HOUSE OF KEYS
OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 12th March 2019

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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);
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 (Onchan);
Dr A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Secretary of the House.

Business transacted

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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.

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

PRAYERS
The Chaplain of the House

Leave of absence granted

The Speaker: Leave this morning has been granted to Mrs Beecroft, Mr Malarkey and to Ms Edge.

1. Commonwealth Day Message

A Connected Commonwealth –
Commonwealth Day Message from Her Majesty the Queen

The Speaker: Item 1 on our Order Paper is the Queen's Commonwealth Day Message, which I will read to the House:

> Commonwealth Day has a special significance this year as we mark the 70th anniversary of the London Declaration, when nations of the Commonwealth agreed to move forward together as free and equal members. The vision and sense of connection that inspired the signatories has stood the test of time, and the Commonwealth continues to grow, adapting to address contemporary needs.
> Today, many millions of people around the world are drawn together because of the collective values shared by the Commonwealth. In April last year, I welcomed the leaders of our 53 nations to Buckingham Palace and Windsor Castle for the Commonwealth Heads of Government Meeting, and we all witnessed how the Commonwealth vision offers hope, and inspires us to find ways of protecting our planet, and our people.
> We are able to look to the future with greater confidence and optimism as a result of the links that we share, and thanks to the networks of cooperation and mutual support to which we contribute, and on which we draw. With enduring commitment through times of great change, successive generations have demonstrated that whilst the goodwill for which the Commonwealth is renowned may be intangible, its impact is very real. We experience this as people of all backgrounds continue to find new ways of expressing through action the value of belonging in a connected Commonwealth. I hope and trust that many more will commit to doing so this Commonwealth Day.

Elizabeth R, Buckingham Palace.

Two Members: Hear, hear.

Question of Urgent Public Importance

EDUCATION, SPORT AND CULTURE

Scoill yn Jubilee's catchment area –
Urgent Question re recent significant change

The Hon. Member for Douglas East (Mr Robertshaw) to ask the Minister for Education, Sport and Culture:

If he will make a statement on his decision to announce, without prior consultation, a significant change to Scoill yn Jubilee's catchment area?

The Speaker: We turn to the next Item on our Order Paper, which is an Urgent Question. Under Standing Order 3.5.1(4) I have been requested by Mr Robertshaw to table an Urgent Question on the following terms:

If the Minister for Education Sport and Culture will make a statement on his decision to announce, without prior consultation, a significant change to Scoill yn Jubilee's catchment area?

Being satisfied that the matter is both of an urgent character and relates to a matter of public importance, I have given him leave to do so.

I call on Mr Robertshaw to ask the Question.

Mr Robertshaw: Thank you very much, Mr Speaker.

I ask the Minister for Education, Sport and Culture if he will make a statement on his decision to announce, without prior consultation, a significant change to Scoill yn Jubilee's catchment area?

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.

In regard to this, the Education Act 2001, section 15(4) and (5), the Department has complied with:

(4) In relation to any provided school or maintained school, the Department may by order designate such area as appears to the Department to be the area, the children living within which would normally be expected to attend that school as the catchment area of the school.
(5) The Department shall give public notice of any order made under subsection (4), and shall cause a copy of the order to be kept available for inspection by the public at all reasonable hours at its offices and at every school to which the instrument relates.

And the Department has complied with that, Mr Speaker.

The Speaker: Supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I thank the Minister for his statement, but does he not accept that he and his Department have acted in a perfunctory and thoughtless manner in this instance towards the parents and children of the school?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

No, I do not. This order comes into place as a joint catchment area from September of this year, so there will be a choice for the parents for this year. And the changes, if this does not assist the catchment for both those other schools, another order would be put forward next year.

The Speaker: Supplementary question, Miss Bettison.

Miss Bettison: Thank you.

I would like to ask the Minister when the catchment area concern was originally noticed and who has been consulted with or involved in the decision making process?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

The Department reviews catchment areas every year and it was discussed at the Department.

The Speaker: Supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

Is he aware that there is a growing concern about his Department's drift towards a centrist and controlling attitude – something that is manifest in the proposals in the 2019 Education Bill – and that his clumsy and insensitive handling of this particular school's catchment area only goes to further reinforce those fears?

The Speaker: I think that is straying well beyond the Question and the Member is making a political point rather than seeking information.

Mr Thomas, supplementary question.

Mr Thomas: Thank you, Mr Speaker.

I rise as a constituency MHK. Is the Minister aware of the huge number of emails that the constituency MHKs have received in respect to this, and also phone calls, and would the Minister undertake to make sure that the local people have all the information?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

The Hon. Member did mention earlier on today that he had been contacted. What the Department has done is that this is going to be a joint catchment area for one year and we can assess whether this has dealt with the issue of overcapacity at Ballakermeen High School.

The Speaker: Supplementary question, Miss Bettison.

Miss Bettison: Thank you.

Could I ask the Minister why the press release was issued last Thursday at 5.28 p.m. meaning there was no one to contact for information and most parents learned of the proposal via social media rather than any direct communication with them?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

Unfortunately that was the time that it went out. I do apologise if people were unable to contact but, as we have said, in the press release this is notification of a laid before item for April Tynwald and that the joint catchment area is a mechanism that we are using to see whether it will address the issue of overcapacity at Ballakermeen.

The Speaker: Supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

Whereas section 15 of the Education Act 2001 on catchment areas shows at least some sense of flexibility to individual circumstances, section 42 of the proposed Education Bill 2019 on catchments is both blunt and high-handed. Exactly why is his Department becoming so detached and dictatorial?

The Speaker: This is a somewhat pejorative question again, Minister, do you wish to comment?

The Minister: Thank you, Mr Speaker.

That is the Member's opinion. The issue that we have is of overcapacity at Ballakermeen High School. The numbers that we have at Ballakermeen are in the region of 400 over their established numbers for permanent capacity.

The Speaker: Supplementary question, Miss Bettison.

Miss Bettison: Thank you.

The Minister has just said that the changes in 2019-20, as per the proposed catchment area order, will then test the ground as it was for 2020-21 and yet in the news release it said:

It will then become a catchment area…

We have a lot of discussion in here about 'will' or 'may' and I just wonder why the word 'will' was used when it would appear the Minister is saying actually we *may* then move forward to a permanent change?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

We are hoping that this will have the desired effect but unfortunately if this does not have the desired effect of giving people that choice to move to St Ninian's, we will have to have that order brought forward.

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Would the Minister agree with me that he has got a situation where he has got two secondary schools in Douglas, one which is too full and one which does has not enough pupils, and he is trying to rebalance the mix between those two; and if he did not do that, then he would have to incur significant extra expenditure to expand the school that has got over demand for it and therefore this is a financially responsible approach that the Department is taking?

The Minister: Thank you, Mr Speaker.

I would like to thank the Hon. Member for his comments. The permanent capacity at St Ninian's High School is 1,600 and their roll is only 1,200. The permanent capacity at Ballakermeen High School is 1,370 and their roll is 1,644. We have an issue; we have to be financially responsible. If we do not do something regarding the catchment areas for this school then we will have further issues.

The Speaker: Final supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

The Minister indicates the disparity between rolls in the two schools. He must have known about this years ago – why now, in the way he has handled it? Isn't there a better way, and shouldn't he have done it before now?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

We have been adjusting the numbers at Ballakermeen High School. There is investment going in this year to give them some more capacity for the numbers they have already got.

This is an increasing problem that people have chosen to go to another school. In the last six years we have had 67 out-of-catchment requests for transfers between St Ninian's and Ballakermeen High School.

2. Questions for Oral Answer

CHIEF MINISTER

2.1. Gas exploration –
Proceeds arising from grant of licence

The Hon. Member for Ayre and Michael (Mr Baker) to ask the Chief Minister:

How he intends to utilise any proceeds which arise from the recent grant of a licence to explore for gas in the Island's territorial waters?

The Speaker: Item 2, Questions for Oral Answer. I call on the Hon. Member for Ayre and Michael, Mr Baker, to ask Question 1.

Mr Baker: Thank you, Mr Speaker.

I would like to ask the Chief Minister how he intends to utilise any proceeds which arise from the recent grant of a licence to explore for gas in the Island's territorial waters?

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

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

The objective in enabling exploration is that, should viable volumes of gas be identified, this would create a new income stream for the Island and it would be a source of gas for the Island.

However, we should acknowledge that by the time the gas could be found, assessed and extracted we as an Island are likely to be relying on gas very much less than we are today. The

question on how any income will be utilised is perhaps a little premature, Mr Speaker. The process is at a very early stage and it is important that we do not start counting our chickens before they have hatched. The odds that any viable gas will be found can be crudely described as 50/50 at best. It would be poor financial management to make budgetary comments to spend such an uncertain income stream at this early stage. Therefore, a decision will need to be taken in the future, should the prospect of a viable income stream become likely, on how this income stream should be utilised.

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you very much, Mr Speaker.

Would the Chief Minister agree with me that, notwithstanding his cautionary comments about the probability of a successful gas find, this potential revenue, if it proves to be real, gives the opportunity for the Island to shift its reliance on carbon as part of making the Island more alive to the challenges that we face in terms of climate change mitigation?

So I was not asking for a budgetary commitment, but I was looking for a statement in principle that this windfall opportunity, should it arise, would be used to invest in changing the Island's economy to make it more fit for the environmental challenges that we face going forward.

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker, and I thank the Hon. Member for his question.

Obviously, I have to respond in a certain way based on the way the question was asked, but one policy option to be considered is that potential income from gas sales, should it be found, would create an ironic opportunity to fund our emissions reductions actions.

The existing strategy has already clarified that the current gas turbines will be at the end of their life and they will be replaced with the generation using renewable sources, be that wind, tidal, photovoltaic or possibly even some new technology which emerges over the next five to 10 years before we need to start making plans.

But this is a personal viewpoint now, Mr Speaker, and I have said it in other places, that I personally feel that should – and I caveat the word 'should' – there be enough gas found in our waters then any income stream from that money should be put aside for the building of a green renewable energy source for the Isle of Man. But that is a 'should' and I very much doubt if I will be around for that to happen, but I wish the people taking part the very best of luck.

The Speaker: I hope you only mean politically, Chief Minister! *(Laughter)*

Supplementary question, Mr Peake. *(Interjection and laughter)*

Mr Peake: Thank you, Mr Speaker.

Would the Chief Minister confirm that the agreement in place is only for a survey and that there is no agreement in place to actually extract any gas?

The Speaker: Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

The agreement in place is for a survey, Mr Speaker, but subject to what is found as a part of that survey, then there will obviously be decisions made to enable the company who were doing the seismic survey to move forward. There was obviously no way they were going to spend the multi-millions needed to do the survey if they did not have the option then to take forward the gas exploration.

TREASURY

**2.2. Gambling supervision –
Statement on consultation**

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

If he will make a statement on the consultation into gambling supervision?

The Speaker: Question 2, I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Treasury Minister if he will make a statement on the consultation into gaming supervision?

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

The Minister for the Treasury (Mr Cannan): Mr Speaker, just to be clear, there is no consultation into gambling supervision but there is a consultation that has been launched by the Gambling Supervision Commission on a new Gambling Anti-Money Laundering and Countering the Financing of Terrorism Code.

The primary driver for the new gambling code is that it forms part of the Island's response to the 2017 Moneyval report. The new code addresses actions included in the Moneyval report, brings the code into line with international standards, the Financial Action Task Force recommendations and some other matters identified by the Gambling Supervision Commission.

The formal consultation launched on the central consultation hub on 15th February for a period of four weeks. This follows informal consultation with the gambling sector that began in June 2018. The Supervision Commission has contacted stakeholders directly to draw their attention to the consultation and also offered individual meetings with operators during the consultation period.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker, and thank you, Minister, for that detailed Answer.

In terms of ensuring the respondents are there in terms of the key stakeholders, at this stage in the consultation do we appear to be getting the responses we would be expecting?

The Speaker: Minister to reply.

The Minister: The consultation has not yet closed, Mr Speaker, so I am not really in a position to be able to respond with any detail to that question.

2.3. Pension forecasts –
Waiting time to receive

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

How long it takes for people to receive a pension forecast?

The Speaker: Question 3. I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Treasury Minister how long it takes for people to receive a pension forecast?

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

The Minister for the Treasury (Mr Cannan): Mr Speaker, in answer to a Question in this place on 12th February, I stated that it could take up to five weeks for individuals to receive a response for a state pension statement, and this remains the case.

The Speaker: Supplementary question, Mr Moorhouse.

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

Would it be possible to fast track the individuals who are less than two years away from their state retirement age? I am aware of one constituent who posted her request on 12th January and has been told she might hear back in April – well beyond the five-week target.

The Speaker: Minister to reply.

The Minister: Mr Speaker, I cannot comment on individual cases. There could be issues with that individual case that may need clarification.

As the Hon. Member knows, I am extremely accessible to dealing with specific queries from constituents via their respective MHKs and if the Hon. Member lets me know about that individual case I will be happy to do so.

In terms of fast tracking individuals, I think, Mr Speaker, it would not be fair to prioritise one group over another and we will deal with such queries as they arrive and in the order that they arrive.

The Speaker: Supplementary question, Mr Moorhouse.

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

Just pushing slightly further at that fast tracking possibility, is the Minister aware that as a consequence of the 2016 changes a person who has a UK pension entitlement and is seeking a UK top-up cannot proceed before the Manx forecast is produced?

I have another constituent who fears that the April deadline will not be met and this will limit the potential money she receives in the future. This is further complicated because there is an April 2019 deadline in place for the UK government accepting back payments of National Insurance contributions.

I recognise the team is very busy and time is limited, but these changes will have a big impact on pensions for the foreseeable future.

The Speaker: Minister to find a question in there.

The Minister: I think I would urge the Hon. Member not to panic and not to necessarily believe everything that is printed in the newspaper. I understand that April 2019 date is actually incorrect and I have been informed it should actually be 2023.

But, Mr Speaker, there is no prioritisation. We will deal with them as they come in. If the Hon. Member has specific individual cases who believe for whatever reason there is a clear requirement for specific urgency or if they have not received information back in good time, then if he lets me know of those individual cases I will consider them on their merits.

POLICY AND REFORM

2.4. Electoral Register update – Reminder letters and responses

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

How many households have been sent reminder letters about the annual canvass to provide an update of the Electoral Register; and how the households who responded to the annual canvass to update the Electoral Register provided their information?

The Speaker: Question 4, 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 Policy and Reform how many households have been sent reminder letters about the annual canvass to provide an update of the Electoral Register; and how the households who responded to the annual canvass to update the Electoral Register provided their information?

The Speaker: I call on the Minister for Policy and Reform to reply.

The Minister for Policy and Reform (Mr Thomas): Thank you, Mr Speaker.

A total of 42,662 household enquiry forms were issued in January as part of the 2019 annual canvass for electoral registration. By the close of business on Friday, 8th February the Electoral Registration Unit had received 22,414 responses.

Details of the non-responding households were sent to the ERS group on Monday, 11th February in order to generate the reminder forms. This resulted in a total of 20,248 reminder forms being issued towards the end of February. The 2019 canvass runs until 18th March and the overall response to date has been encouraging.

By the close of business on Wednesday, 6th March, the number of responses received by the Electoral Registration Unit had increased to 30,560, comprising: 18,157 paper forms returned by post; 9,113 by an online option; 1,631 by phone; 1,472 by text. There were also 187 forms that could not be delivered.

