secretary has communicated with a Tribunal in the UK or authorised such communication by an officer?

The Speaker: Question 3 and I call on the Hon. Member for Douglas South, Mrs Beecroft.

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Mrs Beecroft: Thank you, Mr Speaker.

Could I ask the Chief Minister how many times since September 2016 the Chief Secretary has communicated with a tribunal in the UK or authorised such communication by an officer?

The Speaker: The Chief Minister to reply.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker. Taking your comment on brevity, I will be brief.

The Chief Secretary has not communicated or authorised such communications by an officer with any tribunal in the UK since September 2016.

The Speaker: Supplementary question, Mrs Beecroft.

Mrs Beecroft: Yes, thank you, Mr Speaker.

I am a bit confused because the letter that was sent, and was referred to in a previous Question, he said had been authorised by the Chief Secretary, and I am wondering if he could just clarify that?

And when he is saying it is basic procedure, really, the communication in respect of the appeal is part of normal business as usual, if it has not happened I am wondering how it is classed as normal business as usual?

The Speaker: Chief Minister to reply.

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The Chief Minister: Thank you, Mr Speaker.

The Chief Secretary has not, nor has he authorised officers, as I have said earlier, to communicate with the UK Information Tribunal. There has been communication on issues regarding an appeal made to the UK Information Tribunal and their subsequent decision regarding the release of information held by the UK Home Office under the UK Freedom of Information Act. However, communication has been with the UK government and as part of frequent communications on a number of issues.

The Speaker: Supplementary question, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

Could I ask the Chief Minister to clarify whether or not the UK government asked for this letter to be written?

The Speaker: Chief Minister to reply.

The Chief Minister: I have to be very careful with the answer on this one, Mr Speaker, because the Attorney General in Tynwald Court gave a comment that whilst there was an appeal being answered we had to refrain from commenting on this. So I think in this instance I will have to take the advice of our learned Attorney General; but I am more than happy after the appeal to provide all Members with the information.

TREASURY

1.4. Dormant accounts – Amount held; and banking licence termination

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for the Treasury:

How much is held in dormant accounts on the Isle of Man; and what happens to these funds when a banking licence is terminated?

175 **The Speaker:** We turn to Question 4 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Treasury Minister how much is held in dormant accounts on the Isle of Man; and what happens to these funds when a banking licence is terminated?

The Speaker: I call on the Treasury Minister to reply.

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The Minister for the Treasury (Mr Cannan): Thank you, Mr Speaker.

Hon. Members will be aware that consultation on the proposed Dormant Assets Bill took place between 10th September and 19th October of this year. The main aim of the proposed Bill is to enable dormant assets held by banks in the Island to be transferred to a dormant assets fund and for such funds to be used for charitable purposes.

At present, I can advise that there is currently no single definition of a dormant bank account under Manx legislation. Isle of Man-licensed banks are free to apply their own internal classifications which can vary depending on terms and conditions applied and periods of customer inactivity. Because of this variance, no data is currently collected as to the value of any such accounts.

In respect of the second part of the Question, under current arrangements when a banking licence is to cease, any account classified as dormant by a bank will be treated equally to any other active accounts. A bank will of course endeavour to pay out the balance of all accounts to their owners prior to their licence ceasing. Accounts may also be transferred to another bank licence in the Isle of Man. If there is no transfer, the bank will be required to make alternative arrangements to ensure customers can recover their funds.

Hon. Members will be aware, as I have just said, that we have recently concluded a consultation on a proposed Dormant Assets Bill; that feedback is now under consideration and a response document will be issued shortly with the intention of seeking leave to introduce the Bill into the Branches as soon as possible thereafter.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

To clarify, given the variety of definitions, is there one basic estimate you could provide in terms of what sort of funding could be available?

The Speaker: I call on the Treasury Minister to reply.

The Minister: Well, as I have said, Mr Speaker, I do not have that figure to accurately supply the Hon. House today; and I would be wise, I would suggest, not to speculate how much money there may or may not be in these dormant accounts.

I think from my Answer it is clear that we are addressing this issue and that we have taken positive steps to address this issue, and in due course Hon. Members will have sight of the proposed legislation and indeed the response to the consultation.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

Whilst the legislation is in place, is there any indication of how long it will take for the money to be distributed to local charities?

The Speaker: Treasury Minister to reply.

The Minister: Well, again, Mr Speaker, I really think that I would advise the Hon. Member to have a little patience on this issue. I know he is desperate to get his hands on some money (*Laughter*) but I think a little patience, so that Hon. Members duly have a chance to consider the contents of the Bill and the proposals contained therein.

Clearly, if we are going to create a dormant assets fund then we do want it to be used for a purpose; but that also needs to have certain protections to ensure that people's money is also protected and treated with due caution and respect.

