



# HOUSE OF KEYS OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHIARE AS FEED

## PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 26th February 2019**

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**Volume 136, No. 12**

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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);  
Hon. W M Malarkey (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.

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## House of Keys

*The House met at 10 a.m.*

[MR SPEAKER *in the Chair*]

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

**Members:** Moghrey mie, good morning, Mr Speaker.

5

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

### **PRAYERS**

*The Chaplain of the House*

**Procedural –  
Leave of absence granted**

**The Speaker:** Hon. Members, I am advised by the Chaplain that next week we will be doing the Grace in Manx together. So you have a week to brush up on that one, everybody. Leave this morning has been granted to Mrs Beecroft; and Ms Edge from 10 past 11.

## 1. Questions for Oral Answer

### **CHIEF MINISTER**

#### **1.1. Departments, Boards and Offices – External reviews in last five years**

The Hon. Member for Onchan (Ms Edge) to ask the Chief Minister:

*How many external reviews of Departments, Boards and Offices have taken place in the last five years?*

10 **The Speaker:** We then turn to Questions for Oral Answer and I call on the Hon. Member for Onchan, Ms Edge, to ask Question number 1, please.

**Ms Edge:** Thank you, Mr Speaker.

15 I would like to ask the Chief Minister how many external reviews of Departments, Boards and Offices have taken place in the last five years?

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

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

20 The Hon. Member kindly provided clarification on what she meant by the term 'external review' which was any external review of any aspect of a Department, Board or Office. And I have to say it has taken a considerable amount of officer time.

With the clarification provided in mind we would estimate up 335 external reviews were carried out during 2014 to 2018, inclusive.

25 **The Speaker:** Supplementary question, Ms Edge.

**Ms Edge:** Thank you, Mr Speaker; and I thank the Chief Minister for clarifying that.

I wonder if the Chief Minister, therefore, if it has taken considerable time, could circulate a list of all those reviews and what the scope was, and the cost?

30

**The Speaker:** The Chief Minister to reply.

**The Chief Minister:** If the Hon. Member wants to add yet further cost to my officers to work out what their costs were, I am more than happy to do that and I am more than happy to give all the years and the splits. We have split it down into the amount of reviews per year: for example, 2014 was 32; 2015 – 38; 2016 – 95; 2017 – 71; and 2018 – 91. But I will happily give all that evidence to Hon. Members.

40 **The Speaker:** Thank you.  
Supplementary question, Ms Edge.

**Ms Edge:** Thank you, Mr Speaker.

Obviously I will give the Chief Minister some more clarification. I am seeking to identify whether every Department, Office and Board has had a review in that period. So if he could make that clear?

45

And also, in this hon. place on 12th February, the Chief Minister commented that Scrutiny Committees can carry out these reviews. So I am interested in understanding why 335 have taken place outside of that process.

50 **The Speaker:** Chief Minister to reply.

**The Chief Minister:** Well, there are various examples, Mr Speaker, West Midlands Quality Review is one of many that happen from time to time which will have been included in this count.

### **1.2. Chief Minister's Gas Regulatory Review Committee – Report published on 18th February**

The Hon. Member for Onchan (Mr Callister) to ask the Chief Minister:

*If he will make a statement on his Gas Regulatory Review Committee Report, published on 18th February 2019?*

55 **The Speaker:** Question 2, I call on the Hon. Member for Onchan, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

I was wondering if I could ask the Chief Minister if he will make a statement on his Manx Gas Regulatory Review Committee Report, published on 18th February 2019?

60

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

**The Chief Minister (Mr Quayle):** Thank you, Mr Speaker, and I thank the Hon. Member for Onchan for his Question.

65

At my invitation, the Gas Regulatory Review Committee was established on 30th October 2017. The Committee has since undertaken a thorough examination of the existing regulatory agreement and associated matters. The Committee was chaired by the Hon. Member, Mr Chris Thomas, with membership from the Hon. Member for Ramsey, Mr Hooper, and the Hon. Member for Douglas Central, Mrs Corlett, and I thank them for their diligent and hard work on what is an incredibly complex issue.

70

The Committee was assisted by independent specialist consultants and benefited from constructive engagement with a wide range of stakeholders. This report is published detailing the Committee's conclusions, the supporting analysis and the views of Manx Gas.

75

Mr Speaker, it is right that we have now reviewed the agreement's effectiveness and the protection it provides to gas consumers. The Cabinet Office, Treasury and Her Majesty's Attorney General's Chambers will now take forward negotiations with Manx Gas to establish a new voluntary regulatory agreement, taking into account the Committee's considered recommendations.

80

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker, and I thank the Chief Minister for that statement and for his report.

85

I have tabled Written Questions to the OFT and other related parties at this sitting, but I was wondering if the Chief Minister could confirm here today and to Manx Gas customers that this Government intends to trigger section 15.1 of that agreement of the regulator of the gas market in the Isle of Man this week in order to give that six months' termination notice to Manx Gas of that agreement dated 24th April 2015?

90

**The Speaker:** Chief Minister to reply.

**The Chief Minister:** Thank you, Mr Speaker.

I am not going to give the Hon. Member what he wants but I hope when I give the answer he will understand why.

95

As the report recommends what are the next steps, Manx Gas will in the future be provided with six months' formal notice in respect of terminating the agreement for the regulation of the gas market in the Isle of Man dated 24th April 2015 in accordance with section 15.1 of the agreement. Negotiations will be started before notice is formally given, as it may take more than the six months' notice that are allowed as a notice period to negotiate a new agreement.

100

I would like to give the Hon. Member an example, I suppose. If we look at the issuing of Article 50 of Brexit, it is now perceived that it was – hindsight is a wonderful thing and maybe we can benefit from the hindsight of the UK government, in that they gave notice before they had their first 11 ready, their team ready to work on this, and are obviously struggling because the time period is running out.

105

We will, of course, be having pre-meetings with Manx Gas, so please do not think for one minute that we are not moving on this with haste; but it was felt that we would give notice when we have our first 11 ready to ensure that we are as well prepared to get the very best deal for the people of this Island who use Manx Gas.

**The Speaker:** Supplementary question, Mr Callister.

110

**Mr Callister:** Thank you, Mr Speaker, and I thank the Chief Minister for his detailed response there.

Can I ask the Chief Minister, when he is looking at a new agreement that he also takes into account regulatory adjustments? I am happy to give the Chief Minister three examples of where Manx Gas – and I do not blame the senior management of Manx Gas today, but I can give the Chief Minister three examples of where Manx Gas – has announced price reductions to customers, given the impression they have reduced the tariffs and standing charges, only to find out these are regulatory adjustments.

Will the Chief Minister give reassurance today that that new agreement will put in clear guidelines in respect of Manx Gas, of how they portray regulatory adjustments which are technically refunds due to Manx Gas customers overpaying?

**The Speaker:** Chief Minister to reply.

125 **The Chief Minister:** Thank you, Mr Speaker.

Yes, I am more than happy to reassure the Hon. Member for Onchan that I will be looking for that. I think it is no secret – well, I have publicly stated – that I felt that whilst the previous agreement was a step in the right direction, it did not go far enough and there needed to be a tightening of definitions and how the deal goes forward.

130 We have got to improve it. That is why I am making sure it is done properly, because it is an incredibly complex contract. We have to get it right for the people of the Isle of Man and we will do our utmost.

**The Speaker:** Supplementary question, Mr Thomas.

135

**Mr Thomas:** Thank you very much, Mr Speaker.

Does the Chief Minister agree with me that on top of the termination notice there is the opportunity perhaps to use other mechanisms inside the agreement to make good progress now that the negotiations have started? For instance, there is the change process procedure.

140 Would the Chief Minister also agree with me that Mr Callister makes the point that in 2015 there were three price reductions; and would he agree with me that Mr Callister is right to say that was mixed up with regulatory adjustments, formal or otherwise, and this is one conclusion that was actually made inside the Chief Minister's Gas Regulatory Committee Report?

145 **The Speaker:** Chief Minister to reply.

**The Chief Minister:** Thank you, Mr Speaker.

I am happy to agree with the chairman of the author of the report.

## EDUCATION, SPORT AND CULTURE

### 1.3. Health and safety in schools – Responsibility

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Education, Sport and Culture:

*Who is responsible for Health and Safety in Schools?*



**The Speaker:** Question 3 and I call on the Hon. Member for Onchan, Ms Edge.

150

**Ms Edge:** Thank you, Mr Speaker.

I would like to ask the Minister for Education, Sport and Culture who is responsible for Health and Safety in schools?

155

**The Speaker:** I call on the Minister for Education, Sport and Culture.

**The Minister for Education, Sport and Culture (Mr Cregeen):** Thank you, Mr Speaker.

160

The overall legal responsibility for health in schools lies with the Chief Executive Officer of the Department of Education, Sport and Culture; the day-to-day management responsibility for health and safety in schools lies with the head teacher. The head teacher can further delegate management responsibilities to their senior members of staff.

**The Speaker:** Supplementary question, Ms Edge.

165

**Ms Edge:** Thank you, Mr Speaker.

Can I just clarify with the Minister, because I think he only said that the overall responsibility for the CEO is with health, he did not say safety? (*Interjection*) It is health and safety? Okay.

So can I ask the Minister then, if there was a situation within our schools, who would stand before the courts on the health and safety issue?

170

**The Speaker:** Minister to reply.

**The Minister:** It would be the Chief Executive Officer.

175

**The Speaker:** Supplementary question, Ms Edge.

**Ms Edge:** And can the Minister confirm what regulations and legislation the schools are operating under for this? And what the latest policy is?

180

**The Speaker:** Minister to reply.

**The Minister:** Mr Speaker, that is outside the remit of the Question. I can forward it to Members if they so wish.

185

**The Speaker:** Supplementary question.

**Ms Edge:** If the Minister is obviously aware that it is the CEO that is responsible, surely his policy should state that as well? So I would have thought that was within the remit. But if he can circulate that I would appreciate it. And also what legislation is in place?

190

**The Speaker:** Minister.

**The Minister:** Happy to do that.

**1.4. School day and school holidays –  
Review of patterns**

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

*When the Department last reviewed the school day and school holiday patterns?*

195 **The Speaker:** I 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 Minister for Education, Sport and Culture when the Department last reviewed the school day and school holiday patterns?

200

**The Speaker:** I call on the Minister for Education, Sport and Culture to reply.

**The Minister for Education Sport and Culture (Mr Cregeen):** Thank you, Mr Speaker.

205 Under the statutory instruments of Government, agreeing the times and arrangements for each school day is the responsibility of the governing body after consultation with the head teacher.

Terms and holidays including half-term holidays for schools are determined by the Department. These are to some extent reviewed each year in the pattern for three years ahead, in agreement with primary and secondary head teachers, union officials and then agreed definitively by political members.

210

A formal review of the school year was undertaken in 2004 in which several proposals were presented to the community for consultation. After much consultation the established pattern was reverted to. Again, in 2008, a different proposal was consulted on but again this received mixed responses and so the traditional path was retained.

215

**The Speaker:** Supplementary question Mr Moorhouse.

**Mr Moorhouse:** Thank you, Mr Speaker; and thank you, Minister, for such a detailed Answer.

220 Has the Department provided schools with any advice regarding changes to the school day? There seems to be a lot of research done in this area, and I am sure it is something that the Department could feed through to schools.

**The Speaker:** Minister to reply.

225 **The Minister:** Thank you, Mr Speaker.

One of the issues that we have is when we are looking at the school holidays – and, as the Hon. Member will know, we have had these discussions with both Ballasalla Year 6 and Vic Road Year 6 pupils – about trying to look at different ways of altering the school holidays. One of the areas that does cause difficulty is TT fortnight, Grand Prix fortnight. We have looked into the UK, there was a report done in 2016 and, from recollection, of the 9% of academies who had the ability to change their holidays only 9% have done so.

230

**The Speaker:** Supplementary question, Ms Edge.

235 **Ms Edge:** Thank you, Mr Speaker.

I just wonder if the Minister could confirm with regard to the school day where these are published – because each school does appear to have a different start to the school day; and whether he would publish them?

240 **The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

As I said, this lies with the individual schools and it should be on their website.

245 **The Speaker:** Supplementary question, Ms Edge.

**Ms Edge:** Thank you, Mr Speaker.

I just wonder how the Minister can reassure the Hon. House, then, how people can access this information if schools are not publishing that. How is he going to rectify that?

250

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

It should be on the school website, but if it is not, I will make sure it is.

### **1.5. Education Bill 2019 consultation – Impartiality towards home education**

The Hon. Member for Onchan (Mr Callister) to ask the Minister for Education, Sport and Culture:

*What action he has taken to ensure that the Department's consultation on the Education Bill 2019 is fair and impartial with regard to home educators?*

255

**The Speaker:** Question 5, I call on the Hon. Member for Onchan, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

260 Can I ask the Minister for Education, Sport and Culture what action he has taken to ensure that the Department's consultation on the Education Bill 2019 is fair and impartial with regard to home educators?

**The Speaker:** I call on the Minister for Education, Sport and Culture to reply.

265 **The Minister for Education, Sport and Culture (Mr Cregeen):** Thank you, Mr Speaker.

The Department's consultation is open to all Island residents to comment on and for them to express their views on the draft Education Bill.

270 Questions have been included on the major changes in the draft Bill that were not in the 2001 Act, but there is also room for everyone to comment on the items and they have been carried over from the 2001 Act into the new Bill. Therefore, as everyone is able to comment on the whole draft Bill, it is fair and impartial for everyone to include home educators.

275 The section on home education is an extension of what was in the 2001 Act, based on feedback from the consultation undertaken in 2017, on the principles which would underlie the new Education Bill. Home educators have the right to comment on these provisions which will be reviewed by the Department when the consultation closes.

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

280 I have already provided Members with a copy of the consultation questionnaire; I have a copy here if the Minister would like to have a look. I would like to draw the Minister's attention to question 21, and I quote from the consultation:

Are the assessment proposals sufficient for the Department to ensure that a suitable education is provided to home educated children?

285 To help the Minister this morning, if I answer 'yes' to that question as a home educator then I will be stating very clearly that I am happy with the proposals. But if I state 'no' then this indicates that the provisions are insufficient and therefore do not go far enough. Therefore can I ask the Minister if the question actually provides a fair mechanism by which to oppose the proposals?

**The Speaker:** Minister to reply.

290 **The Minister:** Thank you, Mr Speaker.  
Yes, I think it does because all they have to do is put the comment in the box below.

**The Speaker:** Supplementary question, Mrs Caine.

295 **Mrs Caine:** Thank you, Mr Speaker.

Further to the point raised by the Hon. Member for Onchan on that particular question, 'Are the assessment proposals sufficient for the Department to ensure that a suitable education is provided to home educated children?' – they only have the option to answer 'yes' or 'no' and that does assume the respondent agrees with the proposal in the first place.

300 I would be very concerned if the Minister were to make his assessment purely on the tick box answers, because that, I believe, is what was done with the previous consultation with the response merely noting a majority of respondents supported the proposal.

305 Importantly, I am informed there were many lengthy and detailed responses from home educators, including legal opinion, and the Department made no reference to these in its response. So I ask the Minister: will he be providing a full qualitative, not just quantitative, analysis of all responses to the current consultation, including legal opinion?

Thank you.

310 **The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.  
As I said previously, yes, we will take account of what is put in the comment box.

315 **The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

It does actually say, 'Please briefly explain why you have given the answer,' but if you do not want to give either of those answers then it is very difficult. You end up forcing them either to say 'yes' or 'no'.

320 Can I thank the Minister for the answers given, but would he agree with me that this particular question is unfair, undemocratic and clearly shows that the Department of Education has once again failed to listen to genuine concerns being raised by those who choose to home educate?

325 **The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.  
No, I do not agree with the Member.

**The Speaker:** Supplementary question, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

Would the Minister agree that in the 2017 consultation one of the questions was, 'Should the Department seek evidence from home educators on the education they are giving to their children?' and at that time 67.1% said 'yes' and only 24.1% said 'no'; would he recognise that rights have to go hand-in-hand with responsibilities?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.  
Yes, there is responsibility with these rights.

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

As Dr Allinson has just very correctly highlighted, the first consultation on the Education Bill asked the question, 'Should we do it?' So would the Minister agree that the purpose of this second consultation is to accept that feedback from the Manx public that said, yes, we should do it and now is asking the question, 'How should we do it?' As is usual with consultations, does the Minister also agree that the full detailed individual responses are also published on the consultation website for anybody that chooses to read them?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.  
Yes, I would agree with the Hon. Member.

Going back to the Hon. Member for Onchan, if somebody is concerned about home education, whether for it or against it, why would they not want to make a comment? I do not understand why the Hon. Member is saying, 'Well, if they have a concern they might not make a comment.' Well, it is irrelevant really.

**The Speaker:** Supplementary question, Mrs Caine.

**Mrs Caine:** Thank you, Mr Speaker.

With regard to the suggestion that the consultation is not fair and impartial to home educators, is the Minister aware that this group is distressed at being singled out by the consultation for what they consider is very harsh treatment by the Department; especially as we learned in response to my Written Questions last week that the Department has never, in fact, had cause to use its wide-ranging statutory powers against home educators? Members may be aware England has had them since 1944 and they are applied from time to time by local education authorities. So why does this Department in this consultation seem to seek additional powers?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

The previous Education Act was quite vague on what actions the Department could take. They came under, '... if there has been an appearance'. As was on a documentary not so long

ago, these children can be invisible to the authorities and it is one of these areas that if the Hon. Member is not happy with the Bill when it comes to this Hon. House she is more than welcome to make amendments and then the House will deem which way this Bill should go.

**The Speaker:** Final supplementary on this Question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

Just to give the Minister some of my concerns, a lot of the draft legislation replaces words such as 'may' with 'must' and that is without any real proper dialogue with home educators. Can I ask the Minister if he will do what he promised in January 2018, where we will work with home educators in order to put in place a proper policy that actually supports home educators, but also puts in place the safeguards that he wants?

**A Minister:** Hear, hear.

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

I have had discussions with home educators and, unfortunately, got to the position that we could not agree on the way forward. So we are coming forward with these proposals and the Hon. Member is as welcome as anybody else, if they are not happy and if they feel that there should not be any regulation on home educators, come forward and say that these children are quite acceptable to be kept invisible.

**Mr Callister:** In his opinion.

## ENVIRONMENT, FOOD AND AGRICULTURE

### 1.6. Conservatory roofs – Planning applications to change from glass to slate

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

*How many people have applied to have their conservatory roofs changed from glass to slates or tiles; and how many of these applications were refused in each of the last three years?*

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

**Mr Moorhouse:** Thank you, Mr Speaker.

I would like to ask the Minister for Environment, Food and Agriculture how many people have applied to have their conservatory roofs changed from glass to slates or tiles; and how many of these applications were refused in each of the last three years?

**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.

The number of applications received for replacement conservatory roofs from either glass to slate, or tiles, or lightweight roofing solutions in the last three years were: 76 in 2016; 51 in 2017; 76 in 2018. None of the applications was refused.

**The Speaker:** Mr Moorhouse, supplementary.

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

420 Given the popularity of this type of development have the planners considered putting it in the category of Permitted Development?

**The Speaker:** Minister to reply.

**Two Members:** Hear, hear.

425

**The Minister:** We have and are. When the last review of Permitted Development Orders was made in 2012 the technology and fashion for changing conservative roofs from glass to tiled had not been introduced and consequently such work was not included. But as part of the continued work to improve the planning system, a review of the Permitted Development Order is planned fairly shortly.

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### **1.7. Planning appeal fee – Increase from April 2019**

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

*If he will make a statement on the Department's decision to increase the planning appeal fee from £175 to £276 with effect from 1st April 2019?*

**The Speaker:** Question 7 and I call on the Hon. Member for Onchan, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

I do not know how I will follow that last Question, but I will try.

435

Can I ask the Minister for Environment, Food and Agriculture if he will make a statement on the Department's decision to increase the planning appeal fee from £175 to £276 with effect from 1st April 2019?

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

440

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

My hon. colleagues will be aware that I wrote to all Tynwald Members in respect of this matter to explain the increase and I hope that the Hon. Member received that. In that email I explained that the rate of pay for an appeal inspector to consider an appeal under written representations procedure is £260 per case. The rate of pay awarded to inspectors for appeals undertaken by a formal hearing is £338 per day payable in respect of preparation days, sitting days and report-writing days. As such it is likely to be an average of over £1,000 per case for the inspector, but in more complex cases it could be significantly more than that. This does not include our officers' time for attendance; the potential need for legal advice from the AG's office; and general processing or other expenses.

445

Consequently, even a fee of £276 does not meet the Government's costs in dealing with such matters but will go some way towards cost recovery. The fee is equal for both an applicant appealing a refusal, or the imposition of conditions, or a third party appeal.

450

I fully support the democratic need for local people to be able to express their concern about unwelcome development. I would always encourage anyone with concerns to submit those to

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the initial application so they can be confident that their concerns will be taken into account when the planning application is decided. However, an appeal should be based on legitimate planning matters. It is interesting to note that of 58 appeals in 2018, 16 were third party appeals and only one of those appeals was allowed – suggesting that many of these appeals are not, sadly, based on legitimate planning matters.

Importantly, if an appeal is successful then the appeal fee is returned, though the costs remain and are borne fully by Government. I indicated in my email that whilst the increase is material it is not unreasonable and is in keeping with a fiscally responsible Government.

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker; and I thank the Minister for his detailed response.

Would the Minister not agree that this is more about fairness and giving people an opportunity to actually submit an appeal if they have lost a planning case?

Can I ask the Minister therefore how many, or the percentage of people who have actually got their funds back when submitting an appeal application?

**The Speaker:** Minister to reply.

**The Minister:** Thank you.

Yes, it is about fairness; and fairness works both ways. Remember, when an applicant has prepared an application and submitted it to the Planning Department they will have paid for architects' fees and other fees, and the planning fee. As things stand, a third party can appeal against that decision for £276 whilst the applicant will then have to prepare a case against the appeal by the third party, which could then run into several thousand pounds. So there is an element of fairness on both sides.

You asked me about statistics in terms of successful appeals allowed: of the 58 in 2018, 28% were successful, that is 16 in number.

**Mr Callister:** Thank you.

**The Speaker:** Supplementary question, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

It is a well-recognised fact, Mr Speaker, that during the struggles of the last administration the general public became exhausted with what came to be known as 'stealth taxation'. It was therefore very encouraging when this new administration came in and made it clear that would stop, and that was self-evident in its first five-year forecast. And in the last five-year forecast on departmental fees and charges we saw that the increase over the whole life of this current House was going to be around about £5 million.

However, if you look at the last forecast that we have just considered, we actually see that departmental fees and charges are going up £5 million in the year 2021 in *one year* alone.

**The Speaker:** I am sure the Member is building up to a question.

**Mr Robertshaw:** It is coming, Mr Speaker.

**The Speaker:** Is it coming soon?

**Mr Robertshaw:** Very soon.

Is the Minister not therefore very embarrassed that he is reintroducing stealth taxation in the way described by the Hon. Member for Onchan's Question? And, would he like to take this



opportunity to apologise to the general public for the embarrassment caused in this unannounced change to policy?

510

**The Speaker:** Minister to reply.

**The Minister:** I do not see planning appeal fees as a form of taxation and in fact the shortfall is somewhere around £750 to £800 per appeal heard – and it may be more than that in substantial cases. So it is not a form of taxation. This is a matter of cost recovery and it is nowhere near the actual cost.

515

I think fiscally responsible government is about recovering costs and making sure that we still leave opportunities open for people to appeal in this particular case. But as I said in the earlier reply, it works both ways. In terms of cost, if an appeal is successful they get their costs back. So bringing an appeal for proper planning reasons, material reasons, does enable someone if they are correct to get the fee back.

520

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

525

I would like to thank the Minister for confirming that this 60% increase is purely about raising revenue and not about developing a fairer planning system.

My first question to the Minister is: does this much higher upfront appeal fee discourage people from appealing, or reduce the accessibility to people to enable them to file planning appeals? I would like to know what impact assessment was undertaken before they brought in this charge?

530

In the email that the Minister has already referred to, he correctly comments that the fee is equal for both applicants appealing the imposition of conditions on the planning application or a third party, so his desire to focus entirely on third parties is a bit inappropriate.

My second question for the Minister is about those applicants appealing against a condition: has there been any assessment undertaken whatsoever about the likelihood of applicants deciding not to appeal because of an increased fee?

535

**The Speaker:** Minister to reply.

540

**The Minister:** I take issue with the initial statement about a fairer system and revenue raising. This is cost recovery, purely that, and not taxation as such.

When it comes to the impact: no, we have not carried out an assessment of whether that would impact on whether people would appeal against conditions. But in terms of an application generally, an applicant will have spent several hundred pounds or more on the application fee and they will have spent several hundred, maybe thousands of pounds, on the application; and I believe that a £276 fee, which does not go anywhere near covering the cost of the appeal, will not put people off if they feel strongly about some form of material and proper planning consideration in terms of a condition or a refusal.

545

550

**The Speaker:** Supplementary question, Mr Moorhouse.

**Mr Moorhouse:** Thank you, Mr Speaker.

Have the planners considered introducing a tiered system of charges to reflect the size or value of the proposed development? It would be potentially fairer and also get that revenue you are looking for.

555

**The Speaker:** Minister to reply.

560 **The Minister:** Thank you, Mr Speaker.

Well, we have considered two systems of a two-tier system. One was that we reduce the fee for written representations and another one for hearings. But the problem is at the moment that the Development Order Procedure is such that we ask for the fee up front and they pay the fee and then they can elect to go to a hearing, and there is no way in the Order that we can  
565 revisit the fee paid. So that is something that I will look at in due course.

With regard to a sliding scale of fees, the only other jurisdiction in the British Isles that allows third party appeals, let alone ordinary appeals, has a very complex structure which ends up with people on larger applications paying up to €9,000. But if you look at the size of a development from a private individual's point of view, if they are looking at a third party appeal, particularly  
570 on a large development, and we put it on a sliding scale dependent on the value of the development that could deter individuals from making appeals.

I think one set fee is probably the best way forward at the moment.

**The Speaker:** Supplementary question Mrs Caine.

575 **Mrs Caine:** Thank you, Mr Speaker.

I thank the Minister for his explanation but I am surprised that he repeated again this morning that it is not unreasonable, the level of increase. Would he accept that the £100 additional cost, up to 58%, might price some third party neighbours and individuals out of the  
580 planning process, and that *is* anti-democratic? Did he not consider making it a more inflation-linked increase?

**The Speaker:** Minister to reply.

585 **The Minister:** Thank you, Mr Speaker.

I think the letter that I sent to Members explained the situation and the rationale fairly well. There is a situation and it was fairly evident when planning appeal fees were brought in in 2013 that if there was no cost attached to it, and even if that cost was not full cost recovery, then people would make third party appeals particularly for spurious non-planning, material reasons.  
590 And I think that the figures I quoted at the beginning that said only one appeal last year was granted to a third party, out of 16 – and I read these appeals regularly when they come over my desk – is indicative of that fact.

When they introduced the fee in 2013 – and it predates me, obviously – it went from zero to £175. There has been no rise since 2013. Whether you look at it from an inflation point of view  
595 or whether you look at it from a cost recovery point of view our costs have risen during that time quite considerably. So this is resetting the clock.

**The Speaker:** Supplementary question, Mr Quayle.

600 **Mr Quayle:** Thank you, Mr Speaker.

Would the Hon. Minister not agree with me that in the United Kingdom, or the adjacent isle, you can only make an appeal if you are the applicant? Third party people cannot make an appeal. So is the Isle of Man not more democratic, it could be argued, than the UK?

But would the Hon. Member also not agree with me that, looking around this Hon. House, I  
605 think there are probably five Members who have been chairmen of planning and they will have seen how planning is, sadly, used as a weapon in neighbourly disputes? In fact, the Hon. House may be interested to know that it was I who brought in the planning fee for an appeal, but we did bring it in to enable genuine appeals and if they won they got their money back.

But I think, Hon. Members, if you have never been a chairman of planning on the Island,  
610 speak to the half dozen in here that have been and you will see that it was a fair process brought

in and a fair price, given that it was over £1,000, and we do give the money back – but you do not get it in the UK.

**The Speaker:** Now, Minister, the question was at the start of that. *((Laughter))*

615

**The Minister:** Thank you, Mr Speaker.

I cannot help agreeing with the Chief Minister and I always make the point when I am talking to people about this, that the time to make representations is prior to the planning application being determined and *everyone* is able to do that. So I would encourage people to do that.

620

But, yes, we are more democratic in that we do allow third party appeal.

**The Speaker:** Supplementary question, Mr Baker.

**Mr Baker:** Thank you very much, Mr Speaker.

625

Would the Minister agree with me that actually given the Department is effectively subsidising the cost of appeals and that the vast majority of appeals come from applicants who have had their applications turned down, then effectively the biggest impact of this increase in fees is on the applicants themselves who were seeking to overturn the original decision rather than the third parties that have been extensively referred to today?

630

Furthermore, would the Minister also agree that when we have had over the last four years an average of about 1,400 planning applications determined, of which only 60 to 80 go to appeal and only 16 of those – which is less than 1% – result in a change from the original decision, it probably indicates that the Department, and the process, is working pretty well?

635

Finally, does he share my frustration that the fact that dealing with planning applications, of which the vast majority do not change the outcome and which result in a whole load of activity, both from the Minister and at officer level, which does not actually change anything ... Does he share my frustration that the Department is being criticised by Hon. Members who, in another place, this time last week, were criticising Departments for having excessive costs? And when the Department is trying to be financially responsible, that Hon. Members cannot have it both ways?

640

**A Member:** Hear, hear.

**The Speaker:** Minister to reply.

645

**The Minister:** Thank you, Mr Speaker.

I will start with the last point. Yes, I do find it very frustrating that every time we try and actually charge more in a fair way to cost-recover we are criticised, and it is extremely frustrating.

650

Going back to the earlier points: yes, we do have a fairly robust process and I am pleased to say that, unlike some jurisdictions, we have pre-application liaison and our officers will talk to applicants and also people who are opposing – this is not the case in some areas in the UK now – and that leads to a better and more thorough assessment of planning applications before they are heard. So, yes, I do agree with the Hon. Member, the Chairman of the Planning Committee.

655

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

660

I am really concerned about this because the Minister has mentioned several times this morning this is about recovering costs – and that is a real serious concern. Can I ask the Minister if this is the start of a central Government policy where Government is going to start collecting the actual cost for things? I just hope that it does not actually go down as far as the courts

because realistically sometimes fairness, openness and transparency need to overcome the cost element.

665

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

I am sad that the Hon. Member believes it is a serious situation that we are actually trying to recover costs. These are costs – this is not a general provision of a service in the way that some Government services like Health are delivered. This is a specific service aimed at applicants and the planning process, the development process, and I think it would be seriously remiss of us if we did not try and recover costs.

675 **The Speaker:** Supplementary question, Ms Edge.

**Ms Edge:** Thank you, Mr Speaker.

I, too, am interested and I have heard so many times this morning it is about cost recovery, and I think I have just heard the Chair of Planning say that it is subsidised – so we are not getting cost recovery. And then also, thanks to the Chair of Planning: I think he said that it was 16 out of the 60 to 80 overturned; and prior to that the Minister did say that people would receive a refund.

680 So can I just seek clarification that there have been 16 refunds? So people have paid that money and you are giving it back, there is no cost recovery going on here. And obviously the Minister has just said it is a service: well, that should be paid for by taxes rather than stealth taxes for individuals.

**The Speaker:** Minister to reply.

690 **The Minister:** I am not quite sure, Mr Speaker, where the Hon. Member is coming from there. Yes, they paid their fees and 16 were successful and got their fees back – that is how the system works.

This is not a stealth tax, it is a form of cost recovery and I am seriously concerned that Members are not wanting us to recover costs where we can. I thought that was what fiscally responsible government was all about.

695 It is not taxation; it is cost recovery for a service. When you go and get a driving licence you expect to pay to get a driving licence and that is not tax, that is recovering the cost of issuing the driving licence. When you go to get a passport you are charged for the passport issue – that is cost recovery. And this is a cost recovery.

700

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

The Minister confirmed that no impact assessment was undertaken before bringing this in. Can I ask how the Department intends to monitor to make sure this increased cost is *not* putting people off – applicants, specifically – from appealing decisions that they would like to appeal?

705 And seeing that this is obviously entirely about cost recovery, I wonder if the Minister could advise how much more additional revenue this change is expected to raise, and what the overall cost of providing the planning appeal service is to the Department? Because it would be interesting to see whether this is really going to make any sizeable dent in his Department's budget, or whether this is a throwaway for the Department that might have serious impacts on individuals.

**The Speaker:** Minister to reply.

715       **The Minister:** We are expanding the scope of the Question, but I am very happy to supply the figures outside of this House if the Hon. Member would like them.

          In terms of the impact on applicants: there is an element of impact – and I expressed this earlier – in terms of applicants making third party appeals, or applicants themselves making appeals, that they need to be made on proper planning grounds. One of the rationales to have a fee, and the Chief Minister brought this in some time ago, was to ensure there was a fiscal cost to making appeals so that people appealed for the right reasons – that is *planning reasons*, not just because they do not like the look of a building, or they do not like their neighbours, or whatever.

725       **The Speaker:** Final supplementary on this Question, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

          I seek clarification, Mr Speaker, because when the Hon. Member for Ayre and Michael asked the Minister, in light of the fact that the Departments were not delivering the savings the Treasury asked of them and that therefore it was important to get cost recovery, he seemed to suggest in a very positive way that that was the way forward. Is he not confused – completely confused now – between the difference between Departments themselves saving money, as opposed to the Departments putting their hands in the pockets of individual citizens' savings? And that it should be the former, not the latter, that the Department should be achieving and so far have completely failed to prove they can do?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

740       I am not sure how to answer that really because I think (*Interjection*) the two go hand in hand. There is cost recovery and fiscal prudence within a Department and if you are providing some form of service that people buy into, like *any* organisation, then we look at where we can improve the situation in terms of cost recovery. There is still a large loss to the Department in hearing these appeals.

### **1.8. Japanese knotweed – Removal**

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

*What his Department is doing to remove Japanese knotweed from our Island?*

745

**The Speaker:** Question 8, I call on the Hon. Member for Onchan, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

          Can I ask the Minister for Environment, Food and Agriculture what his Department is doing to remove Japanese knotweed from our Island?

750

**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. You will be pleased to know that we are not charging people! (*Laughter*)

755

Japanese knotweed is a highly invasive plant which causes land management challenges throughout the British Isles and beyond. Under the Isle of Man's Wildlife Act 1990, it is an offence to plant the species or otherwise allow it to be grown in the wild.

760 The Department tries to treat knotweed it encounters on its forest and woodland estate primarily through chemical application via knapsack sprayers or direct injection. We usually have to undertake several consecutive years of spraying and even then this is not always successful.