I checked again this morning and the rise to nine o'clock this morning was that the total now is 31,639, with an extra 800 or so returned by post; 270 or so returned by the online option; 50 by phone; and 25 by text.

Household responses are still being processed ahead of the deadline of 18th March. Therefore these figures will continue to increase. The annual canvass for electoral registration

helps to maintain an accurate record of eligible voters in the Isle of Man and I would encourage those who have not yet responded to do so as soon as possible.

Thank you very much, Mr Speaker, Hon. Members.

The Speaker: Supplementary question, Mr Moorhouse.

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

The original documentation identified a final date of 18th March 2019, so why were over 20,000 reminder letters sent out almost a month prior to this and what was the cost of this postage?

The Speaker: Minister to reply.

The Minister: That number of reminder letters is slightly lower than in previous years and is in line with the normal response. This is a serious matter, registering to vote to be on the Electoral Register. I think it is only fair to people to remind them of their obligation in the household to put in these electoral registration forms.

As I explained clearly in the Answer, the process takes 10 days from cut-off through to the final reminder letter being sent, so quite a few people will have received a reminder letter after they had done something in those days.

The Speaker: Supplementary question, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I would like to thank the Minister for his reply. Would he agree with me that the number of people replying online is increasing year on year and this obviously interacts with the Government's Digital Strategy, and certainly electoral registration should be one of the intrinsic parts of that strategy as it moves forward?

The Speaker: Minister to reply.

The Minister: Yes, thank you very much, Mr Speaker, and to the Hon. Member for the question.

Yes. Every time somebody makes a text, phone or online response to this it saves us quite a lot of money and the electoral registration system update modernisation is completely integrated into the Smart Service Framework, which is a very important part of joined up government in the future. I thank the Hon. Member for his important role taking lead responsibility for the Digital Strategy.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

Given the number of these reminders that have been sent out, is the Minister still confident that the total cost of this data collection will be £32,000?

The Speaker: Minister to reply.

The Minister: Yes.

The Speaker: Excellent.

Question 2.5 to Written Answer

The Speaker: Question 5, obviously Ms Edge is not present today, she is unwell. So Question 5 will be converted to a Written Question.

Item 3, Questions for Written Answer. Those will be circulated in the usual manner.

3. Questions for Written Answer

ENTERPRISE

2.5. TT radio coverage for 2019 –
Award of contract

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

When the contract will be awarded for TT radio coverage for 2019?

The Minister for Enterprise (Mr Skelly): In answer to the Hon. Member's Question, the Department has agreed to put in place a contract with Manx Radio for coverage of both the TT and Festival of Motorcycling in 2019.

A draft contract has been sent to Manx Radio for review and it is expected that it will be agreed in due course.

INFRASTRUCTURE

3.1. First-Time Buyers' Register –
Number of people

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

How many people are on the First-Time Buyers' Register?

The Minister for Infrastructure (Mr Harmer): As of 6th March, there are 130 applicants on the First-Time Buyers' Register.

Of these, 102 applicants have indicated that they are not in a position to progress to buying a property immediately and are therefore not actively seeking to purchase at this point in time.

The remaining 28 applicants are in a position to proceed with a purchase of a property when one which meets their requirements becomes available in their area of choice. At present, the Department is processing 18 of these applications to allocation/purchase.

3.2. DOI unoccupied properties – Breakdown by category

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

How many unoccupied properties the Department holds, broken down by (a) First-Time Buyers' (b) General Social Housing and (c) Older Persons' Housing?

The Minister for Infrastructure (Mr Harmer): As of the end February 2019 the Department holds:

(a) 18 unoccupied First Time Buyer properties, in the process of re-sale.

(b) 13 unoccupied general needs public sector rental properties, in the process of allocation.

(c) The Department does not own or operate older persons' sheltered housing.

3.3. Local Housing Authority unoccupied properties – Breakdown by category

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

How many unoccupied properties each Local Housing Authority holds, broken down by (a) General Social Housing and (b) Older Persons' Housing?

The Minister for Infrastructure (Mr Harmer): The Department does not routinely hold this information for the Housing Authorities; however the information below has been compiled using information supplied by each housing provider as at 6th March 2019.

Housing Authorities	Total Stock	Vacant Stock
Braddan	185	27 (1)
Castletown	258	1
Douglas General Needs	2225	7
Douglas Sheltered	133	0
Malew	8	3
Onchan General Needs	406	8
Onchan Sheltered	100	3
Peel	357	0
Port Erin	215	3
Port St Mary	122	2
Ramsey	553	6
Rushen	4	0
Sheltered Boards		
Castletown & Malew	42	2
Cooil Roi	34	3
Marashen Crescent	136	7
Peel & Western	89	19 (2)
Ramsey & Northern	144	32 (3)
TOTAL	5011	120

Douglas Borough Council and Onchan District Commissioners own and operate both general needs and sheltered (older persons') public sector properties.

It should also be noted that the number of unoccupied properties varies considerably from month to month due to turnover of tenancies, property refurbishment, and allocations to new tenants.

The reasoning for the proportionally high number of vacant properties for some housing providers is set out below:

(1) Braddan – 26 of the unoccupied properties in Braddan are in Cronkbourne Village awaiting completion of sale, which is imminent.

(2) Peel & Western – All 19 properties are vacant as they are due to be either refurbished or demolished as part of the new Westlands development.

(3) Ramsey & Northern – All 32 properties are vacant and will not be re-let as they will be replaced by new apartments at the Mayfield development and potentially redeveloped at a later date.

MANX UTILITIES AUTHORITY

3.4. Electricity generated EfW Plant – Value over last five years

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

Pursuant to the written response of 5th February, if he will make a statement on the financial value of the electricity generated at the Energy from Waste Plant over the last five years?

The Chairman of the Manx Utilities Authority (Dr Allinson): Manx Utilities has commercial contractual arrangements in place with the operator of the Energy from Waste Plant. These require Manx Utilities to purchase all surplus electricity generated by the plant at the times the plant is operating and Manx Utilities pays for this electricity at a price calculated based on what it would pay if the electricity was not purchased from the plant (for example, if Manx Utilities generated the electricity itself or purchased electricity in the wholesale electricity market). The plant also consumes electricity for its operations (for example, when the plant isn't generating electricity) and the operator of the plant pays a commercial tariff for the electricity it consumes.

These arrangements are intended to ensure fair prices for electricity are paid between the operator of the plant and Manx Utilities, enabling the plant operator to sell all surplus electricity generated to generate income without increasing or reducing Manx Utilities' costs as a result.

Wholesale electricity prices vary continually based on time of day, current weather, seasonal changes and general supply and demand imbalances. Manx Utilities' generating costs are less volatile (as generally gas prices are fixed for a whole day but wholesale electricity prices vary on a half-hourly basis) but Manx Utilities will both generate and import/export electricity to match supply with demand to achieve the lowest supply cost. Manx Utilities does not compare the cost of electricity purchased from the plant on a half-hourly basis but the contractual arrangements in place with the plant operator, and as agreed by all parties, represent an approximation of the commercial value to Manx Utilities of the electricity purchased.

Order of the Day

4. BILLS FOR SECOND READING

4.1. Council of Ministers (Amendment) Bill 2019 – Second Reading approved

Mr Malarkey to move:

That the Council of Ministers (Amendment) Bill 2019 be read a second time.

The Speaker: Item 4, Bills for Second Reading, the Council of Ministers (Amendment) Bill 2019, in the name of Mr Malarkey.

Obviously Mr Malarkey is not here today, he is also unwell. Standing Order 3.11A permits another Member to move a motion standing in another's name, if the Speaker decides it is in the public interest and the House gives leave. I am content that it is in the public interest and I ask the House if it is content to give leave for Dr Allinson to move it: is that agreed, Hon. Members?

Members: Agreed.

The Speaker: Thank you.

With that, I call on Dr Allinson to move the Second Reading of the Council of Ministers (Amendment) Bill.

Dr Allinson: Thank you, Mr Speaker.

In moving the Second Reading of the Council of Ministers (Amendment) Bill 2019, I wish to highlight at the outset that the principles of the rule of law and the independence of the judiciary are key to our freedoms as a democratic society. Although these principles have been previously unwritten they have served us well but, times are changing, and in many cases conventions are being replaced with statute law.

Hon. Members will know, for example, that the principles set out in the articles of the Humans Rights Act 2001, require important matters to be set out or prescribed by law. As I have said, times are changing and, as a proud nation and an international financial and business centre, we are experiencing ever more scrutiny from the international community. Bodies such as Moneyval, the EU, the IMF and others have shown an interest in how we conduct ourselves.

Responsibility for ensuring the rule of law and the independence of the judiciary may not be presently set out in our laws, but this does not mean that no one is responsible. In fact, responsibility currently lies with His Excellency on behalf of the Crown. This Bill will, in effect, place a responsibility also on our own Council of Ministers. Importantly, it represents another step along the road of our country taking fuller and greater responsibility for its own affairs and represents a further constitutional development on the part of the Island. (**Mr Thomas:** Hear, hear.)

The Department of Home Affairs believes that by bringing forward this Bill on behalf of the Council of Ministers it is affirming that Government binds itself to the key principle that the rule of law is supreme. It also provides assurance to the judiciary that its independence in the determination of cases is so important that the duty on Council to uphold and support that independence should be stated in law.

This Bill also speaks to the international community and says that we are a mature and progressive jurisdiction that is taking responsibility for more and more aspects of our own good governance.

This Bill is good for business because it clearly states the basic principle that everyone will receive independent and impartial justice in any dispute, entirely free from interference by Government.

Mr Speaker, the Bill is very short and clause 3 contains the detail, as it inserts two new sections into the Council of Ministers Act 1990. New section 6A states that:

> The constitutional principle of the rule of law continues to exist.

And subsection (2) places the responsibility for upholding and supporting that principle on the Council of Ministers. Hon. Members should note that this is *a* responsibility not *the* responsibility. The Lieutenant Governor will also retain a responsibility in this area.

New section 6B places a duty on the Council of Ministers, as a body, and also on each individual Minister, to uphold, support and indeed defend the continued independence of the judiciary.

Mr Speaker, I beg to move that the Council of Ministers (Amendment) Bill 2019 be read a second time.

The Speaker: Hon. Member for Douglas East, Miss Bettison.

Miss Bettison: Thank you.

I beg to second and reserve my remarks.

The Speaker: Mr Hooper, Hon. Member for Ramsey.

Mr Hooper: Thank you very much, Mr Speaker.

This Bill seems to tie in quite well with recent Tynwald approval of the Justice Committee's recommendation that there should be a single ministerial responsibility for the portfolio of justice, specifically the section in here relating to the need for the judiciary to have the support necessary to enable them to exercise all their functions.

The question I was hoping to pose to the Minister today was has there been any progress made on that particular recommendation in respect of this Bill and whether it ties in together. Obviously I cannot ask the Minister that question, but I would be grateful if the hon. mover could put that question to the Minister and provide us with a response.

Thank you.

The Speaker: Mover to reply.

Dr Allinson: Thank you, Mr Speaker.

I am very grateful to the Hon. Member for Ramsey for his comments. I shall be posing that question to the Minister.

The Speaker: Beg to move?

Dr Allinson: And I beg to move, sir.

The Speaker: The question is that the Council of Ministers (Amendment) Bill be read a second time. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

**4.2. Town and Country Planning (Amendment) Bill 2019 –
Second Reading approved**

Mr Thomas to move:

That the Town and Country Planning (Amendment) Bill 2019 be read a second time.

The Speaker: Item 4.2, Town and Country Planning (Amendment) Bill 2019, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

The intention of this Bill, which would amend the Town and Country Planning Act 1999, was laid down in the action plan for reform of the planning system which is laid before Tynwald in May 2018, specifically: new powers for the subsequent introduction of national policy directives, which with Tynwald approval could override the development plan to better meet our needs; a new community infrastructure levy taking effect in early 2020; the powers to introduce a method for faster minor amendments to existing planning approvals by the end of 2019; to introduce the definition of general importance to the Island as set out in section 11(1A) of the Act; discretionary powers for the Cabinet Office to appoint a planning advisory body under section 40 of the Act; and explicitly define the statutory basis for the Planning Committee and its decisions.

A consultation on the draft Amendment Bill was carried out in September and October 2018 and I thank the many participants who made helpful submissions.

Mr Speaker, national policy directives will enable the Council of Ministers, with the approval of Tynwald, to respond in the national interest to particular planning issues. Reasons for the policy shall be given and the Council of Ministers shall consult such persons as it thinks fit before making a national policy directive. The Council of Ministers shall, by regulations, make further provision about the making of national policy directives. These regulations will be the subject of consultation.

In summary, the development plan deals with the whole; national policy directives will deal with the particular. It is intended that they are responsive, possibly even relatively short-lived, so that the identified issue or need is addressed. As described in the action plan, national policy directives are aimed to enable changes in policy to be brought about more quickly when necessary to continue to meet the Island's needs – effectively, to make the planning system more responsive to changing circumstances and expectations.

Mr Speaker, the Bill also creates the power for Council of Ministers, with the concurrence of Treasury, to impose a charge – a 'Community Infrastructure Levy'. This would require several regulations to be made following consultation and engagement to get the balance right to ensure new developments help fund the accompanying wider changes which bring economic, environmental and social benefits. At present there is no ability to make minor changes to planning approvals, either before or during construction; for example, as a result of the assessment of the plans for Building Control. Currently, if the need for minor change arises those carrying out development are left with a choice to either submit a full new planning application for the entire development or to make minor variations to the plans in building the development without specific approval.

The aim of this amendment is to ensure a proportionate approach to minor changes. 'Minor' means that the change does not transform what has been approved into something else or give rise to new impacts or concerns. An approval might be given for a new house but there might be a slight amendment to the shape or position of a window. This provision in the Bill will require the making of a procedure order with Tynwald approval.

By defining general importance, the Bill sets out clear parameters for the referral of applications to Council of Ministers, who would then consider whether to call such applications

in. 'General importance' has not been defined before. The aim is to ensure applications which are key to Government priorities are better identified.

At present, section 40 of the Town and Country Planning Act 1999 requires Council of Ministers to establish a consultative body for the purpose of obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters: (a) the environment, (b) the economy of the Island, or (c) the planning of development.

Then the Cabinet Office must consult the consultative body on all matters on which it appears to the Cabinet Office that its advice would be desirable and, in exercising its functions under this Act, shall have regard to any advice given by the said body, whether pursuant to such consultations or otherwise to advise on policy issues, where desirable.

This body has never been established. This Bill removes the obligation to establish it but preserves the power to do so. The action plan states that more flexibility in how Government involves stakeholders in policy matters is created without extra, what can be seen as, bureaucracy.

The Planning Committee is not created in the Town and Country Planning Act 1999, even though all the Committee's work is the exercise of powers under that same Act. In this Amendment Bill, the Council of Ministers is required to constitute by order a planning committee to carry out any functions specified in such an order and currently performed by the old planning committee, for which it is authorised under section 3 of the Government Departments Act 1987 or which are transferred to it by order under Schedule 2 to that Act. Proper transition, grandfathering and for avoidance of doubt provisions are included.

Mr Speaker, I beg to move that this Bill has its Second Reading.

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

Mr Baker: Thank you very much, Mr Speaker.

I rise to speak on this really very important Bill which has been promoted by the Cabinet Office and brings some major changes to the planning framework.