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ENTERPRISE

1.5. Manx National Heritage sites – Security reviews

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Enterprise:

How often the security at Manx National Heritage sites is reviewed?

The Speaker: Question 5 and I call on the Hon. Member for Arbory, Castletown and Malew,

Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Minister for Enterprise how often the security at Manx National Heritage sites is reviewed?

The Speaker: I call on the Minister for Enterprise to reply.

The Minister for Enterprise (Mr Skelly): Gura mie eu, Loayreyder.

Manx National Heritage has the lead role in promoting and protecting the Island's heritage and culture. We are very fortunate to have an organisation whose focus is on ensuring that the rich history of the Isle of Man's sites, both historic and natural, together with its collections are maintained and made accessible for current and future generations.

There are, however, threats to this as demonstrated by the recent theft of items from the David Gilbert Collection whilst in store in Liverpool. Items for that collection had previously been on display at the Manx Museum, and this highlights the importance of MNH's ongoing commitment and work to preserve our national collections.

As part of that ongoing commitment MNH has in place a range of measures to protect heritage assets, collections and premises. Key sites are subject to internal and external scrutiny and review, such as through the Arts Council England Museums Accreditation Scheme. Additionally MNH has access to, and has sought advice from, the National Security Advisor employed by Arts Council England.

Hon. Members have supported the charitable work of Manx National Heritage for over 120 years. It is only right and proper that Manx National Heritage continues to deliver its stated objective of securing the future of our past.

Gura mie eu.

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The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

The update on security is reassuring. Given that it is now over five years since the Chronicles of Mann were last on the Island, does the Minister believe it is now time for them to return?

The Speaker: I think we are going well beyond the Question, there. I have allowed a certain amount of latitude earlier, but I think that is beyond the Question.

Any other supplementary?

Mr Moorhouse: Yes, please.

The Speaker: Right, one last chance, Mr Moorhouse. (Laughter) And try and keep it within the scope of the Question of security at Manx National Heritage sites, please.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

Given the reassurance over the security at the sites, is there anything else that needs to be looked at to ensure that the Manx National Heritage can go forward in a strong position?

The Speaker: Minister to reply.

The Minister: Gura mie eu, Loayreyder.

As I think demonstrated by the original Answer, the Manx National Heritage *does* take the security of their sites and their collections very seriously; and I think this accreditation that they gain through the UK is very important to that. So I believe they are doing the utmost that they can do.

ENVIRONMENT, FOOD AND AGRICULTURE

1.6. Isle of Man Food & Drink Festival – Plastics policy progress

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Environment, Food and Agriculture:

Pursuant to his statement in February at the Isle of Man Food Festival on encouraging the use to alternatives to plastics, if he will make a statement on progress achieved on this policy?

The Speaker: Question 6 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Minister for Environment, Food and Agriculture, pursuant to his statement in February regarding the Isle of Man Food Festival encouraging the use to alternatives to plastics, if he will make a statement on progress achieved with this policy?

The Speaker: I call on the Minister for Environment, Food and Agriculture to reply.

The Minister for Environment, Food and Agriculture (Mr Boot): Thank you, Mr Speaker.

I do not want to be too pernickety but I did not make a statement in February at the Food Festival, it was actually held in September and I did not make a statement there. I am sure the Hon. Member is aware of the mistake there.

I am pleased to advise the Hon. Member that the 2018 Food & Drink Festival was the greenest to date. All exhibitors were asked to make a green pledge as part of their application process. Plastic bags were virtually eliminated in favour of paper and reusable cloth bags. My Department commissioned some bespoke fabric carrier bags, designed by a local artist and printed locally, advertising the merits of the local food economy. They were used for promotional purposes and I have one for the Hon. Member for use in the future! (Laughter)

Would you be kind enough to let the Hon. Member have that? Thank you very much.

A bag was given to Mr Moorhouse.

The Minister We also improved the segregation of waste to improve the amount that was recycled and I am pleased to advise that Beach Buddies partnered us on this initiative, and Bill Dale was present for most of the weekend, lending a hand.

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It would be unrealistic to say that the event was perfect. This was our first event since the adoption of the plastics strategy. There were still some rogue plastic bags and a fair amount of food products are by necessity, like meat, packaged in plastic. The whole food industry is rapidly developing plastic-free solutions and we will adopt these as soon as they become available and financially viable for producers.

Despite best efforts, the bar at the Festival was unable to procure suitable reusable plastic tumblers and single-use recyclable cups were used. Due to the licensing laws and trading standards this is a particularly complicated area. Glass is not permitted and rigid reusables are either very expensive or require washing facilities that are not available in a festival setting; or they are not approved by trading standards. However, all these issues are resolvable and I was delighted at the step change that was delivered since last year's Festival.

I am confident that an assessment of next year's Festival will see even greater progress driven by technical innovation and consumer demand.