Members of the public are encouraged to report any Japanese knotweed seen growing on DEFA land so that it can be dealt with. When Japanese knotweed is reported on private land the landowners are given removal advice by DEFA, but it is the landowner's responsibility to remove  
765 it from their land and they must then, by law, dispose of cuttings or soil containing roots responsibly. A Japanese knotweed factsheet is available on the Government website or from DEFA's headquarters, which gives advice for landowners on responsibilities, identification and treatment, and do's and don'ts when removing and disposing of the plant.

DEFA and the Year of Our Island have recently awarded grants to Friends of the Neb, a  
770 voluntary group whose remit is to tackle Japanese knotweed and Himalayan balsam in the River Neb catchment. Part of the grant will be used to train volunteers as using herbicides adjacent to water courses requires specialist training to protect the fragile aquatic environment and fish species. The grant will also be used to equip volunteers with the necessary personal protective equipment and to promote the scheme and the control of invasive non-native species. The work  
775 will start at the headwaters and work down to the sea, as both species can be carried downstream and infest new areas.

Acknowledging the success of Beach Buddies in galvanising volunteers, I am sure Members will join me in welcoming this voluntary initiative, and it is hoped that this scheme can be duplicated in the Isle of Man's other rivers.

780

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker, and I thank the Minister for his very detailed response this morning. I very much appreciate it.

785 In his Oral Answer given to this House on 18th September 2018, he confirmed that DEFA record known locations of Japanese knotweed that are reported by the public, but does not have the resources to remove Japanese knotweed when identified.

Therefore – and just to carry on from what the Minister has just said – can I ask the Minister what his Department is doing to ensure landowners, private contractors and local authorities are removing Japanese knotweed correctly in accordance to the guidelines his Department has  
790 already published?

**The Speaker:** Minister to reply.

795 **The Minister:** Thank you, Mr Speaker.

Within the DEFA estate we are under-resourced and find it difficult to control Japanese knotweed. There have to be priorities and that is why we welcome the formation of a voluntary body, which we hope will grow in the same way as Beach Buddies.

In terms of what private individuals do, it is an offence to grow in the wild any plant which is included in Part 2, Schedule 8, and individuals who do this knowingly are committing an offence.  
800 From a farming perspective – and bearing in mind the farming community manages 80% of our Island agricultural and open land – this is an aspect that we are considering at the moment as part of the reform of agricultural support. There could be cross-compliance conditions imposed in terms of controlling Japanese knotweed.

805

**The Speaker:** Supplementary question, Mr Moorhouse.

**Mr Moorhouse:** Thank you, Mr Speaker, and thank you, Minister, for another update on this. In answer to the Question asked in September regarding this specific area, you made reference to the Department working on an invasive species strategy for the terrestrial environment. How is that progressing, please?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker. It is progressing. With the present workload in my Department, particularly around Brexit, some things have had to take a slightly slower lane, but I am aware that it is something that we need to bring forward and I hope to see some progress within the next six months.

## HEALTH AND SOCIAL CARE

### 1.9. DHSC Integrated Care Vision – Parts copied from Wigan Council document

The Hon. Member for Onchan (Mr Callister) to ask the Minister for Health and Social Care:

*When he knew that parts of the Integrated Care Vision were almost a direct copy of the Wigan Council Integrated Health and Care Strategy?*

**The Speaker:** Question 9, I call on the Hon. Member for Onchan, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker. Can I ask the Minister for Health and Social Care when he knew that parts of the Integrated Care Vision were almost a direct copy of the Wigan Council Integrated Health and Care Strategy?

**The Speaker:** I call on the Minister for Health and Social Care to reply.

**The Minister for Health and Social Care (Mr Ashford):** Thank you, Mr Speaker. At the December 2017 Department meeting, immediately prior to me becoming Minister, it was agreed and proposed that the Northumberland model should be adapted for our specific needs. Subsequently, different models already in action from around the UK in relation to integrated care were shared at my first Department meeting as Minister on 2nd February 2018.

The Department agreed that the model that best fitted the Island and what we were seeking to achieve was actually the Wigan model. On this basis, it was agreed unanimously by the meeting that the vision contained within the Wigan model would be used as our base model.

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker, and I thank the Minister for his response. Given the fact that the Minister has already highlighted that this is a vision document and the vision document was published about six months ago, therefore can I ask the Minister when we can expect to receive the strategy document?

**The Speaker:** We are straying a little from the Question. Minister.

**The Minister:** Happy to reply, Mr Speaker, because the strategy document has been in existence for many years. The strategy document is the five-year strategy which was approved by Tynwald in 2016 and actually relates to integrated care hubs, adoption of new technologies; rehabilitation enablement is contained in there, discharge planning and community support, end of life care. Flowing off that as well, there is the Strategic Plan for Mental Health and Wellbeing and the Young People and Children's Strategy.

What the vision document does is it pulls all those together with the high level vision of how integrated care works in practice. So all the strategies are there and they are all public. Also, it feeds into the service delivery plans that have been appearing over the last few years as well: in particular, the '5 years, 5 goals', and under the heading 'More care in the community'.

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

I note the Minister commented there that it was agreed that the model and the vision would be used from Wigan. Can the Minister please explain to this House then why the Department felt it was appropriate to represent statements from Wigan residents as being statements from Isle of Man residents that were gathered during their feedback sessions in the south and west of the Isle of Man?

**The Speaker:** Minister to reply.

**The Minister:** Thank you, Mr Speaker.

There are two bits I think the Hon. Member is referring to. First of all, things that have been called case studies that are not; they are actually examples. I am going to come to the other bit that I think the Hon. Member is referring to as well. So we need to be absolutely clear the case studies are contained on pages 35 to 47 of the document and they are wholly Manx. What is given earlier on in the document is examples where they are not real examples, they are examples of how integrated care should work. They are not real examples in the Wigan document either.

The other bit I think that the Hon. Member is referring to is, from memory, on page 6 of the document. In relation to the feedback given at the south and west, I can actually say I have seen that feedback and it does fit in with those headings, but certainly I personally think that in fact the wording should have been changed around that to make it more Manx specific. But the feedback that was given at those sessions does fit under those headings.

## INFRASTRUCTURE

### 1.10. Housing Strategy – Intention to bring before Tynwald

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Infrastructure:

*When he intends to bring a Housing Strategy before Tynwald?*

**The Speaker:** Question 10, I call on the Hon. Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you, Mr Speaker.

I would just like to ask the Minister for Infrastructure when he intends to bring a Housing Strategy before Tynwald?



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

**The Minister for Infrastructure (Mr Harmer):** Thank you, Mr Speaker.

890 I would refer Hon. Members back to the housing review update given to them on 13th March 2018 when officers showed that the Department continued to deliver on the high level policy and strategic aims of the original housing review which was laid before this House in November 2013.

895 However, given that five years have elapsed since the original review, it is time for my Department to come back to another place with a renewed vision on housing policy direction and I am committed to doing so by the end of the calendar year.

## POST OFFICE

### 1.11. Santander Bank Plc – Statement on contract with IoM Post

The Hon. Member for Onchan (Mr Callister) to ask the Chairman of the Post Office:

*If she will make a statement on the Isle of Man Post Office's decision to cancel the Santander Bank Plc contract with effect from 22nd April 2019?*

**The Speaker:** Question 11, I call on the Hon. Member for Onchan, Mr Callister.

900 **Mr Callister:** Thank you, Mr Speaker.

Can I ask the Chairman of the Post Office if she will make a statement on the Isle of Man Post Office's decision to cancel the Santander Bank Plc contract with effect from 22nd April 2019?

905 **The Speaker:** I call on the Chairman of the Post Office to reply.

**The Chairman of the Post Office (Ms Edge):** Thank you, Mr Speaker.

Broader corporate services provided to Santander UK had diminished and our internal and external costs had increased, making the provision for the cash deposit service loss making for Isle of Man Post Office. Since giving notice, Isle of Man Post Office have sought to work with the provider to explore alternative ways of sustaining the service in a financially responsible way.

910

**Mr Callister:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker, and I thank the Chairman for her response.

915 Can I ask the Chairman what communication prior to the letter dated 23rd January 2019 – which has already been circulated ... Sorry, apologies, 23rd January, I have a copy here, Mr Speaker, if you wish to circulate it – which has taken place between the Post Office and sub-post offices at branches and businesses and customers who use the service before this vital decision was taken, especially in respect to the loss of income and footfall?

920 **The Speaker:** Chairman to reply.

**The Chairman:** Thank you, Mr Speaker.

925 Unfortunately, as we are still in contact with Santander UK it would be inappropriate for me to comment any further.

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

930 I would be grateful if the Hon. Chairman would be able to share: did the Post Office do an impact assessment on each individual local sub-post office before deciding to cancel this contract, both in terms of the lost revenue they would suffer and the potential lost footfall those businesses would suffer?

935 **The Speaker:** The Chairman to reply.

**The Chairman:** As I have just stated, Mr Speaker, it would be inappropriate, as we are still in contract with Santander, for me to comment.

940 **The Speaker:** Supplementary question, Mr Baker.

**Mr Baker:** Thank you very much, Mr Speaker.

945 Could the Chairman of the Post Office advise what sort of methodology the Isle of Man Post Office used to calculate its cost? Did it take a marginal cost approach which looked at the incremental costs arising from delivery of those services, or did it take an average cost basis?

Secondly, once the contractual position finishes on 22nd April, which is about eight weeks away, will she then circulate both the information requested by my hon. friend, Mr Hooper, and also the business case to prove that this was a loss-making service? Because we are heading here for an Isle of Man Post Office service which is withering on the vine and by the time the Chairman comes to the other place in October to present the vision there will be nothing left of it.

**The Speaker:** Chairman to reply.

955 **The Chairman:** Thank you, Mr Speaker.

Obviously I am not going to comment on the contract, but I am sure all Hon. Members in this House are very aware of Santander's position and the number of closures that they have carried out or are carrying out in the UK. Obviously, from an Isle of Man Post Office point of view, we are still in contract with Santander, we are still talking to Santander and I cannot say anything further at this point.

**The Speaker:** Supplementary question, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

965 It does make me smile that the Chairman of the Post Office has shouted in this place and in the other place that Ministers are not held to account, they do not answer questions. Notice has been formally given; the contract ends in April 2019. I hope that the Chairman can answer this question, because it does not actually relate to Santander. Can I ask the Chairman if she is fully aware that most public houses on the Isle of Man actually bank through the Post Office and Santander, along with many other convenience stores, newsagents etc. and this will be business lost after 22nd April 2019?

970 Mr Speaker, it is worth mentioning that these public houses and other businesses also generate a considerable amount of cash and that this cash is used in the post office to pay pensions, child benefits and other allowances. Therefore could I ask the Chairman of the Post Office how much it will cost in additional cash and bank charges to actually make up this difference in loss of cash?

**The Speaker:** Chairman to reply.

980 **The Chairman:** Thank you, Mr Speaker.

As I have already said, we are still in discussions with Santander. Isle of Man Post Office does not only deal with Santander Bank; we deal with other international banks. Obviously, I am quite surprised really that the Hon. Member thinks that Isle of Man Post Office should be running a service that, as advised, was actually loss-making to Isle of Man Post Office.

985

**The Speaker:** Supplementary question, Mr Baker.

**Mr Baker:** Thank you very much.

990 The Chairman has set me up beautifully with that final remark to the last supplementary from Mr Callister. Can she actually answer either of the two questions I have previously requested her to do?

995 Firstly, I asked for the calculations to be circulated once the contract ends. The contract is either going to end or it is not going to end, so could we please have a commitment that once it does end, whenever that may be, whether it be 22nd April or a later date, that she does circulate that to Hon. Members?

Secondly, can she circulate a detailed analysis of the accounting methodology used by Isle of Man Post Office to calculate the profitability or otherwise of its service costs?

Thank you.

1000 **The Speaker:** Chairman to reply.

**The Chairman:** Thank you, Mr Speaker.

1005 Yes, I am happy to circulate anything that I can do that is not commercially sensitive. Obviously, the Hon. Member is an accountant so he will know how we do our practices probably.

**The Speaker:** Supplementary question, Mr Shimmins.

**Mr Shimmins:** Thank you, Mr Speaker.

1010 Would the Chairman of the Post Office agree with me that this is part of a wider trend where people are moving away from cash and paper cheques to use electronic payment methodology; and in fact, a number of people use their cards to pay for drinks in pubs and also that there are other banks available which do bank small businesses and pubs and other cash-type businesses on the Island?

1015

**The Speaker:** Chairman to reply.

**The Chairman:** Thank you, Mr Speaker.

Yes, I agree.

1020 What I would like to say, though, Mr Speaker, is if any Member has got an actual individual concern or somebody has raised it with them, I am quite happy to discuss that with the Member. Obviously, we have been in email communication with the Hon. Member for Onchan, Mr Callister, and I thought we had clarified the position.

1025 **The Speaker:** Supplementary question, Mr Baker.

**Mr Baker:** Thank you very much.

I would like to thank the Chairman for her implying that because I am an accountant I will know what accounting methodology Isle of Man Post Office will be using. Absolutely, fundamentally wrong!

There is a whole different way of potentially looking at these different situations and we need to understand that the Isle of Man Post Office is actually taking a proper commercial approach to the calculation of costs which actually means that it is making a sensible decision here: that if it is closing down service lines it is actually going to improve its financial performance as a result of doing so. That is the reassurance I am looking for and that is why we need to see this information provided by the Chairman.

**The Speaker:** Chairman to reply.

**The Chairman:** As I have already stated, Mr Speaker, we will circulate what we can and obviously anything commercially sensitive I will have to point out. But I think it is inappropriate really to be questioning the accountant at Isle of Man Post Office. It is a commercial business. We have two arms to the business: we have the universal service obligation and we have the commercial arm of the business. I will ensure that whatever I can issue to the Hon. House I will.

**The Speaker:** Supplementary question, Mr Hooper.

**Mr Hooper:** Thank you, Mr Speaker.

Well, if it is inappropriate to be questioning the Post Office and their decisions maybe it is time for an external review, Mr Speaker! *(Laughter)*

I would like just to ask the Chairman if she can answer the question that I actually asked. I did not ask for a copy of the impact assessment that was done on the individual sub-post offices; I simply asked the question, 'Did they do one?' – yes or no? Was an impact assessment done on how this was going to impact on the sub-post office network before they took the decision to close it?

I would just like to comment briefly and ask the Chairman why she thinks that the methodology used for calculating costs is commercially sensitive? It has nothing whatsoever to do with the individual contract at stake. So if the Chairman has committed to circulating all the non-commercially sensitive information, can she commit to circulating that information as soon as possible?

**The Speaker:** Chairman to reply.

**The Chairman:** Mr Speaker, I have to say that Isle of Man Post Office were approached by Santander with regard to making this part of our business with Santander more efficient, more effective; and we have been in negotiations for some time with Santander with regard to this.

I am happy to circulate to Members with regard to the amount of transactions that come through the network. I can give numbers of transactions daily, that type of thing. I am not saying I will give the actual financial status for each individual office but we are fully aware of what the transactions are daily coming through our sub-post office network.

**The Speaker:** Final supplementary, Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

I am really disappointed with the Chairman's responses here this morning.

Can I ask her if she can please ensure to switch off the lights when she has finished closing all the sub-post offices?

**The Speaker:** There is not a genuine question there.

**Standing Orders suspended to take Question 1.12.**

1080 **The Speaker:** Unfortunately, Hon. Members, the hour for Questions is up. I am conscious that there was one more left on the Order Paper.

Cue someone –

1085 **Mr Hooper:** I wish to suspend Standing Orders, Mr Speaker. I beg to move.

**The Speaker:** I need a seconder.

**Mr Callister:** I am happy to second that, Mr Speaker.

1090 **The Speaker:** Mr Callister.

The question is that Standing Orders be suspended in order to take Question 12 for Oral Answer at this sitting. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**ENVIRONMENT, FOOD AND AGRICULTURE**

**1.12. Bottle return scheme –  
Evaluating benefits**

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

*Whether he has considered evaluating the benefits of a bottle return scheme on the Island?*

1095 **The Speaker:** Question 12 and I call on the Hon. Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you, Mr Speaker.

I would like to ask the Minister for Environment, Food and Agriculture whether he has considered evaluating the benefits of a bottle return scheme for the Island?

1100 **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.

1105 Reducing the impact that carelessly discarded plastics have on our terrestrial and marine environments is a priority for this Government. Our Island is a special place to live and work and visit and has UNESCO Biosphere status, and it is incumbent on us all to discourage the use of plastics at source and do all we can to reduce the amount of plastic which, once used, enters and blights the environment.

1110 As the House will know, Tynwald approved phase one of the Single Use Plastics Reduction Plan for the Isle of Man Government in July last year and that is now being implemented across the public service. My officers are drawing up proposals for phase two of this plan and via this we aim to reduce plastic use and encourage the proper disposal of plastics across our community. We expect to launch a public consultation on phase two of the plan relatively soon.

1115 The draft plan will contain a range of measures designed to legislate against unnecessary use of plastic; incentivise people to use more environmentally friendly alternatives; and educate people on the damage done to the environment by plastics, and about more viable choices.

I can confirm that my officers are currently researching possible options relating to the implication of a bottle return scheme on the Island. I would highlight the recent introduction of the Refill scheme which has the potential to substantially reduce the number of single-use plastic bottles. Once we have received public feedback on the consultation we will finalise phase two of the plan for consideration by Tynwald.

**The Speaker:** Supplementary question, Mr Moorhouse.

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

I asked a very similar question last April and you made reference to a pilot scheme in the UK that you were actively monitoring. How is that progressing? Is that a successful way to actually take the bottles and reuse and recycle them?

**The Speaker:** Minister to reply.

**The Minister:** Sorry, Mr Speaker.  
What scheme, sorry, Mr Moorhouse?

**Mr Moorhouse:** It was a bottle recycling scheme.

**The Minister:** Thank you.

The UK recently launched a 25-year environmental strategy and is working to assess the potential bottle return schemes and reverse vending schemes. I am not sure of the progress made with that particular scheme.

I was at the British-Irish Council last week at an Environmental Ministers' meeting and, discussing matters with our Scottish colleagues, they are looking at introducing a bottle return scheme shortly. I have undertaken personally to monitor that to see how the costs mount up and whether there are real benefits.

**The Speaker:** That concludes Questions for Oral Answer, Hon. Members.

Item 2 on our Order Paper is Questions for Written Answer and those will be circulated in due course.

## 2. Questions for Written Answer

### TREASURY

#### **2.1. Increasing pension age – Advice to women born in 1950s**

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

*How many women born in the 1950s were sent letters from the then Director of IOM Social Security in 2009, enclosing a leaflet advising the pension age for women would be gradually rising from 60 to 65; and whether these women have been sent updates relating to subsequent changes or advice about how to deal with these changes?*

**The Minister for the Treasury (Mr Cannan):** On 4th November 2009 the then Director of Social Security wrote to 2,597 women who were born in the 1950s and for whom the then  
1150 Department of Health and Social Security held a National Insurance record, enclosing a leaflet entitled 'State Pension changes and what they mean for you'. This leaflet not only gave details of the increase in state pension age; it also provided information about the reduction in the number of qualifying years required to get a full state pension and the introduction of a new weekly National Insurance credit for carers and parents.

1155 No further general communications have been sent to this cohort about the increases in state pension age.

However, on 18th November 2011 the then Department of Social Care issued a media release announcing that:

... women's state pension age is to rise to 65 by November 2018, 17 months earlier than under the current legislation. It will increase quicker than had been planned and will affect women born after 5th April 1953. The state pension age for both men and women will then rise to 66 by October 2020, some 5½ years earlier than currently provided for.

1160 Furthermore, many of the women have since contacted the Treasury and have been given specific advice about when they will reach state pension age and their National Insurance contribution record. And the raising of women's state pension age has been widely covered in the local and UK media.

Treasury officers are not permitted to advise on any matters related to financial planning.

#### **2.2. State retirement pension – People who did not respond to letters**

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

*What action he has been taken to contact the people who failed to respond to Social Security letters regarding state retirement pension; and whether these individuals are still receiving their pension payments?*

**The Minister for the Treasury (Mr Cannan):** On 18th February 2019 letters were sent to 756 pensioners who had not at that time responded to a letter sent to them on 17th October 2018 asking them to complete and return to the Treasury a 'Declaration of continuing entitlement'.

The letters sent on 18th February 2019 asked the pensioners concerned to complete and return to the Treasury a 'Declaration of continuing entitlement' by no later than 18th March 2019 and advised that if they failed to do so payment of their state pension may be suspended.

To date no pensioner has had payment of their state pension suspended or terminated as a result of not providing to the Treasury a completed 'Declaration of continuing entitlement', as requested by letter to them of 17th October 2018.

### **2.3. Manx Gas – Treasury termination of Agreement for the Regulation of the Gas Market**

The Hon. Member for Onchan (Mr Callister) to ask the Minister for the Treasury:

*When his Department will give Manx Gas six months' formal notice in respect of terminating the Agreement for the Regulation of the Gas Market in the Isle of Man, dated 24th April 2015, in accordance with section 15.1 of the Agreement?*

**The Minister for the Treasury (Mr Cannan):** The current Regulatory Agreement permits any signatory, on or after 1st January 2019, to serve notice of termination on the remaining signatories. The notice period stated is six months and it is noted that only one signatory is required to give notice.

The Government signatories to the Agreement are as follows:

- Office of Fair Trading;
- Treasury; and
- Department of Environment, Food and Agriculture (as successor of the Department of Economic Development by virtue of a Transfer of Functions Order)

The recently published Report of the Chief Minister's Gas Review Committee sets out the direction for the negotiation of new arrangements for the regulation of the gas market. Council of Ministers have agreed that Treasury, Cabinet Office and HM Attorney General's Chambers should be mandated to commence negotiations, supported by external technical regulatory expertise.

Treasury will be guided by the Council of Ministers as to when it should serve notice.

The expected timescale for the negotiation of new arrangements is unknown. If Government gives notice of termination and fails to reach a new agreement within the six-month notice period, the result is that the gas sector becomes unregulated.

It is essential to ensure there is a managed transition from the 2015 Regulatory Agreement into the new system of regulation and Treasury will assist where necessary to work towards a mutually agreeable outcome.



**EDUCATION, SPORT AND CULTURE**

**2.4. Review of operations of Department of Education –  
Publication of Ofsted report (2002)**

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

*If he will publish the Ofsted report (2002) which reviewed the operations of the Department of Education?*

1195 **The Minister for Education, Sport and Culture (Mr Cregeen):** Yes, we will publish this report which was published on the Government website in 2002.

The report can be found on the link below.

<https://www.gov.im/about-the-government/departments/education-sport-and-culture/information-and-publications/o/#accordion>

It can also be found via the 'Information and publications' tab on [www.gov.im/desc](http://www.gov.im/desc)

**2.5. Ofsted report (2002) –  
Recommendations and implementation**

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

*What recommendations made in the Ofsted Report (2002) were implemented; and what reasons were given for not implementing the other recommendations?*

1200 **The Minister for Education, Sport and Culture (Mr Cregeen):** As the Hon. Member is clearly aware, a review of the (then) Department of Education was carried out in 2002 by Ofsted and a report was published, at the time.

1205 The Review made 44 recommendations, ranging from the development of an education improvement services, changes to strategic management for the Department, 16-19 Education, finance, SEN, access to education and youth and community education. A subsequent review of the Department's progress towards the report's recommendations was undertaken by David Halligan (HM Inspector of Schools) in 2004 and the generally positive findings of this are attached.

1210 The relationship between central Government, the Department and schools described in the 2002 report bears little relationship to the current landscape. The legislation which it describes, for example (the 1949 Education Act and the forthcoming 2001 Education Act) are soon to be superseded by a new, much-awaited Bill. Since 2002, there have been very significant changes to the ways in which the Department carries out its functions (including the inclusion of Sport and Culture within its remit) and the Department believes that there have been innumerable improvements to its work over the last 17 years. Though it is sometimes difficult to make a judgment because of the very different contexts, therefore, it is the Department's belief that, of all 44 recommendations, it has implemented the recommendation, gone significantly beyond the recommendation or has recognised that the recommendation has become out-of-date (e.g. recommendations on Literacy and Numeracy strategies, shared services, planning across IOM Government as a whole or recommendation for the peripatetic Language Service).

1220

ISLE OF MAN – DEPARTMENT OF EDUCATION

RESPONSE TO THE RECOMMENDATIONS OF THE OFSTED REPORT

The period since the inspection has been one of change for the Department and its officers. There has been much, very satisfactory, improvement. More remains to be done to implement new policy and plans fully. Since the inspection, Government planning has been transformed, new officers have been recruited to the education service, a strategic approach to school improvement has been developed and the budget is now aligned more closely to the Department's educational priorities. As a result of these changes, the Department's capacity to implement its planned changes and so to secure further improvement is good.

The new planning system establishes the place of education in the economic and cultural life of the island. It has, however, yet to set national targets for attainment, as recommended in the report. The Department is now able to produce sophisticated analyses of data on attainment, and therefore has the capacity to set such targets on the basis of pupils' prior attainment, and thus to provide targets against which the success of the Department's work can be measured.

The developments in school improvement meet the crucial second recommendation of the report. The combination of the protocol for relations with the schools, and the proposals for school self-evaluation and for externally validated reviews will have, when implemented next term, the potential to change the relationship with schools. They define monitoring, challenge, support and intervention and, if implemented successfully, will provide the schools with a clear idea of their strengths and weaknesses, and thus of what they need to do in order to improve. The recommendations to improve primary school management and school governance have lagged. The new approach to school improvement offers the opportunity to deal with these matters because promoting successful management of schools is at its core.

The new emphasis on school improvement is supported by the new approach to budget setting. The financing of improvement activities is clear and the recent case for funding, presented to the Council of Ministers, shows the Department's determination to provide officers with the means to act upon their school improvement policies. There are plans to solve the recent problems with the new school financial management system. When these too are implemented, school management will be further strengthened. The need to analyse service costs so as to improve value for money has not yet been met, but the work has a high priority in the finance officers' future planning.

The personnel control mechanism remains a problem. It continues to promote the use of short term contracts and to force the Department to make decisions on priorities which damage the implementation of its policies. The visit uncovered a very clear example of this happening in the postponement of the appointment of an officer to provide careers guidance for vulnerable young people. The decision had to be made to provide staffing for reform of the teaching workforce which could not be delayed, but it prevented the provision of support to young people who need it badly.

There is a mixed picture of change and improvement amongst the individual school improvement services. Data analysis and provision have made considerable progress. Already advisers are using data to direct their work. Further support and training for schools and the advisory service in using what is now available, is planned. The benefits of improved collection and analysis of data will depend on the success of that support. Manx language provision is now on a sounder basis, and the beginning of a Manx medium school is an exciting development. Support for careers work, for literacy and numeracy, and for Key Stage 3, have all made progress. Support for schools causing concern is more mixed. The precondition for effective work has been met: officers now know where support is necessary. However, the work has yet to become sufficiently systematic and aimed precisely enough where it is needed most. The intention to build up expertise in the advisory service is soundly based.

There has also been mixed improvement in special educational needs (SEN) and in improving access to education. In behaviour, there has been success in reducing suspension in primary schools and in improving support for difficult pupils by expanding the provision of referral units and nurture groups. Nevertheless, the Department has yet to make full-time educational provision for suspended pupils. The personnel control mechanism may cause difficulties in this matter. There is now greater clarity in SEN funding and in the definition of expectations of the support to be provided in schools. This has been achieved through the formula for the delegation of funds which now relates the money provided to the needs of the pupils.

Youth and community work have improved, the difficulties with staffing the careers service, notwithstanding. The careers advisers in post now work more effectively with the youth service, and the work of that service has improved with the increase in youth workers and the decrease in youth officers. The full benefits of this have necessarily to be delayed as staff are trained and become qualified, but those processes are soundly planned. Support for disaffected young people is improving.

This summary has shown that the preconditions for fully meeting the recommendations of the report are in place, particularly in the new clarity of direction in school improvement work. Full implementation must be the next stage and that requires effective management of performance. This can build on the new government-wide

system, if that system is combined with the departmental operational management system in such a way that officers at all levels are accountable for the progress they are making with the programmes of action they have agreed. It will require some improvement in officers' self-evaluation. Some of it is strong. That produced by the finance section, for example, showed in a straight forward way, well supported by evidence, what had been achieved and what had yet to be done. That provided for SEN and access was far less rigorous. Above all, successful implementation will require strong leadership from both the Department and senior officers so that the education service as a whole can follow the new directions which have been set since the inspection.

## 2.6. Schools and college employee costs – Details for last five years

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Education, Sport and Culture:

*How much each school and college has spent on employee costs, broken down by: (a) type of employee and (b) percentage of whole budget assigned to salaries, for each of the last five years?*

**The Minister for Education, Sport and Culture (Mr Cregeen):** The following tables provide a breakdown of employee costs for the last five years. The current year (2018-19) reflects the actual and budgeted spend to the end of January 2019. Total budget % reflects employee costs as a % of the total budget.

Primary Education	2018-19		2017-18		2016-17		2015-16		2014-15	
	£	%	£	%	£	%	£	%	£	%
<b>Anagh Coar</b>										
Teacher	312,383	86%	386,891	86%	393,528	87%	392,538	88%	376,302	87%
Education Support	24,870	7%	28,618	6%	26,838	6%	26,392	6%	26,511	6%
Administrator	16,683	5%	20,521	5%	19,287	4%	17,171	4%	16,595	4%
Ancillary	9,813	3%	11,709	3%	11,821	3%	11,044	2%	10,577	2%
Expenses	307	0%	1,936	0%	614	0%	766	0%	87	0%
<b>Employee costs</b>	<b>364,056</b>		<b>449,676</b>		<b>452,088</b>		<b>447,911</b>		<b>430,072</b>	
<b>Total Budget</b>	<b>409,445</b>	<b>89%</b>	<b>511,190</b>	<b>88%</b>	<b>493,600</b>	<b>92%</b>	<b>471,500</b>	<b>95%</b>	<b>462,900</b>	<b>93%</b>
<b>Andreas</b>										
Teacher	274,238	84%	337,619	84%	330,548	83%	329,939	84%	343,344	84%
Education Support	19,699	6%	25,378	6%	28,928	7%	29,810	8%	29,134	7%
Administrator	20,464	6%	24,589	6%	24,337	6%	20,647	5%	20,230	5%
Ancillary	10,541	3%	14,128	4%	11,359	3%	11,805	3%	11,796	3%
Expenses	1,012	0%	851	0%	1,724	0%	2,577	1%	2,542	1%
<b>Employee costs</b>	<b>325,955</b>		<b>402,565</b>		<b>396,897</b>		<b>394,779</b>		<b>407,047</b>	
<b>Total Budget</b>	<b>354,653</b>	<b>92%</b>	<b>450,236</b>	<b>89%</b>	<b>436,350</b>	<b>91%</b>	<b>438,600</b>	<b>90%</b>	<b>460,600</b>	<b>88%</b>
<b>Arbory</b>										
Teacher	386,042	86%	459,577	86%	450,713	86%	440,906	87%	446,117	87%
Education Support	27,598	6%	31,463	6%	32,445	6%	29,555	6%	29,110	6%
Administrator	21,836	5%	26,492	5%	25,976	5%	22,189	4%	21,804	4%
Ancillary	11,236	3%	15,553	3%	15,515	3%	14,247	3%	13,950	3%
Expenses	619	0%	932	0%	967	0%	572	0%	927	0%
<b>Employee costs</b>	<b>447,330</b>		<b>534,015</b>		<b>525,616</b>		<b>507,468</b>		<b>511,907</b>	
<b>Total Budget</b>	<b>489,666</b>	<b>91%</b>	<b>577,115</b>	<b>93%</b>	<b>565,950</b>	<b>93%</b>	<b>559,600</b>	<b>91%</b>	<b>561,000</b>	<b>91%</b>
<b>Ashley Hill</b>										
Teacher	558,805	84%	676,030	85%	680,891	86%	695,385	87%	773,483	88%
Education Support	43,363	7%	52,819	7%	51,199	6%	44,198	6%	49,715	6%
Administrator	25,900	4%	30,510	4%	30,116	4%	26,111	3%	26,458	3%
Ancillary	34,583	5%	30,491	4%	30,952	4%	29,535	4%	28,086	3%
Expenses	289	0%	3,070	0%	531	0%	293	0%	45	0%
<b>Employee costs</b>	<b>662,939</b>		<b>792,921</b>		<b>793,689</b>		<b>795,522</b>		<b>877,786</b>	
<b>Total Budget</b>	<b>716,429</b>	<b>93%</b>	<b>859,413</b>	<b>92%</b>	<b>861,250</b>	<b>92%</b>	<b>916,400</b>	<b>87%</b>	<b>948,100</b>	<b>93%</b>