I believe that this is very important because planning is integral to the Island's built and natural environment; and I think the response to this Bill needs some very careful thought to ensure that we do not have any unanticipated consequences from it. I understand that the drive for this Bill came from frustration about the planning system at the start of this administration in 2016. It is an integral part of the Programme for Government to improve the planning system.

We have already seen a number of initiatives come forward and many of the elements of this new Bill are eminently sensible. The one area where I would caution is in the area of national policy directives, which in principle sound extremely sensible – to give increased flexibility and to provide a more responsive planning system; however, already have a very comprehensive development plan framework consisting of a strategic plan and area plans, which gives us a framework to assess the planning applications that come forward.

The Strategic Plan provides a very comprehensive strategic and general policy framework, within which provision will be made for development and conservation needs. For those who are not so familiar with the strategic plan, which is this document that was approved in March 2016 in Tynwald, it is a complex document. It consists of a very clear strategic aim; sets of strategic objectives across five broad headings; a series of strategic policies, of which there are 12 which relate to the five sets of strategic objectives of resources, environment, economy, transport and communications and social considerations; and seven policies related to the Island's spatial policy; and nine general policies; plus a series of detailed policies across seven categories, such as environment which consist of 43 policies specifically to the environment, housing which is 18, business, 15 etc.

So this is a complex framework against which funding applications are evaluated and the Strategic Plan makes very clear in section 1.7.2 on page 7:

> The Aim … must be looked at as a whole. [The strategic planning is] intended to inter-relate and should not be read in isolation.

So we have got a system here for evaluating planning applications to lead us to what should be the right outcome.

What is proposed here is the ability to override, as the Minister for Policy and Reform said, that system. Section 2A(7) makes this clear – that in the event of any conflict between a national policy directive and any other elements of the development plan the national policy directive will take precedence, it will 'prevail', as the Bill says.

What that means, Hon. Members, is that any national policy directives which come through and are approved by Tynwald will be unchallengeable, irrespective of the implications that they have in terms of the environment, business, community, housing, society etc. The national policy directive will prevail.

I have got no problem with the need, potentially, to bring forward national policy directives to speak to major issues that affect the Isle of Man if there is a genuine need. We can all envisage scenarios around Brexit or Moneyval, for instance, where the Island's economy may need to change very rapidly. We may need to move more quickly than the current planning framework allows. In that context, I think national policy directives are eminently sensible. We may need to do some structural adjustments to the Island's economy very quickly in the national interest. I fully support that concept. My concern is not with the concept or the principle, it is about the implementation and the detail.

So I do support the objectives of increasing flexibility. I understand the desire to move quickly and flexibly; however, it is all about the implementation. It is not clear, Hon. Members, from the drafting of the Bill in what circumstances national policy directives will be deployed. It talks about when Council of Ministers believe that it is in the national interest. There is no definition anywhere in legislation of what the national interest actually is, so if Council of Ministers believe something is a national interest they have the ability then to bring forward a national policy directive. They may consult, as the Minister for Policy and Reform said, with whoever they feel appropriate. That does not feel very inclusive and comprehensive to me, but that is what it says at the moment: such persons as it deems fit or sees fit.

There is strong Tynwald scrutiny around the process. The Minister will have to bring forward some regulations for national policy directives and once those have been approved will then have to bring any national policy directives through Tynwald as well. So there is good protection there. However, it is clear when one looks at the draft Bill there is a lot of detail around the regulations that are going to be required for the Community Infrastructure Levy. A lot of thought has gone in there, clearly. For whatever reason – and I would be interested in the hon. mover's comments on this – there is very little detail about what those regulations around national policy directives are going to have to comply with.

My concern with this is to make sure that we have adequate scrutiny and safeguards around this whole process. The Minister, in his opening remarks, said that it may well be that these national policy directives are relatively short lived. Yet, I cannot, unless I have missed something, see anything in the drafting that gives us that assurance. He indicated that they will be specific. Again, I do not see anything in the drafting which says they are going to be specific.

My concern is not actually so much about what this administration may do with national policy directives, it is potentially what may happen in future administrations with that power which is extremely strong, Hon. Members. We all know that planning has been the Achilles' heel of many administrations in many jurisdictions. I think we could have a debate about whether it is right that national policy directives will prevail over every other consideration. I am not sure that is right, but I am open to suggestion. I believe that it would be right that if we did have a national policy directive it would be of higher weight in that planning process, in that consideration process, but are we really saying that something which has the approval of a national policy directive is so important that it overrides every single consideration, irrespective of

environmental impact, traffic impact, impact on local residents? (**Mr Shimmins:** Hear, hear.) I do not think that is right. I think we need a more sophisticated approach. I think we are in danger of falling for a simplistic approach which could be damaging to the Island.

Equally, the reason for needing these national policy directives is the speed at which the development plan can be updated. I understand that frustration. We have all shared the journey of the Area Plan for the East which is somewhere in process still and still has some way to go. That is an awfully long time to change, and that, I think, is one of the reasons for the national policy directives being conceived. So we do need to be able to ensure that the administration has the levers to pull to make the Island into what it wants to be and what it sees as its future.

So I am supportive of this Bill. The stated intentions are positive. I would like to thank the Minister for Policy and Reform and the drafter for his positive engagement to date where he has listened to my concerns. Some of his responses have satisfied some of those concerns and my concerns now are very much just around the national policy directives. The remainder of the Bill, I think, consists of a number of different elements which generally are sensible and appropriate.

But I do think there is further refinement needed around the national policy directive. So it is my intention to bring forward some amendments at the clauses stage, which I hope the mover will feel able to support, and certainly the intention is to share those proposed amendments with the Minister.

In summary, at present I think as drafted the Bill carries significant risk which could come back to have an adverse impact on the Island in the future. We need to ensure we properly protect the Island's future interests for this generation and for those to come.

In closing, it would be really helpful if the Minister could clarify exactly the problem that this Bill is trying to solve in terms of national policy directives and give some specific examples of the types of national policy directives he anticipates to be coming forward within the following months.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I apologise to the mover for not getting up to my feet quicker to second this, the Hon. Member for Ayre and Michael got to his feet first.

If I could just say, in seconding this Second Reading, that I think the Hon. Member for Ayre and Michael makes a very good point why this legislation is needed – the complexities of the current system. He went into great detail about area plans, different strategies, and to be a developer on this Island, or even to be an individual trying to modernise your own home, can be a complete minefield, so we urgently need reform of our planning procedures on this Island.

I think, whilst I recognise his worries about national policy directives, this is going to be led by CoMin itself, rather than one individual Minister, and will be accountable. And I think he needs to recognise that there is sometimes a subtle difference between what one person may see as protecting and what another person may see as stifling; what one person may see as encouraging development and another person see as smothering that same development.

So I rise in support of this important and progressive legislation, which I hope will make planning easier and quicker but still remain retain that accountability that we need as a House.

Thank you.

The Speaker: The Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

Firstly I would like to start, I suppose, by echoing a number of the concerns that the Hon. Member for Ayre and Michael, Mr Baker, has raised surrounding the national policy directives and the need for some more specifics and a bit more transparency, I think, around the whole

process. As Chair of the Planning Committee he clearly has a great deal of insight into the process and I think his remarks today have been quite well made.

In respect of the process itself, I would also like to ask the mover about the matter of 'general importance' that is referred to in the Bill; it is quite well-defined, I think. My understanding is a matter will be called in by the Council of Ministers and this would short circuit the process around the planning committees, the Planning Committee itself would not be involved when the Council of Ministers calls in a decision.

So my question to the Minister really is: when matters do not go before the Planning Committee will they still appear on the published lists? Will they still be open to comment by the public? And will the public still get the ability to have that three minutes of oral engagement as they would if the matter was being determined by the Planning Committee? I would like the Minister to provide a bit more detail around how that part of the process, in respect of calling in matters of general importance by the Council of Ministers, will continue to be open and transparent along the lines of the existing planning process.

Another area of real concern for me is in respect of the changes to section 40 in the Act. So on the one hand the national policy directives are proposing to give the Council of Ministers much greater power and control in respect of planning strategy – which I agree there may be cause for that in certain circumstances, I do not oppose that in the slightest, provided we can firm it up a little bit. But at the same time as saying we are going to give the Council of Ministers some more ability to set these national policy directives to override the strategic plan, at the same time the proposal is to remove the requirement then to engage with a consultative body of people with expertise in areas of the economy, of the environment and of the planning of development, which seem to be very key when you are making a national policy directive. I would expect that to be some engagement and consultation with people in these three spheres.

I think that response was actually mentioned in the consultation response document as well, there were a number of people commenting that this body does have value, should have value, and should be in existence so why isn't it? And that is under the current system, before we even get into this issue of national policy directives.

I am aware the Minister has previously stated that it would be his intention to bring some form of a consultative body into being. I would just like him to be able to confirm that and if that is his intention why is he changing the law away from making this a requirement, if he thinks it is needed anyway.

I cannot see myself supporting a huge increase in the powers of the Council of Ministers in respect of planning, which is a system that we have to get right, at the same time that we are reducing the requirement to consult and engage with people who are knowledgeable in some very key areas, especially in respect of these national policy directives.

In fact, the section on national policy directives requires the Council of Ministers to consult such persons as it thinks fit. We are imposing a requirement to consult and then we are removing this body that they can consult with. It does not seem really to fit, so I do not really see the purpose for removing this particular requirement.

The Act is very clear, the Cabinet Office would still control the consultation process itself. They are only required to consult this body when the Cabinet Office considers it would be desirable to do so. So the risk of unnecessary bureaucracy, that the Minister mentioned, will only happen if the Cabinet Office is not capable of using a consultative process which it controls entirely sensibly and proportionately so the Cabinet Office controls the process. I really do not understand why we are looking to remove this requirement for the body. The fact the Cabinet Office is not currently complying with the law does not seem to be a good enough reason to change the law.

I am quite glad though, to see the Planning Committee be placed on a statutory footing in this Bill. I would appreciate some clarity from the Minister in respect specifically of transitional provisions. So the process under the new committee I am assuming will be the same as the process under the existing committee, if not what changes is he proposing to make to the

existing process? Does he plan to consult on those proposed changes and if there are no proposed changes why do we need transitional provisions at all?

And, as a last question, I would just like to ask the Minister what consultation and engagement has he undertaken in respect of the proposed Community Infrastructure Levy? And is this levy intended to replace the current processes for raising funds from developers by way of say section 13 agreements or is it intended to supplement that process.

I look forward to the Minister's comments.

Thank you, Mr Speaker.

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

Mr Shimmins: Thank you, Mr Speaker.

It is right that we review our planning legislation to ensure that it continues to be fit for purpose and this Bill contains a number of proposed changes.

There is a general growing concern across the Island that the Council of Ministers wishes to circumvent normal planning practice and remove any barriers to economic progress, regardless of any negative consequences. There is also concern that the Council of Ministers is consistently ignoring the results of multiple public consultations on planning.

Hon. Members may have read the published responses to the consultation on this Bill. There are many interesting responses urging caution and a rethink on aspects of this Bill. You may have noticed one contribution from a high profile business person who has made a number of significant investments into the Island. Their remarks were succinct and I would like just to read them to you. This is from the consultation which has been published by the Cabinet Office:

> The focus on development to secure economic sustainability is too narrow and the scope should be expanded to secure economic and environmental sustainability since we cannot allow economic decisions that could have a serious detrimental impact on our natural environment and heritage. The risk is real and significant where short term economic decisions are taken that will eventually turn out that long term prosperity has been compromised. Objectors should be given the power/opportunity to challenge decisions taken by the CoMin in either the court of law or otherwise.

Many others feel that these concerns are valid. We do need checks and balances in our planning system.

This Bill asks Hon. Members: do you feel that providing more power to the Council of Ministers to directly intervene in planning matters, which will be considered without transparency, in near private meetings, is the right thing to do?

The Minister may say that we must have these new powers to meet the Island's needs. Other Ministers have talked in general terms about the need to speed up the process or ensuring property developers have certainty and that we are not stifling economic development. Indeed we have just heard from the Hon. Member from Ramsey who talked about stifling and smothering.

I challenge the Minister for Policy and Reform to provide specific examples of why this is needed. He gave a helpful specific example on minor amendments, on windows on houses. It is important that he also provides specific examples of matters of national importance so that the need is clearly articulated and does not talk purely in general terms.

I would remind Hon. Members that we have not had a debate on planning reform. A statement was issued after the Council of Ministers decided on an action plan. This plan was laid before Tynwald, there was no debate. This *modus operandi* is unfortunate. It minimises the opportunity for wider feedback and it heightens the concerns of the general public that these important changes are being brought forward to meet the agenda of the influential few rather than the many.

We are here to represent the needs of the majority, not the small number of wealthy landowners and property developers. We also have an obligation to our Biosphere, our natural

environment and future generations. When the Manx countryside is concreted over, it is lost forever. We will not get it back.

Unfortunately these concerns have been heightened by the recent *modus operandi* employed by the Minister for the Environment, whilst making regulations removing third-party interested party status. This was justified, again, to stop objectors standing in the way of economic progress. This was after another public consultation, which clearly indicated that the majority of the public wished these rights to be retained – the direct opposite of the action subsequently taken by the Minister for the Environment. There is a pattern emerging: to make it easier for developers to build and harder for people to object and appeal.

If the consultation feedback differs from the desired outcome, the rules were changed anyway – in this case, without reference to Tynwald. Then these questionable changes were not announced. They were not announced to the wider public, but only selected people were advised.

Thereafter, when word spreads and people understand what has happened in DEFA, they contact the media, which breaks the news. Eventually a formal press release is issued, but this ministerially approved statement is factually incorrect and deeply misleading. When queried, two correcting press releases were needed to cover this unfortunate series of events, which many people have described as 'skulduggery'.

Hon. Members should ponder this recent track record when considering the proposals which are contained in this Bill. I am interested to hear more about national policy directives.

Mr Baker, the Hon. Member for Ayre and Michael, urged caution. He is a respected Chair of the Planning Committee, so I listened intently to his concerns on the override provisions and the implementation. What debate will take place on national policy directives? Will these debates take place in our national parliament? The Council of Ministers' debates are private; would it not be better to have transparency on matters which, by definition, are of national importance?

The Bill also states that:

> The Council of Ministers shall arrange for the publication of a national policy directive in a manner the Council considers will bring it to the attention of those likely to be affected by it.

This sounds a bit like a clandestine approach, which was utilised to miscommunicate the private decision made to withdraw third-party interested party status. Surely a national policy directive, which is for a matter of national importance, should be communicated to the nation, not just those whom the Council considers are worthy.

I am supportive of the Community Infrastructure Levies. These have been successfully used elsewhere to ensure developers contribute more to community infrastructure. Unfortunately, there are many examples on the Island where this has not happened in the past. This has meant that the taxpayer has had to bear the burden for infrastructure which also, in some cases, has simply not been provided. This is much more than estate access roads, so I very much welcome the commitment to introduce Community Infrastructure Levies here.

Hon. Members will see from the consultation submission from the Department of Infrastructure that they also concur with Community Infrastructure Levies. The Department of Infrastructure goes further, asking for the Bill to be strengthened: asking for, amongst other things, 'may make regulations' to be changed to 'should make regulations' to impose a Community Infrastructure Levy. This does not appear to have been taken on board by the Minister for Policy and Reform; please can he explain why he has not listened to the Department for Infrastructure, or potentially will members from that Department be lodging amendments to support this view at the clauses stage? Perhaps he could also explain and articulate their views on Community Infrastructure Levies.