Finally, as Members may have seen, my Department held the inaugural UNESCO Biosphere Isle of Man Awards on 8th October which included the Economic Sustainability Award. Annabel and Stuart Gentry of Flo the Coffee Van won this category after having removed single-use plastics from their service, among other laudable developments.

Thank you.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

I must apologise for the Question, it was slightly mixed up. It originated from a Question I asked you in February, and that is where we have gone slightly wrong.

Given the success of this initiative, is the Minister looking forward to similar schemes next year, and possibly even rewarding the most innovative company or business at the Isle of Man Food & Drink Festival for advancing in this area?

The Speaker: Minister to reply.

The Minister: Thank you.

We already give awards at the Food & Drink Festival and certainly we can look at a different category of award to reward initiatives in that respect. Moving forward, I think we will see the festival get greener and greener, obviously with our green agenda putting pressure on and helping people move to a greener participation in both of our main agricultural shows as well.

So the future is green.

Procedural – Use of props

The Speaker: I will make note that whilst this is not the first time that props have made an appearance in the business of the House, and Standing Orders are silent on the matter, could I advise against it for the promotion of good order and distractions during the sitting in future, please, Hon. Members.

We turn then to Item 2, and Questions for Written Answer, and they will be circulated in the usual manner.

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2. Questions for Written Answer

TREASURY

2.1. Steam Packet Valuation – Low sulphur fuel cost increases included

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for the Treasury:

Whether Park Partners included the Steam Packet's estimated increase in fuel costs, caused by the need to use low sulphur fuel after 2020, when calculating their valuation of the company?

The Minister for the Treasury (Mr Cannan): The Isle of Man Government were fully aware of the likely impact of increased fuel costs after 2020. This will be managed as part of normal trading considerations and therefore no adjustments were made to the value of the company.

POLICY AND REFORM

2.2. Government workers – Numbers and employment costs

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Policy and Reform:

How many directly employed Government workers there were and how much they cost to employ broken down by (a) 30th September 2016, and (b) 30th September 2018?

The Minister for Policy and Reform (Mr Thomas): At 30th September 2016 there were 7,838 directly employed Government workers with contracted hours. The full employment costs for the month of September 2016 amounted to £25.5 million.

At 30th September 2018 there were 7,850 directly employed Government workers with contracted hours. The full employment costs for the month of September 2018 amounted to £27.7 million.

In both cases, the employment costs exclude expenses but include all other costs such as basic pay, overtime, allowances, employers' pension and NI contributions.

Note: Figures above exclude Manx Utilities (Electricity) and IOM Post, whose data is not held within the core Government systems.

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ENVIRONMENT, FOOD AND AGRICULTURE

2.3. Planning breaches – Reports, outcomes and enforcement caseload

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Environment, Food and Agriculture:

How many reports of alleged planning breaches, broken down by investigation outcome, have been received each month this year; and what the total planning enforcement caseload was at the end of each month?

The Minister for Environment, Food and Agriculture (Mr Boot): Currently our software is not set up to be able to retrieve details of the total number of cases received each month, but is collated on a quarterly basis. This includes information regarding cases received and the reason.

Please refer to Table 2.3A for the breakdown for 2018 as at 30th September 2018. The total number of cases opened as at 30th September 2018 was 190 and the total number of open cases/pending consideration, opened in 2018, as at 24th October 2018, was 120.

Table 2.3A

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	March	June	Sept
Cases Recorded	62	122	190
Cases Closed	14	37	67
Breach Resolved	4	5	10
No Breach	6	21	32
Planning Approval Granted	0	1	4
Enforcement Notice Served	0	0	0
Immune due to passage of time	2	4	4
Immune House in Multiple Occupation	0	0	0
Not Expedient to Pursue	2	4	14
File Converted to Enf Notice file 2	0	0	0
Building Preservation Notice lapsed	0	0	1
Anonymous Complainant	0	0	0
Building Registered	0	2	2
Remaining Open Cases	48	85	123

2.4. Planning breaches – Notification to individuals

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Environment, Food and Agriculture:

How many planning breaches identified in 2018 were notified to the relevant individual within: (a) one month; (b) two months; (c) three months; (d) four months; (e) and longer than four months from the date that the Department was notified of the alleged breach?

The Minister for Environment, Food and Agriculture (Mr Boot): The Department's software is not currently capable of providing this information, as to provide a response to this Question each case file would have to be manually checked.

Given the numbers of cases raised as at 24th October 2018 was 120, this is not considered to be an appropriate use of officer time. As the recently approved Operation Policy on Planning Enforcement refers to timescales for site visits, we are looking at if and how to record this information in the software in a format that can provide this data.

However, I can advise you that in the year to 24th October 2018 the Planning Enforcement Team have sent 228 letters to the subjects of requests to investigate alleged breaches of planning control; this may include multiple letters to the same subject and 168 letters to those persons who asked the Department to investigate a suspected breach.