**HOUSE OF KEYS, TUESDAY, 26th FEBRUARY 2019**

<b>Ballacottier</b>									
Teacher	611,270	88%	736,282	87%	694,234	86%	673,537	88%	651,348 86%
Education Support	50,015	7%	63,460	7%	62,545	8%	49,875	7%	62,648 8%
Administrator	21,530	3%	27,909	3%	25,212	3%	20,900	3%	19,748 3%
Ancillary	15,200	2%	19,363	2%	19,612	2%	19,564	3%	17,680 2%
Expenses	366	0%	1,518	0%	2,041	0%	2,002	0%	2,245 0%
<b>Employee costs</b>	<b>698,381</b>		<b>848,532</b>		<b>803,644</b>		<b>765,879</b>		<b>753,669</b>
<b>Total Budget</b>	<b>732,020</b>	<b>95%</b>	<b>898,240</b>	<b>94%</b>	<b>910,200</b>	<b>88%</b>	<b>834,700</b>	<b>92%</b>	<b>858,500 88%</b>
<b>Ballasalla</b>									
Teacher	255,797	83%	303,655	82%	288,156	81%	281,514	83%	297,992 84%
Education Support	27,951	9%	32,820	9%	31,874	9%	29,741	9%	30,250 8%
Administrator	18,045	6%	21,834	6%	24,456	7%	18,042	5%	17,394 5%
Ancillary	7,240	2%	11,304	3%	10,576	3%	10,676	3%	10,459 3%
Expenses	171	0%	587	0%	948	0%	590	0%	148 0%
<b>Employee costs</b>	<b>309,203</b>		<b>370,200</b>		<b>356,010</b>		<b>340,563</b>		<b>356,243</b>
<b>Total Budget</b>	<b>350,464</b>	<b>88%</b>	<b>405,148</b>	<b>91%</b>	<b>397,350</b>	<b>90%</b>	<b>384,900</b>	<b>88%</b>	<b>410,700 87%</b>
<b>Ballaugh</b>									
Teacher	185,252	78%	232,566	79%	221,828	78%	216,440	79%	218,126 79%
Education Support	30,019	13%	34,152	12%	33,929	12%	33,749	12%	35,400 13%
Administrator	16,974	7%	20,536	7%	19,812	7%	17,081	6%	16,887 6%
Ancillary	6,074	3%	7,171	2%	7,003	2%	6,548	2%	6,427 2%
Expenses	19	0%	394	0%	585	0%	137	0%	130 0%
<b>Employee costs</b>	<b>238,338</b>		<b>294,819</b>		<b>283,157</b>		<b>273,954</b>		<b>276,971</b>
<b>Total Budget</b>	<b>261,726</b>	<b>91%</b>	<b>305,054</b>	<b>97%</b>	<b>303,350</b>	<b>93%</b>	<b>302,500</b>	<b>91%</b>	<b>300,900 92%</b>
<b>Braddan</b>									
Teacher	401,760	89%	413,478	84%	409,915	85%	414,943	87%	393,498 87%
Education Support	26,382	6%	48,773	10%	38,253	8%	33,128	7%	30,368 7%
Administrator	14,775	3%	19,346	4%	19,283	4%	16,508	3%	16,568 4%
Ancillary	10,151	2%	12,108	2%	11,804	2%	10,662	2%	11,179 2%
Expenses	211	0%	778	0%	823	0%	598	0%	103 0%
<b>Employee costs</b>	<b>453,279</b>		<b>494,883</b>		<b>480,078</b>		<b>475,839</b>		<b>451,716</b>
<b>Total Budget</b>	<b>478,281</b>	<b>95%</b>	<b>567,805</b>	<b>87%</b>	<b>537,750</b>	<b>89%</b>	<b>497,400</b>	<b>96%</b>	<b>502,100 90%</b>
<b>Rhumsaa</b>									
Teacher	1,069,632	85%	1,217,392	85%	1,245,469	85%	1,189,818	85%	1,147,960 86%
Education Support	101,753	8%	117,725	8%	124,024	8%	115,599	8%	104,504 8%
Administrator	48,188	4%	59,055	4%	57,976	4%	49,300	4%	48,198 4%
Ancillary	33,786	3%	38,510	3%	38,803	3%	36,123	3%	35,652 3%
Expenses	290	0%	425	0%	2,375	0%	4,264	0%	343 0%
<b>Employee costs</b>	<b>1,253,649</b>		<b>1,433,106</b>		<b>1,468,647</b>		<b>1,395,104</b>		<b>1,336,657</b>
<b>Total Budget</b>	<b>1,391,669</b>	<b>90%</b>	<b>1,650,498</b>	<b>87%</b>	<b>1,625,900</b>	<b>90%</b>	<b>1,484,600</b>	<b>94%</b>	<b>1,484,200 90%</b>
<b>Cronk Y Berry</b>									
Teacher	724,522	88%	884,492	88%	848,574	87%	851,847	89%	872,350 89%
Education Support	54,699	7%	65,509	7%	66,855	7%	58,605	6%	60,666 6%
Administrator	26,892	3%	30,890	3%	30,886	3%	25,940	3%	25,230 3%
Ancillary	21,309	3%	25,569	3%	26,062	3%	23,427	2%	24,466 2%
Expenses	161	0%	760	0%	728	0%	1,140	0%	678 0%
<b>Employee costs</b>	<b>827,584</b>		<b>1,007,220</b>		<b>973,105</b>		<b>960,959</b>		<b>983,389</b>
<b>Total Budget</b>	<b>931,413</b>	<b>89%</b>	<b>1,091,605</b>	<b>92%</b>	<b>1,087,300</b>	<b>89%</b>	<b>1,090,800</b>	<b>88%</b>	<b>1,089,400 90%</b>
<b>Dhooon</b>									
Teacher	168,737	77%	227,649	80%	265,192	82%	263,663	82%	278,190 84%
Education Support	24,560	11%	29,573	10%	32,534	10%	30,871	10%	26,356 8%
Administrator	15,689	7%	18,147	6%	17,030	5%	17,166	5%	16,913 5%
Ancillary	7,788	4%	9,111	3%	9,114	3%	8,349	3%	8,085 2%
Expenses	1,216	1%	1,703	1%	244	0%	2,050	1%	545 0%
<b>Employee costs</b>	<b>217,989</b>	<b>*</b>	<b>286,183</b>		<b>324,114</b>		<b>322,098</b>		<b>330,089</b>
<b>Total Budget</b>	<b>286,128</b>	<b>76%</b>	<b>348,853</b>	<b>82%</b>	<b>352,550</b>	<b>92%</b>	<b>355,200</b>	<b>91%</b>	<b>358,900 92%</b>

**HOUSE OF KEYS, TUESDAY, 26th FEBRUARY 2019**

<b>Foxdale</b>										
Teacher	174,241	76%	199,752	77%	205,016	78%	195,867	76%	190,994	76%
Education Support	30,038	13%	27,385	11%	27,355	10%	35,595	14%	35,666	14%
Administrator	17,618	8%	21,180	8%	20,638	8%	17,174	7%	17,284	7%
Ancillary	7,949	3%	9,480	4%	9,260	4%	8,907	3%	8,511	3%
Expenses	440	0%	336	0%	491	0%	755	0%	425	0%
<b>Employee costs</b>	<b>230,287</b>		<b>258,134</b>		<b>262,761</b>		<b>258,298</b>		<b>252,880</b>	
<b>Total Budget</b>	<b>250,671</b>	<b>92%</b>	<b>299,742</b>	<b>86%</b>	<b>303,950</b>	<b>86%</b>	<b>289,900</b>	<b>89%</b>	<b>302,400</b>	<b>84%</b>
<b>Henry Bloom</b>										
Teacher	642,299	88%	743,068	88%	678,346	86%	705,412	85%	641,870	84%
Education Support	47,970	7%	52,132	6%	58,842	7%	59,157	7%	65,248	9%
Administrator	24,518	3%	30,145	4%	31,660	4%	40,122	5%	37,380	5%
Ancillary	17,340	2%	20,166	2%	21,760	3%	20,540	2%	22,765	3%
Expenses	475	0%	405	0%	50	0%	1,326	0%	289	0%
<b>Employee costs</b>	<b>732,602</b>		<b>845,916</b>		<b>790,657</b>		<b>826,557</b>		<b>767,551</b>	
<b>Total Budget</b>	<b>772,122</b>	<b>95%</b>	<b>880,505</b>	<b>96%</b>	<b>862,100</b>	<b>92%</b>	<b>891,500</b>	<b>93%</b>	<b>939,900</b>	<b>82%</b>

\*Please note that Laxey and Dhoon Schools were federated in 2018-19, resulting in the pay budgets and the actual spend for both schools being distorted.

<b>Primary Education</b>	<b>2018-19</b>		<b>2017-18</b>		<b>2016-17</b>		<b>2015-16</b>		<b>2014-15</b>	
	£	%	£	%	£	%	£	%	£	%
<b>Jurby</b>										
Teacher	191,546	80%	244,709	81%	234,974	80%	238,135	81%	220,430	81%
Education Support	25,608	11%	30,620	10%	30,297	10%	26,220	9%	26,254	10%
Administrator	13,347	6%	17,125	6%	17,520	6%	16,776	6%	17,974	7%
Ancillary	8,530	4%	8,516	3%	8,426	3%	8,538	3%	8,276	3%
Expenses	254	0%	1,609	1%	2,350	1%	2,632	1%	566	0%
<b>Employee costs</b>	<b>239,284</b>		<b>302,578</b>		<b>293,567</b>		<b>292,302</b>		<b>273,500</b>	
<b>Total Budget</b>	<b>278,982</b>	<b>86%</b>	<b>347,356</b>	<b>87%</b>	<b>338,350</b>	<b>87%</b>	<b>329,100</b>	<b>89%</b>	<b>305,000</b>	<b>90%</b>
<b>Kewaigue</b>										
Teacher	292,146	83%	346,605	84%	355,218	84%	363,346	86%	381,017	87%
Education Support	26,919	8%	32,305	8%	32,488	8%	29,899	7%	28,815	7%
Administrator	18,031	5%	21,657	5%	22,117	5%	17,838	4%	17,577	4%
Ancillary	14,776	4%	10,348	3%	10,411	2%	9,894	2%	9,836	2%
Expenses	110	0%	1,137	0%	1,480	0%	1,569	0%	817	0%
<b>Employee costs</b>	<b>351,982</b>		<b>412,053</b>		<b>421,714</b>		<b>422,546</b>		<b>438,063</b>	
<b>Total Budget</b>	<b>385,499</b>	<b>91%</b>	<b>460,573</b>	<b>89%</b>	<b>458,750</b>	<b>92%</b>	<b>478,400</b>	<b>88%</b>	<b>489,900</b>	<b>89%</b>
<b>Laxey</b>										
Teacher	451,920	87%	511,043	87%	489,945	87%	531,082	88%	523,189	88%
Education Support	33,630	6%	33,716	6%	31,297	6%	31,407	5%	30,255	5%
Administrator	20,116	4%	24,318	4%	23,143	4%	20,184	3%	19,041	3%
Ancillary	11,558	2%	18,083	3%	16,702	3%	17,515	3%	24,041	4%
Expenses	2,574	0%	1,509	0%	1,482	0%	420	0%	488	0%
<b>Employee costs</b>	<b>519,798</b>	*	<b>588,668</b>		<b>562,570</b>		<b>600,607</b>		<b>597,015</b>	
<b>Total Budget</b>	<b>487,733</b>	<b>107%</b>	<b>648,158</b>	<b>91%</b>	<b>639,700</b>	<b>88%</b>	<b>641,900</b>	<b>94%</b>	<b>685,300</b>	<b>87%</b>
<b>Manor Park</b>										
Teacher	268,960	84%	337,488	85%	358,644	85%	338,413	85%	349,935	81%
Education Support	22,930	7%	27,415	7%	28,676	7%	33,314	8%	46,245	11%
Administrator	19,481	6%	24,160	6%	22,724	5%	19,336	5%	25,181	6%
Ancillary	7,535	2%	8,728	2%	9,347	2%	8,863	2%	8,737	2%
Expenses	22	0%	440	0%	390	0%	165	0%	15	0%
<b>Employee costs</b>	<b>318,928</b>		<b>398,231</b>		<b>419,782</b>		<b>400,091</b>		<b>430,113</b>	
<b>Total Budget</b>	<b>379,535</b>	<b>84%</b>	<b>478,768</b>	<b>83%</b>	<b>473,950</b>	<b>89%</b>	<b>487,700</b>	<b>82%</b>	<b>475,400</b>	<b>90%</b>
<b>Marown</b>										
Teacher	419,973	89%	515,288	88%	516,998	88%	491,048	87%	487,659	87%
Education Support	27,660	6%	33,354	6%	37,046	6%	41,379	7%	38,719	7%
Administrator	14,218	3%	20,593	4%	19,485	3%	17,554	3%	19,921	4%
Ancillary	11,939	3%	15,228	3%	14,286	2%	11,858	2%	12,743	2%
Expenses	421	0%	1,256	0%	885	0%	2,684	0%	0	0%
<b>Employee costs</b>	<b>474,211</b>		<b>585,719</b>		<b>588,700</b>		<b>564,522</b>		<b>559,041</b>	
<b>Total Budget</b>	<b>532,812</b>	<b>89%</b>	<b>623,627</b>	<b>94%</b>	<b>628,500</b>	<b>94%</b>	<b>584,500</b>	<b>97%</b>	<b>613,400</b>	<b>91%</b>

**HOUSE OF KEYS, TUESDAY, 26th FEBRUARY 2019**

<b>Michael</b>									
Teacher	281,195	85%	331,800	85%	342,744	85%	324,169	86%	321,450 87%
Education Support	25,362	8%	30,247	8%	29,716	7%	25,368	7%	25,073 7%
Administrator	16,700	5%	20,184	5%	19,833	5%	18,223	5%	13,967 4%
Ancillary	6,428	2%	7,488	2%	9,507	2%	8,939	2%	8,593 2%
Expenses	50	0%	65	0%	0	0%	0	0%	144 0%
<b>Employee costs</b>	<b>329,736</b>		<b>389,784</b>		<b>401,799</b>		<b>376,699</b>		<b>369,227</b>
<b>Total Budget</b>	<b>367,766</b>	<b>90%</b>	<b>438,865</b>	<b>89%</b>	<b>433,250</b>	<b>93%</b>	<b>400,500</b>	<b>94%</b>	<b>415,800 89%</b>
<b>Onchan</b>									
Teacher	808,097	85%	922,151	85%	874,166	85%	851,251	88%	866,295 88%
Education Support	88,763	9%	89,676	8%	87,449	8%	61,550	6%	58,249 6%
Administrator	30,043	3%	37,159	3%	34,054	3%	27,182	3%	28,780 3%
Ancillary	23,078	2%	35,961	3%	36,501	4%	29,715	3%	30,117 3%
Expenses	0	0%	294	0%	139	0%	217	0%	1,290 0%
<b>Employee costs</b>	<b>949,981</b>		<b>1,085,241</b>		<b>1,032,309</b>		<b>969,914</b>		<b>984,732</b>
<b>Total Budget</b>	<b>1,044,085</b>	<b>91%</b>	<b>1,201,143</b>	<b>90%</b>	<b>1,170,150</b>	<b>88%</b>	<b>1,167,600</b>	<b>83%</b>	<b>1,167,600 84%</b>
<b>Peel Clothworkers'</b>									
Teacher	841,731	86%	995,151	86%	924,107	84%	876,100	85%	854,810 86%
Education Support	71,515	7%	80,862	7%	92,442	8%	87,204	9%	84,603 8%
Administrator	37,647	4%	45,672	4%	46,668	4%	33,320	3%	31,996 3%
Ancillary	31,724	3%	37,487	3%	32,995	3%	28,256	3%	26,156 3%
Expenses	323	0%	1,787	0%	3,384	0%	1,030	0%	822 0%
<b>Employee costs</b>	<b>982,939</b>		<b>1,160,959</b>		<b>1,099,596</b>		<b>1,025,910</b>		<b>998,387</b>
<b>Total Budget</b>	<b>1,068,458</b>	<b>92%</b>	<b>1,245,178</b>	<b>93%</b>	<b>1,189,500</b>	<b>92%</b>	<b>1,141,100</b>	<b>90%</b>	<b>1,067,100 94%</b>
<b>Phurt Le Moirrey</b>									
Teacher	329,822	85%	389,843	85%	365,380	84%	353,503	86%	350,932 86%
Education Support	27,838	7%	33,917	7%	34,324	8%	29,826	7%	29,354 7%
Administrator	21,167	5%	25,009	5%	25,125	6%	20,622	5%	20,127 5%
Ancillary	7,766	2%	9,446	2%	9,482	2%	9,014	2%	8,925 2%
Expenses	528	0%	417	0%	423	0%	373	0%	250 0%
<b>Employee costs</b>	<b>387,122</b>		<b>458,632</b>		<b>434,734</b>		<b>413,338</b>		<b>409,589</b>
<b>Total Budget</b>	<b>435,870</b>	<b>89%</b>	<b>507,960</b>	<b>90%</b>	<b>489,150</b>	<b>89%</b>	<b>472,700</b>	<b>87%</b>	<b>483,000 85%</b>
<b>Rushen</b>									
Teacher	568,407	87%	641,270	87%	638,115	87%	643,359	88%	628,116 88%
Education Support	39,834	6%	46,238	6%	42,888	6%	41,087	6%	39,485 6%
Administrator	23,443	4%	29,372	4%	28,213	4%	23,891	3%	23,588 3%
Ancillary	19,237	3%	21,928	3%	22,721	3%	23,590	3%	23,027 3%
Expenses	134	0%	411	0%	282	0%	395	0%	84 0%
<b>Employee costs</b>	<b>651,055</b>		<b>739,218</b>		<b>732,219</b>		<b>732,322</b>		<b>714,301</b>
<b>Total Budget</b>	<b>683,634</b>	<b>95%</b>	<b>816,421</b>	<b>91%</b>	<b>811,100</b>	<b>90%</b>	<b>805,300</b>	<b>91%</b>	<b>797,600 90%</b>
<b>Scoill yn Jubilee</b>									
Teacher	856,822	85%	1,027,451	85%	975,510	85%	914,528	86%	925,670 86%
Education Support	79,720	8%	102,723	8%	87,317	8%	76,195	7%	73,925 7%
Administrator	40,129	4%	51,230	4%	50,600	4%	41,622	4%	41,593 4%
Ancillary	27,338	3%	30,736	3%	31,235	3%	32,326	3%	30,176 3%
Expenses	245	0%	478	0%	461	0%	1,508	0%	158 0%
<b>Employee costs</b>	<b>1,004,255</b>		<b>1,212,619</b>		<b>1,145,122</b>		<b>1,066,179</b>		<b>1,071,522</b>
<b>Total Budget</b>	<b>1,111,422</b>	<b>90%</b>	<b>1,285,154</b>	<b>94%</b>	<b>1,243,400</b>	<b>92%</b>	<b>1,170,500</b>	<b>91%</b>	<b>1,147,600 93%</b>
<b>St John's</b>									
Teacher	359,026	86%	436,177	86%	447,361	87%	447,337	88%	449,735 87%
Education Support	27,737	7%	34,431	7%	33,100	6%	30,459	6%	34,234 7%
Administrator	22,342	5%	27,043	5%	25,941	5%	22,055	4%	21,760 4%
Ancillary	6,370	2%	7,719	2%	8,848	2%	9,253	2%	9,515 2%
Expenses	665	0%	1,579	0%	636	0%	1,013	0%	939 0%
<b>Employee costs</b>	<b>416,139</b>		<b>506,949</b>		<b>515,885</b>		<b>510,117</b>		<b>516,184</b>
<b>Total Budget</b>	<b>483,685</b>	<b>86%</b>	<b>568,131</b>	<b>89%</b>	<b>577,550</b>	<b>89%</b>	<b>613,300</b>	<b>83%</b>	<b>623,900 83%</b>

**HOUSE OF KEYS, TUESDAY, 26th FEBRUARY 2019**

<b>St Mary's</b>									
Teacher	648,654	88%	731,275	87%	761,699	87%	732,784	87%	711,827 86%
Education Support	51,417	7%	68,855	8%	72,448	8%	68,988	8%	70,915 9%
Administrator	23,995	3%	27,958	3%	28,764	3%	24,270	3%	23,997 3%
Ancillary	13,168	2%	16,360	2%	17,281	2%	18,195	2%	17,435 2%
Expenses	392	0%	349	0%	315	0%	181	0%	313 0%
<b>Employee costs</b>	<b>737,626</b>		<b>844,796</b>		<b>880,508</b>		<b>844,418</b>		<b>824,487</b>
<b>Total Budget</b>	<b>816,044</b>	<b>90%</b>	<b>970,558</b>	<b>87%</b>	<b>955,400</b>	<b>92%</b>	<b>887,000</b>	<b>95%</b>	<b>887,200 93%</b>
<b>St Thomas'</b>									
Teacher	197,298	81%	243,548	80%	233,464	79%	220,256	81%	220,056 79%
Education Support	24,546	10%	32,017	11%	29,550	10%	26,102	10%	29,148 11%
Administrator	15,394	6%	17,952	6%	20,261	7%	17,153	6%	17,018 6%
Ancillary	6,461	3%	10,930	4%	12,727	4%	9,694	4%	11,106 4%
Expenses	104	0%	163	0%	62	0%	11	0%	52 0%
<b>Employee costs</b>	<b>243,803</b>		<b>304,609</b>		<b>296,063</b>		<b>273,216</b>		<b>277,380</b>
<b>Total Budget</b>	<b>271,538</b>	<b>90%</b>	<b>313,242</b>	<b>97%</b>	<b>308,050</b>	<b>96%</b>	<b>295,400</b>	<b>92%</b>	<b>301,400 92%</b>
<b>Sulby</b>									
Teacher	336,414	86%	399,836	86%	408,204	87%	409,153	88%	399,946 88%
Education Support	24,732	6%	29,346	6%	29,382	6%	25,634	6%	21,675 5%
Administrator	18,179	5%	21,754	5%	20,157	4%	18,685	4%	18,172 4%
Ancillary	10,732	3%	11,431	2%	11,273	2%	10,606	2%	10,818 2%
Expenses	1,628	0%	653	0%	1,043	0%	1,615	0%	2,413 1%
<b>Employee costs</b>	<b>391,685</b>		<b>463,020</b>		<b>470,060</b>		<b>465,694</b>		<b>453,023</b>
<b>Total Budget</b>	<b>398,870</b>	<b>98%</b>	<b>498,344</b>	<b>93%</b>	<b>510,800</b>	<b>92%</b>	<b>516,600</b>	<b>90%</b>	<b>524,000 86%</b>
<b>Vallajeelt</b>									
Teacher	433,568	87%	501,672	87%	464,910	87%	439,347	86%	447,663 87%
Education Support	28,878	6%	33,089	6%	32,332	6%	29,560	6%	29,823 6%
Administrator	20,721	4%	24,437	4%	24,056	4%	20,377	4%	22,760 4%
Ancillary	17,230	3%	17,129	3%	15,369	3%	18,188	4%	16,575 3%
Expenses	452	0%	68	0%	67	0%	1,041	0%	186 0%
<b>Employee costs</b>	<b>500,848</b>		<b>576,396</b>		<b>536,734</b>		<b>508,514</b>		<b>517,006</b>
<b>Total Budget</b>	<b>536,776</b>	<b>93%</b>	<b>624,372</b>	<b>92%</b>	<b>598,650</b>	<b>90%</b>	<b>552,400</b>	<b>92%</b>	<b>617,200 84%</b>
<b>Victoria Rd</b>									
Teacher	528,681	87%	629,828	87%	589,388	85%	536,499	87%	535,313 87%
Education Support	36,015	6%	43,584	6%	54,026	8%	35,542	6%	39,438 6%
Administrator	20,203	3%	24,717	3%	28,039	4%	23,127	4%	22,832 4%
Ancillary	20,220	3%	21,551	3%	22,142	3%	19,146	3%	16,972 3%
Expenses	-328	0%	1,107	0%	472	0%	383	0%	415 0%
<b>Employee costs</b>	<b>604,791</b>		<b>720,787</b>		<b>694,067</b>		<b>614,697</b>		<b>614,971</b>
<b>Total Budget</b>	<b>660,416</b>	<b>92%</b>	<b>778,992</b>	<b>93%</b>	<b>744,950</b>	<b>93%</b>	<b>682,600</b>	<b>90%</b>	<b>691,400 89%</b>
<b>Willaston</b>									
Teacher	409,982	87%	471,930	86%	439,921	86%	415,528	86%	448,470 86%
Education Support	28,806	6%	34,135	6%	32,979	6%	32,430	7%	37,040 7%
Administrator	21,360	5%	25,984	5%	24,709	5%	21,114	4%	20,554 4%
Ancillary	8,683	2%	14,561	3%	11,768	2%	15,840	3%	14,277 3%
Expenses	261	0%	521	0%	1,097	0%	959	0%	164 0%
<b>Employee costs</b>	<b>469,091</b>		<b>547,131</b>		<b>510,474</b>		<b>485,871</b>		<b>520,505</b>
<b>Total Budget</b>	<b>535,033</b>	<b>88%</b>	<b>607,817</b>	<b>90%</b>	<b>590,450</b>	<b>86%</b>	<b>598,400</b>	<b>81%</b>	<b>604,800 86%</b>

<b>Secondary Education</b>	<b>2018-19</b>		<b>2017-18</b>		<b>2016-17</b>		<b>2015-16</b>		<b>2014-15</b>	
	<b>Budget</b>	<b>%</b>	<b>Actual</b>	<b>%</b>	<b>Actual</b>	<b>%</b>	<b>Actual</b>	<b>%</b>	<b>Actual</b>	<b>%</b>
<b>Ballakermeen</b>										
Teachers	4,830,685	84%	5,467,226	83%	5,139,347	85%	4,771,673	86%	4,713,692	86%
Teacher - Supply	0	0%	93,418	1%	38,929	1%	82,825	1%	93,427	2%
Foreign Language	8,928	0%	6,704	0%	6,538	0%	6,386	0%	6,280	0%
Invigilation Fees	16,143	0%	20,711	0%	23,604	0%	18,038	0%	14,978	0%
Clerical - ESO	328,677	6%	360,770	5%	339,064	6%	356,917	6%	350,942	6%
Support Staff - ESO	413,557	7%	486,025	7%	405,966	7%	231,093	4%	202,298	4%
Technicians - ESO	176,802	3%	178,391	3%	102,917	2%	96,258	2%	120,904	2%
<b>Employee Cost</b>	<b>5,774,792</b>		<b>6,613,245</b>		<b>6,056,366</b>		<b>5,563,191</b>		<b>5,502,522</b>	
<b>Total Budget</b>	<b>6,366,933</b>	<b>91%</b>	<b>7,481,400</b>	<b>88%</b>	<b>7,137,000</b>	<b>85%</b>	<b>6,687,500</b>	<b>83%</b>	<b>6,653,200</b>	<b>83%</b>

**HOUSE OF KEYS, TUESDAY, 26th FEBRUARY 2019**

Castle Rushen										
Teachers	2,301,651	83%	2,740,059	82%	2,792,493	85%	2,735,788	84%	2,668,106	82%
Teacher - Supply	62,531	2%	93,203	3%	40,641	1%	62,567	2%	62,205	2%
Foreign Language	204	0%	656	0%	2,319	0%	7,680	0%	7,460	0%
Invigilation Fees	14,713	1%	14,557	0%	19,643	1%	16,076	0%	17,247	1%
Clerical - CS	39,481	1%	40,126	1%	36,230	1%	50,634	2%	89,611	3%
Clerical - ESO	59,880	2%	93,018	3%	111,720	3%	86,578	3%	47,646	1%
Support Staff - ESO	235,347	8%	250,368	8%	211,017	6%	222,364	7%	244,102	8%
Technicians - ESO	72,402	3%	96,044	3%	90,260	3%	88,177	3%	108,262	3%
Employee Cost	2,786,209		3,328,031		3,304,324		3,269,866		3,244,639	
Total Budget	3,419,944	81%	4,096,200	81%	4,015,300	82%	3,942,500	83%	3,936,900	82%
Queen Elizabeth										
Teachers	2,316,913	80%	2,727,173	81%	2,602,680	81%	2,699,887	84%	2,730,036	83%
Teacher - Supply	8,563	0%	1,735	0%	11,604	0%	23,301	1%	42,460	1%
Teacher Workload	97,672	3%	115,521	3%	111,329	3%	95,989	3%	89,952	3%
Foreign Language		0%	0	0%	350	0%	450	0%	0	0%
Invigilation Fees	9,445	0%	9,866	0%	9,324	0%	9,315	0%	9,121	0%
Clerical - CS	24,115	1%	28,826	1%	28,165	1%	24,153	1%	25,636	1%
Support Staff - ESO	148,612	5%	152,595	5%	90,374	3%	84,775	3%	73,359	2%
Technicians - ESO	290,422	10%	342,861	10%	350,258	11%	291,196	9%	316,757	10%
Employee Cost	2,895,742		3,378,578		3,204,083		3,229,066		3,287,322	
Total Budget	3,358,156	86%	4,005,300	84%	3,907,000	82%	3,833,500	84%	3,814,500	86%
Ramsey Grammar										
Teachers	2,989,174	82%	3,472,225	81%	3,313,041	79%	3,204,406	81%	3,106,073	82%
Teacher - Supply	31,072	1%	45,398	1%	110,970	3%	78,570	2%	64,885	2%
Invigilation Fees	19,849	1%	18,090	0%	16,209	0%	16,913	0%	12,316	0%
Clerical - CS	40,219	1%	80,583	2%	95,059	2%	69,358	2%	53,276	1%
Clerical - ESO	136,879	4%	168,801	4%	151,096	4%	155,767	4%	157,122	4%
Support Staff - ESO	132,433	4%	113,008	3%	126,589	3%	132,272	3%	109,584	3%
Technicians - CS	30,131	1%	35,978	1%	34,888	1%	29,920	1%	29,466	1%
Technicians - ESO	240,516	7%	297,702	7%	288,879	7%	231,556	6%	237,022	6%
Ancillaries - Whitley	6,859	0%	1,427	0%	0	0%	14	0%	1,094	0%
Youth Workers	31,798	1%	37,503	1%	37,912	1%	31,781	1%	34,705	1%
Employee Cost	3,658,930		4,270,715		4,174,641		3,950,556		3,805,544	
Total Budget	3,977,290	92%	4,748,600	90%	4,696,600	89%	4,520,800	87%	4,521,300	84%
St Ninian's										
Teachers	4,167,967	84%	4,834,006	84%	4,741,192	84%	4,605,096	87%	4,487,229	87%
Teacher - Supply	32,786	1%	17,645	0%	65,789	1%	40,904	1%	35,934	1%
Foreign Language	11,531	0%	9,527	0%	15,786	0%	13,382	0%	9,312	0%
Invigilation Fees	26,664	1%	19,904	0%	18,658	0%	15,212	0%	11,284	0%
Clerical - Civil Service	65,735	1%	77,956	1%	77,163	1%	67,179	1%	65,806	1%
Clerical - ESO	234,150	5%	271,322	5%	292,423	5%	240,944	5%	261,004	5%
Support Staff - ESO	256,151	5%	293,261	5%	236,871	4%	192,897	4%	147,226	3%
Technicians - CS	22,864	0%	38,353	1%	36,408	1%	30,194	1%	29,323	1%
Technicians - ESO	134,756	3%	173,495	3%	142,263	3%	114,458	2%	115,732	2%
Ancillaries - Whitley	7,260	0%	1,339	0%	2,342	0%	2,567	0%	3,343	0%
Employee Cost	4,959,864		5,736,809		5,628,895		5,322,834		5,166,194	
Total Budget	5,618,172	88%	6,709,300	86%	6,625,000	85%	6,251,000	85%	6,064,100	85%

	2018-19		2017-18		2016-17		2015-16		2014-15	
University College	£	%	£	%	£	%	£	%	£	%
Lecturer	5,261,436	67%	6,348,429	72%	6,839,589	74%	6,539,037	76%	6,427,742	77%
Education Support	1,524,763	20%	1,648,808	19%	1,560,518	17%	1,288,988	15%	1,207,156	14%
Civil Service	723,130	9%	722,223	8%	713,759	8%	616,421	7%	626,706	7%
Manual Worker	203,840	3%	0	0%	29,214	0%	25,488	0%	2,731	0%
Expenses	92,975	1%	83,823	1%	108,273	1%	130,481	2%	128,261	2%
<b>Employee Cost</b>	<b>7,806,144</b>		<b>8,803,284</b>		<b>9,251,352</b>		<b>8,600,414</b>		<b>8,392,596</b>	
<b>Total Budget</b>	<b>8,117,316</b>	<b>96%</b>	<b>9,530,983</b>	<b>92%</b>	<b>9,471,900</b>	<b>98%</b>	<b>9,023,100</b>	<b>95%</b>	<b>8,893,900</b>	<b>94%</b>



**2.7. Primary schools' catering –  
Budget for providing lunch**

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Education, Sport and Culture:

*What the budget is for providing lunch in primary schools and how this compares with the budget for school meals previously provided by DHSC?*

1225      **The Minister for Education, Sport and Culture (Mr Cregeen):** The transfer of catering services relating to primary schools, UCM and the NSC café, (Secondary school catering was transferred as part of the 2018 budget) forms part of the 2019 budget, the net budget to be transferred will be £738,000.

1230      As the DESC are currently managing the Primary, UCM and NSC operations, we are working to this £738,000 allocation and are currently forecasting a slight underspend against this target.

The £738,000 was agreed upon by the DESC and the DHSC and represents the transfer of the 2017-18 income, school catering staff cost and provision budgets (£553,000), in addition to this, provision for equipment replacement of £85,000 and the management team cost of £100,000.

**ENVIRONMENT, FOOD AND AGRICULTURE**

**2.8. Storm damaged trees –  
Cost of removal from highways since 2012**

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

*What the total cost has been for removing storm damaged trees from carriageways in the Island in each year since 2012?*

1235      **The Minister for Environment, Food and Agriculture (Mr Boot):** The Department provides members of its workforce to support DOI who have primary responsibility to respond to storm damaged trees as part of Government's emergency response. This staffing resource is deployed as required and is not charged for.

1240      We do not specifically record costs associated with such events, as whilst there is an opportunity cost, we are using existing resource which is already contained within the Department's staffing budget.

I would like to put on record my appreciation and thanks to the individuals who help in responding to storm events which typically require working at short notice in challenging conditions and at unsociable times of the day to keep the Island's residents safe and the highway network clear.

**2.9. Sustainable development and mitigating climate challenges –  
Reports and recommendations of 2015**

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

*If he will make a statement on the two reports received and the recommendations approved by Tynwald on 19th May 2015 relating to sustainable development and mitigating climate challenges?*

**The Minister for Environment, Food and Agriculture (Mr Boot):** Next month I expect to make a statement on Climate Change Mitigation at Tynwald and host a lunchtime briefing to provide Members with an update on our progress with the Climate Change Mitigation Strategy.

In 2015, Tynwald approved the reports 'Policy on Sustainable Development and Mitigating Climate Challenges' and 'Adaptation Policy for our Climate Challenges'.

The report on sustainable development and mitigating climate challenges was followed with a Tynwald approved strategy in 2016 – 'Greater efficiency, Cleaner energy, Resilient economy – a climate challenge mitigation strategy for the Isle of Man' and the first Emissions Reduction action plan for 2016-2020. When our strategy was published we acknowledged the significant challenge faced with reducing our greenhouse gas emissions during the transition to a low carbon economy.

Our focus in the first action plan in 2016-2020 was to improve property energy efficiency and reduce the role of fossil fuels in both property heating and transport, whilst reducing demand wherever possible. Although much work is still to be done, positive progress has been achieved with the first five-year action plan.

Meanwhile, the 2015 report on adaptation policy was similarly followed with the Tynwald approved strategy in 2016 – 'National Strategy on Sea Defences, Flooding and Coastal Erosion'.

This strategy outlined the following objectives:

1. Raise community awareness to flood and coastal erosion risks and engage relevant stakeholders in effective and appropriate adaptation to these events and risks.
2. Manage and reduce the impacts of flooding and coastal erosion on communities, infrastructure and the environment.
3. Prioritise investment to balance the urgency and impact of the risks identified.

Since 2016, Government has invested in measures to reduce flooding and coastal erosion at Port St Mary (£623,098) and Castletown harbour (£2,169,591), and the Department of Infrastructure has lodged two further planning applications for works at Douglas seafront and Laxey foreshore and harbour which are still to be determined. I am also aware that the Department for Infrastructure has design work underway on climate change mitigation measures in Ramsey, Douglas and Peel.

I would like to close by reminding Members of my opening comment that, in the light of the recent IPCC climate report, I am expecting to make a full Statement to accompany an imminent far ranging consultation about the next emissions reduction action plan. I would also like to acknowledge that I will tonight be launching an agricultural strategy consultation which enhances the emphasis of land managers' roles with regard to emissions and flooding.

## 2.10. Japanese knotweed – Responsibility for removal

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

*Who is responsible for removing Japanese knotweed once it has been identified?*

**The Minister for Environment, Food and Agriculture (Mr Boot):** Once the presence of Japanese knotweed has been identified in an area of land, and its presence has been notified to the person responsible for that land or they have become aware of its presence, it is the duty of that person to ensure it does not grow in the wild, either on the land in question or by spreading to another person's land.