A higher cost Community Infrastructure Levy for large countryside developments and a lower or minimal Levy for those on brownfield, in-town, urban regeneration projects would help reverse the unfortunate trend that we have seen on this Island over the last few decades. Until

the Government takes action to make it more financially attractive to build on brownfield sites and less of a bonanza for landowners and developers to concrete over the countryside, then the same trends will continue. Will the Minister confirm that the Community Infrastructure Levies will be used to prioritise brownfield developments ahead of building over the Manx green fields?

Turning to section 40, which my hon. friend from Ramsey highlighted is an area of particular curiosity in this Bill. This is a part of the 1999 Act which requires the Council of Ministers to establish a consultative body:

> … obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters –
> (a) the environment,
> (b) the economy of the Island, or
> (c) the planning of development.

Of course this body has never been set up, despite the clear requirement in the existing Act to do so. This raises a number of questions. Why was this body never set up? Is it because the Council of Ministers does not wish environmental views interfering with planning matters?

The effects of the proposed clause 15 remove this requirement. It is suggested that the Council of Ministers *may* now set up the consultative body and it *may* consult with them on important matters. Previously it was 'shall' and 'must'.

Hon. Members, you do not have to be a conspiracy theorist to have alarm bells ringing on this. Why change the wording, unless you do not want to set up a body and you have no intention of consulting with this body? It appears that the Minister does not wish to obtain the views of other organisations.

Lastly, an attempt to define 'general importance' is made. This is very wide. Thirty small apartments or a small commercial development feels on the low side. Will the Minister please advise how these *de minimis* proposals compare with elsewhere in the British Isles?

The various other clauses whereby the Council of Ministers can revise guidance could mean that they can make up the rules in private as we go along. This feels too broad. These proposals could result in future generations asking, 'How did we let this Island be developed in such a botched way?'

I go back to my opening remarks: why are many of these changes needed? Please provide specific examples, rather than broad statements. Why remove the checks and balances in our planning system? We need to take a responsible approach for all, not pander to the influential few.

Hon. Members, aspects of this Bill will determine how the Island will be developed for the next two to three decades. Do you wish to provide a series of overrides for the Council of Ministers to assist developers? Or do you feel the current planning process which, like everything, may have some flaws, but it sits with independence, removed from direct ministerial control. I would ask you to think carefully about these questions and the various other points that have been raised today.

It may be that you have absolute faith in the Council of Ministers to make these decisions with the Wisdom of Solomon, and that they can be relied upon to make these important determinations in private. If this is the case, ask yourself what about the next Council of Ministers and the one that follows that? You do not know who these people are, never mind their motivations or qualifications.

This Bill puts in place future planning structures for years to come. Mistakes will negatively impact us all. As such, caution is required. A responsible approach should be taken, and I hope that the Minister will listen to my concerns, which echo those made by others inside and outside this House.

The Speaker: Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

I also have some concerns about this Bill. Although it was consulted on last year, the summary of that consultation does not give any indication as to the level of support or objection to its clauses. It simply summarises some of the comments made, so it does not prove that any heed has been taken of comments made in the consultation.

Perhaps the Minister could indicate what public feedback has informed this proposed revision of our planning legislation. Feedback to me from constituents suggests they are far from happy with some of the proposed changes. Of particular concern, are pages 10 and 11 of the Bill, regarding amending section 11 and section 1A. Together these refer planning applications of general importance to the Island to the Council of Ministers. 'General importance' is defined in section 1A, and seems to cover anything from a garden shed in the countryside to major development. Therefore the Bill would seem to be giving the Council of Ministers powers to call in and decide a significant proportion of applications, of any scale, and is virtually taking away the role of the Planning Committee, which other sections of the Bill are attempting to secure, in deciding such applications. Moreover, the Council of Ministers is given powers to make national policy directives virtually on a whim so that it can control any development it wants.

The overall feeling is that this legislation is taking all democracy out of planning. Government Ministers should not be involved in day-to-day planning matters. You do not find this level of interference of government ministers in the planning system in the adjacent islands.

Page 18, referring to item 15 and section 40 amended, regarding voluntary organisations, in the original consultation on planning this was never consulted on, it is just included in the rubric as a *fait accompli*. It is clear to me that there is concern about this and absolutely no justification for the change. Together with the concerns over interested party status, this is taking away all rights from voluntary organisations in the planning process.

Mr Speaker, I am aware that our planning system is an area of Government in which there is increasing public dissatisfaction – I would even say some suspicion and distrust; certainly a lack of confidence. Although it is welcome to put the Planning Committee on a statutory footing, this Bill was an opportunity to fix what is broken in the planning system, but it does not make comprehensive improvements from a public perspective. Instead, it appears to aim to increase political power over the planning system, to the detriment of democracy and the principles of open government.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Glenfaba and Peel, Mr Boot.

Mr Boot: Thank you, Mr Speaker.

My Department is responsible for everyday planning operation, rather than policy, but we have obviously been deeply involved in the preparation of this new Bill, working closely with the Cabinet Office, looking at it from an operational perspective.

There was a view, when this Government took over, that the planning system could be improved, it might be streamlined, it might be made better for the public generally as well as the economy and the environment. We went out with a very comprehensive consultation which attracted a lot of response, and they were quite diverse some of these responses, but they were all looked at.

It is very easy, when you look at a consultation document, to pluck bits out and say that high value individuals are working at destroying our natural environment and we are trying to change things as a general power grab by the Council of Ministers. That has definitely not been the case, the responses were carefully considered, and also what we wanted to achieve from the Act or the new Bill looked at in detail.

Now, I am going to raise some of the things that have been put forward. First of all, I have to refer to third party rights. They have *not* been removed and anyone that keeps promulgating that they have been removed is promulgating something that is not true. Third party rights still

exist. And, in fact, as part of this consultation and previous consultations, the public generally were asked whether third party rights should be removed and they have not been removed. They have been refined, and there is now a policy on how they are dealt with. So that is number one.

Looking at the various aspects, the six proposals within the Bill, I think they are carefully thought out. Let's start with national policy directives: there was a feeling that there is or was no mechanism – and I know this from my experience as the Minister that considers planning appeals and quite a considerable number of them, that the hierarchy of documentation in the Isle of Man is difficult to interpret. We have many local plans, very local plans – I am talking about parish town plans that are well out of date. Even our regional plans are tending to be dated, and then we have the Strategic Plan 2016. They are all very good and the documentation is really good to refer to, but sometimes there are requirements to move quickly and swiftly and address issues that come out that you do not want to address with primary legislation. National policy directives come out of that as an issue. There may be some clarification required about how they will be operated, but there are within the Act provisions for time limiting them and they will be specified in the order when it comes forward.

But from my perspective, looking at appeals specifically, it would be nice to have a document that sits here, if there is something that is of national importance, that I can refer to. That does not mean that it overarches everything else in the planning process; it means it is to be taken into consideration and it has some priority. In the past we have had PPSs and they effectively did that function or carried out that function, but from Members' point of view and the public's point of view surely the real emphasis should be on the fact that these require Tynwald approval. These are not just the Council of Ministers deciding that they want a policy directive; they will be consulted on and they will have Tynwald approval.

Now, if you do not trust yourselves, that is your problem, but at the end of the day they are coming before Tynwald where they will be openly debated and the public will have an opportunity to respond to consultation on these things. So I do not see where that power grab comes from. You will have the ultimate responsibility for the national policy directives. The Council of Ministers may instigate them, because they see a need or there is a need brought to their attention but, at the end of the day, you will have the responsibility as to whether they are enacted.

Now, looking further down we have some sensible proposals in my opinion and I will just pick these off because they have been raised by various people. Minor amendments: well, I have sat on planning committees and I look at the planning process and I have been frustrated in the past by the planning system here where people are not allowed to make minor amendments.

This is not a national problem, it has nothing to do with strategic planning. It is something that affects the general public when they put an application in for an extension and they want to change the design of a window, non-transformational changes, then it seems sensible – and I think the general public are very much on side – that they should be able to make minor amendments without having to go through the full planning process all over again. I am sure that the Planning Committee and Planning Chairman would welcome that, not having to consider planning applications for minor amendments. So I think that is a sensible move in the right direction and something that will help the public generally.

Then we come to Community Infrastructure Levy charges. Now, this is something that has been going around for some time. At the moment we have section 13, and section 13 enables some planning gain in terms of local issues around planning applications and it has been used in the past. I have recently tasked officers to look into whether we can extend the scope of section 13, but it is fairly obvious that it is locally confined. The Community Infrastructure Levy – and there is a lot of work to go on behind the scenes in terms of the regulation – seems to be a sensible proposal for me in terms of larger developments, where we are able to extract some community good that can be spread around the Island, not just specific to that site. It may be educational, it may be infrastructure, I do not know, we will have to look at the scope in due

course but that is not a move in the wrong direction; it is a move in the right direction, in my opinion. I echo my hon. friend, Mr Shimmins' view on that, it may be structured so that it affects greenfield sites more than brownfield sites, but that is to be brought out in the regulation. There will be some debate over that, I am absolutely certain.

I think I was really shocked when I heard Hon. Mrs Caine's comments and Hon. Mr Shimmins' comments about we are trying to use these changes to wreck the planning system as it exists at the moment, wreak havoc on the environment and override public opinion. That is entirely incorrect, in the extreme. Environmental measures are very important and will remain important regardless of whether we have national policy directives, we have minor amendments or Community Infrastructure Levies, these are things that will go on. Under section 40 committees they were envisaged over 20 years ago and never brought in. I have yet to see, from an operational point of view, an overriding rationale behind them and I look forward to further debate on those in due course.

But these proposals, this Planning Bill, as a system, using Mrs Caine's words, to sort of wreak havoc on the present system and override the public: that is definitely not the aim of this Bill at all. It is a sensible, amending Bill, which brings forward proposals which, in my perspective, will enable the planning system to operate more efficiently, both for the general public and developers and define some of the things that we needed defining for some time.

Thank you, Mr Speaker.

The Speaker: I call on the Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I did not intend to speak this morning but I am brought to my feet by a number of the comments made. But I specifically want to just focus my contribution – because most of the necessary things have already been said – on the national policy directive issue. I just want to pick on two words, a sense of balance and trust. There have been comments here today that suggest that we cannot trust the Council of Ministers, that we cannot trust ourselves, that we should not trust future Houses. Well, in that case, we do not trust the electorate, simple, and we have to do that.

I want to go over to this issue of balance and there have been dark suggestions of inappropriate conduct in a variety of places about how future planning, and particularly the national policy directive will be interpreted and I have to reject that completely. The fact of the matter is that strategic plans and area plans are far too slow in their gestation. We have to keep up to date and we have to have within the hierarchy a mechanism to allow us to make important decisions with very careful deliberation and concern that benefit our society currently and in the future. And so if we do not do that we do not trust ourselves and that is utterly inappropriate.

So I think I will limit my remarks to that, except to say that the jury is out a little bit for me on the balance between community levies and section 13. I need to look at that just a little bit more closely before I can make a sensible contribution, because I have certain concerns there. But, Mr Speaker, let's trust ourselves and let's keep the balance right here.

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

Mr Thomas: Thank you, Mr Speaker.

I appreciate all the comments from all the Members and I will refer to them generally, usually. From time to time I might mention specific Members.

The first point is to remind people, or to tell people if they did not know this before, that all of the consultation responses were published on receipt with permission, just as they were for the action plan for planning reform consultation. So that system was used in this case. We

uploaded immediately on receipt planning consultation responses and also responses on this Bill to the consult.gov.im website.

The consultation response document was prepared a month or so ago and published to take out themes from the consultation. I just wanted to remind Hon. Members that no consultation can ever be a referendum; some consultations, if they are in surveys, have some sort of opinion poll-type aspect to them, but they are not really intended like that, they are not even that good at that. If they are an opinion poll we have got to balance the respondents in some way and we have got to have a large enough sample to be balancing the respondents.

So what consultations are – and particularly this type of consultation which is a stakeholder engagement – is a way to pick the brains of people around this Hon. House and Council upstairs to make sure that the legislation and policy develops taking into account all of that excellent input. That is what we have done.

So the second point I want to go onto is there are a great number of changes made to the Bill subsequent to the consultation, and that is thanks to the people who submitted evidence and it also should be recognised in terms of the mover's attempt and other people around the team that are bringing this Bill forward to the fact that they have looked very much at the consultation responses and responded to it.

So, for instance, after the consultation, in terms of national policy directives we have introduced the consultation framework; before the consultation there was no consultation about national policy directives. Also after the consultation we have introduced the concept of there being judicial review for six weeks after the NPDs are made by Tynwald, which was not there before the consultation. We have also introduced the idea that reasons have to be given for national policy directives which go some way to addressing the serious concern raised so eloquently by, particularly, the Chair of the Planning Committee, Member of DEFA, Member for Ayre and Michael, so helpfully. So that is one point I wanted to make.

If we go on now to the third general theme I want to make, it is that in some senses some things some people said in the debate seem to be slightly time-warped or lacking a little bit of knowledge of the detail of the existing legal framework, because some of the things said in the last three quarters of an hour or so were not actually strictly correct in terms of the existing law or the law as it will be in the future.

So, for instance, in terms of the general importance issues, I am not sure that Members realise that this Council of Ministers has never called in an application and, in fact, we have to go back to 2010 and Tesco's development when a serious issue was actually called in. So that, in itself, to me seems evidence that it is not the intention of Council of Ministers to start calling in applications.

The second point is I do not think it is known by all Members that when an application is called in it triggers a public inquiry, into which of course Members can actually make their submissions and there will be debate and the like. So that is an important point to note. I do not think all Members realised that subsequent to the consultation we changed the Bill such that all of the three paragraphs are needed to apply, so there is a clear 'and' for each of those three paragraphs. That is, I think, what made Mr Baker satisfied in that respect because those 'ands' were added subsequent to the consultation so it is now quite clear that each of them has got to apply, it has got to be exceptional in terms of the Strategic Plan, it has got to meet all of the criteria. So I just wanted to make sure that everybody knew that.

I also want to clarify something about the Section 40 committee, particularly in the light of the Hon. Member for Garff's comments about the Section 40 committee. Members should know that the paragraph in the section that deals with a Cabinet Office making an order about voluntary organisations' participation is completely unchanged by this Bill. Comments about that are irrelevant because we are not talking about any changes in this Bill; what we are talking about is the consultative body and Cabinet Office, as part of the development of this plan, has engaged substantially with interested parties.

We have set up a building conservation forum under Culture Vannin which brings people together. I have met regularly with the Department for Enterprise-created merger of all of the bodies working with developers in the construction industry. What used to be the Construction Forum and the Chamber of Commerce Construction Committee now have a monthly meeting and we have gone along with officers to regularly liaise with that body.

The Chamber of Commerce is another body which cares passionately about consultation and I have engaged with the Chamber of Commerce to find out their intentions for the future of planning. Manx Wildlife Trust has been in to see me a couple of times over the course of the preparation of this Bill to talk through national policy directives and what they might mean. So I just wanted to make sure that people understood that in terms of Section 40 committee.

Moving on to national policy directives, I want to make sure that everybody understands that a national policy directive will include reasons for the policy, so it needs to be well developed by the Council of Ministers. We do have to consult about it and it is going to be about such an important issue that I can imagine that being quite a large scale consultation.