2.5. Planning breaches – Outstanding, identified in 2018

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Environment, Food and Agriculture:

How many planning breaches identified in 2018 are still outstanding, broken down by: (a) priority; and (b) whether or not enforcement action was taken?

The Minister for Environment, Food and Agriculture (Mr Boot): From Table 2.5A below, you will see that 123 cases opened in 2018 remain open as at 24th October 2018.

Prior to the introduction of the Department's Operational Policy on Planning Enforcement at the end of August 2018, the Department did not record the priority allocated to an enforcement case in a manner which can be interrogated. However, I can advise you that of the 27 cases received since 1st September 2018, four are categorised as priority A – High Priority; four are priority B – Medium Priority; 11 are priority C – Low Priority; and 8 are priority D – Very Low Priority.

All of the cases were or will be investigated in accordance with the Department's Operational Policy, the Department has not had to resort to the issue of any formal planning enforcement or stop notices or referral for prosecution in any case raised in 2018. From the attached table it can be seen that as at 30th September 2018 of the 67 cases closed: in 32 of cases reported there was no breach of planning control; in 14 of the cases the breach was resolved either by ceasing the breach or gaining planning approval; and 14 cases where not considered expedient to pursue.

Table 2.5A

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	March	June	Sept
Cases Recorded	62	122	190
Cases Closed	14	37	67
Breach Resolved	4	5	10
No Breach	6	21	32
Planning Approval Granted	0	1	4
Enforcement Notice Served	0	0	0
Immune due to passage of time	2	4	4
Immune House in Multiple Occupation	0	0	0
Not Expedient to Pursue	2	4	14
File Converted to Enf Notice file 2	0	0	0

56 K136

Building Preservation Notice lapsed	0	0	1
Anonymous Complainant	0	0	0
Building Registered	0	2	2
Remaining Open Cases	48	85	123

2.6. Planning breaches – Still outstanding

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Environment, Food and Agriculture:

How many planning breaches are still outstanding, broken down by: (a) priority; (b) whether enforcement action was taken; and (c) and how long each breach has been outstanding less than: one month; two months; three months; four months; and longer than four months?

The Minister for Environment, Food and Agriculture (Mr Boot): As per Question 5, we only started recording case priority from 1st September 2018 onwards. Of the open cases, again we are unable to break our data down into this level of detail. However, as you can see from Table 2.6A below, to 30th September 2018 we have closed 67 of the cases raised in 2018 for the reasons indicated.

Of the 123 cases which remain open, 18 are pending the determination of a planning application and the Department is continuing to investigate or seeking resolution of the remaining 102 cases. This information relates only to cases opened in 2018, as your other Questions have related to this period. If required, we can provide a similar table to the one below, for earlier years.

Without going into each individual case, we are unable to provide the information requested by point (c). This request relates to individual cases and our data cannot be interrogated to reveal this information.

Table 2.6A

	March	June	Sept
Cases Recorded	62	122	190
Cases Closed	14	37	67
Breach Resolved	4	5	10
No Breach	6	21	32
Planning Approval Granted	0	1	4
Enforcement Notice Served	0	0	0
Immune due to passage of time	2	4	4
Immune House in Multiple Occupation	0	0	0
Not Expedient to Pursue	2	4	14
File Converted to Enf Notice file 2	0	0	0
Building Preservation Notice lapsed	0	0	1
Anonymous Complainant	0	0	0
Building Registered	0	2	2
Remaining Open Cases	48	85	123

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2.7. Planning breaches – Timescales for visits

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Environment, Food and Agriculture:

How many alleged planning breaches received in 2018 were visited within the timescales set in the Operational Policy on planning enforcement and how many were not, broken down by level of priority?

The Minister for Environment, Food and Agriculture (Mr Boot): As per Question 5, we only started recording case priority from 1st September onwards. Of the 27 cases received, of the four priority A cases, two were visited in accordance with the Operational Policy. There was sufficient information available to the Department in one case to not require a site visit and in the remaining case the request to investigate was anonymous and related to a breach of a Strategic Plan Policy.

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Of the four priority B cases, two were visited within the Policy timescale, one was a recurring breach and a site visit was not considered necessary, and the remaining case remains within the timescale for a site visit.

Of the 11 priority C cases, two were visited within the timescale. There was sufficient information available to the Department in two cases to not require a site visit, and the remaining cases are still within the timeframe to visit. All eight of the eight priority D cases are still within the timescale for a site visit, but I can advise you that in four cases there was sufficient information available to the Department to not require a site visit, and four cases have visits scheduled.

We are only able to provide this level of information at this time due to the limited number of cases and as previously stated in Question 2.4 we are looking into ways of utilising the software to enable site visit target data to be extracted.