If the responsible person for the land has become aware of Japanese knotweed on that land and then fails to take all reasonable steps and exercise due diligence to prevent the plant

growing in the wild, then that person may be committing an offence under section 14(2) of the Wildlife Act 1990.

## HOME AFFAIRS

### 2.11. Prisoners on remand awaiting trial – Average percentage since 2011

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*What the average percentage of prisoners that were on remand awaiting trial was in each year since 2011?*

**The Minister for Home Affairs (Mr Malarkey):**

	2011	2012	2013	2014	2015	2016	2017	2018
<b>Average Percentage of Prisoners on Remand</b>	25%	20%	13%	13%	13%	12%	14%	11%

### 2.12. Low level crimes – Number resulting in minimal sanctions/fines since 2011

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*How many and what the average percentage of low level crimes, as defined in the Criminal Justice Strategy and processed in the summary courts, resulted in minimal sanctions or fines of less than £200, in each year since 2011?*

1290 **The Minister for Home Affairs (Mr Malarkey):** The information requested by the Hon. Member for Ramsey can only be provided by the General Registry.

This information is however not, at this time, available electronically and as a result it cannot be provided without undertaking a resource-intensive manual trawl of records by Registry staff, which is regrettably not feasible.

1295 It is accepted that it would be of considerable benefit to have such statistical information available and it is anticipated that this will be the case in the future.

There have been a number of separate pieces of work to collate information since 2012, but the manual collection has meant that the usefulness of the information has been restricted and prohibitively resource heavy to repeat.

1300 Therefore the move towards digitisation of processes is extremely important and once in place will allow management information, such as that requested in the Hon. Member's question, to be collated and analysed.

1305 All the parties involved are supportive of moving towards increased digital working, and through the Criminal Justice Board, are working towards achieving a shared goal of a paperless operation of the criminal justice system.

**2.13. Criminal justice system –  
Forms and systems used now compared with 2009**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*How many different forms and systems would be used during one person's journey through the criminal justice system; and how this compares to 2009?*

**The Minister for Home Affairs (Mr Malarkey):** The original figures from the review of the criminal justice system in 2011 stated that there were around 98 forms and 22 systems to be updated on an offender's journey through the criminal justice system. Obtaining these statistics required a large amount of resource and effort. Their purpose was primarily to set the scene of the issues with the criminal justice system at that time.

Since the review, there have been some areas of modernisation, but no fundamental changes in the IT Infrastructure of the respective agencies.

In March 2019, the Constabulary will go live with their new 'Connect' system which will modernise the way the Police record and store information. For example, the custody process will no longer require the custody sergeant to 'book in' a detainee on paper before entering the data into several different systems. The detainee will be booked in electronically and the data transferred as relevant.

The new system will also mean the creation of digital 'case files' for hand-off to the Attorney General's prosecutions team.

The Criminal Justice Board is committed to paperless operation of the criminal justice system as an enabler for efficiency across different agencies and the provision of improved services to victims and witnesses.

**2.14. Most serious criminal cases –  
Average time from court hearing to judgment**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*What the average length of time for the most serious cases, using the Criminal Justice Strategy definition, was from first court hearing to judgment in each year since 2011?*

**The Minister for Home Affairs (Mr Malarkey):** The information requested by the Hon. Member for Ramsey has been provided by the General Registry. The average figures below relate only to matters which have ultimately been dealt with by the Court of General Gaol Delivery.

	2011	2012	2013	2014	2015	2016	2017	2018
Average number of days from Charge to case conclusion	344	284	242	255	212	260	301	220
*Prosecution/Defence/Witnesses etc. Non-availability for trial	128	144	129	173	174	200	201	182

\* The primary lapse period between the various stages is that between the date a matter is set down for trial and the trial date itself. A number of factors affect this period, including the work required by Prosecutors and Defence. However, the primary factor is their availability and that of others such as witnesses and experts for a trial date. The availability of a court or Deemster has been shown to have minimal effect on these timelines.

Note: the information above includes the average number of days from Charge to the first Summary Court appearance (please see the Answer to Question 2.16 for these average figures).

**2.15. Court system –  
Average time from first court hearing to judgment**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*What the average length of time for cases to proceed through the court system, from first court hearing to judgment, was in each year since 2011?*

**The Minister for Home Affairs (Mr Malarkey):** The information requested by the Hon. Member for Ramsey can only be provided by the General Registry.

1330 This information is however not, at this time, available electronically and as a result it cannot be provided without undertaking a resource intensive manual trawl of records by Registry staff, which is regrettably not feasible.

It is accepted that it would be of considerable benefit to have such statistical information available and it is anticipated that this will be the case in the future.

1335 There have been a number of separate pieces of work to collate information since 2012, but the manual collection has meant that the usefulness of the information has been restricted and prohibitively resource heavy to repeat.

Therefore the move towards digitisation of processes is extremely important and once in place will allow management information, such as that requested in the Hon. Member's Question, to be collated and analysed.

1340 All the parties involved are supportive of moving towards increased digital working, and through the Criminal Justice Board, are working towards achieving a shared goal of a paperless operation of the criminal justice system.

**2.16. Criminal justice system –  
Average time for offences to reach court**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*What was the average time taken for an offence to reach court, from the time the offender was entered into the criminal justice system, was in each year since 2011?*

1345 **The Minister for Home Affairs (Mr Malarkey):** The information requested by the Hon. Member for Ramsey has been provided by the General Registry. The average figures below relate only to matters which have ultimately been dealt with by the Court of General Gaol Delivery.

	2011	2012	2013	2014	2015	2016	2017	2018
Average number of days from Offence to Charge	77	105	106	92	119	92	108	80
Average number of days from Charge to first Summary Court appearance	12	7	6	5	4	4	7	15
<b>Total</b>	<b>89</b>	<b>112</b>	<b>112</b>	<b>97</b>	<b>123</b>	<b>96</b>	<b>115</b>	<b>95</b>

**2.17. Courts –  
Number of offences dealt with since 2011**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*How many offences were dealt with in the courts, in each year since 2011?*

**The Minister for Home Affairs (Mr Malarkey):** The information requested by the Hon. Member for Ramsey can only be provided by the General Registry.

1350 This information is however not, at this time, available electronically and as a result it cannot be provided without undertaking a resource intensive manual trawl of records by Registry staff which is regrettably not feasible.

It is accepted that it would be of considerable benefit to have such statistical information available and it is anticipated that this will be the case in the future.

1355 There have been a number of separate pieces of work to collate information since 2012, but the manual collection has meant that the usefulness of the information has been restricted and prohibitively resource heavy to repeat.

Therefore the move towards digitisation of processes is extremely important and once in place will allow management information, such as that requested in the Hon. Member's Question, to be collated and analysed.

1360 All the parties involved are supportive of moving towards increased digital working, and through the Criminal Justice Board, are working towards achieving a shared goal of a paperless operation of the criminal justice system.

**2.18. Criminal Justice Strategy –  
SMART Objectives and KPIs**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Home Affairs:

*What the SMART Objectives and key performance indicators are agreed by the Criminal Justice Board, that underpin the Criminal Justice Strategy; and when they were first agreed?*

**The Minister for Home Affairs (Mr Malarkey):** The objectives identified in the Criminal Justice Strategy in 2012 were:

- 1365
- Fewer people entering the criminal justice system;
  - Reduce the overall cost of the criminal justice system to the taxpayer;
  - Reduce the time taken to get offences to court;
  - Reduce the number of offences which go through the courts;
  - Reduce reoffending rates;

1370

  - Provide effective services to victims;
  - Improve public confidence.

1375 There were no specific Key Performance Indicators agreed at the setting of the Strategy, as it was acknowledged that the paucity of data was one of the main issues behind the lack of ability to identify improvements and benchmark the performance of the criminal justice system in the Isle of Man. There have been a number of separate pieces of work to collate information since 2012, but the manual collection has meant that the usefulness of the information has been restricted and prohibitively resource heavy to repeat. The move towards digitisation of processes will allow management information to be collated and analysed.

As part of the Programme for Government in 2017 a number of Key Performance Indicators were identified as providing information useful to monitor the work of the Department.

The current Department Key Performance Indicators reported on are:

- Achieve a minimum of 80% in satisfaction levels with victims of crime with the Police;
- % of offenders attending work or education;
- Increase confidence in the judicial system;
- To sustain the lowest levels of crime in the British Isles per 1,000 population;
- To achieve the highest detection rates in the British Isles (as a % of crime committed).

## INFRASTRUCTURE

### 2.19. Flybe customer app – Use at Ronaldsway Airport

The Hon. Member for Onchan (Mr Callister) to ask the Minister for Infrastructure:

*When Flybe customers will be able to use their app at Ronaldsway Airport?*

**The Minister for Infrastructure (Mr Harmer):** Flybe is in the process of changing its ticketing system and appear to be facing some technical issues with the use of the Flybe app, resulting in their passengers not being able to use their app as a means of access to security areas at airports. This is not the fault of the airports themselves. Whilst this is a frustration for passengers, there is nothing that the Airport can do until the company's technology is ready.

### 2.20. Storm damaged trees – Cost of removal from highways since 2012

The Hon. Member for Onchan (Mr Callister) to ask the Minister for Infrastructure:

*What the total cost has been to his Department for removing storm damaged trees from carriageways in the island in each year since 2012?*

**The Minister for Infrastructure (Mr Harmer):** The Department does not record the costs involved in removing trees from the highway network following storm damage.

Officer time deployed during reactive events such as these is charged to the Department's maintenance or environmental services budgets.

It is important to record my thanks to the other agencies of Government that support us in adverse weather conditions.

**MANX UTILITIES AUTHORITY**

**2.21. Installation of MUA cables and posts –  
Wayleave payments made to landowners**

The Hon. Member for Onchan (Mr Callister) to ask the Chairman of the Manx Utilities Authority:

*How much has been paid in wayleave payments to agriculture landowners each year since 2012 in order to allow MUA cables and posts to be installed and other works?*

**The Chairman of the Manx Utilities Authority:** The specific answer to this question is £245,450, the majority of which is for *easement* payments.

To assist in understanding this figure, some further explanatory information is provided below. Manx Utilities has assumed that this Question relates to the installation of new equipment and that this relates to all infrastructure, not solely electrical overhead lines and poles.

Manx Utilities' infrastructure is placed on private land by the employment of either wayleave or easement agreements. The former offer a yearly rental payment to the owner/occupier and are largely employed to formalise the installation of overhead lines and associated poles and stays, although a very small number of underground cables are also covered. Easement agreements are utilised to evidence the installation of underground equipment such as water, sewerage and gas pipes together with underground electricity cables; unlike wayleaves, these grant 'in perpetuity' rights for Manx Utilities to lay and subsequently operate and maintain the assets for a 'one off' payment upon the execution of the agreement by the landowner.

The electricity network is extensive and during this period Manx Utilities has not had the need to construct any new overhead lines over agricultural land save and except for when an individual has requested a connection; this will not have needed a payment to facilitate.

The majority of new infrastructure installed since 2012 relates to underground assets, for which the cost of easements has been as follows:

Sewerage – £91,750.00

Gas – £92,700.00

Water – £61,000.00

**OFFICE OF FAIR TRADING**

**2.22. Manx Gas –  
OFT termination of Agreement for the Regulation of the Gas Market**

The Hon. Member for Onchan (Mr Callister) to ask the Chairman of the Office of Fair Trading:

*When his Board will give Manx Gas six months' formal notice in respect of terminating the Agreement for the Regulation of the Gas Market in the Isle of Man, dated 24th April 2015, in accordance with section 15.1 of the Agreement?*

**The Chairman of the Office of Fair Trading:** The Report of the Chief Minister's Gas Review Committee sets out the direction of travel for the negotiation of new arrangements for the regulation of the gas market. The process for the implementation of that Report rests with the Council of Ministers, either directly or via the Committee.



The current Regulatory Agreement permits any signatory, on or after 1st January 2019, to serve notice of termination on the remaining signatories. The notice period is six months and at that stage, the Regulatory Agreement falls, save for a few preserved clauses.

1430 The Government signatories to the Agreement are:

- Office of Fair Trading
- Treasury
- Department of Environment, Food and Agriculture (as successor of the Department of Economic Development by virtue of a Transfer of Functions Order)

1435

The Office of Fair Trading will be guided by Council or the Committee as to if or when it should serve notice; noting, of course, that only one signatory needs to do so.

In terms of the timing, the OFT has advised the Committee that in serving notice,

it is important to have an end date of 31st December to make the termination manageable. The current Agreement manages profits aligned to the Manx Gas accounting year and a part year would be unfathomable. An alternative approach would be to use the Change Mechanism within the existing Regulatory Agreement to achieve the same outcome. It is important to stress that, if Government gives notice of termination and fails to reach a new agreement prior to termination, the result is that the gas sector becomes unregulated.

1440 Regardless of the mechanism, it is important to ensure that there is a managed transition from the 2015 Regulatory Agreement into the new system of regulation. The Office of Fair Trading is committed to working with other agencies towards the desired outcome of a new Agreement. In the meantime the Office of Fair Trading will continue its role under the 2015 Agreement.

## Order of the Day

### 3. BILL FOR SECOND READING

#### 3.1. Charities Registration and Regulation Bill 2018 – Second Reading approved

Mr Thomas to move:

*That the Charities Registration and Regulation Bill 2018 be read a second time.*

**The Speaker:** Item 3, Bill for Second Reading, Charities Registration and Regulation Bill 2018,  
1445 and I call on Mr Thomas to move.

**Mr Thomas:** Thank you very much, Mr Speaker.

This important technical, modernising Bill is promoted by Her Majesty's Attorney General in his capacity as *de facto* guardian of Manx charities.

1450 Thus it was introduced into the Legislative Council on 4th December, having been published in draft for consultation last summer following a principles engagement the previous summer. As the Chief Minister stated a fortnight ago, this legislation is overdue.

Hon Members, the Bill has six main purposes. Firstly, to update the meaning of 'charity'. The definition of 'charity' is currently set out in section 14 of the Charities Act 1962, namely an:

... institution, corporate or not, which is established for charitable purposes, and is subject to the control of the Court in the exercise of the Court's jurisdiction with respect to charities.

1455 The 1962 Act provides that:

... 'charitable purposes' means purposes which are exclusively charitable according to the laws of the Isle of Man.

1460 The meaning of 'charitable' in the Island has primarily been developed by the courts, which have generally adopted the traditional four 'heads' of charity which had been derived in England and Wales from the Preamble to the Statute of Charitable Uses 1601, namely: the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community not falling under any of the preceding heads.

These purposes were widened by provisions in the Recreational Charities (Isle of Man) Act 1960 and the Charities Act 1962, reflecting legislative change in England and Wales.

1465 The definition of charity was expanded in England and Wales by the Charities Act 2006 by the adoption of 13 purposes or heads of charity, which extended the definition beyond that which applies in Manx law. The effect of this is that a *bona fide* charity established in England and Wales may not be able to carry on activities in the Island. The Bill before us today extends the definition of 'charity' so that it includes the English 13 heads of charity.

1470 The second purpose is to provide for a modern register of charities: the present legislation providing for the registration and regulation of charities is the Charities Registration Act 1989, which replaced the Public Charities Act 1922. The Bill will repeal the 1989 Act, albeit re-enacting certain of its provisions, in particular those which provide the Attorney General's regulatory functions.

1475 Although the 1989 Act does provide a requirement for a charity in the Island to register by filing a statement, it does not provide the clear *vires* for the establishment and operation of a registry, which are necessary in a modern world. Accordingly, the Bill makes provision for matters such as the information to be contained in the register, the notification of any changes

to that information, the circumstances in which an institution should be removed from the register and the making available to the public of information contained in the register. To reflect the importance now placed on the privacy of an individual, the Bill provides for the making of regulations to provide restrictions on the publication of information which is held on the register.

The Bill also sets out the criteria for determination of an application to register a charity, which include matters such as: whether the institution is a charity under Manx law; the nature of its connection with the Island, whether its name can be considered to be undesirable or misleading and whether the governing instrument is fit for purpose; whether there is reason to be concerned about the suitability of the persons appointed to it as its trustees to undertake such role; and the risk of the charity being used for money laundering activities or of its property being used to finance terrorism.

Hon. Members, the reason why these matters need to be considered in detail at the time of registration is to ensure that a charity coming onto the register is not only suitable for registration but, with the principle in mind that ‘prevention is better than cure’, that it, and its trustees, have the necessary powers and understanding of how they should be used so that the charity can operate successfully both in regard to the achievement of its charitable purposes and the meeting of the necessary regulatory requirements.

The Bill also preserves the requirement, first introduced in the Charities Registration Act 1989, that a charity wishing to register as a Manx charity must have a substantial and genuine connection with the Island. Such a requirement is important to prevent the Island being used, for example, by entities which have no intention to carry on charitable activities here and no presence here other than an accommodation address. Failure to register is one of the offences in the Bill.

Also included in the Bill are provisions concerning the keeping of a register of mergers. The purpose of this is to provide a record of mergers of registered charities so that charities which would otherwise cease to exist as a consequence of the merger do not have to remain in existence, and on the register, merely to receive future bequests or gifts. Instead, the gift will be treated as a gift to the successor charity. This will be to the benefit of the relevant charities and also the registrar.

Thirdly, to assist charity trustees in the proper delivery of their charity’s objectives: a basic principle regarding the smooth running of an operation is that those charged with its management should have a clear set of rules to work to. This is even more important in the case of a charity where the trustees are required to use the charity’s property for purposes which are subject to control by law as well as by the charity’s constitution.

There is presently no requirement that a registered charity has a written constitution. Even where existing charities do have a written constitution, problems frequently arise due to their inadequacy and/or lack of clarity as regards the powers of the trustees and, in many cases, the lack of a mechanism to make changes. In the absence of such a mechanism, or to enable a charity to adopt a written constitution, an application has to be made to court for approval of a scheme. To address these issues, which will assist the charities as well as the registrar and regulator, the Bill provides for adequacy of the constitution to be a condition of registration, a requirement for all charities, including those already on the register, to have a written constitution and for the Attorney General to be able to approve the adoption of a written constitution, or for its amendment where it does not provide the necessary mechanism. As is the case presently, model constitutional documents will be available for charities to adopt should they so wish.

As the trustees of a charity, whether described in the constitution as trustees, directors, committee members, council members, are acting under a duty to discharge the charitable trusts on which the charity’s property is held, the Bill provides that the restriction on the delegation of the functions by the trustees of a charitable trust, which are set out in the Trustee

Act 2001, apply to all charities, irrespective of whether they are constituted as a company, a Foundation, an unincorporated association or as a trust.

1530 Fourthly, to ensure more effective regulation of charities: the Charities Registration Act 1989 provides for annual accounts of charities to be filed, which are subject to examination or audit if the income is above certain thresholds. Annual accounts provide only limited information as regards the activities of a charity and, to improve the ability of the regulator to identify potential problems as regards the running of a charity; the Bill makes provision for a report on the  
1535 activities of the charity to be filed at the time of filing the annual accounts. The information to be contained in the report will be prescribed, meaning that the reporting requirement can be tailored to reflect the size of the charity. It is not anticipated that the reporting requirement will place any significant burden on trustees as, in most cases, they are already required to report on the previous year's activities at their charity's annual general meeting.

1540 In the case of foreign charities, the Bill will clarify that the accounts and reports to be filed are in respect of their activities in, or in connection with, the Island as the regulator clearly has no interest in their operations elsewhere. Further, to ensure accountability within the Island, unless at least one of the trustees is ordinarily resident in the Island, a foreign charity will be required to appoint a 'responsible person' in the Island who will be responsible for the charity's  
1545 compliance with all the legislative requirements.

The Bill makes provision for the automatic disqualification of individuals for acting as trustees of charities, for example, if convicted of dishonesty offences, disqualified as a company director or placed on the Sex Offender's Register. The effect of this will be to prevent unsuitable individuals from undertaking such a role. As part of the process of approving an application for  
1550 registration, the Attorney General will be able to consider whether the trustees of a charity have the appropriate expertise and experience to ensure the successful delivery of that charity's objectives and also whether there is a substantial risk of the charity being used for money laundering activities or being involved in the financing of terrorism. These provisions should reduce the potential risks both to the charities themselves and to the Island's reputation.

1555 The Bill re-enacts the Attorney General's existing regulatory powers, which include powers to require specified information to be provided to the Attorney General, to institute inquiries and to make application to the court to remove or suspend a trustee from office. These powers will be augmented under the Bill by the power to obtain a search warrant from a Justice of the Peace. Further, the Bill enables the Attorney General to make regulations prescribing  
1560 information with which the Attorney General may require to be provided. This will enable, for example, charities to be required to provide information concerning the adoption of, and compliance with, safeguarding policies. This is an amendment since the consultation version of the Bill, brought to the attention of the policy makers and the drafters by a good friend, Dr Alex Allinson, who is kindly seconding the Bill today. We had a very valuable consultation. That was  
1565 one of the points raised in that consultation process. The Bill also provides for the disclosure of information between the Attorney General and public authorities for the purpose of enabling them to discharge their respective functions.

Fifthly, to improve public service and administrative efficiency: the Bill provides for the functions of registrar to be conferred on the Attorney General, in addition to his existing  
1570 functions as regulator. This will address the uncertainties which have long existed as to where the boundary lies between the functions of the registrar and those of the regulator. As the registrar presently routinely seeks advice from the Attorney General's Chambers, at present, as to the exercise of his functions under the 1989 Act, it will streamline the administrative process as well as assisting trustees and members of the public by providing a 'one-stop shop' for all  
1575 matters concerning charities.

A further advantage is that it will address the incorrect perception that, by not having a charity commission, the Island's regulation of charities is somehow inadequate.

Sixthly, and finally, to provide a simplified mechanism for appealing decisions of the registrar and regulator by establishing a Charities Tribunal: the Bill increases the number of decisions

1580 which the Attorney General can make in relation to charities, including those which are related  
to the function of registrar. It also provides for the Attorney General to be able to exercise  
certain functions which currently fall within the jurisdiction of the High Court, such as the  
approval of the adoption, or amendment, of constitutional documents. As a public authority,  
1585 decisions of the Attorney General are subject to judicial review by High Court by way of a  
doleance claim. In order to provide a more straightforward and cost effective mechanism for  
challenge, however, the Bill provides for the creation of a Charities Tribunal to hear appeals in  
respect of decisions taken by the Attorney General, with the exception of decisions concerning  
the exercise of his powers to inquire into the activities of charities, to make applications to court  
for the protection of charities and to consent to a prosecution for non-compliance with certain  
1590 requirements under the Bill.

The Bill also makes a number of other provisions, including enabling the Attorney General to  
appoint a person employed in the Attorney General's Chambers to perform certain specified  
functions which the Attorney General would otherwise have to undertake personally, and for  
the Attorney General to enter into arrangements with the Registrar General for the provision of  
1595 services in connection with the delivery of the Attorney General's functions under the Bill, which  
will enable the register to be hosted within the Central Registry, thus taking advantage of  
existing IT provision.

Mr Speaker, Hon. Members, it might be helpful if I emphasise at this point that it is not the  
intention of this Bill to change the landscape concerning registration, i.e. to make any alteration  
1600 to the nature of institutions which are able to register here in the Island. This is something the  
Attorney General stressed upstairs in the Legislative Council when this Bill was going through the  
other Branch.

For this reason, existing exemptions from registration have been included in the Bill, as well  
as the requirement that an institution seeking registration should have a substantial and genuine  
1605 connection with the Island.

A query was raised in the other place concerning the continuation of the exemption for  
ecclesiastical charities, which has its origins in the Public Charities Act 1922. As I have said, it is  
not the purpose of the Bill to change the landscape concerning registration. Moreover, the  
public consultation did not result in any proposal to interfere with the exemption for  
1610 ecclesiastical charities.

It might also be helpful to remind Hon. Members that ecclesiastical charities, as far as the  
Island is concerned, are only those as set out in Schedule 3 to the Church Act 1992, namely  
trusts of property established for charitable purposes which are or include any ecclesiastical  
purpose, and in particular:

- (a) the benefit of any clerk in Holy Orders or ecclesiastical officer as such, or of the dependants of any such clerk or officer;
- (b) the augmentation of the stipend of any benefice or ecclesiastical office;
- (c) the use of a building for any ecclesiastical purpose;
- (d) the provision, maintenance, repair or improvement of any land or building held for any ecclesiastical purpose, or the maintenance of divine service therein;
- (e) any other purpose for the benefit of the Church of England in the Island.

1615 Any religious charity not falling within that list would be required to register unless exempted  
under regulations, which is the case for the religious charities included on the list in the Schedule  
to the Religious Charities Regulations 1999, namely in respect of the Church of England:

The Sodor and Man Diocesan Board of Finance.  
Any parochial church council.  
An incumbent or churchwardens ...

In respect of the Roman Catholic Church:

Liverpool Roman Catholic Archdiocesan Trustees Incorporated.

In respect of the Methodist Church:

The trustees for Manx Methodist Church Purposes.

The trustees of any property held for, or for purposes of, any circuit, district or local church of the Methodist Church.

1620 In respect of the United Reformed Church:

The trustees of any property held for, or for purposes of, any local church of the United Reformed Church.

And in the respect of the Society of Friends:

The trustees of any property held for, or for purposes of, any weekly or monthly meeting or preparative meeting of the Religious Society of Friends.

1625 Hon. Members, Mr Speaker, a second query was raised in another place as to whether under clause 10(4) the reference to 'substantial and genuine connection' ought to be defined in the Bill. The Attorney General replied that he did consider and advise on this but concluded that it would not be appropriate to seek to restrict how this might be interpreted other than to provide guidance.

1630 Thirdly, it was suggested upstairs that the Bill should contain provisions for a light touch regulation in respect of reputable foreign charities, including a fast track registration process. The registration process itself only requires completion of an application form which is submitted with the charity's governing instrument, both of which have to be checked to ensure that they comply with Manx law. When steps are taken to prescribe what the actual application form must contain, consideration can then be given to prescribing different information for differing categories of charity. There is no reason why there should be any delay in processing such applications provided the documentation submitted is in an acceptable form. In addition, 1635 as the Bill provides, there is ability for certain categories of charities to be exempted by regulations. This would enable an exemption from registration to be made in the case, for example, of an English charity which was registered with the Charity Commission in England and Wales, which has contracted to deliver specific services on the Island for a fixed period and which will not be raising any funds here.

1640 Finally, upstairs it was questioned whether small charities should be exempt from registration. This could be possible by making regulations under the Bill. However, there was no call for this during the consultation and so it has not been considered necessary. Indeed, at the recent presentation to Hon. Members about this Bill, Mr David Gawne MBE addressed the audience expressing full support for the Bill as drafted and he was there representing the Isle of 1645 Man Council of Voluntary Organisations which has previously had long involvement with the Manx charitable sector in respect of both small and larger charities. There is no *de minimis* provision on the face of the Bill as regulations can be made to address this if necessary and, of course, any such regulations would have to be approved by Tynwald.

1650 Mr Speaker, I beg to move that the Charities Registration and Regulation Bill be read for a second time.

**The Speaker:** I call on the Hon. Member for Ramsey, Dr Allinson.

1655 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second and reserve my remarks.

**The Speaker:** Hon. Member for Middle, Mr Shimmins.

**Mr Shimmins:** Thank you, Mr Speaker.

1660 Hon. Members, I have a number of queries and concerns on this Bill. Firstly, why was the Bill introduced into the Legislative Council first?

It has been confirmed that there is no urgent deadline for this Bill and as such, is it not the role of the Legislative Council to review and refine legislation, whilst the Keys determines policy. This seems an odd way of doing it

1665 And as it stands the Attorney General is promoting this Bill, which transfers functions to his Department. I would be interested in the Minister for Policy and Reform's views on any conflicts of interest here. So the Attorney General's Chambers are making the regulations; it is proposed that they will now also carry out the day-to-day administration of charity registration, which is being transferred from the Department of Enterprise and then they will also raise prosecutions if they consider that these are required. Is this healthy? Should there not be a separation of powers in this situation. The Minister for Policy and Reform referred to a 'one-stop shop', that could be dangerous in an operational, regulatory and legal environment.

1670 A number of Isle of Man advocates feel that the points that they raised during the consultation process have not been taken on board. And in this regard it would be helpful if the Minister, when he responds, could advise what parts of the Bill have been changed following the consultation.

The Minister also highlighted the debates in the Legislative Council about the carve out for the church. The ecclesiastical exemption appears historical and it was helpful that the Minister explained the various previous Acts which have the regime that we have as it stands, but it does seem odd that a non-religious charity is required to comply with these regulations but church related ones are not, and I wondered if this was because the Tynwald Ecclesiastical Committee had fully considered this previously. Perhaps the Minister could clarify this.

1680 So my slight concerns in this area were actually heightened by the remarks made by the Lord Bishop who stated that there must be several hundred Anglican Church Isle of Man trusts and that many unpaid officials may actually be unaware that they are trustees, and this kind of raised some alarm bells about good corporate governance. Surely any charity which receives regular substantial charitable donations from the public in the Isle of Man should have high standards of corporate governance and be required to comply with our charities legislation.

1685 In terms of the concept for substantial and genuine connection not being defined, I hear what the Minister said earlier, which he kind of repeated what the Attorney General had previously said. I just want to understand how he feels, in a bit more detail, how this ambiguity is helpful or would it not be better to have clarity on what constitutes a substantial and genuine connection, bearing in mind we are talking about a matter of law and an important Bill, as the Minister previously highlighted.

1690 It is perhaps unfortunate that there is no acknowledgement of other charity regulation regimes. For example, a household named charity in the United Kingdom or other neighbouring places, with a commitment to full transparency, publishing their accounts with a large corporate governance team board of trustees is already subject to considerable regulation and scrutiny. In other areas of regulation here on the Island, a lead regulator approach is adopted to improve co-ordination and reduce duplicated bureaucracy. Particularly for charities, bureaucracy incurs cost and more cost results in less funds for charitable causes. So I would very much welcome the Minister's response in terms of why a lead regulator approach is not contained within this Bill.

1700 At the other end of the scale, he briefly touched on the concept of *de minimis* and, Hon. Members, you will be aware that the community organisations we have range greatly in size and scale. Some, for example, local toddler groups in our constituencies, may only have a few hundred pounds in the bank. Is it right that we treat them in the same way that we treat an established charity with multi-million pound turnover and over 100 employees?

1705 I would stress that both organisations are carrying out highly valued work in the community but I would submit that the size and nature of the risks are different. And again, other aspects of our regulatory approach here in the Island adopt a risk-based approach. So my question would

be why have we not adopted a more defined risk-based approach with this opportunity to review our charity's legislation?

So I look forward to receiving the Minister's response on these points.

1715       **The Speaker:** I call on the Hon. Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

          I am actually going to echo some of the comments that were made just there by the Hon. Member for Middle, Mr Shimmings. Firstly I would like to say broadly I think this Bill is  
1720 moving us in the right direction. But I am slightly concerned it is not making the best use of some of our resources. We already have a Registrar General on the Island, who oversees the Central Registry and I think all of our other registries – the companies registry, for example, handles the registration requirements of over 26,000 companies and foundations under a range of different legislative frameworks. So it seems to me that that is the obvious and sensible place to centralise  
1725 our charities registry, with the people that do this stuff day in, day out. The regulation itself might sit elsewhere but the registration, the processing of forms, the processing of renewal paperwork, all of that seems to be the bread and butter of what our Registry does for 26,000-27,000 other entities that already exist on the Isle of Man.

          My concern of putting the regulation of charities within the Attorney General's office actually  
1730 raises a query of appropriate oversight. I would be grateful if the Minister could advise how he sees executive and parliamentary oversight of this function being exercised over this regulator. Our other regulators, whilst all independent of Government, broadly fall under the remit of a Minister, but primarily the Treasury Minister; but the Attorney General has no such executive oversight. As a Crown appointee he is not really even answerable to Tynwald in respect of his  
1735 regulatory functions.

          So this Bill, in my view, does not really look properly at the way we regulate and register charities because the fundamental question of what might be best in the Island just has not really been asked. It has just been assumed that the Attorney General is the right place for all this and it has simply just been accepted without too much question. I am, however, willing to  
1740 accept that I cannot make such fundamental change to the direction of this Bill at this point so I will not be attempting to do so.

          One of the requirements in this Bill, as the Minister has already outlined, is to register a charity it needs to have a substantial and genuine connection to the Isle of Man. Now quite a number of the consultation responses raised this as a query as to why a substantial connection is  
1745 still necessary. I would appreciate some clarity from the Minister on why he thinks that a substantial connection as well as a genuine one is still required. The response the Attorney General seemed to give in the consultation document was simply, 'This is as relevant today as it was in 1989,' without explaining any further as to why this might be so. I do thank the Minister, however, for confirming that guidance will be issued in respect of what might be considered  
1750 substantial and genuine.

          I would like to turn to some of the very specific provisions within the Bill itself. There is no specific exemption for the smallest of charities; in the UK charities with a gross income of less than £5,000 are completely exempt from the regulation and registration requirements, although they can voluntarily register.

1755       The Bill, in my view, places quite a large increased administrative and regulatory burden on these small charities, and that is right in some cases, but I do not understand the logic in overburdening the very smallest of charities with these requirements. The Minister, however, is incorrect in his earlier statement that no concerns were raised in the consultation, because concerns about this were raised during the consultation.

1760       Firstly, that this would result in fewer people being willing to act on behalf of these small charities. And secondly, a concern was raised: the statement in the consultation document is simply, 'There should be a more clear means of exemption for small local charities.' Right there



in the consultation. This was just simply dismissed by the Attorney General without any real explanation, just a statement to the fact we do not intend to do this at this time. It is not an answer that is just 'I do not want to do it'. So I will be bringing an amendment myself to the Bill to exclude the smallest of charities from the potentially onerous requirements this Bill would place on them.

When it comes to publication of items on the register itself that was not particularly clear for me either; clause 9 simply states the register will be 'public'. Personally, I think the right to inspect documents needs to be much more robust in this Bill as well as the requirement the register be publicly accessible at all times instead of simply allowing the Attorney General to determine how this might work in practice, and as such I will be bringing some amendments to this effect.

Clause 15 in the Bill relates to the publicising of the removal of a charity from a register. Again it is also quite vague, it just simply allows the Attorney General to publish these things in such a manner as he sees fit. Now we have got a perfectly good process for publicising the removal of companies from the register, which is the administrative dissolution procedure, and it is my intention to bring an amendment to this Bill to bring it in line with those requirements. The Attorney General stated in response to this particular issue being raised in the consultation that removal of a charity from the register has no effect on the existence of the charity. But actually I would suggest that seeing as all charities will be required to register under this Bill, being taken off the register actually is quite a serious issue and would probably only result either because the charity has ceased to exist or because it has suffered some severe regulatory failing, both of which the public I think should be entitled to know.