Members should also realise that a national policy directive has effect for the period specified in the order under which it is issued or, if no period is specified, until revoked. So we can time limit national policy directives. There is another mechanism, which is that each time we remake part of the strategic plan – either an area plan or the overall strategic plan – we also in Cabinet Office have to consider whether the national policy directive is revoked because it has been included into the overall Strategic Plan, or it is not revoked. That all happened during and after the consultation.

The final general point I want to make is that Tynwald is at the heart of this. National policy directives have to be approved in Tynwald. I do not think all Members here understand as well that if planning applications are decided by the Council of Ministers because they are called in Tynwald can override the decision of the Council of Ministers. That is what the existing law says in terms of called-in applications for general importance.

Tynwald is at the heart of this. It is not people who are getting beyond themselves, people who are going too far; it is actually people who are saying, 'We need to revisit the planning system and we need to make sure it works for stakeholder organisations, for interested groups but for the Manx public, the Manx society, the Manx economy, the Manx environment in general terms. So they are the general points I want to make.

Specifically, I will address some questions that I was asked. I think I was asked along the way what specifically might national policy directives be made about? The first thing I would say is I hope next month to be launching a consultation about the regulations for national policy directives. That is the first step. So we will have a chance to look at the issues around the regulations for national policy directives.

The second point is in the action plan for planning reform there was a statement about likely early national policy directives, and what the action plan says is that we will be looking to ensure sustainable economic development to meet the community needs in urban and rural areas. So there is a hint about something to do with how development takes place in greenfield sites and also to deal with the brownfield sites issue. I can absolutely assure people that the intention would be to consult on those national policy directives widely.

I was asked a specific question about whether the Community Infrastructure Levy could be used for the brownfield case and that is covered in the action plan, because there is a specific commitment to use rates, compulsory purchase, planning permissions around car parks for brownfield site development, and community infrastructure levies seem to make a lot of sense to include in that list.

Okay, in terms of Mr Baker's very helpful comments and perhaps to juxtapose that with another former Chair of the Planning Committee, Mr Robertshaw, I do not think we can see the desire to reform the planning system as being just one for this administration. The last administration ended in July 2016 with two reports considered and approved at the last Tynwald

of the last administration. I chaired a Select Committee and our recommendations were approved, and from memory we had 18-20 or so recommendations.

Simultaneously, Government brought a report on reform of the planning system with recommendations and that was approved. In fact, ever since I have been on the Island – I arrived in the Island at the time of the Crow Report and all of the episodes around a particular development a bit down south – and planning, to my mind, and how politicians and how the general public can influence the strategic planning system, has been on the table for those 20 years, ever since the Crow Report.

I think the national policy directives, if we can work to address Mr Baker's concerns and everybody else in this Hon. House's concerns we can actually be a massive way forward, (**Mr Robertshaw:** Hear, hear.) because you know the minimum amount of time for a development for an area plan, for strategic plan reform, is probably something like 18 months. We are working on finessing the Area Plan for the North and West timetable, which we hope to launch in April as well – call for sites; and we are working on improving that process, making it more responsive. But the national policy directives, if handled properly – and that is what we want to do – can be a helpful way for the next administration politicians to actually decide what needs to be done to continue to keep our Island special so that the development of society and the economy and the environment is sustainable. I look forward to liaising with Mr Baker and we have already had very helpful meetings, as has been described.

Mr Hooper, Hon. Member for Ramsey, asked four very specific questions. I think I have addressed the one about general importance. I am pleased to discuss that more. Also I think he made a very good point about the potential use of the Section 40 committee. I have often thought to myself rather than me meeting and officers meeting each of these groups or organisations one by one, why don't we bring them all together?

Back in 1998 at the Second Reading and the clauses stage and the Third Reading when this Bill that we are amending was going through, the purpose for paragraph 1 and paragraph 2 of the Town and Country Planning Section 40 committee was to engage the committee, not on actual planning applications, not on strategic plans, but on evolving policies that needed to be put into orders and regulations.

It might well be that having changed the law so it reflects reality, we begin consultation on national policy directives, on the community infrastructure levy regulations, by constituting a small committee, genuinely a representative committee, to actually develop those regulations. I think through time the memory of why this law was written like it is has been lost because it is quite clear, if you go back to the original Second Reading and clauses debates about the Section 40 committee, the problem back at the end of the 1990s was that many of these individual groups did not think that their perspective was being passed through to Government and to Tynwald by ADCO, the representative body; because when you set up a representative body, one consultative body, it is quite easy for that consultative body and that representative body to develop a life of its own and an opinion of its own.

I think at the time there was a feeling that the actual organisations who have members who cared about these things were not having their voice heard inside the representative body and therefore Government was getting a biased perspective through only talking to one consultative body. But anyhow, it is on the table that this Minister thinks that as we develop important regulations for Community Infrastructure Levy, for national policy directives and for all the other regulations and orders that are in this arrangement. If the group of people can work together to come up with a consensus through such a body it would be a good idea to do it. If they prefer to carry on meeting individually so be it.

Mr Hooper also asked me to clarify the transitional provisions and I think I can do that in bold terms now, to say that they have all been carefully thought through. It is one of the areas that we have worked on most in terms of legal drafting, but I look forward to including the Hon. Member in the debate about those over the next couple of weeks before we get to the

clauses stage to discuss exactly what the various transitional provisions mean and what the impact will be for everybody who cares about the future of the Planning Committee.

Community Infrastructure Levy – I also had a question about that and I have answered that it will begin in terms of consultation.

Just one last question on the DoI and their statement that Community Infrastructure Levy was such an important thing that regulation shall be made. The first meeting I had this New Year – I cannot remember whether it was 2nd January, 3rd January, whenever it was – was with the DoI to talk through that very important submission. DEFA made a very important submission about community infrastructure levies; Manx National Heritage did; and many people in the private sector. Community Infrastructure Levy, and its connections with section 13 agreements, is a massive issue.

In my view – and the officers now know this – we have got to start the discussion now, or at least as soon as possible, about: how Community Infrastructure Levies might be used; who is going to pay them; how they are going to be paid; what the money raised would be for; what the governance of the arrangements is. That needs to start so that we can implement the action plan target of 2020 for implementation of these things.

With that, Mr Speaker, Hon. Members, I beg to move.

The Speaker: I put the question that the Town and Country Planning (Amendment) Bill 2019 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

5. LEAVE TO INTRODUCE

Private Member's Bill – Leasehold premises and compulsory purchases – Leave to introduce granted

The Hon. Member for Ramsey (Mr Hooper) to move:

That leave be given to introduce a Private Member's Bill to make further provision in relation to leasehold premises and to amend the Housing (Miscellaneous Provisions) Act 2011 in respect of compulsory purchases; and for connected purposes.

The Speaker: Item 5, leave to introduce, and I call on the Hon. Member for Ramsey, Mr Hooper, to move.

Mr Hooper: Thank very much, Mr Speaker.

Hon. Members, I rise today to ask leave to introduce a Bill aimed at some bite-sized reforms to our residential leasehold legislation.

Firstly, I would just like to clarify some terminology. Any reference I make here to leaseholders refers specifically to holders of long residential flat leaseholds; that is people who have purchased a residential flat under a long leasehold which is a lease over 21 years. This Bill specifically would not apply to commercial leaseholders.

Any references to the existing Act is a reference to the Housing (Miscellaneous Provisions) Act 2011 and the UK Act would be a reference to the UK Commonhold and Leasehold Reform Act 2002.

As Hon. Members will have seen from the very draft Bill and memo that I circulated, these proposals will come in two parts.

Firstly, the Bill will propose to ensure that leaseholders would have the unqualified right to assume management of their block of flats. I am sure all Hon. Members are aware Isle of Man law already has this provision and this right, but only where a landlord or management company has failed in their obligations. The conditions in the existing Act are quite onerous and require proving before a tribunal. In some ways this is quite good because it means we already have a process in place for assigning management rights to an organisation. It also means we have clear definitions for who should qualify for these rights, what sort of property should qualify, as well as what types of leaseholders.

Unfortunately, the downside is the current system often does not provide these leaseholders with a level playing field. These proposals would enable leaseholders to get together, form their own management company collectively, which I propose would follow the UK Act and the model that it sets out, and then they could apply to the tribunal for the management order. The tribunal can then follow its existing legal processes, check the leaseholders meet the existing qualifying conditions and then award the management order as they would ordinarily. Using the UK Act for the management company formation makes sense as it is a simple process, well-trialled that has been in place since 2002.

So where has this Bill come from? Why am I here? Simply put, I have had quite a lot of issues raised by constituents around the current processes and the fact that these rights are currently conditional on convincing a tribunal of wrongdoing on the part of a landlord. This means that even in situations where there has been, according to the tribunal, potentially criminal acts, tribunals have not awarded management orders. I am also aware of situations where tribunal decisions have been granted and yet no actual change has followed. Unfortunately, the leaseholders then do not have the resources to pursue court action and have no further leverage. Most modern leaseholds will come with a share in the freehold itself and a share in the management company, which means these leaseholders already have control over their property. But this is not the case for everyone, meaning the freeholder who is often an investor, not somebody living in the property, has control over the management of the property as well as things like service charge levels. Personally, I am of the view that where constituents raise issues with their MHKs and those issues can be rectified by making small legislative changes, we as MHKs should have the willingness to try and go through that process.

Giving leaseholders on the Isle of Man the ability to take over management of their own homes will do two things. Firstly, it will give them some leverage so they can go to their existing management company and collectively say, 'We are not happy and if you do not resolve these issues we will exercise our rights and take over management ourselves'. Secondly, it gives them the ability to enforce that leverage, should it become necessary. It is that second point that is most important, and it is the second point which currently many leaseholders feel they do not have the ability to actually exercise their rights and enforce that leverage.

I will be the first to admit there have to be safeguards. The first of which: I am proposing that the landlord would have a right to a seat at the table on the management company, meaning the landlord can protect their own interest in the building. The second of which: there would have to be a majority of leaseholders wishing to take over management and there would have to be an open and public process.

When it comes to disputes or the management company not fulfilling its obligations, luckily the existing legislation provides these safeguards. If a landlord or tenant is unhappy with any new management structure they can take the new management company to the tribunal and make their case to have the management order rescinded, amended or reallocated.

In essence then, the proposal that I am making will simply tip the balance in favour of leaseholders instead of the landlord, and as it is the leaseholders who are making their homes in these flats then it seems right to me it should be them that has the priority.

The second aspect of this Bill is that it will provide leaseholders with the right to purchase their freehold. This comes as well from discussion with constituents, not just of mine but of those from other constituencies. Some need to purchase their freehold to secure their property,

but the landlord is either not willing to sell or not willing to sell at a reasonable price. This can often be the case where a leasehold is coming to the end of its term, which can reduce the value of the property and make getting mortgages difficult, which further reduces the ability for these leaseholders to sell their property onwards.

I even had a conversation with one individual who advised if they had known when moving from the UK that they would not have the rights to purchase that they already have in the UK, they would not have bought their property; and another who is experiencing great difficulty in selling their leasehold because they are caught in this exact situation.

Again, the existing Manx legislation already has this right as a qualified right. Provided you can prove the landlord has defaulted on their obligations, there is a process whereby leaseholders can exercise the right to purchase the freehold. The proposal that I have laid before you simply removes these particular conditions, meaning the existing processes can be used along with all the protections and safeguards that currently exist in the law in order to enable leaseholders to purchase their freehold.

So, again, what are the main advantages to removing these conditions? Firstly, it gives them leverage so they can go to their landlord and start negotiations for purchase, knowing there is a statutory process they can fall back on if it becomes necessary. Secondly, and more importantly, it gives them the ability to enforce that leverage should it become necessary.

Again, there have to be safeguards. The advantage of using the existing Act is the process and safeguards already exist, as well as a process for determining value and settling disputes. So in my view there is no need to over complicate things. The UK is currently consulting on changes to their leasehold law that might include changes to their process, including, for example, a statutory way of calculating the value of the freehold.

Personally, I am not convinced that such a big step is needed on the Island. Giving leaseholders the right to manage and the right to purchase is a very small first step which can be made by making small changes to our law. Any wide-ranging or complex changes to leasehold law would be much better off dealt with by the Department of Infrastructure, which is why I am only proposing to tackle a small and bite-sized portion here.

The changes I am proposing should fit in with the Department of Infrastructure's plans for reform over the coming years and they do not fundamentally alter the landscape as they rely on existing processes already set out in Manx law. I am proposing that any changes would be consulted on and I fully intend to do that, as well as seeking formal feedback from the Department of Infrastructure after my very draft Bill has been vetted and updated by the Attorney General's Chambers. I have already sought some informal feedback and I would like to thank Minister Harmer and his team in the Housing Department for their input and feedback so far.

In short, Hon. Members, this proposal is about rebalancing rights for long leaseholders in residential flats, making those rights commensurate with the rights they would have if they were in the UK, but using our own existing Manx processes. I hope I have managed to outline why I think this is needed and the benefits it could bring, as well as the approach I propose to take should leave be granted today.

Mr Speaker, I beg to move.

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

Dr Allinson: Thank you, Mr Speaker.

I rise to second this motion that leave be given to introduce a Private Member's Bill.

Within Tynwald we deal with national and international issues: Brexit, GDPR, international sanctions; we have all signed up to the Programme for Government – that has to be one of the defining characteristics of this administration. However, as constituency MHKs we also come face to face with individual issues, individual problems, where the law is lacking, where the

procedure is lacking and where we wish to help to engage with those constituents and to make a difference, which is why most of us came to this House.

I see the role of Private Member's Bills in achieving this as extremely important. Whilst we will never lose track of the Programme for Government and that key fundamental move forward, we have to remember that on the side-lines there may be various issues that are not a high priority, that do not affect a huge amount of people, but for those individuals make a huge difference.

So I fully support my fellow Member for Ramsey for bringing this forward, because as has he, I have also sat down and met some of the people involved in disputes with management companies or trapped in tenancy agreements with freehold and leasehold disputes, which really do affect their lives. I think we should not lose track of the precious nature of our ability to bring in Private Member's Bills to make some of these subtle changes which are on the periphery of law, the periphery of policy, but can make a huge difference to individuals.

So whilst I accept that Private Member's Bills, whether they be about organ donation or no-fault divorce, perhaps produce extra demands on the Attorney General's office, I think they are inherently an important part of what we do in this House.

With that, I beg to second.

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker and I congratulate both the mover and the seconder for an excellent presentation justifying this request for leave to introduce which I will be fully supporting.

Just a few questions for the hon. mover to tackle in his response, especially in the light of the helpful comments made by Dr Allinson, the other Hon. Member for Ramsey, by way of connection between the activity on Programme for Government legislation and the Private Member's valuable thing.

At this stage I also want to acknowledge that the other Hon. Member for Ramsey, the mover of this request, and I have been talking about this very important issue, which is important in Douglas as well, for a number of years.

The first question is: where is the priority for this particular aspect of housing relative to some other housing legislation? It sounds like the Hon. Member has already been discussing how it fits in with the Landlord and Tenant Bill and other follow-on aspects of that with the Department of Infrastructure Housing Division, but I know the Office of Fair Trading is also very keen on bringing forward estate agents' legislation that has been kicking around. The last time I can see it having been introduced into the House of Keys was in 1998, but it has been a festering sore for 20 or 30 years. The Department for Enterprise, the Hon. Member's own Department, has actually produced for me a paper on lots of changes that are needed to property law and land registry law around that, so I wanted to see how this is prioritised relative to that issue. I am supportive but I just wanted to make sure the Hon. Member has thought through the connections with other pieces of legislation across Government's intentions.