HEALTH AND SOCIAL CARE

2.8. Log burners – Public health advice

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for Health and Social Care:

What advice Public Health gives in relation to log burners?

The Minister for Health and Social Care (Mr Ashford): Public Health does not provide any advice in relation to log burners. This would fall within the remit of Environmental Health which is part of the Department of Environment, Food and Agriculture.

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HOME AFFAIRS

2.9. Motor accidents – Old and New Castletown Roads

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Home Affairs:

How many motor accidents broken down by fatal, serious and slight, took place on (a) the Old Castletown Road between Kewaigue Hill and the Blackboards and (b) Cooil Roundabout and Ballasalla in each of the last five years?

The Minister for Home Affairs (Mr Malarkey):

							2018	Grand
Location Type	Level	2013	2014	2015	2016	2017	Jan - Sep	Total
a) Old Castletown Road	Fatal							
	Serious			1				1
	Slight	1	1		1	3	3	9
Old Castletown Road Total		1	1	1	1	3	3	10
b) New Castletown Road	Fatal		1					1
	Serious	1	1		1			3
	Slight	5	4	5	5	6	2	27
New Castletown Road	Total	6	6	5	6	6	2	31
Grand Total		7	7	6	7	9	5	41

Note:

- Collisions at the junction between Kewaigue Hill and Old Castletown Road included in (a). This is three Slight Injury collisions, two in 2018, and one in 2013.
- Collisions occurring on the A5 (New Castletown Road) at Blackboards (junction between New and Old Castletown Roads) counted only in (b). This is five Slight Injury Collisions in five different years.

INFRASTRUCTURE

2.10. Prince's Half-Tide Dock – Negotiations

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for Infrastructure:

Who led the negotiations in respect of the Half-Tide Dock?

The Minister for Infrastructure (Mr Harmer): The negotiations in respect of the purchase of the Prince's Half-Tide Dock were led by my Chief Executive, supported by officers from within the Department and the Attorney General's Chambers, under my authority.

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Order of the Day

3. CONSIDERATION OF COUNCIL AMENDMENTS

3.1 Abortion Reform Bill 2018 – Council amendments agreed as amended

Dr Allinson to move.

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The Speaker: Item 3, Consideration of Council Amendments. Again, I refer Hon. Members to the email I sent out last week about how we will deal with this procedurally, and I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

Hon. Members, I am very proud to stand before you today and support the amendments tabled by the Legislative Council to the Abortion Reform Bill and the other three amendments before us. I am proud of the workings of Tynwald and grateful for the attention and consideration afforded to the Bill.

I am grateful to the Lord Bishop for his unique perspective regarding some of the moral and ethical issues which arose during those debates. Further witnesses were called to give evidence including a pharmacist, a paediatrician and a counsellor who has worked for abortion services.

I believe the amendments before us today enhance the Bill and the input from Her Majesty's Attorney General helps clarify and addresses some of specific concerns Members still had when this Hon. House completed the clauses stage.

But most of all I am proud of the women and men of this Island who have engaged in the debate around the Bill and supported its progress. When I was originally given leave to introduce this Private Member's Bill last January, there were some Members who questioned whether such reforms were necessary and suggested a Committee be set up to decide. Since then we have witnessed reform of abortion provisions in Scotland, a campaign for decriminalisation in England and Northern Ireland, and a referendum in the Irish Republic which has altered their constitution and will progressively reform the provision of reproductive healthcare in their country.

There are progressive campaigns to reform outdated and restrictive practices in Gibraltar and Malta; and whilst the Argentine Senate narrowly refused to back a popular Bill to allow legal and safe abortion up to 14 weeks, the issues of autonomy, consent and choice will continue to reverberate around the world as women insist that abortion is treated as an intrinsic part of basic healthcare and *not* as a criminal act.

I am proud that our parliamentary system gives somebody like me the ability to bring forward legislation on behalf of my constituents and for the benefit of my country. The right for any Member of Tynwald to bring a Private Member's Bill forward should be cherished and encouraged. It will never distract from the important Government business we are elected to oversee and scrutinise, but it does establish the clear and continuous link between the vote somebody casts in a general election and the laws which are written to govern them. (A Member: Hear, hear.)

During our deliberations on this Bill there have been many changes and amendments. The Legislative Council have exercised their unique position and special skills to view the draft Bill as a whole with fresh eyes and independent scrutiny. Many of the amendments are technical in nature and aim to simplify the words used and reflect enhanced definitions which then no longer need to be repeated later in the text.