Clause 16 in the Bill also causes me some concern. It requires every charity to have a written instrument, which I am absolutely fine with, but then it excludes all existing charities from this requirement until a date prescribed. So I would like the Minister to please provide confirmation that this date is going to be prescribed in the Appointed Day Order so as not to leave all of our existing charities hanging in limbo with this requirement. I would also like him to confirm that guidance will be issued to help the smaller charities deal with adopting written constitutions if they do not already have them.

In respect of enabling charities to make changes to their own governing instruments, there are two clauses in the Bill, 17 and 21, that require the Attorney General's approval for this, but the Bill does not provide that he must not unreasonably withhold his consent. So again I will be bringing some small amendments to ensure this is done.

Turning to the accounting side of things, there is no requirement in the Bill itself for charities to keep financial records. There is a requirement in the Bill for the charities to produce accounts, but that is not the same as being required to keep day-to-day transactional accounts, transactional records. There is a regulation-making power to this effect, but I think it is of such importance that the high level requirements should be placed in the Bill in exactly the same way they are for companies under the Companies Act. Regulations can then set out any further detail that is required. There is also no reference in the Bill for a requirement for charities to preserve these records, which is not particularly good from an anti-money laundering perspective. And so, again, I will be bringing amendments to rectify these two oversights.

Lastly, I am going to talk briefly about the ecclesiastical charities, because the exemption is specified in the Bill itself; and as the Minister has rightly pointed out, this is not all religious charities and this seems quite strange to me because all the other exemptions are included in the regulations – the religious charities exemptions being the case in point here. None of these other exemptions are included in the Bill itself. And even when drafting the amendments for the small charities, I was advised the best place to put those is in section 46, which is the regulations section, not in the Bill itself.

So if Tynwald at some point wants to debate the appropriateness of any of these exemptions it is pretty straightforward because it is all in secondary regulation, but ecclesiastical exemption

actually is much harder to change because it is in the Bill as a primary Bill. So if Tynwald does want to have that debate it is very hard to have that.

And so I am going to be bringing some amendments very similar, if not identical to the ones that were raised in LegCo, to move this exemption into the Religious Charities (Exemption) Regulations to sit alongside all the other exemptions, just so that if in the future Tynwald is minded to have a debate on this, they can do without having to resort back to changing the primary law. Now I want to be very clear that at this time I am not proposing that we have that debate, and I am not suggesting that even such a debate might be desirable; all I am trying to do is place all the exemptions in the most appropriate place should Tynwald decide to have that debate in the future.

The amendment, in the words of the Attorney General, would achieve the following, these charities would:

... continue to be exempt from registration but such exemption would be on the same basis as those of the other exempt religious charities ... Thus there would be a parity of treatment.

The Attorney General has confirmed in the Upper Chamber that this amendment will make no fundamental change to the regulatory landscape, which is absolutely key. We do not want to change the landscape at this point; that is not the purpose of this Bill. But when I was looking at this amendment, something the Attorney General has said in the debate made me think a little bit. In the debate he stated that:

As regards the churches referred to in the Regulations, they are not operating in the Island on a standalone basis but, instead, are part of larger organisations with a clear structure and accountability.

He went on to say:

I would suggest that the existence, and degree, of financial oversight are matters that would be taken into account in considering whether to add or remove a particular religious charity from the list of those exempted from registration.

But in his consultation response the Attorney General stated, 'It is not relevant to its regulation in the Island whether a charity is subject to regulation by another comparable authority'.

So it is completely contradictory. On one hand it is okay and on the other it is not. For me, this raised an interesting point in relation to foreign charities because there are a lot of international charities who are in exactly the same boat. They are already operating under a degree of regulation by, for example, the UK Charities Commission but these charities will still be subject to the requirements of our Bill.

Take the Royal British Legion, for example, they have a rather complex charitable structure that I am sure Mr Speaker will give you chapter and verse on if you are having trouble sleeping, but these structures can make the production of local Isle of Man based accounts quite difficult. And yet when this point has been raised with the Attorney General's Chambers at consultation it was simply brushed aside. This charity and charities like it are already regulated by the Charities Commission in the UK and so putting them under the same quite onerous requirements as other charities that are not regulated elsewhere seems a little bit unusual. So the consultation response, as Mr Thomas has correctly stated, the regulator is not interested in a global report. That there may be some additional costs involved cannot be a reason for avoiding the relevant regulatory regime. In any case, detailed figures should be available of the operations here as part of its ordinary financial records.

So, on the one hand, the Attorney General feels that religious charities should be exempt from some of these requirements because they are part of larger, well-regulated international structures, but on the other hand, foreign charities regulated in a similar vein should not. In

1855 actual fact, depending on the exact structure of the local charity, the statement about availability of accounting records might not even hold true.

So to my mind this is quite a fundamental issue about foreign charities, how they are registered and how our regulator should interact with those charities that are regulated elsewhere that may have activities on the Island. I do not think this is being properly considered.  
1860 I do not think it has been properly considered because it was raised in the consultation response and no appropriate response was given. (**A Member:** Yes.) It was not properly considered in the Upper House and it really has not been properly considered in the Minister's opening remarks, it has simply been pushed to one side.

I do not have a proposed solution for this. In all likelihood it can probably be dealt with  
1865 through the regulation-making powers that exist in the Bill. But I would suggest that we need a remedy for this. And we should know what is going to be proposed in respect to some of these more complex, foreign registered charities, before this Bill gets finalised and makes its way on to the statute books.

It is quite disappointing for me that this issue and many of the other issues that I have raised, being quite technical matters, not matters of policy, were not addressed by the Legislative  
1870 Council. I would suggest that had this Bill come to this House first, or even if the very valuable consultation responses had been properly circulated or published in advance of the Legislative Council debate, then that Council would now have time to go away and investigate and look into some of these more technical issues that, in my view, have not been properly thought through  
1875 such as the treatment of foreign charities.

I wonder if the Minister would comment on this in his summing up.  
Thank you, Mr Speaker.

**The Speaker:** Mr Baker, Hon. Member for Ayre and Michael.

1880 **Mr Baker:** Thank you very much, Mr Speaker. I will be very brief.

I would just be grateful if the Minister for Policy and Reform could draw out some of the nuances around the ecclesiastical charities and trusts, because I think it would be helpful for us to understand what we are actually looking at with these organisations.

1885 The Hon. Member for Middle referred to any organisation who receives donations from the public should be covered by legislation. I am not clear in my own mind to what extent a lot of these ecclesiastical charities do receive donations from the public, and I think – and this is just a personal view – a lot of these are very much historical organisations that were maybe established by a deceased person bequeathing funds for a certain purpose, for example, and the income from those assets may be being used for charitable purposes.  
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That is a very different scenario from a charity going out and raising funds for its purposes. I do not have a sense of the scale of the number of charities, although anecdotally I think there are quite a lot and I think there is a lack of clarity around actually how many organisations would fall into any such legislative provision around these ecclesiastical charities.

1895 So I think, similar to some of the comments that have been made by Hon. Members who have already spoken, there is just a little bit more thought and clarity needed around this, because clearly a lot of thought has gone into this Bill and we do not want to delay it moving forward. I think there is a recognition that we do need to improve what we are doing, but we need to make sure we are not having some unintended consequences for either the national charities or some of these smaller organisations that are caught effectively by default in the provisions that we make, or indeed the smaller charities that have already been raised.  
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So I think we need some clarity. I do not know whether the Ecclesiastical Committee is able to shed any light on this, but I think if it is not we do need to find out a little bit more before we take too much action that may have a long-term impact.

1905 Thank you.

**The Speaker:** I call on the mover to reply.

**Mr Thomas:** Thank you, Mr Speaker, and to my seconder and the three Hon. Members who have spoken and contributed to the debate.

1910 I am not sure it is really appropriate to address the first question from Mr Shimmins about the role of the Legislative Council relative to the role of the House of Keys in dealing with legislation, because that is such a huge debate. But I would just say a couple of things.

The first point is that Legislative Council Standing Orders, at 4.5, clearly deal with the procedure for Bills first being introduced into the Council. There is a Standing Order entitled  
1915 Procedure for Bills first introduced into the Council. That was confirmed as recently as June 2018 when that Standing Order was amended to introduce the sub-clause which caused a bit of controversy a couple of weeks ago because it was amended such that the Bill to which this Standing Order applies shall be transmitted to the House of Keys immediately, unless the President determines that its transmission should be delayed. As I said two weeks ago, it is not  
1920 my intention to debate that issue in this House but I will be bringing this to the Standing Orders Committee's attention.

The second point I would make is that between 2013 and 2016 the role of the House of Keys and the role of the Legislative Council often came up in terms of legislation and it was very clear, and it was always made very clear, that legislation should not leave the House of Keys until it  
1925 was perfect, until it was perfect in the eyes of the Legislative Council. So it is not right to think that we leave imperfect legislation for the Legislative Council to sort out. We have to make sure it is perfect before it leaves this House before it goes to the Legislative Council.

The reason why this particular Bill went to the Legislative Council is it is a technical Bill. Two years ago the process for this Bill sped up. We had our principles consultation; there was a  
1930 widely circulated principles consultation and it was decided during that process that there are so many things that we need to do in terms of charities law and in terms of gathering together information and changing the way that we deal with charities, that we could not possibly do it in this Bill, which has already got 12 Parts, 68 clauses and one Schedule.

So therefore a decision was made after the principles to limit this to technical aspects of  
1935 charities' registration and regulation. That was confirmed when the Bill was published seven or so months ago when the Bill was put forward for a second consultation in perfect model style for people to comment on the legislation. Then it was brought in good faith by the policy department responsible for charities, the Attorney General's Chambers, so that the Attorney General could actually argue in good faith about this technical Bill and make sure that it was  
1940 suitable for purpose.

So that leads on to the second question – second good question – that Mr Shimmins gave me the chance to address. He expressed a concern that functions are being transferred to the Attorney General's department and that was built on a bit later by Mr Hooper in respect of  
1945 talking about the wonderful organisation which is the Central Registry in the Department for Enterprise.

The point I would make is that one of the major reasons why charities registration is being linked together more closely with charities regulation, which was always with the Attorney General's Chamber, is because the amount of advice, the level of advice, the frequency of  
1950 advice, that was needed from Chambers by the Registry people, it is much better just to have that in one place, in the same way that we combined payroll and other aspects of HR to do with that in one place. It just is more efficient and effective.

I am not at all worried about conflict of interest, which is the specific question I was asked, and I will actually use two examples for why I am not worried. The first one is from  
1955 Mr Shimmins' world of regulation of financial services. The Financial Services Authority in the Isle of Man and in other places, both registers membership for supervision by the Financial Services Authority and then basically supervises them and even takes enforcement action according to the regulation process. The Charities Commission set up in Jersey, in Northern

Ireland, in England and Wales and Scotland, has the same characteristic of bringing together registration and regulation in one place. So it is completely the norm to actually do that. It is much more efficient and effective. So I am putting back the argument of efficiency and effectiveness to the Hon. Member to answer his question.

Building on that, obviously as the Hon. Member for Ramsey, Mr Hooper, has outlined, there is now developing a great expertise and a great specialism in IT systems and the process of registration in the Central Registry, and that will be used. There is no intention for that skill to be reinvented in the Attorney General's Chamber. I remember from school, people who became lawyers were very bright but they were not very good at adding things up and running computer systems and that is why they became lawyers. That is why we are not in any way going to try and get them to start running the computers. I am sure they will be delegating the functions. As I laid out in my opening speech, the law actually allows for that function to be delegated to the Central Registry.

So basically the Central Registry is where we are registering legal entities and companies. We are also regulating civil matters, we are also looking at deeds and land, but charities are different; charities are a status. It is about legal interpretation of status and that is different and that is why we need a process like the one that exists in the Charities Commission in England and Wales.

That obviously leads on to answer – I have answered my own question – ‘Why do we not need a charities commission in the Isle of Man?’ We could have an Isle of Man charities commission but that would be growing the size of Government. Our Attorney General obviously does more than it does in bigger countries because it needs to; and we are just talking about one and a bit people here, and it is much more efficient to actually have that done as part of a function.

Moving on to Mr Hooper's question about political oversight, both from Government and so on, arrangements will be made and I am absolutely sure his Committee will be making sure that we have in place arrangements to make sure that the pay and rations aspect of the regulation and registration of charities is subject to good Government oversight and, through that, to parliamentary oversight.

Okay, moving on to some of the other points that Mr Shimmins raised. Advocates – we ‘had not taken on board some of the suggestions’, ‘queries were still being raised’. I have asked the Law Society in my quarterly meetings with the Law Society to be very specific because three advocates submitted consultation responses – Cains, Appleby and Mr Rimmer, and fourth, oh, yes, Peter Cannell as well – and I have asked each of them individually to raise concerns with me if those concerns have not been addressed and I have also asked the Law Society more generally to submit evidence. I absolutely assure this House and everybody else that we will do everything we can to address questions.

That feeds on to another specific question that Mr Shimmins asked, which was about how we had actually responded to suggestions in the consultation. I mentioned one about safeguarding; it was mentioned by Dr Allinson and several others. Mr Speaker made a very helpful submission and brought to our attention that examiners were not covered in the right way that they should have been. So we changed clause 28 to bring in the examiners as being in their proper place, relative to auditors in the legislation. The Land Registry made lots of helpful suggestions and the FSA made helpful suggestions. We included all of that into our Bill as presented here before this House today.

We come on now to the case about substantial and genuine connection. There is already guidance that is used in making that case. This all goes back to the 1980s; perhaps even the 1970s was when the problem was around that needed to be addressed with a new law.

I can absolutely assure this Hon. House that this question might have gone either of two ways. The first one is the way it has gone, which is that we are making too much about substantial connection, but I do not think that to be the case because I also was prepared to answer the other assertion that in the light of substance requirements, which were taken

2010 through upstairs, the other place, in December, we might need to tighten up some of the issues around the substance. So we can debate that more when it comes to the clauses stage, but I do not think the argument is one-way and that is certainly something that I will endeavour to make sure that those responsible for the policy in this area endeavour to look at further, and I will answer more specifically in terms of both of those two angles.

2015 That leads on to foreign regulation and the concept of lead regulation, perhaps even group regulation, that we might apply to charities. Let's just remind ourselves of the scale of what we are talking about here. We are talking about two or three charities a month needing registration; we are talking about 700 charities. It does not take very long to actually assess the form when the application is made properly to decide whether or not to allow a foreign charity to be on the register.

2020 I just wanted to remind Hon. Members the situation across is not quite the one that Mr Hooper described. There is not a Charities Commission for the UK; there is a Charities Commission for England and Wales. There is another one for Scotland, another one for Northern Ireland; and when an English charity goes to Scotland they have to register with the Charities Commission.

2025 All I want to say about this is I am very happy that we need to make sure that we treat the process efficiently, we make it effective; but we are a separate country. Before you know it, people will start arguing we do not need a legal system and if you do not need a legal system that is Manx why do we need a Manx parliament? We are a separate nation with our own separate laws and it is very important that we have our own Attorney General making our own arrangements for Manx charities. That is fundamental in all of this and I can continue arguing about that later.

2030 In terms of small charities, which is an issue raised by both Mr Shimmins and Mr Hooper, I think it was Mr Teare, former Treasury Minister, who was the person being quoted. There are lots of very good people like Mr Teare around who spend a lot of time filling in accounts for lots of charities. Clearly, accountants who do that and get asked to do that, have it in their interest to do it as little as possible. It might well be interesting to make an exemption, but the point that was being made in the consultation responses was that there has been no demand from the public or from actual charities – no huge demand. There has just been one person who submitted. Other people have expressed the same idea, but there has not been a huge demand.

2040 If we are going to make this change, that is a policy decision and we ought to be considering that as a policy decision and we ought to be consulting about that as a policy decision before we come to make the exemption. So the right way to do it would be in secondary legislation, if we are going to do it. I am not adverse to that, but it is massive because I can assure you that from the coalface most of the biggest offences are caused quietly by smaller charities, through ignorance perhaps. But that is no defence when it comes to the law. So there are many issues to be considered and I certainly think we need consultation about this.

2045 So risk-based approach is the one that is adopted already. We already have different accounting regimes for smaller charities. As I understand it, the Attorney General's Chambers staff are very keen on treating charities appropriately to their size and their complexity and their risk. The Hon. Member, Mr Shimmins is right: there is no formal statement about risk-based approach inside the legislation, but it took financial services 20 or 30 years to get to that position and we have not got to that position as yet in fire and safety law and risk-based. It is not actually the sort of approach that is liked by smaller people, in my experience; smaller people want to know exactly what they have got to do. They do not want, 'It depends on the risk, is the answer,' they want to know exactly what they have got to do and exactly when they have got to do it, and exactly on what form they have got to do it. So we need to have a further discussion if we are going to move more towards a risk-based approach.

2055 I think I have dealt with most of the issues raised by Mr Shimmins and Mr Hooper, except to acknowledge some good suggestions about publication of the register, about how we disseminate information on removal, about assurances on the ADO and about guidance. What I

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would say is that our thinking was that this was the sort of thing that was appropriate for secondary regulation. I have not seen the amendments that the Hon. Member has apparently drafted, but I look forward to discussing those with officers and then making up our mind whether they are helpful to provide some flexibility. But I would stress we want that this whole piece of legislation and the regulations under it are made on the basis that the transition will be carefully managed. From a policy point of view and from a management point of view, the Attorney General is a public officer and is required as a matter of constitutional law and public law to act reasonably. So therefore I can assure this Hon. House and the hon. questioner that we will be looking into these things.

That brings me on to the Church issues to close. I think the hon. questioner looked to me to draw out nuances, but I would suggest that the questions that Mr Baker and Mr Robertshaw asked at an earlier stage in the discussion were the right questions to be asking. It is massive. We work on cleaning up ecclesiastical charities and the whole business needs further investigation. It is not the sort of thing that you rush in to. We need to know the facts. We need to know exactly what is involved.

So if we are going to make changes we should be putting this into the secondary legislation and then beginning the investigation through the Ecclesiastical Committee, if that is the appropriate place, through a consultation, through actually engaging with all the church leaders to find out what is involved. It is not the sort of thing we can rush through in any way. I do not think that is a legislative priority. I do not think there are masses of risks, as was suggested by the questioner. We have only got a scarce amount of resources that we can apply to secondary and primary legislation, so we decided bringing this Bill forward was not the priority for the moment; the priority was technical changes rather than policy changes about the relationship between the Church and the state. But of course it is in the will of this House and the will of the other place. We could begin the process of reviewing how we treat ecclesiastical charities and we could prioritise that for work. That is our choice collectively, it is not a decision that we have made previously.

Then, finally, I just want to rise to the challenge set to me by Mr Shimmins about the consultation. I do believe the consultation was of a certain type. Essentially, we had a 20-page document of suggestion, response and what we did, which we circulated to all Members who asked for it, but we had decided not to publish that. We only published that on 12th February, but there was a very detailed legal-type response document published on the website from a month or so before that, which actually went through exactly what had been suggested and what we had done as a consequence of the suggestions. So to my mind, as the person responsible for consultation as well, the public aspects of consultation, in no way am I not defending this consultation and the way it was handled.

I beg to move.

**The Speaker:** The question is that the Charities Registration and Regulation Bill 2018 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**4. BILL FOR THIRD READING**

**4.1. Income Tax Legislation (Amendment) Bill 2019 –  
Third Reading approved**

Mr Cannan to move:

*That the Income Tax Legislation (Amendment) Bill 2019 be read a third time.*

**The Speaker:** Item 4, Bill for Third Reading, Income Tax Legislation (Amendment) Bill 2019.  
Mr Cannan to move.

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**Mr Cannan:** Mr Speaker, as previously outlined this Bill amends and confirms two Temporary Taxation Orders and confirms a third without change. It also amends the Income Tax Act 1970.

During the clauses stages of the Bill a number of technical questions were answered regarding the changes it makes to the new flexible pension scheme. This scheme is already

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proving popular and I hope these changes will make it easier to operate, and more attractive. The changes make it possible to have more than one of the new flexible pension schemes; it will allow pension payments to be made to a spouse or dependent on the death of a member; and will also allow for a more flexible way to draw down the pension.

As this scheme allows for freedom on drawdown, it is up to the pensioner how they use this fund in their retirement. They can draw the whole, or part, of the pot and invest in property or purchase an annuity, or they can leave it and receive a regular pension payment.

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The final change enables Treasury, with Tynwald approval, to regulate to cap the level of Transfer and Exit fees that can be charged by providers of the new scheme.

I beg to move the Third Reading of the Bill.

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**The Speaker:** Hon. Member for Middle, Mr Shimmins.

**Mr Shimmins:** Thank you.

I beg to second and reserve my remarks.

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**The Speaker:** There being no rush to speak, I will put the question that the Income Tax Legislation (Amendment) Bill 2019 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**5. CONSIDERATION OF CLAUSES**

**5.1. Highways (Amendment) Bill 2019 –  
Clauses considered**

Mr Harmer to move.

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**The Speaker:** We move to Item 5, consideration of clauses, and we take first the Highways (Amendment) Bill 2019 in the name of Mr Harmer. I call on him to move.

**Mr Harmer:** Thank you, Mr Speaker.

I would first like to thank Members for supporting this Bill at the Second Reading earlier this month.

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I would like to, firstly, go through clause 1. Clause 1 gives the Act resulting from the Bill its short title. Mr Speaker, I beg to move that clause 1 stands part of the Bill.

**The Speaker:** Mr Baker.

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**Mr Baker:** I beg to second.

**The Speaker:** I put the question that clause 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 2, Mr Harmer.

**Mr Harmer:** Clause 2.

The Highways Act 1986 amended: clause 2 introduces the amendments that are made to the Highways Act of 1986 by clauses 3 and 4.

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Mr Speaker, I beg to move that this clause stands part of the Bill.

**The Speaker:** Mr Baker.

**Mr Baker:** I beg to second.

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**The Speaker:** I put the question that clause 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Harmer.

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**Mr Harmer:** Clause 3 amends section 92A of the 1986 Act to provide that an order which amends a definitive map only in consequence of the making of: (a) an order under section 33, 34 or 91; (b) an agreement under section 4 or 87; or (c) both such an order and such an agreement need only be laid before Tynwald because in these circumstances the process is essentially administrative in nature.

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Mr Speaker, I beg to move that clause 3 stands part of the Bill.

**The Speaker:** Mr Baker.

**Mr Baker:** I beg to second.

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**The Speaker:** I put the question that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Harmer.

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**Mr Harmer:** Clause 4 adjusts the definition of 'planning approval' for the purposes of the Highways Act 1986. The change is required because, as a result of the transfer of certain planning functions to the Cabinet Office, planning approval is no longer always granted by means of a development order under Part 2 of the Town and Country Planning Act 1999.

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

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**The Speaker:** Mr Baker.

**Mr Baker:** I beg to second.

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

**5.2. Communications Bill 2018 –  
Consideration of clauses commenced**

Mr Malarkey to move.

**The Speaker:** We move then to the consideration of the clauses of the Communications Bill 2018. Mr Malarkey, the bar has been set. *(Laughter)*

I call on you to move.

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**Mr Malarkey:** Thank you, Mr Speaker.

Can I start by thanking all Members? This Bill has been some five years, that I am aware of, in the making. It has been held up several times through Select Committees and various consultations, it has been re-consulted on, and hopefully we have today a Bill that has got to suit just about everybody – but you never know, at the end of the day.

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With your permission, Mr Speaker, I intend to move the Bill in groups of clauses, wherever possible to do so, and I have circulated to all Members how I intend to move these clauses. This, as I have said before, is a largely technical Bill and this approach should assist the Bill to be moved without unnecessary delay.

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My next wording is that we have officers and legislative members present – but I am reassured by a text message I received 30 seconds ago that they are on their way! *(Laughter)* Should you require at any stage for questions to be answered, I would be asking to go into committee so that my soon-to-arrive officers and our member for the Attorney General's office would be able to answer such questions.

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But now, if you will bear with me while I change my glasses – but I will probably not be able to see everybody now because I am putting my reading glasses on for the first time in this Hon. House – I shall move to clauses 1 and 2.

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Clauses 1 and 2 of the Bill set out the Bill's short title and commencement provisions. It is envisaged that the great majority of the Act will be brought into operation by phased commencement set out in a number of Appointed Day Orders. This will allow the Commission to prepare the necessary secondary legislation such as licences which will require consultation with all interested parties.

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

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**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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

Now, Hon. Member, I believe it is your intention to move clauses 3 to 8 at the end of the – *(Interjection by Mr Malarkey)* 3 to 8 at the end –

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**Mr Malarkey:** That is correct, Mr Speaker, I was about to say that. But I am happy for you to –

**The Speaker:** So I call on you to move clause 9, Hon. Member.

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**Mr Malarkey:** Thank you, Mr Speaker.

Clause 9 imposes restrictions on the power of the Council of Ministers to give directions to the Commission in relation to a person who has applied for a licence or holds a licence or to

whom a licence may be granted. The Council of Ministers must not give directions as to the performance of the functions of the Commission in relation to such a person.

2235 Mr Speaker, in moving this, I would ask Hon. Members to remember clause 9 when we debate new clause 8 by Mrs Caine.

I beg to move.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

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Clause 10, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clause 10 defines a regulated activity under the Bill. An activity is a regulated activity if it falls within any of subsections (2) to (5).

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This clause covers both telecommunications and broadcasting. Subsection (2) details that the provision of public electronic communications networks and services or associated facilities will fall to be regulated under the Bill. These are the network services and facilities currently run by the Island's licensed telecommunications operators. The Bill makes explicit provision for the licensing of radio stations broadcasting on the Island and for television provision where certain jurisdiction conditions are met. That is that the provider has its head office on the Island, or the editorial decisions are made on Island or the provider uses a satellite uplink situated on the Island.

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The Council of Ministers may by order make amendments to these provisions in order to modify the scope of activities, add activities or delete activities.

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

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

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I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 10 stand part of the Bill.

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

Clauses 11 to 14, Mr Malarkey.

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**Mr Malarkey:** Thank you, Mr Speaker.

Clauses 11 to 14, which I would like to take together, make provision for excluding persons and activities from being regulated by means of an order made by the Council of Ministers.

Clause 11 allows for Council of Ministers to exclude by order an activity from being regulated. This is to allow for future-proofing of the Bill due to, for example, new technologies or to allow for deregulation where there are social or economic benefits in doing so.

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Clause 12 imposes a general prohibition on carrying on regulated activities otherwise than in accordance with a licence and contains penalty provisions. For example, it would be prohibited to run a mobile network without an appropriate licence.

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Clause 13 provides an exception for activities comprising the provision of television-licensable content services provided by a person within the jurisdiction of a Member State of the EU for the purposes of the Audio-Visual Media Services Directive and licensed or authorised by that Member State for the purposes of that Directive. This is to guard against double licensing of activities.

2285 Clause 14 permits the Commission to exempt persons from provisions of the Act and to apply appropriate alternative provisions in such cases. This is to allow for future-proofing of the Act and to allow some flexibility to prevent overregulation where there are no social or economic benefits in applying all the provisions of the Act to a person or class of persons.

Mr Speaker, I beg to move that clauses 11 to 14 stand part of the Bill.

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**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

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**The Speaker:** I put the question that clauses 11, 12, 13 and 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 15 to 24, Mr Malarkey.

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**Mr Malarkey:** Thank you, Mr Speaker.

I wish to move clauses 15 to 24. I would like to take them together to deal with the licensing for both telecommunications and broadcasting and provide the framework for the work of the Commission.

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Clause 15 specifies how an application for a licence other than a class licence is to be made, and follows the current process for applying for a licence. The matters which the Commission may or must take into account in considering a licence application are laid out in Schedule 1.

Clause 16 states that the Commission must act in a way that is open, transparent and non-discriminatory in the granting of a licence.

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Clause 17 deals with the grant of a class licence. This is a general authorisation, which usually contains restrictions on the size and extent of the system and the services that can be offered. The class licence could cover those activities which may technically fall under the definition of a public electronic communication network or service, but are of little or no economic or social value to the Island, would be disproportionate to license or would impose too great a burden on operators of those systems.

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Clause 18 deals with the form and effect of a licence.

Clause 19 deals with the sort of conditions that may be imposed on a licensee, and afford the Commission a reasonable degree of latitude as to what may be included in a licence in order to futureproof the legislation.

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Clause 20 sets out what is to happen when a person to whom a licence has been granted fails to commence the regulated activity for which it was granted.

Clause 21 provides for the making of codes of practice in respect of regulated activities. This provision gives the Commission the ability to set out binding codes of practice.

Clause 22 deals with the Commission's powers to impose, vary or revoke licence conditions.

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Clause 23 deals with public consultation about proposals in relation to the procedural fairness requirements laid out in Division 3 of clauses 25 to 29.

Clause 24 deals with the imposition variation and revocation of conditions in class licences.

Mr Speaker, I beg to move that clauses 15 to 24 stand part of the Bill.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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**The Speaker:** I put the motion that clauses 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 25 to 29, Mr Malarkey.

**Mr Malarkey:** Thank you.

2340       Clauses 25 to 29 set out the procedural fairness requirements which apply to a number of applications and decisions throughout the Bill in relation to licenceholders. The purpose of the 'procedural fairness requirements' is to provide a shorthand way of referring to the requirement for the Commission to give a licenceholder an opportunity to be heard before the Commission makes a final decision over what action to take.

      Clause 25 explains that the requirements apply if the section of the Act states that it is to apply.

2345       Clause 26 requires the Commission to issue a 'proposal notice' which gives the licenceholder the proposal, the reasons for the proposal and the period in which the licenceholder may make written representations. The Commission may not make a decision until the representation period ends or earlier in certain specified circumstances.

2350       Clause 27 requires the Commission to consider any written representations from the licenceholder.

      Clause 28 requires the Commission to give notice if the proposal is withdrawn.

      Clause 29 makes it clear that the Commission does not have to give further notice if, in the light of submissions made, it elects to modify the proposal.

      Mr Speaker, I beg to move that clauses 25 to 29 stand part of the Bill.

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**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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**The Speaker:** I put the motion that clauses 25, 26, 27, 28 and 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

      Clauses 30 to 32, Mr Malarkey.

2365       **Mr Malarkey:** Mr Speaker, clauses 30 to 32 give the Commission the powers to impose obligations through the licence conditions requiring the licenceholders to furnish to the Commission such information as may reasonably be required for the purposes of exercising its functions under the Act. This is not a new power. What is new is that if a licenceholder knowingly provides false or misleading material, acts recklessly or withholds any material  
2370       information with the intention of causing the Commission to be misled then the enforcement procedures in the Bill will be engaged.

      Mr Speaker, I beg to move that clauses 30 to 32 stand part of the Bill.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

2380       **The Speaker:** I put the motion that clauses 30, 31 and 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

      Clauses 33 and 34, Mr Malarkey.

2385       **Mr Malarkey:** Mr Speaker, clauses 33 to 34 deal with the Commission's powers to publish guidance and issue directions. Directions are used by the Commission to require a licenceholder to perform certain actions. Before issuing a direction the Commission must comply with the procedural fairness requirements.

      Mr Speaker, I beg to move that clauses 33 and 34 stand part of the Bill.

**The Speaker:** Dr Allinson.

2390

**Dr Allinson:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

**The Speaker:** I put the motion that clauses 33 and 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2395

Clauses 35 and 36 and Schedule 2, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 35 and 36 and Schedule 2 deal with the licensing requirements for broadcasting licences. I intend to take these provisions together.

2400

Clause 35 contains provisions in relation to the suitability of licenceholders to hold a licence, including whether an applicant is a fit and proper person.

Clause 36 gives effect to Schedule 2. The latter contains disqualifications which prevent certain people from holding a licence. These restrictions are in place in order to preserve media plurality or prevent undue influence on a broadcaster. These provisions are largely the same as in the previous legislation. These provisions apply to all forms of broadcasting other than on-demand programme services.

2405

Mr Speaker, I beg to move that clauses 35 and 36 stand part of the Bill.

**The Speaker:** Dr Allinson.

2410

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I am going to put the motion that clauses 35 and 36 *and Schedule 2* stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2415

Clauses 37 to 39, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 37, 38 and 39, which I intend to take together, contain further provisions in relation to broadcast licensing.

2420

Clause 37 is based upon provisions inserted into the Island's Broadcasting Act 1993 when it was amended in 2007, to ensure that the Commission considers the effect on existing broadcasters if another broadcasting service is licensed. Following consultation responses, this clause makes it explicit that the effect should be considered where programmes are to be provided for reception mainly on the Island.

2425

Clause 38 deals with the transferability of a broadcasting licence, making it clear that the Commission's consent is required in relation to a transfer. This is to ensure that the conditions as to media plurality and ownership are met.

Clause 39 is declaratory and provides that the only person to be regarded as providing a broadcasting service is the person with general control over the service.

2430

Mr Speaker, I beg to move that clauses 37, 38 and 39 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

2435

**The Speaker:** I put the question that clauses 37, 38 and 39 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 40 to 43, Mr Malarkey.

2440 **Mr Malarkey:** Mr Speaker, clauses 40 to 43, which I would like to take together, make provision for the term of a licence, power of entry, and that the Council of Ministers may require the Commission to direct a licenceholder to publish an announcement or not to include an announcement of a specified matter in the service.

2445 Clause 40 specifies that a broadcasting licence, other than a licence for sound broadcasting or the licence for the public service broadcaster, will continue in force until it is surrendered or revoked.

Clause 41 deals with the Commission's powers of entry to premises under a licenceholder's control.

2450 Clause 42 gives the Council of Ministers the power to direct a licenceholder to publish certain information in a broadcasting service and also to refrain from doing so. A broadcaster is permitted to announce, as part of the service, that it has been given a direction under this provision. This replicates current powers in the Broadcasting Act 1993, which are also contained in equivalent UK legislation, for the Council of Ministers to direct the Commission to direct licenceholders to include certain announcements in their broadcasts at specified times or to refrain from including any particular matter in their services.

2455 Where a licenceholder is obliged to make a particular announcement, they may make clear in their service that this is being carried out further to a direction given by the Commission. Similarly, where a licenceholder has been obliged to refrain from including a particular matter in their service, the licenceholder may announce in the service that this is the case, and may also  
2460 announce when that obligation has come to an end. The purpose of these provisions is principally to allow Council of Ministers to address matters of national security or major public interest, and to do so in such a way that the affected broadcasters are not required to take editorial responsibility for the content of the announcements.

2465 Clause 43 makes it clear that a licence holder may also require a licence under the UK's broadcasting and wireless telegraphy legislation as extended to the Isle of Man.

Mr Speaker, I beg to move that clauses 40 to 43 stand part of the Bill.

**The Speaker:** Dr Allinson.

2470 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 40, 41, 42 and 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2475 Clauses 44 to 47 and Schedule 3, Mr Malarkey.

2480 **Mr Malarkey:** Mr Speaker, clauses 44 to 47 and Schedule 3, which I propose to take together, set the framework for one or more codes of standards to be drawn up by the Commission for broadcasters. This is built as a framework to allow the Commission to take note of changes in societal attitudes and context when the Commission is producing or revising codes and also in applying codes. Tynwald sets the broad framework and the Commission can apply that framework to specifics.