The second point is it sounds like the Hon. Member intends to do his own consultation. I know Peter Karran was always very good at doing his own consultations, sending out his own letters and actually dealing with that sort of thing very well. So I would like reassurance, or at least more information, from the hon. mover to what extent he plans to ask for Government resources in terms of consultation, because we are quite pressed at the Central Government these days and it would be very reassuring to hear that the Hon. Member plans to continue to handle consultation on his own in that way, or perhaps with the support of Tynwald resources.

The final point is about drafting. The Hon. Member has made a good shot already, it seems, to draft his own Bill and I wondered obviously, if leave is given today we have got until the end of the next parliamentary year, when the Hon. Member would expect legislative drafting time to be requested from the Attorney General's Chambers? Because obviously each November we

bring to the Hon. Court our intentions for the drafting resources, for the use of drafting resources. This year in particular resources were very tight and we had to rank pieces of legislation, and we are now having to give people in Government the bad news that we cannot do everything, we have got to prioritise things. So I just wanted some indication from the hon. mover when he planned to actually use legislative drafting resources which are shared between Tynwald and Government?

The Speaker: Hon. Member for Glenfaba and Peel, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

I rise generally to support and welcome the Member who is introducing the Bill. It is a defined issue but it is across Island, and a very specific issue and I know a lot of work has been done in that area.

I think, from the Department's point of view, obviously just to reflect what the previous speaker has talked about, our focus must be and has to be on the Landlord Registration Bill because of the importance that that has in many areas of society, including those that are vulnerable and in very different status. So that is where our priority and focus has been.

I hope that the Member has those resources to take his Bill through, but obviously – and where there is commentary we can obviously help as a Department, because I do think it is an important issue that has come up.

With that, I leave my comments.

Thank you.

The Speaker: Mover to reply.

Mr Hooper: Thank you very much, Mr Speaker.

I will deal with Mr Thomas first, I suppose. I would like to thank you for your comments and for your support, Minister.

Where does this sit in the national priority? As my hon. colleague from Ramsey, Dr Allinson, said, this is about national issues versus individual constituency issues – making a difference to people who are perhaps sitting on the periphery of where our normal priorities lie. The Department of Infrastructure, as the Minister has helpfully confirmed, have their priorities already. Again, other priorities, as well as the Landlord and Tenant Bill, will be estate agent legislation, land registry law; these are very big issues. The issue I am trying to address here is a discrete and specific issue that can be addressed through a Private Member's Bill, so when it comes to priorities this is definitely on the periphery of our national priorities, which is why I think it is the right thing to be doing through a Private Member's process.

When it comes to the consultation I fully intend to utilise the Government's very helpful consultation hub, as has been done with all the other Private Member's consultations to date. Of course I will welcome any support his Department is able to provide, but I certainly do not intend to rely on any Government resources pushing through a Private Member's Bill.

How do I intend to fit this in with drafting time? We have been reassured time and time again there is more than adequate drafting resource within Chambers, so I have absolutely no concerns and anticipate there being more than adequate drafting time being able to be directed and allocated to a Private Member's Bill. Having said that, I do fully intend to make sure that my process works with the Attorney General's Chambers' resources and I do not intend to put them under any additional unnecessary pressure.

I would like to thank Ray Hammer again for his comments, the Minister, and for his support and entirely would like to say, yes, I do intend to work with the Department on this. Although I do appreciate it is not one of their priorities, I do hope I can fit this Bill in around the periphery of the work they are trying to do around landlord and tenants.

With that, Mr Speaker, I beg to move.

The Speaker: I put the question that the Hon. Member for Ramsey, Mr Hooper, be given leave to introduce a Private Member's Bill to make further provision in relation to leasehold premises and to amend the Housing (Miscellaneous Provisions) Act 2011 in respect of compulsory purchases and for connected purposes. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

6. CONSIDERATION OF CLAUSES

6.1. Charities Registration and Regulation Bill 2018 – Consideration of clauses commenced

Mr Thomas to move.

The Speaker: We turn to Item 6 and the consideration of clauses of the Charities Registration and Regulation Bill 2018. I call Mr Thomas to move.

Mr Thomas: Thank you very much, Mr Speaker.

With your agreement, I would like to move clauses 1 and 2 together. I am happy to have them voted on separately if Mr Speaker or Hon. Members wish. The clauses are introductory.

Clause 1 gives the short title of the resulting Act of Tynwald. Clause 2 provides for the Act to be brought into operation by one or more orders made by the Attorney General. The power includes provision to make consequential, incidental, supplementary and transitional provisions in connection with its commencement.

Mr Speaker, I beg to move that clauses 1 and 2 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 1 and 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I understand that clause 3 is to be taken at the end, Mr Thomas. We turn to clause 4.

Mr Thomas: Mr Speaker, with your leave and thank you to the House for that, I will now move to Part 2, which comprises clauses 4 to 8 and makes provision as regards the definition of 'charity' and 'charitable purpose'.

Clause 4 restates the existing definition of 'charity', which 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 but not including an ecclesiastical charity within the meaning of Schedule 3 to the Church Act 1992 or a trust of property falling within paragraph 1(2) of that Schedule.

As I explained during the Second Reading, the exemption from registration for ecclesiastical charities has its origins in the Public Charities Act 1922, which first created the requirement for charities to register in the Isle of Man. Ecclesiastical charities are those set out in Schedule 2 to the Church Act 1992, which Act is concerned with matters regarding the Church of England. Exemption from registration in relation to specified religious charities which do not fall within the definition of ecclesiastical charities but which hold property or funds of the Church of

England, the Roman Catholic Church, the Methodist Church, the United Reformed Church and the Society of Friends is currently provided by the Religious Charities Regulations 1999, made under section 2(3) of the Charities Registration Act 1989. A similar power to make regulations exempting charities from the requirement to register is contained in clause 10(3) of the Bill.

Exemption from being on the register, however, does not mean exemption from being regulated. This is a very important point. This is because the powers of the Attorney General to act for the protection of charities contained in Part 8 of the Bill, which will re-enact existing statutory powers, including the power to institute inquiries and to seek orders from the court to remove or suspend trustees, to appoint replacement trustees and to take steps to control the use of funds, apply to all institutions established for charitable purposes and not just to those which are registered charities. A charity is a status and that power is general across the piece.

As I indicated during the Second Reading, it is not the purpose of the Bill to change the landscape concerning registration. The Hon. Member, Mr Hooper, has tabled a number of amendments to the Bill, namely amendment numbers 1, 2, 3, 12 and 17, the effect of which would be to remove the exemption for ecclesiastical charities from the Bill and, instead, to insert it into the Religious Charities Regulations 1999.

I will be arguing against those amendments because, whilst they may be seen as nothing more than preserving the *status quo*, the effect would be to change the nature of the exemption for ecclesiastical charities, which has been in primary legislation since 1922, to one in regulations, meaning that the exemption could be removed without the necessity to bring forward an amendment to primary legislation, i.e. without the opportunity for a full debate on the principle that taking legislation through this Branch and the other place requires.

Given that the removal of the exempt status from ecclesiastical charities would represent a significant change to the landscape which was not a matter raised during the consultation on the Bill, no change should be contemplated to the status of ecclesiastical charities, not even one which appears on its face to retain the *status quo*, without having carried out a public consultation exercise on this specific issue.

Members might be reassured that, for this reason, I am not going to support this amendment but I can pledge with the support of the Attorney General's Chamber to launch a public consultation exercise as soon as possible – perhaps even at the end of this week – which will seek views not only as to whether any charities established for the advancement of religion, including ecclesiastical charities and the religious bodies which are currently exempt from registration under the Religious Charities Regulations, should be exempt from registration, but also whether any other category of charity, including small charities, should also be exempt.

So, Mr Speaker, may I suggest that amendments 2 and 17, namely the amendment to clause 4 and insertion of New Clause 3, should be taken together?

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

The Speaker: I call on Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: Thank you.

Amendment 2 in the name of Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

This amendment forms part of a series of linked amendments that intends to move the ecclesiastical exemption from primary into secondary law. So I will talk about broad principles of the whole series of amendments first, because if this is not approved there is no point talking about all the other ones.

These amendments were all moved in another place but were deferred by that body pending debate in this House.

Specifically the amendment to clause 4 will remove the exemption itself from the definition of a charity. Why should we move this exemption? Firstly, every other exemption in this Bill sits inside the regulations, including all the other religious exemptions, so this provides parity of treatment. I would like to be absolutely clear on this; the Minister just stated that this would be a significant change to the regulatory landscape; that is fundamentally not true and that was confirmed by the Attorney General in another place.

Any charity currently exempt under this exemption would still be exempt if these amendments are approved; there will be no change, in effect. When this was debated in another place, the Lord Bishop helpfully outlined the structure of Church charities and I will summarise his comments here:

> … the principal financial institution of the Manx Church is the Diocesan Board of Finance of the Diocese of Sodor and Mann ... in addition to funds acquired in its own name the Diocesan Board of Finance, the DBF, is now also a trustee of funds formerly held by the Church Commissioners for the Isle of Man.
> The main financial bodies at parochial level are the Parochial Church Councils (PCCs) … And the incumbent or the vicar or rector and the churchwardens of each ecclesiastical parish may also acquire and hold property on trust. That function predates the creation of PCCs and most parochial trusts are administered by incumbents and churchwardens.
> There are a few cases where property or funds are held for ecclesiastical purposes by other trustees.'

The Bishop then went on to highlight that all the main bodies are exempted from the registration and regulation requirements by virtue of regulations. The Minister tried to confirm this in his opening remarks, but again was slightly wide of the post. The exemptions from registration which are included in the Bill do not include the powers of the Attorney General to regulate charities exempted by virtue of the Religious Charities Regulations, only charities exempted by virtue of the ecclesiastical exemption. At least that is my understanding of the definition in Part 8 that specifies:

> This section applies to an ecclesiastical charity and to a trust of property falling within paragraph 1(2) of Schedule 3 of the Church Act 1992 as it does to a registered charity.

No mention of all the charities exempted by the regulations. Again I may be wrong but that is my plain text reading. The Religious Charities Regulations 1999 exempt the DBF, the Board of Finance, the PCCs, the Church Councils and the incumbents and churchwardens from the requirement to register. These are the main Church bodies. So all these main Church bodies, including those which deal with church buildings and burial grounds, would appear to be exempted predominantly by virtue of regulation, not by virtue of being an ecclesiastical charity.

That is what I find quite strange here. The main Church of England bodies are all exempted by virtue of regulation, not by primary law and not by this ecclesiastical exemption. So if all the main Church of England bodies are exempted by regulation then it would seem that the ecclesiastical exemption would apply to those few cases where property or funds are held by other trustees. To my mind it makes sense that all bodies sitting under the Church of England are regulated in the same way and are exempted from regulation in the same way.

So all I am talking about here is parity of treatment, making sure that all those Church of England bodies are exempted in one document, using one method and one process. That is all these amendments will do.

Going forward, I would suggest that there is an undertaking, an exercise, to see how the religious charities' exemptions are used on the Island and whether they are appropriate in their current form. But that would be very much a secondary step that Tynwald would have to decide on at a later date. If Tynwald does want to look at making a future change to the landscape there would need to be a body of work as well as a consultation to establish, firstly, if any change is needed, and secondly, if it is appropriate. This would be a policy change and this Bill

does not change policy, so it would not be right to try and change anything major in this Bill without proper consultation.

In order for that second step to happen, the Minister has already mentioned there will be a consultation on this process. If he intends to consult on it then it is much better for this exemption to be in secondary regulations rather than in the Bill itself. So if Tynwald wants to change it Tynwald can do that through an open debate in Tynwald, changing secondary law without having to go through the primary process.

It was quite entertaining to listen to the Minister's comments that placing these regulations and these exemptions into secondary law would remove the ability to have open and frank debate in a parliament. That was entertaining seeing as he is the main driver for pushing more and more things into secondary legislation through Tynwald. Him being on the opposite side of this argument for a change definitely made me chuckle.

I want to be absolutely clear, though, the linked series of amendments that I am proposing today are not asking Tynwald to consult, they are not asking Tynwald to change anything, they are not asking anyone to do a piece of work; that is my personal view, that that is not what the amendments are doing. All the amendments are doing is moving the exemption from primary law into regulations where it will sit alongside all the other regulations. It is absolutely not my intention to place any increased burden on small charitable trusts that do not take in large sums of public money, which would appear to be the case for the majority of trusts that would be making use of this particular exemption.

So for clarity, these amendments will provide parity of treatment for all Church of England charitable bodies, including parity for those classed as ecclesiastical charities with all of the major Church of England bodies, such as the Board of Finance, the Parochial Church Councils and the incumbents and churchwardens. These amendments do not fundamentally alter the landscape. Any entity currently exempted will still be exempted. The Attorney General stated in another place the amendments tabled cause no concern with reference to maintaining the *status quo* which we have at the moment.

Mr Speaker, I beg to move the amendment to clause 4:

Amendment to clause 4
2. Page 17, omit lines 29 to 32.
In consequence of this amendment, omit '(1)' at the beginning of the clause.

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

Mr Shimmins: Thank you, Mr Speaker.

I rise to second the amendment and would just say this is about consistency. I listened with some interest to the fuzzy logic applied by the Minister for Policy and Reform and a kind of pot calling the kettle black came to mind. But this is about consistency. It is a sensible thing to do and I fully support it.

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

Mr Cannan: Thank you very much, Mr Speaker.

I rise to support my hon. colleague, the Minister, bringing forward the Charities Registration and Regulation Bill 2018 and I support the view that the amendments from Mr Hooper should not be supported at this stage, even if they are well intentioned and in essence appear to make sense. Perhaps I should remind the Hon. Member that the road to Hell is paved with good intentions and perhaps apt when you are talking about this particular Bill.

I think the main point for me is that, as the Hon. Member who moved these amendments has clearly and concisely pointed out, this is actually quite a complicated area and Church law,

ecclesiastical law, has its own set of rules and regulations. I think that is why it has purposely not being included and clearly not being included within this Bill.

But, for me, it was his words actually in the previous discussion that brought it home to me, when he asked the Minister next to me, 'What consultation and engagement has taken place?' What consultation and engagement has actually taken place with the Church on this matter? There has certainly been no consultation with the Chairman of the Ecclesiastical Committee – no consultation with me. I just worry that when we start bringing forward these seemingly well-intentioned moves that actually we do have unintended consequences.

I do not wish to have added bureaucracy any more than anybody does on small charities performing a specific function that are in essence already under law or already under regulation. I think it would be important that we did, if we are going to effectively change the basis on which ecclesiastical charities are regulated, or potentially regulated, that we do have a proper consultation period. For me, we just really do not understand, I think, properly or have not properly gone through a process of ensuring that what we are intending to do, what might seem logical is in fact logical and will not cause problems, or at least have the threat of causing problems, for what might be very well-intentioned, small charitable trusts, property, connected with the Church and that may have application for our constituents in a way that we have not intended. That may even extend to small coffee mornings that are raising charitable funds for the Church or for the parish hall.

So I would urge caution. Personally, I can understand why the Hon. Member wants to do this, because it seems logical, but as the Chairman of the Ecclesiastical Committee it is not something that we have considered. I do think that the views of the PCC, the diocesan bodies, should be sought before we start potentially adding the threat of causing confusion or adding bureaucracy into this specific area. This is not a fact of saying that exemption does not mean to say that these charities or small charities or ecclesiastical charities are not unregulated, because that is absolutely not the case.