Other amendments seek to rid the Bill of ambiguities created by previous changes and I hope Hon. Members will allow me to detail some of the reasons and consequences for these. Amendment 3 further strengthens the role of counselling and informed consent prior to a termination; whilst amendment 5 redefines 'gestation period' to include the use of ultrasound scans where there is medical uncertainty. Her Majesty's Attorney General proposed amendment 5 which removes the World Health Organisation's definition of 'health' from the Bill. In his opinion, the extra definitions which were added as amendments by this Hon. House made this superfluous and its removal clarified the intent of the Bill. He also proposed amendments to the definition of 'relevant product' and there are further refinements to the definitions of the terms 'treatment' and 'serious impairment'.

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I am grateful to Miss August-Hanson for her expansion on the definition of 'woman'. I am also grateful to Mrs Lord-Brennan for amendment 29 which reflects that services should be patient-centred and not overly bureaucratic. I am grateful to Howard Connell, one of our legislative drafters, for his work on the Bill; and to Mrs Sharpe who refined clause 12 to make the wording more elegant and provide clarity to a very complicated issue which might very rarely occur following a termination.

During our deliberations on access zones, the Hon. Member for Ayre and Michael, Mr Cannan expressed concern about the use of the word 'must' in relation to the establishment of such areas and I pledged to ask the Attorney General to liaise with the Ministry of Justice over this provision. Mr Cannan was concerned about the clause and the compatibility with the European Convention on Human Rights, in particular: article 9 which enshrines the freedom of thought, conscience and religion; article 10 which provides that everyone has the right to freedom of expression; and article 11 which provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others. But these are qualified rights and they may be restricted in certain circumstances if necessary and for a legitimate aim. These important rights must be balanced with the right to respect for private and family life enshrined in article 8.

To justify any restrictions on fundamental human rights, it needs to be clearly established that there is a pressing social need and that a fair balance has been struck between the demands of the general community and the requirements of the protection of an individual's rights. In setting that balance, the use of the word 'must' imposes an imperative obligation on the Department to make an order. But the word 'may' clearly gives the Department the space to consider the facts of each individual case and to decide on the balance of probabilities whether or not the establishment of the access zone is justifiable interference. In this way, amendments 56 to 60 make it implicit that this consideration of balancing the fundamental rights of a protester and a woman accessing abortion services are made. They strengthen the Bill by ensuring that the European Convention has been respected in each and every case. This will not just protect any decision made by the Department against vexatious legal challenge, but ensure that women accessing a hospital or clinic are not subjected to harassment or intimidation.

We have come a long way since last January. I have learnt so much in the long process of drafting and refining legislation, but have always been supported by the majority of people from all backgrounds and faiths who appreciate law reform is vital for our society. This Bill ceased to be *my* Private Member's Bill months ago: it is now *our* Bill, a piece of law crafted by all Members of Tynwald which I believe we can justly be proud of.

Mr Speaker, I beg to move that this Hon. Court does concur with the Council in their amendments.

The Speaker: I call on the Hon. Member for Douglas East, Miss Bettison.

Miss Bettison: Thank you, Mr Speaker.

I am incredibly proud to be able to second the Council amendments as laid on the Order Paper before us today. Up to three years ago I naively assumed that if I ever needed an abortion, for whatever reason, it would be available to me safely through the healthcare services of our

Island. How wrong I was. I am delighted that a group of calm, but capable and determined campaigners brought this to the attention of the media, the politicians and the then candidates and our community on the Isle of Man. Many people expressed shock, similar to that I had felt, that laws still existed prohibiting access to safe reproductive healthcare for women.

Since then, there has been an incredibly detailed conversation among many parts of our community about how the law should look. I believe that Dr Allinson has taken the spirit of that conversation to provide a Bill that provides safe, effective abortion services to our Island while putting the necessary safeguards in place to prevent it from being used inappropriately. It has been a privilege to support him in this process.

I have also witnessed the excellent scrutiny applied by the Legislative Council Members, from those with years of experience to those for whom this was their first piece of legislation. (A Member: Hear, hear.) The amendments are sensible and ensure that this Abortion Bill is one that other countries, where discussions on this topic are still in their infancy, will look to as an example of excellent legislation. I am confident the DHSC will move swiftly to ensure prompt implementation and remove the necessity for our women to take risks with their health just to access healthcare services.

I beg to second.

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The Speaker: Thank you.

I call on the Hon. Member for Douglas East, Mr Robertshaw, to move your amendments.

Mr Robertshaw: Thank you, Mr Speaker, and with your permission I will take both amendments 3A and 8A together with your approval, sir. (**The Speaker:** Yes.)

Can I begin by first of all thanking the hon. mover for indicating his support for these two amendments which are simply further refinements of the amendments brought before us today from LegCo? Can I also, Mr Speaker, thank the mover for his endless courtesy and patience throughout this whole and protracted period? We have not always come at this from the same position but at least I am proud of the way he has conducted himself and I think it is an example to all in terms of how we deal with legislation.