Clause 44 gives effect to Schedule 3, which sets out the standards.

2485 Paragraph 1 sets out the standards that are to be expected for broadcasters to protect minors, ensures political advertising complies with the code and that material likely to encourage crime or lead to disorder is not included in broadcasting services.

2490 Paragraph 2 specifies particular requirements. The matters to which the requirements apply are matters of political or industrial controversy, and matters relating to current public policy. The requirements are: (1) the service provider must not air its own views on such matters, unless they concern the provision of television or radio programme services; (2) the service provider must preserve due impartiality about such matters. The relevant rules in the

Commission's standards code must particularly take account of the need to preserve impartiality for major matters of political or industrial controversy or relating to current public policy. Fulfilment of this requirement need not necessarily be measured programme by programme, but on balance over all programmes included in the relevant service.

Paragraph 3 provides for the Commission to make standards codes in respect of advertising, sponsorship and product placement and on advertising of a political nature.

Clause 45 requires holders of broadcasting licences to observe standards set under Schedule 3 and establish and maintain procedures for the handling of those complaints. It also requires the licenceholders to comply with any direction issued by the Commission on advertising, for example, smoking, alcohol, product placement or sponsorship of programmes. The Commission already issues a code on advertising and sponsorship detailing the requirements which will require some updating.

Clause 46 contains some additional powers in relation to advertising.

Clause 47 requires the Commission to establish and maintain such procedures as it considers appropriate for the handling and resolution of complaints or for the conduct of investigations about the observance of these standards.

Mr Speaker, I beg to move that clauses 44 to 47 and Schedule 3 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 44, 45, 46, 47 and Schedule 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 48 and 49. Mr Malarkey.

**Mr Malarkey:** Clauses 48 and 49, which I intend to take together, make provision for the local radio stations on Island, not including the public service broadcaster.

Clause 48 ensures that the licence holder is incorporated under the laws of the Island and contains a new provision that the station must have a director who is ordinarily resident on the Island.

Clause 49 provides for the term of a sound broadcasting service to not exceed 10 years and to be renewable for a period not exceeding an additional 10 years. The renewing provision is new. At the end of the licence period, whether it has been renewed or not, the licence would be advertised.

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

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker. I beg to second.

**The Speaker:** I put the question that clauses 48 and 49 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 50 to 52. Mr Malarkey.

**Mr Malarkey:** Thank you, Mr Speaker.

Clauses 50 to 52 define what is and is not a radio content licensable service and give the Council of Ministers a power to amend clauses 50 and 51 by order if it thinks it is necessary or expedient to do so. There are currently no providers of such services on the Island. A radio licensable content service is a service provided in digital or analogue form, broadcast from a



satellite or distributed using an electronic communications network that is to be made available for reception by members of the public and consists of sound programmes.

2545     The Hon Member for Glenfaba and Peel, Mr Harmer's amendment adds 'In this Act' in this part of the clauses, and I hand over ...

Mr Speaker, I beg to move that clauses 50 to 52 stand part of the Bill.

**The Speaker:** Dr Allinson.

2550

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** Mr Harmer.

2555

**Mr Harmer:** Thank you. I beg to move my small amendment on clause 50:

*Amendment to clause 50*

*3. Page 52, line 15 at the beginning insert 'In this Act'.*

**The Speaker:** Mr Thomas.

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

2560

**The Speaker:** I put first the amendment number 3 in the name of Mr Harmer. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 50, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2565     And that clauses 51 and 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 53 to 55, Mr Malarkey.

**Mr Malarkey:** Clauses 53 to 55 define what is and is not a television licensable content service and make provision for the Council of Ministers to amend these clauses by order if it appears necessary or expedient to do so. 'Television licensable content service' is usually teleshopping channels or a self-promotional service and consist of a particular kind of advertising whereby the broadcaster promotes its own products, services or channels. There are currently no providers of such services on the Island.

2575     Mr Speaker, I beg to move that clauses 53 to 55 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

2580

I beg to second.

**The Speaker:** I put the question that clauses 53, 54 and 55 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 56, Mr Malarkey.

2585

**Mr Malarkey:** Thank you, Mr Speaker.

Clause 56 specifies the terms and content of the public service broadcasting licence. The first licence must be granted for a period not exceeding 10 years. The licence may be renewed on one or more occasions. Before renewing the licence the Commission must consult with such

2590 persons as the Commission considers appropriate as to the duration of and the conditions attached to the renewed licence.

Mr Speaker, I beg to move clause 56 stand part of the Bill.

**The Speaker:** Dr Allinson.

2595

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

2600 **The Speaker:** I put the question that clause 56 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 57 and 58.

2605 **Mr Malarkey:** Clauses 57 and 58 state that in making editorial decisions the public service broadcaster must act independently of Government and the public service broadcaster must comply with the public service broadcasting obligations as defined in clause 3.

Mr Speaker, I beg to move that clauses 57 and 58 stand part of the Bill.

**The Speaker:** Dr Allinson.

2610 **Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

2615 **The Speaker:** I put the question that clauses 57 and 58 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Mr Thomas:** Hear, hear.

**The Speaker:** Clause 59.

2620 **Mr Malarkey:** Mr Speaker, clause 59 states that the licence of the public service broadcaster must include a condition requiring that broadcaster to include in the service a specified proportion of programming in Manx Gaelic.

I beg to move that clause 59 stand part of the Bill.

2625 **The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker. I beg to second.

2630 **The Speaker:** I put the question that clause 59 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. (**Mr Thomas:** *Yindyssagh!*)

Clauses 60 to 64. Mr Malarkey.

2635 **Mr Malarkey:** Clauses 60 to 64 were drafted to implement the will of Tynwald as of 2014 following the debate on the Tynwald Select Committee on Public Service Broadcasting.

Clause 60 states that the public service broadcaster must comply with a written statement of station requirements prepared by the Commission. These requirements specify the level of performance and programme quotas the broadcaster must meet in order to fulfil its public service broadcasting obligations. This written statement must be published and is subject to review.

2640 Clause 61 requires the public service broadcaster to prepare an annual statement of programme policy and monitor its performance in carrying out the proposals contained in that statement.

2645 Clause 62 requires the public service broadcaster to submit financial statements to the Commission and Treasury which show how the money provided to it in order to fulfil the public service obligation has been spent.

Clause 63 makes provision that the statements produced under clauses 61 and 62 must be laid before Tynwald annually. It also provides that Treasury may make payment to the public service broadcaster by way of grants, loans or otherwise. The amount of such funding must be approved by Tynwald annually.

2650 Clause 64 provides that the Commission may review the performance of the Public Service Broadcaster and the adequacy of funding.

Mr Speaker, I beg to move that clauses 60 to 64 stand part of the Bill.

**The Speaker:** Dr Allinson.

2655

**Dr Allinson:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 60, 61, 62, 63 and 64 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2660 We turn now to clauses 65 to 67 and Schedule 4. I call on Mr Malarkey to move.

**Mr Malarkey:** Thank you, Mr Speaker. The answer is yes. (**The Speaker:** Right.)

2665 Clauses 65 to 67 and Schedule 4 provide for on-demand programme services to be regulated by the Commission. On-demand programme services are TV-like services provided on demand; for example, Netflix or Amazon Video.

Clause 65 gives effect to Schedule 4 and requires that in order to be regulated by the Commission a provider must either have a head office on the Island, make editorial decisions on the Island, or use a satellite uplink on the Island or use satellite capacity appertaining to the Island.

2670 Schedule 4 defines On-Demand Programme Services and lays out that a provider must give advance notice of providing a service and also the standards that such a service is expected to meet. This is not a licensing regime but a notification scheme similar to the UK.

Under clause 66 the Commission may make regulations to exempt any person or class of person from any of the provisions of Schedule 4.

2675 Clause 67 states that if a person is under the jurisdiction of an EU member state then Schedule 4 will not apply. This is to prevent the possibility of requiring double regulation when the Commission knows that the provider is already subject to a well-structured regulatory regime. This clause will also require amendment once the effect of Brexit has become clear.

Mr Speaker, I beg to move that clauses 65 to 67 and Schedule 4 stand part of the Bill.

2680

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

2685

**The Speaker:** Mr Hooper.

**Mr Hooper:** Thank you, Mr Speaker.

2690 I just wonder if the Minister could please provide some clarity on what is meant by 'satellite capacity appertaining to the Island'?

**The Speaker:** I call on the mover to reply.

**Mr Malarkey:** Right. I missed that, Mr Speaker. Could the –

2695 **Mr Hooper:** I am happy to repeat the question, Minister. *(Interjection by Mr Malarkey)*  
In clause 65 there is a reference to requiring an on-demand programme service to be licensed on the Island if they utilise ‘satellite capacity appertaining to the Island’. I just wonder what that means.

2700 I mean, we are aware that the Isle of Man has a number of satellite companies that contract their services worldwide, internationally, and I would hate to find someone inadvertently being required to register simply because they are utilising the services of an Isle of Man-based satellite company.

I would just like some clarity on what that phrase actually means.

2705 **Mr Malarkey:** Mr Speaker, if you could just bear with me, if I can get an answer – rather than going into Committee – from my officer.

Just a short one will do! *(Laughter)*

**The Speaker:** Mr Malarkey.

2710 **Mr Malarkey:** Apparently it is only to the EU and it is highly unlikely to apply to us ...  
If the hon. questioner is not happy with that, I am quite happy to go into Committee and allow the officer to explain in more depth. It is not something I have personally got the answer to but I am quite happy to move into Committee if the hon. questioner would like.

2715 **The Speaker:** Mr Callister.

**Mr Callister:** Yes, thank you, Mr Speaker.

Can I propose that we put the House into Committee for a few minutes?

2720 **The Speaker:** Seconder? Mr Robertshaw.

Those in favour that the House resolves into Committee, please say aye; those against, no. The ayes have it. The ayes have it.

*In Committee of the Whole House*

2725 **The Speaker:** Mr Hooper, would you care to put your question again whilst the officers work out who is going to answer it. *(Laughter and interjection)*

Mr Hooper.

2730 **Mr Hooper:** Okay, so again, just for clarity, the question is what that reference to the provider of a service not using satellite uplinks or satellite capacity that appertains to the Island – just what that actually means, because we know that we have a number of on-Island satellite leasing companies that provide satellite filing and satellite spectrum services, and I just want to make sure that, say if I am on Netflix and I decide to use one of those satellites, for example, they are not inadvertently then being told you have now got to register on the Isle of Man.

2735 **The Speaker:** Now in responding, if you could just state your name and your position, please?

**Ms Strang:** Sue Strang and I am Chief Operating Officer at the Communications Commission.

2740 With the satellite capacity appertaining to the Island, there are only two countries in Europe that actually have satellite capacity that appertains to their country, so it is kind of a failsafe *in case* we have such a thing that could happen in the Island, but it is unlikely.

The satellite uplink will be the one that will be more relevant to the Island where somebody would be and could potentially now uplink from the Island using satellite capacity. I hope that makes sense.

2745

**Mr Hooper:** Yes, thank you.

**Mr Robertshaw:** Can I propose, Mr Speaker, that we return to normal business?

2750

**The Speaker:** Secunder?

**Mr Hooper:** I will second that.

**The Speaker:** Mr Hooper.

2755

The proposal is that business be resumed. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

*The House moved out of Committee and business was resumed.*

**The Speaker:** Mr Malarkey, would you care to respond to the debates on clauses 65 to 67 and Schedule 4?

2760

**Mr Malarkey:** I beg to move that clauses 65 to 67 and Schedule 4 stand part of the Bill.

**The Speaker:** The question is that clauses 65, 66 and 67 and Schedule 4 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it. (**Mr Thomas:** Hear, hear.)

2765

Clauses 68 to 72, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 68 to 72 deal with the issues of transferability and the terms of electronic communications licences for telecommunications providers.

2770 Clause 68 requires, as does the current Telecommunications Act, that an applicant must be able to finance and sustain a service.

Clause 69 provides that a licence may not be transferred or assigned to another party.

Clause 70 is concerned with the connection of systems and apparatus.

2775 Clause 71 states that the electronic communications licence will continue in force for such a period as may be specified in, or determined by, the licence; and clause 72 states that a provider may be required to hold further licences.

Mr Speaker, I beg to move that clauses 68 to 72 stand part of the Bill.

**The Speaker:** Dr Allinson.

2780

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clauses 68, 69, 70, 71 and 72 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

2785

Clause 73, Mr Malarkey.

**Mr Malarkey:** Clause 73 allows the Commission to designate Ofcom to perform such functions in relation to telephone numbers as are set out in the designation.

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

2790 **The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

2795 **The Speaker:** I put the question that clause 73 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 74 to 77, Mr Malarkey.

**Mr Malarkey:** Thank you, Mr Speaker.

2800 Clauses 74 to 77 deal with the universal service obligations (USO) which must be provided, made available or supplied throughout the Island. The objective behind 'universal service' obligations is to ensure that the basic communications services which are used by the majority, and which are essential to full social and economic inclusion, are made available to everyone who reasonably requests them at an affordable price.

2805 Clause 74 requires the Council of Ministers to make an order providing for these obligations to be imposed upon holders of telecommunications licences who are universal service providers, who are designated under clause 75. This order may be amended by Council of Ministers after consultation with the Commission and such persons as the Council of Ministers feel appropriate.

2810 Clause 75 allows for the Commission to designate a person as a universal service provider and provides a process for doing so. Manx Telecom is the universal service provider and this clause is designed to replicate the provisions in their current licence.

Clause 76 permits the Commission to impose conditions on the licence of the universal service provider to secure compliance with the universal service obligations and provides a mechanism for the Commission to review the conditions.

2815 Clause 77 empowers the Council of Ministers to establish funding schemes for universal service obligations if the burden of cost of providing them proves to be unfair.

The burden of cost of providing the universal service obligation falls on the operators and ultimately on consumers. The provision of USO is not cost free. If services are to be made available to those who might not otherwise be able to afford them, or consumers who live in rural areas the market might not serve, this requires a subsidy from other users of the telephone network.

2820 Mr Speaker, I beg to move that clauses 74 to 77 stand part of the Bill.

**The Speaker:** Dr Allinson.

2825

**Dr Allinson:** Mr Speaker, I beg to second these very important clauses and reserve my remarks.

**The Speaker:** You just reserved your remarks. *(Laughter)*

2830 I put the question that clauses 74, 75, 76 and 77 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 78, Mr Malarkey.

2835 **Mr Malarkey:** Clause 78 sets out when a person shall be taken to have significant market power in relation to a particular market. A person will only be taken to have significant market power where he is, alone or with others, in a position of dominance in a market. A position of dominance is defined as:

... a position of economic strength affording the person the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

The Commission determines whether a market is 'effectively competitive'. If it is not, the Commission identifies which undertakings in that market have significant market power and impose regulation of that undertaking.

Mr Speaker, I beg to move that clause 78 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 78 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 79, Mr Malarkey.

**Mr Malarkey:** Clause 79 sets out the methodology to be applied in identifying a particular market. The Commission has to take into account in identifying or analysing the relevant markets such principles as are applied from time to time in European jurisdictions and also the circumstances of the Island. There are further factors which the Commission must have regard to in subsection 3. That is whether the market is subject to high barriers to entry; whether the market has characteristics such that it will tend over time towards effective competition; and the sufficiency of measures under the Fair Trading Act 1996 or the competition provisions in this Bill to reduce or to remove such barriers or to restore effective competition.

I beg to move that clause 79 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 79 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 80, Mr Malarkey.

**Mr Malarkey:** Clause 80 states the matters that the Commission must have regard to in making a significant market power determination and matters that the Commission may have regard to, for example the distribution of market share among the licence holders and the stability of their market share, the overall size of the licenceholder's undertaking and the degree to which a licenceholder and any competitors can expand their business in the identified market.

I beg to move that clause 80 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 80 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 81 to 83, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 81 to 83 set out the procedures for the Commission for the identification of markets and issuing determinations, the procedure for a review of markets and market definitions and the procedure for the imposition and revocation of significant market power conditions.

Clause 81 gives the Commission a procedure for issuing determinations to allow stakeholders to comment on the Commission's procedures.

Clause 82 states that where the Commission has identified and analysed a market for the purposes of making a market power determination to further review and analyse the identified market. This allows changes in the market to be taken into account.

Clause 83 gives the Commission the power to impose significant market power conditions on a licenceholder. These conditions must be proportionate and objectively justified, taking into account a number of objectives in relation to the market as appropriate. There must be an opportunity for stakeholders to comment on the significant market power conditions.

Any significant market power condition imposed on a licenceholder is a condition of the licence and accordingly a failure to comply with a significant market power condition constitutes a breach of a licence condition.

I beg to move that clauses 81 to 83 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** I put the question that clauses 81 to 83 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 84 to 88, Mr Malarkey.

**Mr Malarkey:** Clauses 84 to 88 are concerned with network access. I intend to take these clauses together.

Clause 84 provides the type of licence conditions that may be imposed on a licenceholder.

Clause 85 makes provision for the Commission to impose conditions in respect of network access pricing in certain circumstances.

Clause 86 provides for the Commission to impose conditions about network access in exceptional cases.

Clause 87 applies where the Commission has made a determination that a licenceholder has significant market power in a market for a relevant retail service.

Clause 88 empowers the Council of Ministers to amend clauses 84 to 87 if it appears necessary or expedient to do so.

Mr Speaker, I beg to move that clauses 84 to 88 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 84 to 88 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 89 to 96 and Schedule 5, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 89 to 96 and Schedule 5, which I intend to take together, are essentially the Telecommunications Code from the Telecommunications Act 1984 with some



updates of terminology. This code governs the installation of telecommunications infrastructure. There are currently only two code operators on Island, Manx Telecom and Sure (Isle of Man) Ltd.

2940 Clause 89 lays out that the Commission may designate that the code applies to a person.

Clause 90 sets out how a person seeking designation must apply to the Commission and also which matters the Commission must have regard to in making a decision and the procedures to follow such conditions.

2945 Clause 91 sets out that the designation can be made subject to certain restrictions as the Commission feel are appropriate.

Clause 92 lays out that the Commission may suspend a designation and the procedures for doing so.

Clause 93 lays out the interpretation provisions for clauses 94 to 96.

Clause 94 sets out the procedures for compulsory purchase of land by petition of Tynwald.

2950 Clause 95 makes provision for code operators to enter upon and survey land and lays out the procedures and requirements.

Clause 96 states that certain provisions of Acquisition of Land Act 1984 apply for the acquisition of land by agreement by a code operator.

2955 Schedule 5 contains further details relevant to the operation of the Electronic Communications Code.

Mr Speaker, I beg to move that clauses 89 to 96 and Schedule 5 stand part of the Bill.

**The Speaker:** Dr Allinson.

2960 **Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 89 to 96 and Schedule 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2965 Clauses 97 and 98 and Schedule 6, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, Clause 97 and 98 and Schedule 6, which I intend to take together, introduce new stand-alone competition provisions for the Commission.

2970 These powers complete a suite of remedies for the Commission and strengthen its regulatory position and replace and update the fair trading conditions in the licences. The Commission, in common with most regulators, would always use *ex ante* regulation, that is imposing conditions on an operator who has been found to have dominance in the market and to have significant market power. This is a first preference as competition investigations tend to be costly, complex and litigious. However, having competition powers is a useful tool for any regulator.

2975 Clause 97 imposes a duty on the Commission to regulate competition in electronic communications matters.

Clause 98 states the matters the Commission must have regard to, amongst other things, in determining whether or not to conduct a competition investigation. These are the impact, strategic significance, risk, and resource implications of undertaking the investigation.

2980 Schedule 6 details the powers and responsibilities of the Commission in carrying out a competition investigation and draws on similar provisions in the UK's Competition Act 1998.

Mr Speaker, I beg to move that clauses 97 and 98 and Schedule 6 stand part of the Bill.

**The Speaker:** Dr Allinson.

2985 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second and reserve my remarks.

2990 **The Speaker:** I put the question that clauses 97 and 98 and Schedule 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 99 to 102, Mr Malarkey.

2995 **Mr Malarkey:** Clauses 99 to 102, which I intend to take together, deal with anti-competitive behaviour and impose a prohibition on collusive behaviour between persons which has an adverse effect on competition.

Clause 99 imposes a prohibition on collusive behaviour between persons which has an adverse effect on competition.

3000 Clause 100 provides that agreements which are the subject of an order under section 8(2) of the Fair Trading Act 1996 are excluded from the application of clause 99. Section 8(2) of the Fair Trading Act provides that a course of conduct does not constitute an anti-competitive practice if it is excluded from those purposes by an order made by the Council of Ministers.

3005 Clause 101 provides an exemption from the application of clause 99 of agreements which comply with certain conditions on the promotion of trade or are the subject of a declaration by the Commission. Before making or revoking a declaration under this section the Commission must consult with the Office of Fair Trading.

Clause 102 provides that the Commission may make a direction if a person's conduct contravenes these provisions.

3010 The Fair Trading Act 1996 is due to be replaced with a comprehensive Competition Bill by the Office of Fair Trading. These provisions in respect of section 8(2) will be updated then.  
(**Mr Thomas:** Hear, hear.)

Mr Speaker, I beg to move that clauses 99 to 102 stand part of the Bill.

**The Speaker:** Dr Allinson.

3015 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

3020 **The Speaker:** I put the question that clauses 99, 100, 101 and 102 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that seems like an appropriate point to adjourn for lunch. We will recommence our considerations at clause 103 and we will do that at half past two.

The House stands adjourned.

*The House adjourned at 1.01 p.m.  
and resumed at 2.30 p.m.*

### **Communications Bill 2018 – Consideration of clauses concluded**

**The Speaker:** Fastyr mie, Hon. Members.

3025 **Members:** Fastyr mie, Mr Speaker.

**The Speaker:** We resume deliberation of the Communications Bill at clause 103 and I call on Mr Malarkey to move clauses 103 and 104.

3030 **Mr Malarkey:** Thank you, Mr Speaker.

Clause 103 defines abuse of a person's dominant position in relation to the electronic communications market on the Island and outlines conduct which may in particular constitute such an abuse.

3035 Clause 104 empowers the Commission to give directions in respect of an abuse of dominant position and applies the procedural fairness requirements.

Mr Speaker, I beg to move that clauses 103 and 104 stand part of the Bill.

**The Speaker:** Dr Allinson.

3040 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the motion that clauses 103 and 104 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3045 Clauses 105 to 107, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 105 to 107 contain supplemental provisions in relation to this division.

3050 Clause 105 empowers the Commission to take interim measures where it has begun, but not completed, a competition investigation and has reasonable grounds for suspecting a breach of the prohibition on collusion, or the prohibition of abuse of dominant position or breach of a condition. The Commission may give such directions to prevent serious damage to an undertaking, to protect the public interest or for the protection or enhancement of the economic development and well-being of the Island.

3055 Clause 106 provides for sanctions to be imposed for breach of the competition provisions in the form of a financial penalty. The Commission must take various factors into account in determining whether or not to impose a penalty. The amount of the penalty must not exceed 10% of the licenceholder's turnover for the period of the contravention of the period in question, subject to a maximum of three years.

3060 Clause 107 deals with co-ordination between the Commission and the Isle of Man Office of Fair Trading in competition investigations. If the Commission and the Isle of Man Office of Fair Trading cannot agree which of them is to investigate conduct falling under the relevant provisions they must seek a direction from the Council of Ministers under paragraph 12(1) of Schedule 2 to the Statutory Boards Act 1987.

3065 Mr Speaker, I beg to move that clauses 105, 106 and 107 stand part of the Bill.

**The Speaker:** Dr Allinson.

3070 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the motion that clauses 105, 106 and 107 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3075 Clauses 108, Mr Malarkey.

3080 **Mr Malarkey:** Clause 108 provides for various offences in respect of the improper use of electronic communications systems. A person is guilty of an offence if he or she sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or causes any such message or matter to be so sent.

Nothing in this clause limits the scope of section 2 of the Protection from Harassment Act 2000 offence of harassment. Subsection (2) of the clause creates an offence where a person

causes annoyance, inconvenience or needless anxiety by means of a public electronic communications network. It is drawn from the UK Communications Act 2003. The clause authorises penalties up to six months' custody or a level 5 fine, or both.

Mr Speaker, I beg to move that clause 108 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I call on Mr Hooper to move amendments 4 and 5.

**Mr Hooper:** Thank you very much, Mr Speaker.

Two proposed amendments to this clause.

The first amendment, number 4, is simply introducing a defence to the offence of sending a threatening message. Currently, if you are trying to, for example, enforce a debt on the Isle of Man, sending a message to someone saying, 'I am going to enforce my debt and I am going to take possession of your property unless you start paying,' it could be constituted as threats and could be considered an offence under this clause. It seems appropriate to have a reasonable means of defending yourself to say, 'Actually, if what I have done is a reasonable means of enforcing a lawful demand then that should be acceptable.' This provision already exists in the UK equivalent of this clause. This is simply aligning us with across the water.

The second amendment, number 5, adds the words 'believes to be false' into the clause here, so it would read: 'Sends, by means of a public electronic communications network a message that he or she knows or believes to be false.' That is because currently it is an offence to send a message that you know to be false for the purposes of causing annoyance, inconvenience or needless anxiety, but not one that you simply believe to be false. So spreading rumours would apparently seem to be perfectly acceptable, provided I cannot prove that you knew what you were sending around was a lie. The fact that you believe it to be untrue and said it anyway seems to slip through the net entirely. So, again, Hon. Members, the UK has this particular wording in their equivalent of the law and this is simply bringing our clause into line.

Mr Speaker, I beg to move amendments number 4 and 5:

*Amendments to clause 108*

*4. Page 89, after line 20 insert—*

*«(2) In proceedings for an offence under subsection (1), in respect of a message or other matter which is menacing in character, it is a defence for the accused to show that the menaces were a lawful means of reinforcing a legitimate demand and proportionate in all the circumstances.».*

*Renumber the subsequent subsections of the Clause, and adjust cross-references accordingly.*

*5. Page 89, for lines 23 and 24 substitute —*

*«(a) sends, by means of a public electronic communications system a message which is false and which he or she knows or believes to be false;».*

**The Speaker:** Mrs Caine.

**Mrs Caine:** Thank you, Mr Speaker.

I beg to second the amendments.

**The Speaker:** Both amendments?

**Mrs Caine:** Amendments 4 and 5.

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**The Speaker:** Thank you very much.  
Mr Quayle.

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

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Just a quick question for the Hon. Member. 'Cause harm' – could the Hon. Member confirm –?

**A Member:** That is the next –

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**Mr Quayle:** Oh, sorry, that is the next one, is it?

**The Speaker:** I call on Mr Hooper to add anything?  
I call on Mr Malarkey to reply to the clause.

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**Mr Malarkey:** Thank you, Mr Speaker.

Neither I nor the Commission have any objection of this amendment being put in. My Department has looked at it in depth with the Police and we feel that it might need to be expanded upon slightly with regard to page 89, to add in that he has reasonable grounds for making the demand. This expands the defence somewhat in line with blackmail. I have spoken to the legislators about this and in supporting the amendment today I would probably ask a

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Member of LegCo to amend this as it goes through just to make it a little bit clearer.

Other than that, we have no objections, Mr Speaker.

**The Speaker:** So it is not your intention, Hon. Member, to invoke the procedure for an amendment to an amendment; you are looking to correct it in another place?

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**Mr Malarkey:** I was not aware I was capable of doing that, but we have not got one. Sorry, I will have to take advice from the legislator here, Mr Speaker.

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**The Speaker:** In which case, you will need to move into Committee in order to take advice.

**Mr Robertshaw:** I propose we go to Committee.

**The Speaker:** You will do that. And seconded by Mr Cregeen. Is that agreed, Hon. Members?  
(**Members:** Agreed.) Mr Connell.

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*In Committee of the Whole House*

**Mr Connell:** If I may, sir, I will stay sitting because then you might actually hear me.

It would be sensible to amend the provision to include the standard defence in the blackmail context. I have not actually drafted it, but if I had the message I could probably put something together and we could table it then.

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**The Speaker:** It is then up to the Members to whether you wish to now push this to a vote on this question or whether you intend to deal with it in another place. It is up to you.

**Mr Malarkey:** I think it might be easier to deal with in another place, Mr Speaker. It is a very simple amendment to the amendment. It can be done, realistically. It will have to come back to this Hon. House just to be ratified, but again rather than try asking the Attorney General's office

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to start rushing off and doing amendments now ... This is only something that has recently come to my attention from my Department.

3175 **The Speaker:** In which case then, I will put the amendments in the name of Mr Hooper.

**Mr Robertshaw:** Mr Speaker, we need to return to –

3180 **The Speaker:** Sorry, my apologies. Yes, we do need to come out of Committee.

**Mr Robertshaw:** Mr Speaker, I propose we return to normal business.

**The Speaker:** Thank you, Mr Robertshaw and Mr Cregeen. Thank you very much.

*The House moved out of Committee and business was resumed.*

3185 **The Speaker:** In which case, now we will move to the vote and put the question – firstly, I will put them together on the basis that no one has raised any specific concerns about them – amendments 4 and 5 in the name of Mr Hooper. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 108 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3190 We now turn to amendment number 6 on the Order Paper, and that is a New Clause 1 in the name of Mr Hooper. I call on Mr Hooper to move.

**Mr Hooper:** Thank you very much, Mr Speaker.

3195 I am rising now here to move New Clause 1 that is tabled as amendment number 6 in principle.

Hon. Members, I would like to give you just some brief background as to why I think this clause is necessary. When it comes to digital communications, to social media, to email, we are living in a very fast-moving world and I think it is quite evident that legislation is struggling to keep up with the way that the world is moving on.

3200 As the Minister has already outlined, section 108 of this Bill makes very specific provision as to what may be considered a communications offence: false messages with the intention of causing annoyance or distress, repeatedly making use of a public communications network or sending messages that may be considered to be grossly offensive, indecent or threatening. But in this day and age those are not the only ways you can cause somebody harm by sending messages using a public communications network.

3205 I am going to try and outline what I mean here. Imagine that you are involved with a charity and that charity provides some funding to a company that perhaps is engaged in research and some of those research activities might involve animal testing. This is, quite rightly, a sensitive and emotive issue. So what happens if your address were to be posted on a forum for people who take this issue very seriously? Is the posting of your address a crime? Is that an incitement? It is very difficult to answer that question.

3210 What happens if someone is to post it purely with the intention of getting other people to take action; maybe there is no direct incitement with that post, but the reason for posting it is to cause somebody else to take action as a result? The potential harm that could be done to you as a result of somebody sharing your personal address could be quite significant. But depending on exactly what was posted and where it was posted and how it was posted, it might not be considered a criminal act in and of itself.

3215 So what about personal imagery? Somebody might get hold of a photo of you in swimwear – not offensive, not indecent –

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**Mr Robertshaw:** It would be in my case! *(Laughter)*

**Mr Hooper:** I tried to avoid any personal references there! *(Laughter)*

3225 So imagine then they decide to share this image with others on a public forum, or perhaps they decide to email that picture of you to all of your work colleagues in order to cause you some embarrassment perhaps. Is that currently an offence? Again, it is not clear.

3230 Taking this a step further, what happens if someone were to take that image of you and superimpose it onto a pornographic video – something known as ‘deep fake’? In the UK it is now illegal to share private sexual imagery with the intent to cause distress. That is referred to generally as ‘revenge porn’. But this sort of image might not fall under that definition; it is not a private sexual image; it is fake, it is not real. It might be caught under section 108 of our Act here because it is sending a false message, but this is the same offence as in the UK, and the UK Law Commission is recommending that this law needs updating and revising. So that makes me think actually it is not going to be covered here.

3235 So then if someone were to take this faked video with your face on and send it to your employer or perhaps to your school year group, would that be an offence? Imagine you are that school child, imagine the harm now that has been caused to you as a result of this image circulating, and imagine the place that you are in, emotionally, psychologically, after that video has been circulated; and then you get an email from someone just entitled, ‘Maybe you should kill yourself’. Is encouragement to self-harm an offence? It is certainly misuse of a public communications network, whatever else it might be.

3240 One of those messages might not impact you too much. What if you get 20 or 30 or 50, or this video or this image gets posted to a website along with your email address? You might get 60, 100 of these emails. This could have potentially devastating consequences.

3245 The offender only has to post the image or the video once, because the way that social media works you get a lot of interaction and these videos and images have the potential to go worldwide in a moment. Yet the image itself was only shared by the originator once. **(A Member: Hear, hear.)**

3250 This sort of pile-on or pile-in bullying we can see is getting more and more common in the digital world. It is made much easier by the de-individual nature of anonymised interaction. **(Mr Robertshaw: Totally agree.)** And yet it might not necessarily constitute harassment – harassment being defined as a person pursuing a course of conduct. So this kind of collective pile-on group harassment may not necessarily be covered, and even within that, individual messages or posts might not meet the threshold by themselves for criminal prosecution; but the collective impact of this could be very significant on the individual. The law seems quite lacking in this regard.

3260 So I have touched very briefly – very briefly – on the potential harm that can be caused by the public sharing of private information, but this goes much deeper than I have outlined. Public and private spaces are online, and especially are overlapping even more and more, so what someone might have considered a private post or a private interaction online for themselves and maybe their close family might suddenly become very public without their consent, perhaps an admission of mental health issues or an open admission of sexual orientation.

3265 The criminal law around these sort of issues is very complex and it is always changing, and the best perspective I have outlined is perhaps overly simplified. I think the phrase they use now is that sequences have been shortened. I am just trying to show why a communications offence makes a very good backstop. The UK updated their laws to deal with revenge porn and then this fake porn came along, so they will have to update their law again. They have updated their harassment law to take account of collective harassment, but it does not quite cover some types of this pile-on abuse that we are seeing. Every time we fix the law, technology overtakes it.

3270 So with this ever-evolving nature of digital technology and communication, I think the core principle that when we communicate with each other online we should intend to do no harm needs to be enshrined somewhere in our law. So using a communications offence seems a

sensible backstop for this. There will obviously need to be very specific criminal offences for a number of the things I have already outlined, especially the sexual offences and especially the encouragement to self-harm. I am sure these will be coming forward in the very near future. But this clause that I am proposing today will provide a backstop protection for when the specifics of a particular case do not quite fall neatly within any one category of existing or proposed criminal law.

I am aware of two areas of concern that Members have raised with me so far and I would like to thank the Hon. Member for Garff, Mr Perkins, for having a chat with me about one of them.

The first of these areas is the definition of ‘harm’ and whether or not it needs to be defined. Hopefully, I will pre-empt the Chief Minister’s question here. My understanding of the term ‘harm’ – and I am very happy to be corrected if I am wrong here – is that it is quite a well understood judicial term. The Criminal Code of 1872 has sections relating to harm that refers to harm being caused to an individual. If Members would prefer more recent references, the Criminal Justice and Police Courts Act 2007 has, again, very numerous references to harm and the offences of causing harm to an individual.