The Speaker: Hon. Member for Glenfaba and Peel, Mr Harmer.

Mr Harmer: Thank you.

I just rise to support those comments.

I think whilst well intentioned, the danger is it does inadvertently change the landscape because going from primary to secondary fundamentally puts that threat to the charities and we really do not know what we are dealing with here. We are not actually fixing a perceived problem or an issue that has come up, we are talking about very small vulnerable charities and I am well aware of the pressures, or the perceived pressures even, that GDPR has put on certain charities just as to whether they continue to exist, whether they continue to function.

So my view is that you know this was a very technical Bill, you can already hear in the language being used how technical and detailed it is, that anything of this nature should really receive proper consultation, which is absolutely due. This is why it was not in the Bill and I think when I hear concerns being raised by the Bishop and so forth, however well explained away, they still rise in me a very deep concern. So there is a time to do this, there is a time to consult, but I think moving it from primary to secondary does not allow that proper consultation and also puts that threat to charities that really are just trying to do their day-to-day business.

With that, I finish.

The Speaker: Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

If I can just expand on the previous speaker's comments, that he referred to with the Lord Bishop. I just pick a few of them out and caution this Hon. House from barging into this area

without careful consultation and consideration. So effectively supporting the mover rather than the amendment.

The Lord Bishop made a few points here and forgive me for repeating them. He said:

> … subjecting ecclesiastical charities to regulation under the Bill would, in nearly all cases, serve only to duplicate financial controls which already apply to them under church legislation.

He went on to say:

> The task of identifying their trust instruments for the purpose of registration would take great expense and months or years of work by unpaid volunteers.

Then the final comment I would ask Members to consider:

> There is a greater danger for unpaid officials in that they may be unaware that they are trustees and yet failure to register or to file accounts would render them liable to criminal penalties.

So in other words, we need to consider things very carefully before we start throwing these sort of amendments about.

Thank you, Mr Speaker.

The Speaker: I call on Mr Hooper to reply to the debate on the amendment.

Mr Hooper: Thank you very much, Mr Speaker.

First things first, let's try addressing the first set of comments that were made. The Attorney General, who I suspect has a greater understanding of charity law than any Hon. Member in this room, stated quite clearly these amendments do not change the *status quo*. The Attorney General confirmed in another place he has no concern with these in reference to maintaining the *status quo*. He stated:

> The proposed amendments, to which I raise no objection, will maintain the *status quo*.

So if we want to talk about the amendments themselves, which is all I am talking about here, they make no change to the landscape, they maintain the *status quo*. They do not change the basis of regulation for small ecclesiastical charities. So park all of those objections because they are based on absolutely nothing.

I am really glad to hear the Minister for the Treasury and the Minister for Infrastructure raise concerns about small trusts, small charities, because later on in this very Bill I am proposing to bring an exemption for small trusts and small charities, and I look forward to their support bringing exemptions for small charities later on at clause 46.

Concerns raised by Mr Robertshaw are valid – the concerns the Bishop raised. I absolutely, totally agree that subjecting small ecclesiastical charities to regulation would place them with an increased burden. Thankfully though, these amendments do not do that. These amendments do not place ecclesiastical charities subject to regulation or registration requirements. They do not change the landscape. They do not change the *status quo*. They are exempt today, they will be exempt tomorrow. That is exactly what happens with these amendments.

The purpose of this registration would create years of work – it would. Again, these amendments do not do that. They do not require these charities to be registered. They do not change anything. They maintain the *status quo*.

I do not really know what else I can say, Hon. Members. The objections that have been raised today talk about things which actually are not relevant at all. I have already said we should consult on any policy changes. This is not a policy change; this is simply moving the exemptions into a place where we can have that consultation.

The Minister for Policy and Reform earlier made reference to drafting resources and restrictions, so he intends to consult and then bring another primary Bill further down the line to make these changes – whereas if we move them into secondary, if he consults and wants to make changes, that is simply a Tynwald secondary piece of legislation which is much easier and quicker to draft. (**A Member:** Hear, hear.)

Again, logically it makes sense to place all the exemptions in the same place to enable that consultation to take place. I do not really know what else I can say. The Attorney General was clear. The Bishop's concerns are all absolutely valid. But unfortunately we are not changing regulatory nature here, we are not placing any regulatory burden on those small ecclesiastical charities, so there will be no change. So those concerns, whilst well-founded, would only apply at a later date if Tynwald did decide to place these ecclesiastical charities underneath the regulatory regime that this Bill sets out.

With that, Mr Speaker, I beg to move the amendment to clause 4.

The Speaker: Mr Thomas to reply to the clause.

Mr Thomas: Thank you very much, Mr Speaker, and to the hon. mover of the amendments for having allowed this important debate to take place by bringing the amendments.

I want to thank all the people who have spoken, particularly Mr Robertshaw and the two Ministers who have spoken about how this, although it is not a change of practice, is a major change of policy.

The point I want to say, particularly about that, is that things are not 'broke'. No evidence has been offered that we have got a problem that needs to be tackled here. The justification for the issue is parity of treatment – consistency – and the point I would like to make is I phoned around quite a few of the people who submitted evidence to the consultation to ask them what they meant when they said, 'At some point we need to review charities law. Was this a major issue for you?' and it really wasn't. There are many other issues that are much more important in terms of reviewing the substance of charities, and that word is used deliberately, not this one. But if we are going to review this one it is going to suck up resources, because what we are talking about, as I understand it, in the UK is a change to the Local Government Act in 1894, if the Charity Commission of England and Wales is accurate in terms of its definition, whereby a regime was put in place that has been used.

We are talking about changing relationships between the state and the religious bodies, so major changes of policy need to be considered properly in the Branches. Mr Hooper made the point of discourse of debate to say that he and I will both be using this episode, whatever the outcome, in future when we discuss primary and secondary legislation. But the point is here, this is really a major policy change and it needs to be in the Branches after a proper consultation and it needs to be prioritised alongside other pieces of policy development and legislation. The main point is if it is not 'broke', we do not need to fix anything.

Just for the point of clarity then, that is what the Attorney General was saying, I believe, it is not going to change practice but it is still a major change in policy. Also, just for completeness, Mr Hooper – a good stab at interpreting ecclesiastical and religious legislation and charities legislation, but I understand he is actually wrong as regards the effect of Part 8 and that clause 36 relates only to one specific power of the Attorney General and his powers under the remainder of Part 8 are much wider.

I also want to compliment the mover of the amendment because he peppered his justification with phrases like, 'It would seem,' and, 'It would appear to be the case,' and, 'I may be wrong'. My point is he may be wrong, it might seem but it might not be the reality. What we need to do is we need to put this into the proper development of policy in its priority place and we need to basically begin the engagement about this very important issue, as is happening in the United Kingdom, and I urge Members to vote against the amendment today, to support the Bill as drafted. I do pledge that we will make a consultation available about this point and new

points, and in a year or so we can come back to this question if issues arise in the consultation that need to be addressed.

I beg to move.

The Speaker: I will put the question about amendment 2 first and, as has been pointed out, amendments 1, 2, 3, 12 and 17 are connected –

Mr Thomas: New Clause 3 as well.

The Secretary: That is New Clause 3 – amendment 17.

The Speaker: Amendment 17 is New Clause 3.

So depending on what happens here, you need to consider the impact of that throughout the rest of the Bill.

I put the question first that amendment 2 in the name of Mr Hooper stand part of this clause. Those in favour, please say aye; against, no. The noes have it.

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

FOR	**AGAINST**
Dr Allinson	Mr Ashford
Miss Bettison	Mr Baker
Mrs Caine	Mr Boot
Mr Hooper	Mr Callister
Mr Perkins	Mr Cannan
Mr Shimmins	Mrs Corlett
	Mr Cregeen
	Mr Harmer
	Mr Moorhouse
	Mr Peake
	Mr Quayle
	Mr Robertshaw
	Mr Skelly
	Mr Speaker
	Mr Thomas

The Speaker: There are 6 for, 15 against. The noes have it. The noes have it. Therefore amendments 1, 3, 12 and 17 also fall.

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.

Clauses 5 to 7, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

With your agreement, as you say, I would like to move clauses 5 to 7 together.

The 1962 Act provides that 'charitable purposes' means 'purposes which are exclusively charitable according to the laws of the Isle of Man'. As the only statutory provisions which describe charitable purposes are the Recreational Charities (Isle of Man) Act 1960 and section 2 of the 1962 Act, the primary description and interpretation of what is charitable under Manx law has been provided by the High Court, in particular in the judgments *In re Costain (1961)* and *In re Ring (1962)*.

In considering the interpretation of 'charitable' in the Island, the court has primarily adopted the principles which had been developed by the English courts, albeit indicating that Scottish and Irish cases could also be treated as guides. There are no reported cases, however, in which either Scottish or Irish precedents have been considered.

Thus, despite the learned Deemster having accepted, *In re Ring*, as substantially correct the contention that the law of the Isle of Man, 'was more liberal in interpreting what was charitable, and in any event not narrower, than the interpretation which English law had put on the Statute of Elizabeth', in practice it is the English courts' interpretation to which regard has been had in cases to which the statutory provisions in the Recreational Charities (Isle of Man) Act 1960 and section 2 of the 1962 Act do not apply.

Prior to the enactment of the Charities Act 2006 of Parliament, the definition of 'charitable purposes' had been developed entirely through case law having regard to the preamble to the Statute of Charitable Uses 1601, also known as the Statute of Elizabeth. The preamble, which did not form part of the statute law as it was not in the body of the Act, contained a list of purposes or activities which the State believed were of general benefit to society, and to which the State wanted to encourage private contributions. The courts, in considering whether or not a particular purpose was charitable in law, have tended to look for an analogy between the purpose under consideration and the 1601 list, and to recognise the purpose as charitable if an analogy with the 1601 list could be found. This resulted in the classification by Lord Macnaghten in Pemsel's case 1891, of 'charitable purposes' into four principal heads, namely: (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion; and (4) other purposes beneficial to the community not falling under any of the preceding heads.

It is on this fourth head, having also had regard to the preamble, that the courts have relied in holding to be charitable, well-recognised purposes, such as the relief of elderly persons, the relief of ill-health, the care of animals and the preservation of the environment.

With the passing of the 2006 Act, these principal heads of charity were codified and expanded into a list of 13 descriptions of purposes, which preserved those purposes which had already been recognised as being charitable by the English courts as well as broadening the meaning of 'charitable purpose', in particular by including within the list 'the advancement of amateur sport'. Prior to the 2006 Act, such a purpose was only deemed to be charitable if it could be shown to fall within accepted charitable purposes, such as the promotion of education, the promotion of public health or the provision of recreational facilities in the interests of social welfare.

Although the Manx courts can still have regard to English case law in determining whether a particular purpose can be said to be charitable where that purpose was deemed to be charitable in England and Wales prior to 2006, they cannot adopt a purpose which has only become charitable in England and Wales as a consequence of its inclusion in the statutory list. This means that a *bona fide* charity established in England and Wales may now be unable to carry out any activities in the Island.

In order to address this potential difficulty, clause 5 sets out a definition of 'charitable purpose' which requires the purpose to be one included in the list contained in clause 6, which includes all of the purposes which are presently applicable in England and Wales, as well as preserving the purposes recognised by the Manx statutory provisions to which I have already referred.

The new definition of 'charitable purpose' includes the requirement adopted by the 2006 Act that the purpose must be for the public benefit, as described in clause 7. Under the existing law, when the status, charitable or non-charitable, of an organisation established for the relief of poverty, the advancement of education, or the advancement of religion is being considered, the organisation's purpose is presumed to be for the public benefit unless there is evidence that it is not for the public benefit. For organisations established for all other purposes, the opposite is the case. Subsection (2) abolishes this presumption and puts all charitable purposes on the same footing. Subsection (3) makes clear that the meaning of the term 'public benefit' is, and remains, that which has been developed under the common law.

Mr Speaker, I beg to move that clauses 5 to 7 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I am quite happy to second this part. These are some of the fundamental principles of this new Bill and are extremely important in terms of definition of purpose to align us not only with the United Kingdom but also to set out for ourselves quite clearly what we see as charities.

Thank you.

A Member: Hear, hear.

The Speaker: I put the question that clauses 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.

Clause 8, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Clause 8, which is also in Part 2, re-enacts the existing law which provides that it is an offence for an institution to hold itself out as being a charity unless it is a registered charity or a charity exempt from the requirement to register. One of the reasons for this is to prevent an institution from claiming, or appearing, to be a charity when it is not in fact established for charitable purposes. It is also to prevent a foreign charity from carrying on activities within the Island if it does not meet the criteria for registering as a Manx charity and, thus, be subject to regulation here. The existing penalties on conviction are being retained.

Mr Speaker, I beg to move that clause 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 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Thomas.

Mr Thomas:

Clauses 9 to 15, which comprise Part 3, concern the continuation and maintenance of the register and the registration process. I turn first to clause 9.

Although the 1989 Act does provide a requirement for a charity in the Island to register by filing a 'statement' in the General Registry, it does not provide the clear *vires* for the establishment and operation of a register which are necessary in a modern world. Accordingly, clause 9(1) provides for there to continue to be a register, to be kept by the Attorney General. The effect of this will be to combine the role of registrar with the Attorney General's existing role as regulator, thus reflecting the position in England and Wales, Scotland, Northern Ireland and Jersey, where those roles are combined in the respective Charity Commissions.

As the register is essentially nothing more than a list of institutions and a repository of certain information concerning them, the more significant role is that of the regulator. Although the registrar accepts institutions onto the register if he or she is satisfied that they have the necessary characteristics required by law, it is the regulator who is responsible for ensuring that they continue to satisfy the requirements and that the necessary steps are taken if they do not. This can include obtaining a declaration from the court that an institution is not established for charitable purposes, in which case it must be removed from the register. The *vires* to make such applications, and to carry out any necessary enquiries, has always been vested in the regulator rather than the registrar. Of the two roles, it is the role of regulator that has primacy. Thus, combining them both in the Attorney General, whose statutory role as regulator of Manx charities dates from 1922, would not result in an inappropriate vesting of powers in that office.

It may be helpful if I remind Hon. Members that the only significant change to the Attorney General's role under the existing law is the vesting in him of the role of registrar and the function of making the secondary legislation, which is primarily concerned with the structure and operation of the register. The prosecutorial function already resides with him, which is confirmed not only by the requirement under the 1989 Act that he must personally consent to any prosecution but also, as a consequence of Schedule 8 to the Criminal Justice Act 2001, all prosecutions on behalf of Government Departments, Statutory Boards and Offices are taken in the Attorney General's name by prosecutors in his Chambers.

Any decision to prosecute, whether under the general criminal law or in a regulatory context, requires the application of a two-stage test: firstly, whether there is sufficient evidence available to afford a reasonable prospect of conviction; and, secondly, whether a prosecution is in the public interest. In the context of regulating charities, I can indicate that it has always been the approach of the Attorney General that the public interest requires prosecution to be considered as a last resort, e.g. in those cases where the breach is incapable of rectification, the breach has arisen, or continues, as a consequence of a deliberate act on the part of the trustees or there is some other evidence of *mal fides*. Wherever possible, the Attorney General and his staff work with the trustees to rectify the breach.