Mr Speaker, turning to amendment 3A, I retain the full integrity of amendment 3 to clause 3 that LegCo have put forward and which in my amendment is detailed at (a), but adds at (b) the following wording:

... if provided after termination, in addition to complying with those guidelines insofar as they are relevant, includes specialist information about the after-effects of termination on the woman;

Post-termination counselling is covered in clause 15. There were some significant changes to clause 15 during the debate in LegCo and I welcome the fact that clause 15(2) now says, and I quote:

In discharging its functions under subsection (1), the Department must have regard to the fact that a woman may need counselling and support some time after the termination as well as in its immediate aftermath.

I am, however, concerned that LegCo amendment 3, as it stands, only defines counselling as that which complies with the guidelines issued under clause 6(12). And I should add that the only part of the clause 6(14) conditions which would be relevant to post-abortion counselling is:

... counselling is balanced, impartial and non-judgmental;

My amendment 3A would extend the definition of counselling and therefore ensure that counselling given under clause 15 would need to meet the guidelines but also include specialist information about the after-effects of termination on the woman. This is important because the counsellor must have specialist expertise and familiarity with post-abortion scenarios rather than being a general counsellor. This specialist expertise is because the counsellor will, with the

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woman, identify post-abortion issues and then counsel, signpost or refer onwards if, and as, needed.

Mr Speaker, I fully appreciate that there may only be a few women each year who will feel the need to access services under clause 15, but it seems to me that there should be as much care about the counselling that is provided *after* an abortion as before. Indeed LegCo's amendment to clause 15(2) makes clear this this need for counselling may appear at some later time after an abortion, as well as immediately afterwards.

We need to provide counsellors who can offer that support and I cannot imagine that Hon. Members would not want this to be the same standard and with similar guidelines as counselling provided before an abortion.

Mr Speaker, I now wish to turn to amendment 8A. During the debates earlier this year I raised a number of concerns about the impact of the Bill on freedom of conscience. I welcome the amendment by Legislative Council for a revised definition of 'treatment' set out in clause 3 by amendment 8, so that 'treatment', and I quote:

... means the process beginning with the consultation with the relevant professional or pharmacist leading to the termination and ending with the disposal of the products of conception.

My one and only hesitation about this definition is this: that if a consultation with a relevant professional or pharmacist did not result in a termination because, for example, a woman changed her mind or did not fit the criteria in clause 6, technically – and this is very much a technical point only – this might not be constructed as treatment and therefore would not be covered by the right to conscientious objection in clause 8 on conscientious objection. Therefore my amendment 8A to amendment 8 would address that concern with a slight change of wording which I hope Members will feel able to support. For the word 'leading' on the second line of the amendment I am proposing that the wording should say, 'which could lead'.

Mr Speaker, I hope these amendments will receive the support of the House and I beg to move both amendments 3A and 8A in my name, sir.

Amendment 3A to clause 3

Page 9, after line 17 insert—

"counselling" means counselling which-

- (a) if provided during a pregnancy, complies with guidelines under section 6(12) insofar as those guidelines are relevant in the particular case, and
- (b) if provided after a termination, in addition to complying with those guidelines insofar as they are relevant, includes specialist information about the after-effects of termination on the woman;'.

Amendment 8A to Council amendment of definition of 'treatment' For 'leading' in the second line, substitute 'which could lead'.

The Speaker: I call on the Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I beg to second both of the amendments made by my colleague, Mr Robertshaw.

The Speaker: I call on the Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

This Bill now makes it plain that abortion on the basis of sex is not legal, apart from in relation to sex-linked diseases. However, there is no comparable requirement asking a medical practitioner or pharmacist to record that they have assessed to the best of their ability that an

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abortion is not being sought for illegal sex-selective purposes. And I have to apologise for my 'Sir Humphrey' comment now, but my amendment to the amendment therefore of 55-55A- requires a medical practitioner or pharmacist to record that they have assessed to the best of their ability that an abortion is not being sought for illegal sex-selective purposes.

Mr Speaker, before I move my amendment to the amendment, 55A, I would also like to echo the sentiments expressed by my colleague, the Hon. Member for Douglas East, Mr Robertshaw in the honourable way that Hon. Member, Dr Allinson has handled taking this Bill forward. It is hard work. The amount of hard work – as someone who has moved a number of Bills – that goes into this behind the scenes is phenomenal and this has been an exceptionally difficult Bill to take forward. I just want to echo those sentiments and thank him for his hard work and dignity in dealing with an awful lot of comment.

I therefore beg to move the amendment 55A, standing in my name.

Amendment 55A to Council amendment to clause 17
After 'pharmacist' add—
'—
(i) the termination does not contravene section 13; and (ii)'.

The Speaker: I call on the Hon. Member for Glenfaba and Peel, Mr Boot.