This Bill in front of us has several references to causing harm and Schedule 4 has specific references to the degree of harm being caused by broadcast material to be a required consideration when setting standards. So the term harm is already referenced in this Bill elsewhere; it is not a new phrase that I am trying to create here in Manx law, it is already littered throughout our criminal legislation. So I am quite comfortable that we do not need a further detailed definition of that term here in this Bill, partly because the intention of this clause is to be quite broad to encompass a wide range of different types of harm and offence; and I think defining too narrowly might restrict the application unduly. I mean this is definitely up for consideration and if it is felt by Members that a definition is needed I am happy to go with that. I just think as a baseline principle we do not really need it here. I am quite happy to leave it up to the court to interpret whether or not harm has been felt or has been incurred in any particular way.

The second issue that has been raised with me in relation to this clause is whether or not this will curtail people’s freedom of speech, their ability to post and communicate and engage online. In response to that, I would say just a few things.

Firstly, we have Article 10 of the European Convention on Human Rights. That protects your right to free speech. Irrespective of what we try and do here on the Isle of Man, that is a convention that we are part of. We have those rights.

Secondly, this clause is very specific. The first part of this clause only makes it an offence if when posting or sending a message it is your intention to cause somebody harm. Without intent there is no criminal act and if anyone is able to argue that intentionally causing harm to another should be protected speech they are much better at this than I am.

Thirdly, this is a criminal offence. The burden of proof is quite high. The requirement is to prove beyond a reasonable doubt not only that you have suffered harm but also that a reasonable average person will also have suffered harm in the same circumstances and that there was originally an intent to cause harm. It is quite a high bar and to top all that off there is still a public interest test when it comes to prosecutions. I am comfortable, therefore, that this clause will not, perhaps unfortunately, clamp down on anonymous internet trolls posting as they will; nor will it stop the healthy online political discourse that we seem to have in abundance on the Island.

I do not intend to go into much more depth in this when moving the clause in detail, but I am happy to try and address any concerns that Hon. Members have. Although, please bear in mind that I do not have an army of departmental helpers behind me.

Mr Speaker, with that, I beg to move this clause in principle:

*New Clause 1*

*6. Page 90, after the end of line 5 insert the following New Clause as clause 109—*



*«109 Causing harm by sending message by means of electronic communications system*

*(1) A person commits an offence if—*

*(a) the person sends by means of an electronic communications network a message or other matter with the intention that it should cause harm to another;*

*(b) sending the message or other matter would cause harm to an ordinary reasonable person in the position of the intended recipient; and*

*(c) sending the message or other matter causes harm to the intended recipient.*

*(2) In determining whether a message or other would cause harm, the court may take into account any factors it considers relevant, including—*

*(a) the extremity of the language used;*

*(b) the age and characteristics of the recipient;*

*(c) whether the message or other matter was sent anonymously;*

*(d) whether the message or other matter was sent more than once;*

*(e) the extent of circulation of the message or other matter;*

*(f) whether the message or other matter is true or false;*

*(g) the context in which the message or other matter was sent.*

*Maximum penalty for an offence under this section—*

*(on information)— 2 years' custody or a fine;*

*(summary) — 12 months' custody or a level 5 fine.».*

*Renumber the subsequent clauses of the Bill and adjust cross-references accordingly.*

**The Speaker:** Mrs Caine.

**Mrs Caine:** I beg to second the new clause.

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**The Speaker:** Thank you.

Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

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I would like to ask for the leave of the House to invoke Standing Order 4.7(4A) to bring a minor amendment to this amendment.

**The Speaker:** Well, I will need to deal with the amendment once we have moved it in detail. So if the clause is approved in principle then the amendment will come to it in detail, but I appreciate Dr Allinson for telling us that this is coming and if you want to explain a little bit about why, then that is not a problem. But it is just a case of the formal moving and seconding of it will need to happen after the clause has been moved in detail, if we get that far.

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So if there is anything you want to add at this stage?

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**Dr Allinson:** Can I talk?

**The Speaker:** Yes, you may.

**Dr Allinson:** Thank you very much, Mr Speaker.

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I would like to thank my fellow Member for Ramsey for bringing this important new clause in. This dovetails in with some of the work the Department of Home Affairs is doing through the Sexual Offences and Obscene Publications Bill that will be coming to this House, but goes a little bit further in terms of dealing with those grey areas, as he says.

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With electronic communication comes electronic harm and the potential for abuse. And so I would like to bring a slight amendment to his wording in (2)(a) to slightly change rather than just 'the language used' to add 'or imagery', so that the entire line would be: 'the language or imagery used'.

The reason for this is that we are aware that people and abusers are circumventing laws at the moment by using emojis or images to also abuse people; and so just this extra word will hopefully give the courts more powers to actually deal with abuse as and when it may happen.

Thank you.

**The Speaker:** Chief Minister.

**The Chief Minister:** Thank you, Mr Speaker; and can I say I think the Members for Ramsey have done us royally proud on this one. (**A Member:** Hear, hear.)

I am happy to support both: the amendment from Dr Allinson to the new clause put forward by Mr Hooper. But whilst I am delighted with the new clause and I really want to support it, I am a little bit concerned ... I am going to support this, I hasten to add, but I would just like to see what more can be done. Does he really feel this goes far enough? Does it cover, for example, 'harm to another' – *mental* harm? A definition of 'harm' is normally physical harm and it is just clarifying: does it *catch* mental harm is all I am looking for? It is one of my interests. And if it does not, then I would support an amendment in the future on that.

I would like to ask him: does he feel it goes far enough? And I understand anything that we post should be legal and decent, but you see so much nowadays of bullying; and young people, especially when they go home, their home is no longer their haven because they are getting bullied at home by postings.

As I say, all credit to the Hon. Member for Ramsey, Mr Hooper, for bringing this in. But maybe now that he has raised this and it is in our minds, we should look maybe to an amendment in the future. But I would be interested in his feedback on whether, (b) it goes far enough; (a) – back to face – does it cover mental? Would he think it would cover mental damage?

And how can you prove intent, is my third point? Does that mean all I have to say is, 'Well, I didn't intend to cause him ... The fact that I have sent him 50 emails, it was a bit of a laugh. I didn't think it was going to ... I didn't intend to cause it'. It seems a very *easy* defence to throw up and if you have got to prove that ...

I mean, I think all of us, surely, would want to protect – especially the younger generation – from bullying at home. (**A Member:** Hear, hear.) And if I can just stand up and say, 'Well, it wasn't my intention to cause harm'. If that is the 'Get out of Jail card' then, whilst I am here to support what his obvious intentions are, I just worry that word 'intent' – if that is a 'Get out of Jail card', then it does not achieve what we would all want to see.

So I just look forward to his answer.

**The Speaker:** Mr Thomas.

**Mr Thomas:** Thank you very much, Mr Speaker.

I am a man of high standards and I like to keep things simple; (*Laughter*) and there are just a couple of questions I have got at this stage.

The first question is for the mover of this amendment, because obviously it was first mentioned on 6th November at the Second Reading and the Hon. Member, to his credit, talked about harmful or malicious communication. Obviously that is 12 weeks ago and I just wanted to see if the mover had actually consulted with anybody in those 12 weeks and actually taken legal advice on all of these things in those 12 weeks? Because I want to be reassured that we are not just making policy and law on the hoof here, we have actually engaged in a proper process.

The other question I have is either for the officers – so for the members of the Department or the officers involved – because at the Second Reading stage there was a clear answer given which was that there are sanctions for malicious communication in the Bill and yet there are quite clear and updated parts of the Bill that *look* at the use of telecommunications or broadcasting which may be seen as being either obscene or actually may upset people. So what I

3405 heard three months ago, and what I remember hearing three months ago, was that everything was fine with the Bill as it was proposed at that time. So I just want an exposition of what has changed in those three months whereby we now need new clauses whereas we were assured at the Second Reading that everything was fine with the Bill as first drafted.

3410 The main point I am trying to make is that it is bad practice not to have settled the policy; and the second bad point is to be making up law on the hoof in a complex part of criminal law, as was actually explained by the hon. mover of this amendment.

**The Speaker:** I call on Mr Hooper to respond to the debate on the New Clause 1 in –  
(*Interjection by Mr Malarkey*)

3415 Sorry, Mr Malarkey, do you wish to contribute to the debate?

**Mr Malarkey:** Mr Speaker, certainly I or the Commission have no objections to this new clause being fitted. But what I will say at this stage is that some of the issues that are being covered by the new clause are also going to be covered by the Sexual Offences Bill which, when  
3420 the mover mentioned revenge porn, some of the new issues that ... Why the Commission did not bring this particular part forward, to answer the Minister's question, is because we knew it would be covered later on through things like the Criminal Justice Bill.

Now, having reflected on this and seen what Mr Hooper's motion was, I am quite happy at this stage for us to have it in this particular Bill, (**A Member:** Hear, hear.) so when we are going  
3425 forward with the Criminal Justice Bill and with the Sexual Offences Bill we do not double up on it. As long as it is in statute, as long as it is law I am not really too worried about where it actually sits. This will be a darn sight quicker than it will be going through Sexual Offences Bill or Criminal Justice Bill.

I am happy to support the motion of the Hon. Member for Ramsey.

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**A Member:** Hear, hear.

**The Speaker:** Mr Hooper to reply to the debate in principle.

3435 **Mr Hooper:** Thank you very much, Mr Speaker. I will take these in reverse, actually.

So, Mr Thomas: have I consulted with anyone on this change to the Bill? Well, it is not normal practice to consult on amendments. You have had 12 weeks, I think, to raise these queries with me, Hon. Member, and as yet I have not had anything ... I do appreciate that some Hon. Members have had a conversation with me about these proposals, which I welcome.

3440 I am going to be honest, my original proposals that I put to the drafters did go much further than this. I think Mr Connell will agree with that statement and he managed to kind of pull me back a little bit, I think, and on reflection quite sensibly so. So I would like to thank Mr Connell for his help and advice in putting this together.

I would like to reassure the Hon. Member for Douglas Central that this wording did not come  
3445 out of the back of my mind. This is a clause that is in place in New Zealand, which is another Commonwealth jurisdiction now obviously very similar to the UK and the Isle of Man in that respect, and so it is law that should dovetail very nicely and work quite well on the Isle of Man with law that we already have.

I think the standards that the Hon. Member referred to were broadcasting standards, actually, about obscene material. One is not broadcasting if one is posting on Facebook or  
3450 sending emails and that is the difference I think – here, the Bill deals with the telecommunications offences as well as broadcasting offences, and this falls into the former rather than the latter, I think.

As to the Chief Minister: does it go far enough? I do not think I can answer that question. I  
3455 think it is one of those things that we will have to see how things pan out and whether or not there are failures in the courts – prosecutions that cannot go ahead. I would like to think that as

a backstop offence this is broad enough to capture the kind of offences that the Sexual Offences Bill ... or maybe it will not capture, simply because that by its very nature has to be quite a specific Bill dealing with specific circumstances. So I would like to think that this amendment will go far enough. I do not know. I think the Chief Minister is right, we will have to wait and see whether further changes are needed a little bit further down the road.

As for proving intent, that is fortunately already existent in the Bill in the previous clause that we have just approved. So in order for an offence in respect of sending a message 'for the purpose of causing ... inconvenience or needless anxiety', actually, the purpose behind sending the message has to be the causing of offence, the causing of needless anxiety – the intent is still there. Proving intent is quite difficult. It is why, I think, when it comes to freedom of speech issues, this clause should work quite well because it is a very high bar that you have to meet in order to demonstrate someone has done something intentionally. And again it is only intended as a backstop offence; I am sure the Sexual Offences Bill that is coming forward will have much more stringent provisions in respect of some of the very specific offences that I am hoping to cover with this. And I think that is an issue we will have to deal with further down the line. But I do take this point on board that it is not an easy solve, unfortunately.

I suppose the last comment is about harm: do I think it covers other types of harm, other than physical? I would say I think it does, from looking at other references to the term 'harm' across our legislation, there are other references to financial harm, emotional harm in other Bills that we have, and so I think the term 'harm' is broad enough to cover all those various types of harm. Again, whether or not we do need to define it at some point is probably a conversation to have further down the line if it turns out that this clause, for whatever reason, is not workable when it goes to the court system. But I think I am quite comfortable that the term 'harm' does cover those different types of harm that I am intending to cover with the clause.

With that, Mr Speaker, I just want to move the amendment to the new clause in principle.

**The Speaker:** The question is that New Clause 1 be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I call on Mr Hooper to move the New Clause 1 in detail.

**Mr Hooper:** Thank you very much, Mr Speaker. I do not have very much to add to what I have just said.

The first part of this new clause, section (1) specifically states that an offence is committed if somebody 'sends by means of an electronic communications network a message or other matter with the intention that it should cause harm'. And then the two safeguards underneath that are: have got to intend that it causes harm, it must actually cause harm and it must have caused harm to a reasonable person in the same circumstances.

The second part of the clause gives some guidance to the courts in whether or not a message would constitute harm; gives some factors the courts may consider relevant – it is not a complete or comprehensive list, it is simply a list of areas of guidance.

And, with that, I do not think I have anything else to say other than I am very supportive of the amendment that has been tabled by my hon. colleague, Dr Allinson.

Mr Speaker, I beg to move New Clause 1.

**The Speaker:** Move New Clause 1 *in detail*.  
Mrs Caine.

**Mrs Caine:** I beg to second.

**The Speaker:** Thank you very much.  
Dr Allinson.

3510 **Dr Allinson:** Thank you very much, Mr Speaker; and I think we have had a decent conversation about this.

One of the problems with legislation is it is very rare that you get it completely right, particularly with communications because we are dealing with multimedia; and so what was originally a Broadcasting Act and then was added to that and added to that, has to constantly evolve. So I am hoping that some of the regulations in this will allow us to do that – to deal with the Ministers that we sometimes deal with in our society, but without restricting the ability of the Communications Commission to actually do their job.

So with that, Mr Speaker, I just want to move my amendment to the amendment.

*Amendment to Mr Hooper's New Clause [to be New Clause 109]:*

*6A. In subsection (2)(a) for "the language used" substitute «the language or imagery used».*

3520 **The Speaker:** Thank you.  
Miss Bettison.

**Miss Bettison:** Thank you.  
I would like to second the amendment. Can I say something?

3525 **The Speaker:** Yes, please.

**Miss Bettison:** I was thinking I had missed my chance!

I just wanted to add that I am very supportive of both Mr Hooper's amendment and this amendment to it in terms of considering imagery. I am personally aware of a girl aged 12 where a photo was taken from a school photo, that was then cropped on to an alternate body and imagery and language used to write on that things that she liked, which did not include going to the swimming or going to the park or any other such things that a 12-year-old girl might like – and caused *incredible* distress, mental upset and long-term mental health issues to that girl.

I think this is absolutely a very real risk to children and to adults in our society and I think we absolutely have a duty to do everything within our power to ensure that this law works as best as it can. And by adding in imagery, we just ensure we tighten that up.

So I am very supportive of this.  
Thank you.

3540 **The Speaker:** Dr Allinson, do you have anything to say in summing up?

**Dr Allinson:** No, thank you, Mr Speaker.

3545 **The Speaker:** Mr Hooper?

**Mr Hooper:** Nothing further to add, Mr Speaker.

**The Speaker:** In which case, I will put first the amendment to the amendment in the name of Dr Allinson. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.  
And putting New Clause 1 in detail, that it stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

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

**FOR**

Dr Allinson  
Mr Ashford  
Mr Baker  
Miss Bettison  
Mr Boot  
Mrs Caine  
Mr Callister  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Mr Harmer  
Mr Hooper  
Mr Malarkey  
Mr Moorhouse  
Mr Peake  
Mr Perkins  
Mr Quayle  
Mr Robertshaw  
Mr Shimmins  
Mr Skelly  
Mr Speaker

**AGAINST**

Mr Thomas

**The Speaker:** With 21 for, and 1 against. The ayes have it. The ayes have it.  
We turn then to clauses 109 to 112 and I call on Mr Malarkey to move.

- 3555 **Mr Malarkey:** Thank you, Mr Speaker. Thank you for the break! *(Laughter)*  
I intend to take clauses 109 to 112 together. Clause 109 creates an offence in relation to the fraudulent use of an electronic communications network or service with intent to avoid payment.  
Clause 110 creates an offence for possession or supply of anything enabling such fraudulent use, which could be electronic or otherwise.
- 3560  
Clause 111 makes it an offence for a person who is engaged in the provision of a public electronic communications network or service to intentionally modify, or interfere with, the contents of a message sent by means of that network or service. It is not an offence if the modification or interference occurs in the course of a person's duty; for example, because he or she is required to do so by virtue of a court order or a warrant.
- 3565  
Clause 112 makes the unauthorised disclosure of messages and information about public electronic communications systems or networks an offence by a person who is engaged in the provision of an electronic communications network or service, otherwise in the course of that person's duty. Penalties are provided for in all these cases.
- 3570  
Mr Speaker, I beg to move that clauses 109 to 112 stand part of the Bill.

**The Speaker:** Dr Allinson.

- 3575 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clauses 109 to 112 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

- 3580  
Clause 113 to 117. Mr Malarkey.

**Mr Malarkey:** Subdivision 1 of Division 8 comprises clauses 113 to 117, which I intend to take together. The Subdivision deals with disputes that may occur between communications providers regarding network access and terms of access.

3585 Clause 113 applies to disputes between a licence holder and a person in relation to the provision of network access and allows for a dispute to be referred to the Commission.

Clause 114 provides for the Commission to decide that an alternative means of dispute resolution may be used.

3590 Clause 115 provides for the making of a procedure for the consideration and determination of a dispute and timescales. The clause also sets timescales for the Commission to consider a procedure. These clauses are similar to those in the Communications Act 2003 (of Parliament).

Clause 116 provides for how the Commission is to determine a dispute that has been referred and gives the options for the Commission in determining a dispute.

3595 Clause 117 gives the Commission powers to require parties to disputes and other persons to provide them with information that enables the Commission to decide whether they should handle a dispute, and consider and determine a dispute.

Mr Speaker, I beg to move that clauses 113 to 117 stand part of the Bill.

**The Speaker:** Dr Allinson.

3600 **Dr Allinson:** Thank you, Mr Speaker. I beg to second.

These give the Communications Commission quite important powers particularly with increased competition on the Isle of Man to determine disputes relatively quickly and so get the best service for the public.

3605 **The Speaker:** I put the question that clauses 113 to 117 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 118 to 123. Mr Malarkey.

3610 **Mr Malarkey:** Clauses 118 to 123 form Subdivision 2 and deal with a number of general issues and are in large part replicas from the Telecommunications Act 1984. I intend to take these clauses together.

3615 Clauses 118, 119 and 120 concern the approval of apparatus and, in essence, state that if equipment is certified for use in the EU then it will be compliant for the purposes of the Isle of Man. It also states that the Commission may make an order in respect of information that may be marked on apparatus and that the Commission may make an order in respect of the marking of charges for apparatus.

Clause 121 enables the Commission to prescribe information which must be published in advertisements for apparatus which is intended to be connected to an electronic communications network or system.

3620 Clause 122 provides a mechanism, which is commonly found in environmental and regulatory legislation, under which a person charged with an offence under clauses 119 to 121 can plead the conduct of a third party as a defence to the charge and require the third party to be charged instead. Any person charged under those sections has a defence if he or she can show that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

3625 Finally, clause 123 empowers the Council of Ministers to give directions to the holder of a public telecommunications licence in the interests of national security or international relations.

Mr Speaker, I beg to move that clauses 118 to 123 stand part of the Bill.

3630 **The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

3635 **The Speaker:** I put the question that clauses 118 to 223 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 124 to 127. Mr Malarkey

**Mr Malarkey:** Thank you, Mr Speaker.

3640 Part 6 is Enforcement.

Part 6 of the Bill deals with Enforcement and Division 1, clauses 124 to 127 deal specifically with Broadcasting. I intend to move these together. These provisions give the Commission new powers of enforcement and are based on the similar provisions in respect of licence holders in the UK and make a broad range of penalties available to the Commission than currently are available.

3645 Clause 124 deals with interpretation for the Division, and that 'licence holder' means the holder of a broadcasting licence.

Clause 125 is a new power for the Commission in that if it is satisfied that the licence holder has failed to comply with a statutory provision under this Act, any condition of the licence or a direction given by the Commission under the Act, it may direct the licence holder to broadcast a correction or an apology. It may also direct a licence holder not to repeat a programme or advertisement if the licence holder has failed to comply with a licence condition, a statutory provision under the Act or a direction of the Commission.

3650 Clause 126 gives the Commission the power to impose a financial penalty or shorten a licence period in the case of a failure to comply with a licence condition, a statutory provision under the Act or a direction of the Commission.

The amount of a penalty imposed on a licence holder must not: (a) in the case of a licence holder providing only local broadcasting services, exceed £5,000; and (b) in any other case 5% of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which the licence has been in force.

3660 Clause 127 gives the Commission a new power to suspend or revoke a licence in specified circumstances, for example if a licence holder has deliberately misled the Commission in a licence application or failed to comply with a licence condition.

Mr Speaker, I beg to move that clauses 124 to 127 stand part of the Bill.

3665 **The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

3670 **The Speaker:** I put the question that clauses 124 to 127 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 128 to 130. Mr Malarkey.

3675 **Mr Malarkey:** Division 2 of Part 6 deals with Enforcement with Electronic Communications licence holders. These provide a new suite of enforcement provisions for the Commission. I intend to take the clauses together.

3680 Clause 128 provides for the interpretation of defined terms used in the Division in that 'licence holder' means the holder of an electronic communications licence, including a person operating under a class licence.

3685 Clause 129 empowers the Commission to serve notice on a licence holder if it is satisfied that there has been a contravention of the licence, and specifying the steps which the licence holder must take to remedy, and specifying any penalty which it is minded to impose under clause 130. The penalties, except for a continued contravention, are to be determined with regard to clause 133, that it must not exceed 10% of a licence holder's turnover.



Clause 130 provides penalties for a continued contravention which may not exceed £20,000 per day as the Commission may determine. The Council of Ministers may by order amend subsection (5) by substituting a different sum.

3690 There are more clearly defined enforcement measures which will help the Commission to ensure that the market is a level playing pitch for all operators to compete in. Such measures will provide certainty to would-be new entrants as well as bolstering consumer protection.

Mr Speaker, I beg to move that clauses 128 to 130 stand part of the Bill.

**The Speaker:** Dr Allinson.

3695

**Dr Allinson:** Thank you very much, Mr Speaker; I beg to second.

**The Speaker:** I put the question that clauses 128, 129 and 130 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3700

Clauses 131 and 132. Mr Malarkey.

3705 **Mr Malarkey:** Clause 131 applies if a licence holder has been given a notice under clause 129 and that the licence holder has had opportunity to make a representation. The Commission may, (a) give a confirmation decision imposing the requirements; or (b) inform the licence holder. This is enforceable through civil proceedings brought by the Commission or by any other appropriate remedy or relief

3710 Clause 132 allows for a confirmation decision to be given to the licence holder and may either require immediate action on behalf of the licence holder or specify a period in which the licence holder must comply with those requirements. It also allows the Commission to specify a penalty which may be reduced from the penalty previously specified to take into account representation from the licence holder or steps taken to comply with the Commission's requirements.

Mr Speaker, I beg to move clauses 131 and 132.

3715

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you very much, Mr Speaker.  
I beg to second.

3720

**The Speaker:** I put the question that clauses 131 and 132 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 133 to 136. Mr Malarkey.

3725 **Mr Malarkey:** Clause 133 provides the maximum for a penalty under clause 129 that the penalty must not exceed 10% of turnover except as provided for in clause 130 for continued contravention.

3730 Clause 134 provides for the suspension and revocation of an electronic communications licence. Clause 134 also makes provision for a shortened process if the matter is an urgent matter. 'Urgent matter' is defined in subsection (a) as a threat to public safety, public health or national security; and subsection (b) as serious economic or operational problems for people who are communications providers or for users of telecommunications networks or services.

Clause 135 gives the Commission the power to revoke a class licence after following a process which is set out in the clause.

Clause 136 deals with a licence holder's liability in tort for a breach of a licence condition.

3735

Mr Speaker, I beg to move that clauses 133 to 136 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker. I would like to second.

3740 **The Speaker:** I put the question that clauses 133 to 136 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 137, Mr Malarkey.

3745 **Mr Malarkey:** Clause 137 empowers the Commission to issue a public statement where the Commission has investigated that a person has failed to comply with a statutory provision, a condition of a licence, or a direction from the Commission. The Commission may also publish information about persons carrying on a regulated activity on the Island or elsewhere if it appears to the Commission to be desirable to publish such information for the protection of persons, or desirable to do so in the best interests of the public. There are notification requirements in the clause that the Commission must follow.  
3750 I beg to move that clause 137 stand part of the Bill.

**The Speaker:** Dr Allinson.

3755 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 137 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
3760 Clauses 138 and 139. Mr Malarkey.

**Mr Malarkey:** Clause 138 specifies the decisions of the Commission which are appealable and states in subsection (6) that the High Court must decide the appeal, by reference to the grounds of appeal set out in the appeal notice, by the same principles as would be applied by a court in a dolence claim.  
3765

Clause 139 provides that in the absence of rules of court under the High Court Act 1991 for the purposes appeals under that Part, the court may adopt such procedure as it considers appropriate.

I beg to move that clauses 138 and 139 stand part of the Bill.  
3770

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.  
3775

**The Speaker:** Mr Hooper.

**Mr Hooper:** Thank you very much, Mr Speaker.

I wonder if the Minister could just clarify: so far there are two sections which we have approved and do not appear to be subject to the rights to appeal, and they are the imposition of licence conditions to a class licence and the revocation of a class licence. I would just like to be clear on why there has not been a right to appeal included in respect of those two powers?  
3780

I think the relevant sections are section 24 and section 135, if that helps.

3785 **Mr Malarkey:** Will you bear with me, Mr Speaker?

**The Speaker:** Mover to reply.  
Mr Malarkey?

3790 **Mr Malarkey:** Mr Speaker, could you just give me a moment for my officers to ...

**The Speaker:** Would you like to move to Committee?

3795 **Mr Malarkey:** I do not think it is necessary to move to Committee? Move to Committee, go on.

**Mr Robertshaw:** Mr Speaker, I move that we go to a Committee of the House.

3800 **The Speaker:** Thank you.  
I take that as seconded. Is that agreed, Hon. Members? (**Members:** Agreed.) Thank you.

*In Committee of the Whole House*

**The Speaker:** So the two parts that are not eligible to be appealed and why.

3805 **Mr Connell:** The answer, Mr Speaker, is that the very nature of a classed licence is that nobody has an individual interest in it. It is a classed licence, it authorises the world; it would therefore be inappropriate to actually grant an appeal to an individual.

**The Speaker:** There was another one.

3810 **Mr Hooper:** They are both in respect of a classed licence –

**Mr Connell:** They are both in respect of a classed licence and that is the point.

3815 **Mr Hooper:** But it may be the situation that imposing a licence condition on a classed licence has a detrimental effect on the majority of holders of that licence, for example.

**Mr Connell:** That would be a matter for politicians, not for an appeal.

It is a finely balanced point but the answer is that is much more of a political issue than it is of an individual right of appeal.

3820 **Mr Hooper:** My understanding then is if the Communications Commission were to grant a classed licence that says, I don't know, everyone on the Isle of Man has the right to a certain type of broadcasting equipment and then were to decide to impose conditions on that licence that unfairly impacted the majority of the Isle of Man people using said classed licence, they would not be able to band together or chip in for a High Court appeal; it would have to be a political decision to overturn the regulators.

3830 **Mr Connell:** Obviously, doleance would be a totally separate matter. You can raise doleance issues without the need for a specific appeal right. These are appeals which are specifically conferred by the Act. But it is, with respect, much more of a political decision than a case which would apply in relation to an individual licenceholder, where there clearly should be a right of appeal.

**Mr Malarkey:** Okay?

3835 **Mr Hooper:** Yes.

**Mr Robertshaw:** Mr Speaker, I move that we return to normal business.

**The Speaker:** Thank you very much.

**Mr Cregeen:** I second.

**The Speaker:** Thank you very much.

The motion is that business be resumed. Is that agreed, Hon. Members? (**Members:** Agreed.)  
Thank you very much.

*The House moved out of Committee and business was resumed.*

**The Speaker:** I will revert to the question. Minister, do you have anything to add before we start summing up?

**Mr Malarkey:** Nothing to add, Mr Speaker.

**The Speaker:** In which case, we will go straight to the question that clauses 138 and 139 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 140 to 143, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clause 140 provides that criminal proceedings for an offence under the Act may be instituted only by the Attorney General, and extends the time limit for the institution of proceedings for a summary offence to 12 months from the date of its commission. It was six months.

Clause 141 deals with the liability of a director or other officer of a body corporate for an offence committed by such a body.

Clause 142 deals with the relationship between civil and criminal penalties.

Clause 143 deals with injunctions.

I beg to move that clauses 140 to 143 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** I put the question that clauses 140 to 143 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 144 and 145, Mr Malarkey.

**Mr Malarkey:** Clause 144 empowers the Commission, with the consent of the Treasury, to determine the amounts of fees and duties payable under the Bill. These may be specified in a notice or in the conditions of the licence. The Commission may vary fees and duties with the consent of Treasury.

Clause 145 deals with registers to be maintained under the Act by the Commission and the contents of such registers, which must be available for public inspection.

I beg to move that clauses 144 and 145 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** I put the question that clauses 144 to 145 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3890        Clause 146 and Schedule 7, Mr Malarkey.

**Mr Malarkey:** Clause 146 imposes restrictions on the disclosure of information, unless (a) the person to whom it relates has consented to the disclosure, or (b) the disclosure falls within one of the exceptions in Schedule 7.

3895        Paragraph 1 of Schedule 7 gives specific instances where the disclosure of information is not precluded under clause 146.

Paragraph 2 provides for disclosure to designated authorities.

3900        Paragraph 3 provides that the clause does not preclude the disclosure of any information for the purpose of enabling or assisting an authority, whether a governmental or private body, in a country or territory outside the Island to exercise functions similar to any of those of the Commission under this Act or any other enactment. In practice, this would primarily be used to authorise disclosures to Ofcom.

Paragraph 4 gives further exclusions in relation to notices and registers and public statements.

3905        Mr Speaker, I beg to move that clause 146 and Schedule 7 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

3910        I beg to second.

**The Speaker:** I put the question that clause 146 and Schedule 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 147, Mr Malarkey.

3915

**Mr Malarkey:** Thank you, Mr Speaker.

Clause 147 empowers the Commission, if satisfied that a foreign satellite has been repeatedly engaged in broadcasting material either offending against good taste and decency or inciting crime, to proscribe it.

3920        I must read the footnotes for this one, Mr Speaker.

Only one Foreign Satellite Service has been proscribed in the Isle of Man. Proscribing means that organisations must not support or contract with the service in question. The last one was Red Hot Dutch. *(Laughter)*

Mr Speaker, I beg to move that clause 147 stand part of the Bill.

3925

**The Speaker:** Dr Allinson.

**Dr Allinson:** I beg to second and reserve my remarks.

3930        **The Speaker:** I put the question that clause 147 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 148 and Schedule 8, Mr Malarkey.

3935        **Mr Malarkey:** Clause 148 and Schedule 8 deal with the requirement to publish advance programme information.

Paragraph 1 of Schedule 8 provides for the Schedule to be treated as if it formed part of Part III of the Copyright Act 1991.

Paragraph 2 defines the scope of the Schedule, so that it relates to information which the provider of a programme service is required to make available under section 176 of the Broadcasting Act 1990 of Parliament as applied in the Isle of Man.

Paragraph 3 applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies: despite the assignment, the duty to make the information about programming available remains with the programme service provider, and not the assignee.

Paragraph 4 details the circumstances in which the right conferred by paragraph 6 on a publisher of advance programme information is available.

Paragraph 5 states that a person wishing to avail himself or herself of the right conferred by paragraph 6 must give notice to the copyright holder.

Paragraph 6 deals with exercising the right.

Paragraph 7 deals with the application to settle the terms of any payment to be made to the holder of the copyright.

Paragraph 8 deals with the right of a person to make an application to the Copyright Tribunal to review any order made under paragraph 7.

Mr Speaker, I beg to move that clause 148 and Schedule 8 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** I put the question that clause 148 and Schedule 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 149 to 151, Mr Malarkey.

**Mr Malarkey:** Clause 149 deals with the application of the Bill to the Crown.

Clause 150 empowers the Commission to apply UK and EU legislation by order and despite anything to the contrary in an Act of Tynwald. This was inserted in anticipation of Brexit.

Clause 151 deals with statutory documents, and states that the Commission must consult before making any regulations or orders under the legislation.

I beg to move that clauses 149 to 151 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

**The Speaker:** I put the question that clauses 149 to 151 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 152 and Schedule 9, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clause 152 gives effect to Schedule 9 which deals with consequential amendments and repeals. The substituted Schedule to be moved by the Hon. Member for Glenfaba, Mr Harmer, contains the same material as the original Schedule, but is correctly numbered and the enactments being amended are set out in strict alphabetical order. This was purely and simply a bit of a mix up within the Schedule.

I beg to move that clause 152 and Schedule 9 stand part of the Bill.

**The Speaker:** Dr Allinson.

3990 **Dr Allinson:** Thank you, Mr Speaker. I beg to second.

**The Speaker:** Mr Harmer to move the amendment.

**Mr Harmer:** I beg to move formally the amendment to Schedule 9:

3995

*Substitution of Schedule 9*

*9. For pages 202-218 substitute the following—*

*«SCHEDULE 9*

*[Section 152]*

*CONSEQUENTIAL AMENDMENTS AND REPEALS ...*

*[See [Order Paper](#) pp. iv-xix for full text of amendment]*

**The Speaker:** Mr Thomas.

**Mr Thomas:** I beg to second, Mr Speaker.

4000 **The Speaker:** I put the question first that amendment 9 in the name of Mr Harmer be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 152 and Schedule 9 as amended stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Malarkey, clause 8.

4005

**Mr Malarkey:** Clause 8.

Clause 8 and Schedule 1 deal with the status, functions and independence of the Communications Commission. Subject to the Act and in particular clause 9 which follows, the Commission is required to exercise its powers independently. Schedule 1 specifies the functions of the Commission and may be amended by the Council of Ministers by order after consultation with the Commission and any other persons that Council of Ministers considers appropriate.

4010

Paragraph 1 of Schedule 1 sets out the functions of the Commission in respect of broadcasting and electronic communications networks and services.

4015

Paragraph 2 states the general duties of the Commission in relation to telecommunications and broadcasting and states that in carrying out its functions, the Commission must, so far as is practicable, seek: (a) to further the interests of all members of the public in the Island in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

4020

Paragraph 3 gives the Commission's functions specifically in relation to electronic communications and how it must exercise the functions in a manner best calculated to secure a wide range of electronic communications, networks and services. It must also secure that any provider of a network or service is able to finance the provision of that network or service.