625 **Mr Boot:** I beg to second.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

I do feel that I must rise to address the amendments that are set out at clauses 19, 20 and 21. And I do want to actually thank the hon. mover for his gracious remarks this morning regarding the 'must/may' issue. I do hate to say that I told you so, but I told you so! (Laughter)

What I would say, because I think that in the spirit of this it is not the time or place to score points, but I do want to say to the Hon. House that even under great pressure we must always consider the principles that we stand up for, and we should not abandon core principles expressed in human rights legislation, and we must pay due respect to those in this and other legislation that comes before us, irrespective of the pressures and heat of the moment that may arise.

I do have just a couple of points for the Hon. Member for Ramsey, Mr Hooper, who said to me that it cannot be a serious amendment when I brought it to the House. I can assure the Hon. Member it was a *very* serious amendment and I do not joke in bringing such amendments forward. The Hon. Member also pointed out that we needed 11 pages of legislation that they have in the UK Act – well, I hope that we do not need 11 pages of legislation, but if we do I hope he has got his pen ready.

But I too want to pay tribute particularly to the mover of the Bill because I do think he has conducted this debate in a very measured and calm manner and I think that they were, to an extent, exemplified in the way he conducted his remarks this morning. So I thank him for that and give this Bill my support.

The Speaker: If no other Member wishes to speak, I will give the right of reply first to Mr Quayle in terms of your amendment, sir, if you wish to reply?

Mr Quayle: No, I have nothing further to add, thank you.

The Speaker: Mr Robertshaw?

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Mr Robertshaw: No, Mr Speaker, I do not.

The Speaker: In which case, Dr Allinson to reply to the motion.

Dr Allinson: Thank you, Mr Speaker.

I would like to thank the Hon. Member, Mr Cannan, for his comments. I completely agree with him that we need to have respect for human rights legislation, but that legislation can be complex at times and I agree with him that he was right. But as I said, during our debate, what I wanted to do was to take that away and give the Attorney General some time to look at that and consult with the Ministry of Justice in the United Kingdom. What we have actually seen with Sajid Javid's decision not to go for automatic exclusion zones in the United Kingdom, again was for that reason of respecting the human rights convention because we have to show that consideration has been given to balancing those rights.

I would like to thank all the Hon. Members for their input today and throughout all the stages of this Bill, and particularly to Mr Robertshaw and the Chief Minister for being very open in sharing their amendments that we have considered today.

I would also like to personally thank the Hon. Member for Douglas East, Miss Bettison, for seconding this motion and for her support and wise counsel over the last two years. Last night there was a meeting in Douglas to find ways of increasing the participation of women in the democratic process and I know that several Hon. Members attended and shared ideas aimed at encouraging more women to stand for office, to identify the barriers to participation and publicise the potential benefits to Tynwald and Government of having a more diverse and inclusive membership. And I think if this House is to retain the respect and trust of the electorate it must reflect our society as well as remaining democratically accountable to it.

It is my hope that by tackling subjects such as abortion rights, equality, equal pay for equal work, sexual violence and educational opportunities Tynwald can continue to evolve and mature. The issues we tackle here have to be relevant to the community we serve and our deliberations and decisions should always have a real positive impact. Abortion Law reform is not purely a feminist issue. In this very Chamber on Monday 18th July 2016, Junior Tynwald debated the motion that the current abortion laws were outdated and needed to be reviewed. They voted in favour. Now, two years later, you have the chance to support all these amendments and allow this Bill to progress.

But legislation alone is not enough. The principles of autonomy, consent and choice enshrined in this Bill when passed, will have to be implemented by the Department of Health and Social Care. Services will have to be organised and planned to provide clear access to abortion care. The challenge will then pass to the staff of the NHS to create a truly patient-centred system which makes these words reality and these aspirations real.

Hon. Members, I beg to move these amendments and ask that they are accepted in full and we will move forward together to meet further challenges, seek further opportunities and fulfil the promises we made to ourselves and others to make a real difference while we have the privilege of being in office.

Thank you, Mr Speaker.

The Speaker: Now, Hon. Members, as per the email that I sent out outlining how this will be dealt with, the motion is that the amendments made by the Legislative Council be agreed so that there are three amendments and we will deal with those first.

Firstly, dealing with amendment 3A in the name of Mr Robertshaw, the motion is that they stand part of the amendments to the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendment 8A in the name of Mr Robertshaw, that they stand part of the amendments to the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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HOUSE OF KEYS, TUESDAY, 30th OCTOBER 2018

And amendment 55A in the name of Mr Quayle: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I therefore put to the House that the Council amendments, as amended, be concurred with by this House. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Those three amendments will then return to the Legislative Council and, subject to their approval, will mean that the Bill will then be able to go forward to Tynwald for signature.

Hon. Members, that completes the business before the House of Keys this morning and we stand adjourned until ten o'clock on 6th November in our own Chamber.

The House adjourned at 10.48 a.m.

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