4025

Paragraph 4 states the Commission's functions in relation to broadcasting. The Commission is to: (a) regulate, in accordance with this Act, broadcasting services; (b) keep under review the reception in the Isle of Man of programme services provided from the Island or elsewhere, and the quality and content of those services; and (c) further the interests of the Island in the whole field of programme services.

Mr Speaker, I beg to move that clause 8 and Schedule 1 stand part of the Bill.

4030

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I call on Mrs Caine to move amendments 1, 2, 7 and 8.

**Mrs Caine:** Thank you, Mr Speaker.

I rise to move the amendments in my name, with the support and in fact at the insistence, of the Digital Agency Board of the Department for Enterprise.

The changes all aim to achieve one thing in the legislation and that is simply to remove the political Chair of the Communications Commission.

The business community has been absolutely unanimous for a number of years in its request for the Chair of the Island's communications regulator not to be a political appointment. It is an aim that I fully support, believing that regulators operate best separate from any perceived or actual political influence. These amendments will bring the Isle of Man into line with modern commissions in other jurisdictions.

Another good reason to remove the political head is continuity. Communications regulation is a complex subject and it can take a new Minister a fairly significant time to get up to speed and add value to the process. If there is a Cabinet reshuffle or an election then the whole education and learning process needs to start over.

I believe that the Island will be better served by ensuring the regulator is independent of any political control, ensuring impartiality and independence from Government, resulting in a modern Commission that can provide confidence to all telecoms companies and media organisations that it regulates as to its operational independence.

I should emphasise this does not imply any criticism of current or past political Chairs, but simply reflects the modern global movement for independence of regulation which we already have in our other regulatory bodies.

Mr Speaker, I beg to move:

*Amendments to clause 8*

1. Page 31, line 15 for "Statutory Board" substitute «body corporate».
2. Page 31, line 25 after "about the" insert «constitution and».

*Amendments to schedule 1*

7. Page 125, for the heading to the Schedule substitute "Constitution and Functions of the Communications Commission"

8. Page 125, before paragraph 1 insert—

«1 Constitution of the Commission

[GC 74/89 as amended and drafting]

- (1) The Commission shall comprise not less than 4 and not more than 6 members, appointed by the Council of Ministers.
- (2) The Council of Ministers shall appoint one of the members appointed under subparagraph (1) to be the Chair of the Commission.
- (3) The appointments under subparagraphs (1) and (2) shall be subject to the approval of Tynwald.
- (4) None of the members appointed under subparagraph (1) may be a member of Tynwald.
- (5) In appointing members, the Council of Ministers must have regard to the need for the Commission to include members who are appropriately qualified, by experience or otherwise, to participate in the exercise of the Commission's functions.
- (6) The Statutory Boards Act 1987 applies to the Commission, with the exception of paragraph 7 of Schedule 2 to that Act, but the Commission is not a Statutory Board for the purposes of the Payment of Members' Expenses Act 1989.
- (7) The Council of Ministers may by order amend—
  - (a) the minimum and maximum number of members specified in subparagraph (1); and



(b) subparagraphs (5) and (6).

(8) *An order under subparagraph (7) may include such consequential, incidental, supplemental, transitional and transitory provisions as appear to the Council of Ministers to be necessary or expedient, including, for the sake of clarity, consequential amendments to this Act and the Statutory Boards Act 1987.*

*Tynwald procedure for an order under subparagraph (7) or subparagraphs (7) and (8) — approval required.*

(9) *On the coming into operation of this paragraph for all purposes—*

(a) *the entry relating to the Commission in Schedule 1 to the Statutory Boards Act 1987 is repealed; and*

(b) *the following cease to have effect, namely—*

(i) *the Telecommunications Commission Order 1989;*

(ii) *the Communications Commission (Amendment) Order 1999; and*

(iii) *the Communications Commission (Amendment) Order 2012.».*

*In consequence of this amendment, renumber the subsequent paragraphs of the Schedule as paragraphs 2 to 5 respectively. Adjust cross-references accordingly.*

**The Speaker:** Mr Hooper.

4060 **Mr Hooper:** Thank you very much, Mr Speaker.  
I beg to second the amendments and reserve my remarks.

**The Speaker:** Mr Shimmins.

4065 **Mr Shimmins:** Thank you, Mr Speaker.  
I rise to support Mrs Caine's amendments.

Hon. Members, the FSA does not have a political Chair, the Gambling Supervision Commission (GSC) does not have a political Chair. It is not modern practice. Really I am struggling to see what the advantages are of having a political Chair in those circumstances.

4070 In terms of freedom of speech, again I would not question that freedom of speech has been impaired, but really do we want a politician in charge of our broadcasting regulator? I am not sure that is a very healthy state of affairs and that is why I unreservedly support the amendments.

Thank you.

4075

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

4080 Although I completely understand the mover of this amendment, I do think it would be worthwhile if we went into Committee of the Whole House so we could actually ask the Communications Commission themselves whether they think having a political Chair is worthwhile.

4085 The reason being that although we have heard from the mover that the industry is overwhelmingly supportive of this move, I would like to make sure from the Communications Commission that that is actually the whole point of this move; because this Bill is not just for media, it is also for broadcasting and it has other ramifications beyond our Isle.

So if somebody would like to second me I would like to pose that question to the Commission themselves in terms of what would help them achieve their aims.

4090 **The Speaker:** Before taking any persons to that effect, I would say that while we have the Chief Executive of the Communications Commission; I would not expect either him or Ms Strang

to answer any questions that are political in nature and this does seem to me to be a political question, rather than a matter for officers or technical experts in the field.

However, I do not want to put words into the hands of those who can speak for themselves.  
4095 If you wish to go to Committee, the House –

**Mr Robertshaw:** Mr Speaker, does the mover still wish to move?  
I will second.

4100 **The Speaker:** Certainly.  
In which case then, Dr Allinson, would you care to put your question –?

**Dr Allinson:** Well, is the House agreed?

4105 **The Speaker:** Is the House agreed?

**Members:** Agreed.

*In Committee of the Whole House*

**Dr Allinson:** Okay. Thank you very much.

4110 So without meaning to put you in a political situation at all, could I ask whether you have had approaches from industry that were very keen, either industry on the Island or industry off the Island, who found the idea of having a political Chair odd in an international context, or questioned it?

4115 **The Speaker:** Mr Kiely.

**Mr Kiely:** Thank you for the opportunity. I appreciate you do not want to put us in a political situation.

4120 **The Speaker:** Sorry, can I just remind you that the microphone in here does not amplify; it is only for the purposes of *Hansard* and I am further away from you than you think! *(Laughter)*

**Mr Robertshaw:** Don't be like that!

**Mr Kiely:** Apologies for that!

4125 As I say, I fully appreciate that you do not want to put us in a political ... or answering political questions. Quite frankly, I do think it is a question that should be answered in this forum, rather than by me right now.

I do not necessarily think that this is the time or the place, maybe, to do it in this Bill. I think there is a lot of work that needs to be done to enact this Bill.

4130 Also in terms of removing the political Chair, I suppose the question that comes out of that is what do you replace it with and how do we know that that is the most appropriate structure for the industry as a whole?

4135 I think the best way of doing that is to actually put that question to the industry in the form of a consultation and find out what all of the stakeholders' views are to get everything in the round rather than taking particular views from particular interest groups right now.

**The Speaker:** Mr Malarkey.

4140 **Mr Malarkey:** Mr Speaker, I do apologise to the officer having to be put into that delicate situation, really.

My view, and as the officer has just said, is this might be the place but it is certainly not the time to be moving this amendment today. The view of the Commission – and I can speak on behalf of the Commission, as a politician – is that at the moment they also do not think that this is the time. Nobody is actually saying that maybe in the future this may not be considered, but this Bill has taken five years to get here today, and we will hopefully finish the clauses today and get the Bill moving on its way. This is only the start for this Bill, there is secondary legislation due to come off the back of this Bill – quite a considerable amount of secondary legislation, which will need a lot of political guidance and help to get through the other place.

Without a political Chair or a political person sitting in on these meetings this Bill, as you have found today, is highly technical in places. Some of the stuff that we deal with within the Commission is highly technical. I believe that a political Chair plays a very important point, personally, in the Commission. I believe that it communicates very important information back to the Council of Ministers. Very often this information comes through from Oftel and in the Commission we have to decide whether it is right or wrong. But then it has to be ratified by the Council of Ministers. You need somebody sitting in there that is listening to that information and that can actually take it to the Council of Ministers and take the legislation forward with it.

This is one of many things that a political Chair does. He does not sit in there as an expert on what is right in the regulations. The Commission has, at the moment, five independent people sitting on the board. They are all, I would say, experts in their own way. The Commission covers many things from broadcasting to satellites, to a variety of different things that we do – obviously the telecommunications – and we have people sit on the board who relay that and make decisions on that, and make the board's decision on that. And sometimes political questions come up – which is probably the only input, Mr Speaker, that I put in – which is to help them with political decisions going forward or how I see the political reaction will be, and also to find out how the Council of Ministers will feel.

There is not much point in the board turning round after Oftel comes to the Island and saying, 'We have got to change the frequencies of this, that and the other'; and the Commission turns around saying, 'Yes, we're going to do it', and then not knowing what the plans are within the Council of Ministers that maybe we want to do something else with those frequencies.

To me, Communications in the Isle of Man is very important, and I know they are a regulator and I do not think the political Member interferes to the regulator – certainly I never have and I do not think past Chairs have ever interfered, with the greatest respect, Mr Speaker. But I think it is an important role.

But getting back to the main part of today, this is not the time. It might be the place but it is not the time for us to be moving this clause today. I would like to see this Bill finished with. I would like to see the secondary legislation coming through. And then if you want to go out for consultation in a few years' time, I am certainly not of the belief of the claim that the hon. mover has made that the whole industry wants this.

We know of two sections of the industry – I could name them here, but I am not going to – who are pushing and we know *why* they are pushing to take tighter control of the regulator. And I will fight that because they are independent and as far as when I have sat on their board, they are still independent. I fear in the future if we do not have somebody strong on the board looking out for this, that we are in danger of having our board influenced quite drastically from the outside. It is obvious today that I know, as I said, who these people are, and they have already lobbied an awful lot of people today to try and get them to move this motion. They have lobbied me continuously for the last two years to try and get me to support this amendment today.

So all I can say to you is, I know we are in Committee at the moment and I am not really summing up, but I would ask you today not to support this clause. If you feel so strongly about it in the future, after the Bill has gone through, after we have finished with the secondary legislation – you could still have time to do it before the end of this parliamentary session.

Hopefully, it is not going to take another two-and-a-half years to get this Bill finished and moved on. But if any of you want to bring something back and do it, then will be the time.

This is not the time; the Commission does not believe it is the time; I do not believe it is the time.

Thank you Mr Speaker.

**The Speaker:** Mr Shimmins.

**Mr Shimmins:** Thank you, Mr Speaker.

I was very surprised by that in terms of 'this is not the time, wait a couple of years' – surely the clauses section of the Bill *is* the time to discuss these things. *(Interjection by Mr Malarkey)*

I would just like to ask the Chief Executive of the Communications Commission, in terms of his experience with the Broadcasting Authority of Ireland, is there a political chair on that board? Is there a political chair on the Ofcom board, to the best of his knowledge?

**The Speaker:** Mr Kiely.

**Mr Kiely:** The Broadcasting Authority in Ireland, I do not believe there is. But I do not have a whole lot of experience with them; my experience is more with the Communications regulator there.

In terms of Ofcom, I believe the Chair is a member of the House of Lords. I cannot think of his name off the top of my head, unfortunately ...

**The Speaker:** Mrs Caine.

**Mrs Caine:** Thank you, Mr Speaker.

I welcome the debate today and the chance to go into Committee, but a couple of points and questions for Mr Kiely.

This Bill was extensively consulted on and I believe you had numerous submissions. Could you confirm that some of those submissions included the opinion and the viewpoint put forward that the political Chair should be stopped?

**Mr Kiely:** Yes, they did; and some did not.

**Mrs Caine:** Do you know how many submissions, or is it extensive?

**Mr Kiely:** I cannot remember exact numbers now, off the top of my head.

**Mr Malarkey:** It certainly was not everybody.

**Mr Kiely:** I would be hazarding a guess. I can look and find out some other time.

**The Speaker:** And along with answering political questions, guessing is also up there on the list! *(Laughter)* I would really rather –

**Mr Kiely:** That is why I was avoiding it.

**The Speaker:** Okay.

Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

I just want to respond to a couple of points made by the Minister there, which leave me a little bit uneasy. The idea that a regulator can only function well with a political head is a contradiction in terms. It is like suggesting the FSA or the Gambling Supervision Commission would work a lot better if they had a political head, which of course is nonsense.

The fact of the matter is that regulators in the new world that I would see under the terms of the Minister of Policy and Reform's 'one public service' concept; (**A Member:** Ooh!) regulators as a whole would sit outside that body and as such would not have political involvement.

The FSA and the Gambling Supervision Commission function perfectly well when it comes to legislation in their relationship to this House – as I am sure we would find an appropriate route for the Communications Commission to do the same thing.

Thank you.

**The Speaker:** Mr Callister.

**Mr Callister:** Thank you, Mr Speaker.

I am struggling with this one, actually, if I am being honest. I actually disagree with my colleague from Douglas East, because I sometimes wish that we did have a political Member on the FSA at times, to report back and to have oversight to us about actually what is going on there. But realistically I am not sure if this question is for the witnesses or for the Minister.

But I was wondering if it is possible they could just give a little bit more explanation with regard to why they feel the timing is not right? I am really struggling with why you feel the timing is not right, because if a decision is to be made let's make it today, or whenever. I am just trying to understand why you feel the time is not right to make the decision today.

**The Speaker:** Mr Malarkey.

**Mr Malarkey:** Yes. Within the industry there is an awful lot of change going on at the moment. As I explained to you, this Bill has been five years in the making. A lot of what is in this Bill gives far more power, for a start, to the Commission and it does actually extract the Council of Ministers from decisions in several places.

We believe at the moment, because of the additional legislation that requires to come through, you really do need a political Member sitting on the board to find out what the legislation is all about. I mean, I will be honest, I have struggled today in places and I have sat on every board and I have listened to every discussion, and I have been through this Bill several times *with* the board, and with the amendments after the consultations and everything else. This is not simple legislation and I do not think it would be right ...

What would be the alternative? Well, you would have to have *some* political connection somewhere. You would have to have a sponsor Department. So who is the sponsor Department going to be? Is it going to be my Department? Because that is probably who I will end up with.

Am I supposed to take legislation through on stuff that is handed in front of me when I am not sitting on complicated legislation (**A Member:** Yes, yes.) to find out what it is all about within the board? Yes, that is fine. I do not believe so.

So if it was given to my Department as a sponsor, today I am in here moving these clauses as the Chair of the Commission. I am one vote. I am 'Billy No-Mates'. I have got no political backing whatsoever on this occasion. Yes, I probably have the Council of Ministers. (**A Member:** Yes!) I hope so! (*Laughter and interjections*)

But what I am saying is, if ours was the sponsoring Department and there was something coming through, I would have collective responsibility; I would expect to have three votes in here – I would have had my two Department Members and myself. Right? I would actually have more power than I do at the moment as a single Chair to the Commission. So you are actually giving more political power if you are going to take the Chair away and then make a Department a sponsor. (*Interjection by Mr Robertshaw*)

4295 So just going back to the argument, this is not the time because of the amount of legislation that is going through and because of the amount of things that are going through the Communication Commission at the moment – there are lots of licences going on. We have the Programme for Government with regard to broadband going on. It fits very much with the Communications Commission as it does with the Cabinet Office, and as it does with all of us with what is going on. It is important to have your finger on the pulse, in my opinion.

4300 I am not stuck in the ground with this one. If it wants to come back in two years' time, or 18 months' time when we have the legislation through, and you want to have a full debate about this – and it is extremely easy to bring a motion forward to change that bit of legislation – it can be done then.

4305 I am asking Members today to reject this and let us get on with the Bill.

**The Speaker:** Mr Baker.

**Mr Baker:** Thank you, Mr Speaker.

4310 I would just like to ask some questions of Mrs Caine, who has brought this amendment, which I understand is on behalf of the Digital Agency – so I presume that is distinct from the Department for Enterprise, you are bringing it purely for the agency?

4315 Could you clarify for those of us who are not as close to the fine workings of the agency model, the links between the Digital Agency and the Communications Commission? It is obviously a key relationship. But it would just be useful to understand a bit more about that.

4320 And could you articulate why you think that this change is necessary? What the issues are with what we have currently got? And how replacing a political Chair with a non-political Chair will actually help? Just so we can understand a little bit more about the real benefits of what you are proposing.

**The Speaker:** Just while Mrs Caine is putting her thoughts together on that one, I know your wish to pick some other comments as well. I will just bring in Mr Hooper at this point.

**Mr Hooper:** Thank you very much, Mr Speaker.

4325 This is quite interesting really from my perspective. The Minister has said it is essential that we have a political Chair in order that he can take the Bill through this House and yet every single technical query that has been referred to the Minister he has thrown straight to the officers. (*Interjection by Mr Malarkey*) A responsible Department Member could do that just as well as a Minister being a political Chair. It does not seem to make a lot of sense to me.

4330 The officers were asked earlier whether or not the Minister reckons we should consult on this. Well, he did consult on this in 2015, and correct me if I am wrong here: you consulted on this and this was one of the questions in the 2015-16 consultation. It was also done as part of the update in 2017. It has been consulted on twice and you were not able to provide the detail of how many respondents were in favour of, or against. But I can go through that just to help a little bit.

4335 The respondents to the consultation who were in favour of a political Chair included Douglas Borough Council, the Department of Infrastructure, Mr Henderson and e-Ilan Communications – all Government bodies. The respondents who were either against a political Chair or who viewed it as out of step with common regulatory practice and had the potential to cause a lack of confidence were Sure, Manx Telecom, 3FM, Manx Radio, Vodafone, Domicilium, MICTA – the list goes on.

4340 So on the one side we have Government bodies telling us it is essential we have a political Chair and on the other side we have a broad range of industry telling us we should not have a political Chair – and that is not just one tiny sector of industry that has been referenced, that is *everyone*. So on the one side, I will admit some of those people did say ... like Vodafone's response was: 'Actually, we think it should be independent, but on balance we don't really

care' – because I think they are not an Isle of Man operator so it does not affect them quite as much as it affects some of the others.

4350 But in reality we have industry on the one side saying: 'International norms are you do not have a politician involved in regulation'; and on the other side we have Government saying: 'Yes we do and yes we should, because it is the right thing.' But actually we have not heard a properly articulated reason as to why that is the case.

4355 I think the sponsoring Department model seems to work quite well for the FSA and the GSC and for other regulators that we have. I do not really see the problem with that. I really just thought I would try and clarify some of this because we have consulted on this; we have asked the question; we have had a response – and in their very detailed response document the Communications Commission sets out a lot of this along with their rationale for keeping the *status quo*. And really it does not amount to much more than the Communications Commission seems to feel more comfortable with a political Chair. They have not made a rational argument  
4360 as to why it is necessary, other than 'It's always been done this way and we would like that to continue'.

**The Speaker:** Mrs Caine.

4365 **Mrs Caine:** Thank you. Are we still in Committee? (**A Member:** Yes, we are.) Just to come back on a few of those points; and then I have also got a question of my own if it is all right to ask?

4370 So I am well aware that Mr Malarkey is an enthusiastic member of the Communications Commission and has spent years bringing forward the legislation, and I am grateful to Mr Hooper for highlighting that a lot of the industry feedback to the consultation was very much in favour of removing the political Chair.

4375 Now, I met with the officers at the Communications Commission with the media panel, and if you think of the Digital Agency Board as the industry body established under the Department for Enterprise but given the freedom to go ahead and grow the industry, the digital economy of the Isle of Man ... And there are representatives on there from a whole host across the spectrum of digital businesses and that includes a small number of people with a media interest. It was a small sub-committee including Deb Byron from the Chamber of Commerce, including Richard Arning from SES and including Kurt Roosen from MICTA who attended the office and had the discussion. And the feedback that we were left with was that it was very much a political  
4380 decision and that, although it was consulted on, the feeling that we were left with when we expressed again the feeling – for all the reasons articulated so well by Mr Shimmins – that other regulators are separate and the perception of that separation is not seen as interference, but there could be the perception of influence or a closeness that actually is not healthy in the terms of a modern regulator.

4385 The impression that we were left with was that, despite all the feedback from the industry that was very firmly against retaining the political Chair, the Communications Commission, in particular the Minister, were in favour of it because that was how it was and they liked it that way and there was this huge amount of legislation coming forward.

4390 But that takes me to saying why would we have – when media, along with many other industries, is very fast-moving and changing and there are always new technologies and new regulation – primary and secondary legislation will be coming. It is my understanding that this legislation will go forward and when it comes into force that will be on a day that is appointed. So when it comes into force could that be the time that the political Chair is removed? And until that time of bringing forward all the regulations wouldn't it be that you could go ahead and you  
4395 could bring all your regulations, and at that point the political Chair would no longer be there? And, as with all the other regulators, a suitable person appointed by the Council of Ministers and brought before Tynwald for approval would be approved in the same way that other regulators are?

I have got one final question, so I do not know if you wanted to answer that?

4400

**Mr Malarkey and another Member:** What was the question?

**Mrs Caine:** So that political Chair could be retained until the regulations are brought in; and when this Bill is enacted that is the point where the political Chair would fall.

4405

**The Speaker:** Mr Connell.

**Mr Connell:** For the benefit of *Hansard*, Howard Connell, Chief Legislative Drafter in the AG's Chambers.

4410

The answer is that the power to appoint a day includes a power to appoint as many days as you like and it would be possible, assuming that Mrs Caine's amendment went through, not to commence that until such time as it appeared to be convenient to do so. (**A Member:** Hear, hear.) And one can include all sorts of transitional provisions about how they consult on who the next Chair should be, (**A Member:** Absolutely.) as part of the appointed day process.

4415

So the answer is it does not all have to happen at once and obviously, even if the amendment were to be accepted today, it could not come into operation until such time as it had received Royal Assent. That would be the earliest date, which would probably be some time next year.

**The Speaker:** One more, Mrs Caine?

4420

**Mrs Caine:** Thank you very much.

My final question was a point raised by the Hon. Minister and mover of this Bill, which was that he was just a single, 'Billy No-Mates' Chair of the Communications Commission: and therefore could I ask the Chief Minister and the other Ministers here, is this a free vote? This is a parliamentary matter, it is a political principle of whether we think the head of a regulator, the Chair should *not* be a political appointment; and do we assume then that the Council of Ministers is not supporting a Minister, but having a free vote on the matter?

4425

**The Speaker:** Mr Shimmins.

4430

**Mr Shimmins:** Thank you very much, Mr Speaker.

I am listening to this debate intensely but what I am not hearing is any *real* justification for a political Chair. I am hearing a reluctance to change; I am hearing, 'We are very busy' – but no *real* justification about why we have wished to retain a political Chair. I would put to Hon. Members that we need to take a bit of a step back and understand *why* it is not sensible to have political chairs of regulators. We do not have that for the Financial Services Authority or the Gambling Supervision Commission and the reason for that is to create public confidence that there is no political interference, that there is nobody who could be perceived as just steering things either in a helpful way for them personally politically, or for their political grouping whatever that may be.

4435

Now, I am not in any way suggesting – let me make it absolutely clear – that is or has been the case. But there is a real risk with a political Chair that that could happen and that is what we need to be aware of. I would suggest to you, Hon. Members, that there is much more of a need for independence with the broadcasting regulator than with the Financial Services regulator or the Gambling Supervision Commission, because in reality it is much less likely that there will be a conflict, or a perception of bias, for those regulators than for broadcasting – which is inherently political.

4445

So I really want to hear *why* we need a political Chair. I am not hearing that justification. Now, I put to Hon. Members we need to hear that and if we do not hear that then we should not support it. Thank you.

4450



**The Speaker:** Mr Baker.

**Mr Baker:** Thank you, Mr Speaker.

4455 I actually think the case is for the mover of the amendment to make the case for the change. It is not for everybody else to sit back and defend the *status quo*; it is for somebody who has put in an amendment to convince this Hon. House that we should support it.

I asked Mrs Caine four questions, and she beautifully asked about four questions for everybody else and did not answer one of mine. So could she please try and answer the questions that I asked her a couple of minutes ago if she wants my support for her amendment?

4460

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

4465 Can I partly reply on Mrs Caine's behalf here, because it is not for her to prove an anomaly. Currently the situation we have got with the Communications Commission *is* an anomaly because the appropriate place for regulators is to be outwith political influence. We all agree that. We have all done that elsewhere. We know it is correct. It is for those standing against the mover's proposal here to argue the case as to why there should be a special anomaly. It is the *reverse* of the situation.

4470 So I do not think there is anything for Mrs Caine to answer. I think it is for those who want to support the *status quo*, who want to argue their case. And so far I have not heard a thing. In fact, actually the Minister did a great job of arguing against himself when he was trying to put his case forward.

4475 So, it is for that side of the argument to tell us clearly why it is a special case and it should be an anomaly – because it is not, it is a regulator and it should sit outwith direct political influence. It is simple.

**The Speaker:** Mr Hooper.

4480 **Mr Hooper:** I just thought it might help, Hon. Members, if I briefly read one or two of the consultation responses specifically in relation to this, just to try and make the case for Mr Baker.

So one of the consultation responses stated:

A report by ICC in early 2000 also recommended the Chair of the Communication Commission should not be a political appointee for the exact reasons that were detailed in the Consultation document.

4485 So the consultation document itself laid out a number of reasons why we have a political Chair and then the independent report said: 'All of those are very good reasons *not* to have a political Chair'.

There is another response from Manx Radio, which talks very briefly about why there should not be. This is from the Communications Commission response document.

One of the responses stated:

"The Commission should have no political members as this is incompatible where one of the licence holders is enshrined as a PSB" (Public Service Broadcaster).

... "regulation independent of the State is vital to preserve the right to freedom of speech" and that a political chairperson would not give telecoms operators the comfort that the Commission "is an impartial, independent body, free from political pressure" ...

4490 One respondent commented that an independent Chair would be preferred, especially as the state Government on the Isle of Man, through e-Ilan Communications, 'the Government has a direct financial interest in telecoms regulation'. And so having a member of the Government on the board as Chairman may not be seen to be entirely impartial.

One of the comments stated:

... "the chair should represent an independent and informed view".

4495 And probably, quite easily, SES's response in January 2018 to the technical consultation argued:

"It is highly unusual in a European market to have direct political oversight of a Communications Regulator. We very strongly urge a review of this relationship. It is against recommended good practice and could be seen by inward investors as a serious risk of political intervention in their business, and thus a disincentive to invest on the Isle of Man."

4500 These are all publicly available statements in the consultation document and the consultation response that are available online. These are all very good reasons why we should not have a political Chair of the board. In response, all we have heard is we need to keep one because we like it; and we have not had any more detailed reason other than, 'It's the way it is'. And yet all the technical detailed responses that were provided made very strong and quite well-made cases about the impact having a political Chair at a regulator could have.

4505 I think Mr Shimmins has summarised it quite nicely. Part of it is about confidence; part of it is about being seen to be impartial as well as actually being impartial. It is the perceived risk as well as the actual risk that we are trying to deal with here.

**The Speaker:** Mr Quayle.

4510 **Mr Quayle:** I would just like to comment on the names that Mr Hooper has read out, Mr Speaker; and I think, if anything, he has just given an argument why you *should* have an independent Chair of a political Member, because those are businesses looking after their sector. *(Interjections)*

4515 We have seen some 'interesting profits', shall we say, from some of these companies and I think having a political Member on board who has not got a majority – he is just one vote in five, so he can be regularly outvoted – but just keeping an eye ... I have got no problem with that.

**The Speaker:** Dr Allinson.

4520 **Dr Allinson:** Mr Speaker, I apologise if I have put the Commission in a difficult position, but I think the debate has shown that it is a political matter and there are differences of opinion. Can I suggest that we come out of Committee of the House and actually vote on this motion?

**Several Members:** Hear, hear.

4525 **A Member:** Yes. I second that.

**The Speaker:** Overwhelmed with seconders for that motion. Is that agreed, Hon. Members?  
(**Members:** Agreed.) Thank you.

*The House moved out of Committee and business was resumed.*

4530 **The Speaker:** In which case business being resumed, we have the right for Mrs Caine to sum up if she so wishes?

**Mrs Caine:** Thank you, Mr Speaker.

I think it is entirely a political decision. I think it is on Members' perception, where they stand, whether they think it is more important to have a political Chair or an industry Chair who is

4535 tasked to carry out the regulation of a media regulator with the impartiality that we put on all our regulators; and in a modern democratic system, especially as Hon. Members have highlighted, where this involves a regulator of the public service broadcaster, the perception of separation of Government from that is very important.

I would like to thank particularly Mr Shimmins and Mr Hooper for their input. I apologise if I did not respond to Mr Baker's questions, but I think they have been answered and it is very much a political decision whether you feel that this is the time, when we are processing and approving the most comprehensive substantial amount of legislation governing the sector of communications on the Island, to decide whether we think the political Chair of the regulator is out of step.

4545 I thank the legislative drafter, Mr Connell, for pointing out that it does not all need to happen in one fell swoop and that actually the Appointed Day Orders could be staggered to reflect the fact at the point where all of the legislation and the regulations have been drafted and therefore the need for that political input would fall.

4550 But I think that substantially Members will probably have made up their mind already. I think it is indefensible in a modern, democratic, well-regulated jurisdiction that we should even contemplate having that direct link between the Council of Ministers and a regulator, where it would be better to be open, transparent and have the separation with experts in their field. Why would an expert from a company be any more likely to be influenced or have a vested interest than a Minister with one foot in Government and one in the regulator?

4555 I must emphasise there is no reflection on how it has been. I am informed that the history was that the Home Affairs Minister, who is now in law the person who is put in as the political Chair of the Communications Commission, that was done because at the time TETRA, the emergency communication system, was going in and it was just a logical fit at that time. But I think we are seeing that with all the legislation coming before us the new world of communications regulation on the Isle of Man deserves an independent Chair.

4560 I beg to move.

Would you like me to do the detail of the clauses or later?

**The Speaker:** I beg your pardon, Mrs Caine.

4565 **Mrs Caine:** Would you like me to specify what the detail of the amendments are?

**The Speaker:** You are summing up (**Mrs Caine:** Yes.) so the detail of your clauses, if you wish to revisit them – (**Mrs Caine:** Okay.) How you sum up is entirely in your hands.

4570 **Mrs Caine:** It is just to say that amendment 1 – the reason there are so many stages of this – removes the status of the Commission as a statutory board in order to entrench the constitution as set out in the amendment to Schedule 1 of the Bill.

4575 Amendment 2 amends the provision paving the introduction of the Schedule to reflect the inclusion of the constitutional material in relation to the Commission and the Schedule itself. Amendment 7 amends the heading to the Schedule to reflect its expanded content; and amendment 8 re-enacts in the form of primary legislation the essential provisions of the constitution of the Commission apart from the political Chair.

Thank you, Mr Speaker.

4580 **The Speaker:** Mr Malarkey to sum up on the clause.

**Mr Malarkey:** I think enough has been said.

4585 I do not really think, Mr Speaker, there is an awful lot more I can say. I think the debate has been had. I think everybody was right; it is a political decision. I think it is something that, if it is not resolved today it will be resolved at another time. There will be time for another debate.

I have made my views quite clear, Mr Speaker; I have made that of the Communications Commission quite clear. Certainly, it is not really going to affect me personally, Mr Speaker – I make that quite clear, because by the time this comes into action or whatever, we will almost be at the end of this sitting of this parliament. So I personally think that we should reject the amendment today and stick with the clause.

Thank you.

**The Speaker:** Hon. Members, because of the interconnection between amendments 1, 2, 7 and 8 that Mrs Caine has put down, I am going to put them together because they stand all four together. So I therefore put the question whether amendments 1, 2, 7 and 8 be approved. Those in favour, please say aye; against, no. The noes have it.

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

**FOR**

Miss Bettison  
Mrs Caine  
Mr Callister  
Ms Edge  
Mr Hooper  
Mr Moorhouse  
Mr Peake  
Mr Perkins  
Mr Robertshaw  
Mr Shimmins

**AGAINST**

Dr Allinson  
Mr Ashford  
Mr Baker  
Mr Boot  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Mr Harmer  
Mr Malarkey  
Mr Quayle  
Mr Skelly  
Mr Speaker  
Mr Thomas

**The Speaker:** There were 10 for, 13 against. The noes have it. The noes have it.

Putting clause 8 and Schedule 1 without the amendment: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Malarkey to move clauses 3 to 7.

**Mr Malarkey:** Thank you, Mr Speaker. Finally!

Hon. Members, I now finally return to clauses 3 to 7 which define general and specific terms used in the Bill which reflect industry and regulatory standard terms. I took these clauses out of order to assist if any amendments were required to the definitions in the Bill.

Clause 3 defines general terms used in the Bill and also defines ‘public service broadcaster’ as Radio Manx Ltd and the public sector broadcasting obligations.

Clause 4 defines ‘electronic communications network’ and ‘electronic communications service’. This updates the narrower definitions in the Telecommunications Act 1984 of telecommunication systems and apparatus to reflect the UK definition from the Communications Act 2003 and the EU definition.

Clause 5 defines ‘available for reception by members of the public’ and excludes on-demand programme services from this definition.

Clause 6 defines ‘programme service’ and provides certain exceptions. In broad terms this does not include internet services or two-way services.

Clause 7 allows for Council of Ministers to amend the preceding provisions of the division by order if it appears necessary or expedient to do so. There are other similar change provisions in the Bill. During the lifetime of this new legislation, technology will evolve and the nature of the business models that support the innovation and investment will change in tandem. In order to provide the regulatory and legislative certainty needed to help foster investment, the Bill has adopted a technology and service neutral approach. By not themselves prescribing or defining

services and markets, the Bill's provisions do not inadvertently prevent innovative services from being rolled out in future. The flexibility inherent in the legislation provides the opportunity to cater for such developments and quickly respond to societal and industry needs.

4625 Mr Speaker, in moving clauses 3 to 7, I would like to thank the Hon. Members of this House for their patience today, especially when I have stuttered in a few places, and the speed at which we have managed to do this in one flow of moving.

At that, I wish to move clauses 3 to 7 stand part of the Bill.

4630 **The Speaker:** Dr Allinson.

**Dr Allinson:** Mr Speaker, I beg to second these and say it has been six years, a long time coming, but I would like to congratulate the Minister for bringing this through in one sitting.

Thank you.

4635

**Several Members:** Hear, hear.

**The Speaker:** I put the question that clauses 3, 4, 5, 6 and 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4640 Hon. Members, that completes the business on our Order Paper today. The House will now stand adjourned until 5th March, 10 o'clock, in our own Chamber.

Thank you.

*The House adjourned at 4.15 p.m.*