The remaining provisions of clause 9 set out the information which must be contained in the register and enable the Attorney General to prescribe the particulars of the charity which are to be included. Clause 9(3) provides that the register is public except to the extent prescribed by regulations made by the Attorney General under clause 9(4). This will enable the necessary balance to be struck between the public interest and an individual's right to privacy. It will also enable all details about certain trustees to be kept private; for example, in circumstances where there is a genuine risk to them in being identifiable on a public register.

Mr Speaker, do you mind if I talk to the amendment in advance?

The Speaker: In anticipation … better that you do not.

Mr Thomas: Okay.

I beg to move.

The Speaker: Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

This is an amendment to clause 9, which deals specifically with the requirements to make the register public. The intention behind this amendment is to make these requirements slightly more comprehensive than they are already. The publicity requirement simply says, 'The register is to be public and is to be accessible in such a manner and at such times as the Attorney General may determine, but that is extremely broad.

The amendment that I am proposing firstly requires the register be open to public inspection at all reasonable times; it also requires that the register must include entries that have been cancelled when institutions are removed from the register – much in the same way that dissolved companies still exist on the Companies Register. It is a similar approach here. There is a provision later on in this Bill which enables the Attorney General to collect and maintain data in such form as they feel appropriate, which may include non-documentary form. This amendment, again, makes specific reference to any information that is contained in the register

that is not held in documentary form, is also required to be open to public inspection at all reasonable times.

The amendment itself also includes some specifics from the UK Charities Act that are, again, more specific around the types of information that are being provided to the Attorney General that must be public. Again, there is a repetition here of the exemptions and the ability of the Attorney General to prescribe classes of information which are not to be publicised. As the Minister has already outlined, there is good reason why that power may be used.

Mr Speaker, I beg to move amendment 4:

Amendment to clause 9

4. Page 21, for lines 9 to 14 substitute—

"(3) The register (including the entries cancelled when institutions are removed from the register) is to be public and must be open to public inspection at all reasonable times.

(4) If any information contained in the register is not in documentary form, subsection (1) is to be read as requiring the information to be available for public inspection in legible form at all reasonable times.

(5) Copies (or particulars) of the trusts of any registered charity as supplied to the Attorney General under this act must, so long as the charity remains on the register—

(a) be kept by the Attorney General, and

(b) be open to public inspection at all reasonable times.

(6) If a copy of a document relating to a registered charity—

(a) is not required to be supplied to the Attorney General as the result of this act, but

(b) is in the Attorney General's possession,

a copy of the document must be open to inspection under subsection (4) as if supplied to the Attorney General under this Act.

(7) Despite anything in subsections (3) to (6), the Attorney General may prescribe information or classes of information which are not to be made available except in such circumstances and to such persons as may be prescribed.

Tynwald procedure —approval required.".

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

I beg to second. These bring consistency with the Companies Registry and also the United Kingdom. It seems to be sensible.

The Speaker: Mr Thomas, to the amendment.

Mr Thomas: Thank you, Mr Speaker.

I appreciate the amendment because this is an important discussion we are about to have. I will be supporting a couple of Mr Hooper's amendments perhaps a bit later on, but this is not one I can support.

Essentially, the amendment tabled to clause 9 makes additional provision regarding the public nature of the register and its availability for examination, as the mover has explained.

This amendment is unnecessary as it seeks to prescribe the steps that the Attorney General must take as regards the publication of the register when the existing clause 3 requires the Attorney General to make it accessible in such a manner and at such times as he or she may determine, which I believe is adequate to ensure that the spirit of the legislation, namely to provide public access to the register, is respected. A good point has been made of comparing this with the Companies Register.

Let me say a couple of things about that. The first point is the nature of the Companies Register and the nature of the charities register and the nature of the use and so on. It is up to

charities to make the case and to tell people about them and what they are doing. That is a bit different perhaps from companies. Also, the other point is that the comparison with the UK has been made and it would be lovely to have the resource of the UK and to have limitless resource, and infinite resource even, to do everything to make things public. I am sure the Attorney General will be making the case to work with the Department for Enterprise, to work with the Central Registry which is an excellent body, to do everything possible, to use the desks and to use the computer resources in time to make all the information available. But we are not there as yet. Treasury has not as yet approved any business case made by the Central Registry for the small registers that are run to do with legal practitioners, to do with trade unions, to do with charities. Perhaps at some point in the future – and I am sure the Attorney General believes in as much transparency and as much public access as he possibly can get – but this is premature.

Trust me, in good faith everything will be done to make the documents available. But this is a little tiny operation – two or three charities being registered each month; 700 existing ones; annual documents which are being beefed up very slightly in this process. Everything will be done to make this accessible, to make this information accessible.

I think the amendment is going a bit too far at this stage. With that, I beg to oppose the amendment and to encourage people to support the Bill as drafted.

The Speaker: Mr Hooper to reply.

Mr Hooper: Thank you very much, Mr Speaker.

The hon. mover is absolutely correct, the intention of this amendment is to prescribe some of the requirements around the publication of information held in the register, instead of leaving it up to the Attorney General. That is precisely because I do not believe that we should leave the spirit of the law to be interpreted in this case by the regulator; it is our job to set the law and the regulator's job to enforce it. The same here with registration requirements.

I am sure the Minister means well when he says, 'Trust me, in good faith.' I am sure the Attorney General believes in the publication of this information. Well, it would have been nice to have had that confirmation in advance. However, we have not had any such confirmation. I have no idea what the Attorney General believes and the Bill, as drafted, leaves it entirely up to him to exercise his powers as he sees fit, as opposed to saying there are some sort of documents that we believe should be publicly released, that information relating to charities regulated and registered on the Isle of Man should be publicly accessible and available.

The mover also mentioned that he believes it is up to charities to tell people what they are doing. Again, he is incorrect. This Bill will require charities on the Isle of Man to file annual reports and annual accounts, all of which should be publicly available; and I am sure the Attorney General intends to make such documents publicly available, but I would much rather place this requirement on the face of the Bill so as to set an exceptionally clear message as to what we expect the register to look like and how we expect the register to be put together. I do not think it is our job to trust the Minister, to rely on his good faith. He has form in this regard, making promises to this Hon. House that have not been kept and not been fulfilled. I think again the spirit of the law –

The Speaker: I will ask the Hon. Member to be careful about the words he is using. *(Interjections)*

Mr Hooper: I am happy to quantify that, Mr Speaker. I have done in another place in reference to the Safeguarding Act, most recently.

I think it is quite clear, it is incumbent on us to be absolutely clear what we expect from our charities registry and I think leaving these decisions up to the Attorney General to make entirely as he sees fit without any framework within which he should be making those decisions is entirely inappropriate and irresponsible on our part.

In that respect, Mr Speaker, I would like to move.

The Speaker: I call on Mr Thomas to reply to the debate on clause 9.

Mr Thomas: Thank you, Mr Speaker, and to the hon. mover.

The simple point is that – what shall I say? – resources need to be made available. We start from where we are. I do believe there is an obligation on the people responsible for trustees in law to do everything they can to have the trust to obtain the trustee status, so I reject that point – that there is no obligation on … Most people in this Hon. House, I am sure, will now or at some point in the future take up responsibilities regarding charitable fundraising and charitable activities. It is an onerous responsibility; it is an important responsibility.

I am happy that, from what we have heard today, the Treasury and the Department for Enterprise can work with the Attorney General's Chambers to make it absolutely possible so that smarter government includes smarter provision of accessibility to these important documents; and I do undertake to do that in coming months and years, working with the Attorney General's Chambers' staff member involved in this area.

So with that, I beg to move the clause as posted on the face of the Bill and I call on Members to reject the amendment.

The Speaker: I put before Members first amendment 4 in the name of Mr Hooper. Those in favour, please say aye; against, no. The noes have it.

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

FOR	**AGAINST**
Miss Bettison	Dr Allinson
Mrs Caine	Mr Ashford
Mr Callister	Mr Baker
Mr Cregeen	Mr Boot
Mr Hooper	Mrs Corlett
Mr Moorhouse	Mr Harmer
Mr Peake	Mr Quayle
Mr Perkins	Mr Robertshaw
Mr Shimmins	Mr Skelly
Mr Speaker	Mr Thomas

The Speaker: There are 10 for and 10 against. The amendment therefore fails.

I put to you clause 9 as drafted. Those in favour of clause 9 as originally drafted, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 10 to 14, Mr Thomas.

Mr Thomas: Thank you for allowing me to move clauses 10 to 14 together, Mr Speaker.

Clause 10 provides necessary clarity by imposing an express requirement to register. This clause also re-enacts the existing provision for the making of regulations to exempt any charity or class of charity from the requirement to register, and preserves the requirement introduced by the Charities Registration Act 1989 that a registered charity have a substantial and genuine connection with the Island.

The reason this requirement was introduced by the 1989 Act was, to quote the then Attorney General during consideration of clauses in another place in March 1989:

> To prevent the Island being used by people who have no connection with the Island and who have no intention of operating a charity here but simply to use it as a post box for some activity which we do not wish to be associated with.

So it is about protecting the Island's reputation which, in the intervening 30 years, has become an even more important consideration, given the risks posed by money laundering and the financing of terrorism and the resultant scrutiny that there now is of the Island in terms of financial matters by international organisations such as Moneyval and the OECD.

Although the term 'substantial and genuine connection' is not defined in the Bill, during the Second Reading in another place, the Attorney General gave an explanation as to the circumstances which would lead to and provide evidence of the necessary connection and confirmed that guidance would be published as to how this term should be interpreted. As a public officer, it is unlawful for him to act in an arbitrary manner, meaning that the guidance would be applied consistently.

Failure to register is an offence, with the penalties mirroring those which apply under clause 8.

Clauses 11 to 13 provide for the application for registration, the criteria for the determination of an application and the administrative steps to be taken on registration.

The reason why the matters set out in clause 12 are being 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. This will also assist the public in having confidence in the charities sector.

Clause 14 provides that the Attorney General is not liable for the accuracy of any document submitted for inclusion on a register maintained under the Bill, but provides a power to make inquiries to establish the accuracy of any information provided.

Mr Speaker, I beg to move that clauses 10 to 14 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 10 to 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker, and to Hon. Members.

I turn now to clause 15, which provides for the circumstances in which an institution must be removed from the register, which will enable the register to be an accurate record of the charities which are presently carrying on activities in the Island.

An amendment has been tabled by the Hon. Member, Mr Harmer – which I can talk to, can I?

A Member: No.

The Speaker: The principle is that you do not talk to amendments until they have actually been proposed and seconded.

Mr Thomas: Okay, Mr Speaker, then I beg to move that clause 15 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: I call on Mr Harmer to move amendment 5.

Mr Harmer: Thank you, Mr Speaker.

This is an amendment which on reflection the Council of Ministers have agreed should be included. Clause 10, section 3, enables the Attorney General to make regulations exempting any charity or class of charity from the requirement to register under the Act, and thus from the ongoing requirement to file the documents and information such as annual accounts, reports and details of trustees.

Clause 15, Part 1, sets out the circumstances in which the Attorney General must remove charities from the register. The Bill does not make provision for a charity to be removed in any other circumstance. This means that in the event that the registered charity became exempt from registration it could not be removed from the register, in which case it would have to continue to file documents etc. required to be filed by the register's charities, which is clearly not what was envisaged by exempting it.

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

Amendment to clause 15
5. Page 24, after line 5 insert—
'(d) any charity or other institution which is exempt from registration; and'

In consequence of this amendment, omit 'and' at the end of line 5 on page 24, renumber the following paragraph as (e) and adjust cross-references accordingly.

The Speaker: Hon. Member for Douglas North, Mr Ashford.

Mr Ashford: I beg to second, Mr Speaker.

The Speaker: I call on Mr Hooper to move amendment 6.

Mr Hooper: I will move the amendment, then I will talk to the clause as well.

The amendment that I am proposing here is in respect of the publication of information in respect of removal of charities currently. Again, the Bill leaves this entirely up to the Attorney General as to the manner in which he feels necessary to publish the removal of charities, which could be no publicity at all.

As far as I can see, there are only two real reasons why a charity will be removed. It falls into those five different categories, but: either the charity that has stopped operating is dissolved; or it has broken the rules, no longer complies with the rules and has been removed by the Attorney General as a result. In both of those cases I think the public really have a right to know that charity no longer exists, no longer is on the register and should no longer be accepting public donations. I think that those publication requirements are so important they should be on the face of this Bill.

The publication requirements that I have drafted in this amendment are lifted from the administrative dissolution process sitting inside the Companies Act which works very well for companies. There should be publicity around the dissolution of charities and the reasons for it, and equally, there should be a list of the charities that have been dissolved. As is the case with companies, this could simply be part of the register itself.

I have real issues with the amendment tabled by Mr Harmer, the Hon. Member for Peel and Glenfaba. In the UK there is the ability for charities to voluntarily register, which seems to not exist under this Bill. So if a charity which otherwise may be exempt wishes to be registered for a reason, whatever reason that may be, they will not be able to as they will be exempt. They will have to be removed from the register. So I would appreciate some clarity from the Minister on that point.

The second point I would like to ask is where is this list of dissolved and removed charities going to be? The reason I ask this question is because a charity that ceases to exist, a charity which no longer operates, a charity which has been removed from the register is removed from the register. The requirements set inside clause 9 – the unamended clause 9 – specifies the register must contain the names of every registered charity and such particulars and information relating to every such charity as may be prescribed. So the Attorney General can prescribe what can be on the register in respect of registered charities.

The moment the charity ceases to be registered, what happens to that information? The Attorney General cannot prescribe information holding the requirements for non-registered charities. That does not seem to be there at all. What happens to all that information that was on the register for a charity that is no longer registered, it has been removed? My, again, plain text reading is that information also has to go.

Will there be a register of dissolved, non-existent charities? Will it be maintained; and if it is going to be maintained which section of the Act enables the Attorney General to do that? Again, it does not seem particularly clear from my perspective where those removed charities would sit. So we are going to have charities that could be operating for 20 or 30 years and then all of a sudden all this information could simply disappear. I would appreciate some real clarity from the Minister on what happens to the information about dissolved or charities that simply lose their registration status.

Mr Speaker, I beg to move the amendment:

Amendment to clause 15

6.Page 24 for line 9 and 10 substitute—

'(3) The Attorney General must publicise the removal of an institution from the register —

(a) by publishing a notice in one edition of a newspaper published and circulating in the Isle of Man;

(b) by publishing a notice on a website maintained by the Attorney General, for a minimum period of one month;

(c) by maintaining a current list in the prescribed form and with the prescribed particulars of all institutions in respect of which notice has been published; and

(d) by making the list maintained under paragraph (c) available for inspection by any person at any reasonable time.

(4) On and after the coming into operation of section 43(1)(b) of the Legislation Act 2015 subsection (3) has effect with the substitution for paragraphs (a) and (b) of—

"(a) by publishing a notice in the electronic gazette;".'.

The Speaker: I call on the Hon. Member, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second the amendment in the name of Mr Hooper.

I would also like to just make an additional point, because this in some ways is similar to the previous amendment, where the wording follows what is already in place and is tried and tested in the Companies Registry. I really hope the Minister for Policy and Reform is going to explain if he resists this amendment as well following best practice, because in my personal opinion the public interest in charities is a higher level than in companies. Companies are private companies; a charity seeks donations from the Manx public. So as such I feel there should be higher levels of transparency and as a bare minimum we should be following the Companies Registry practice. So if he is going to resist this amendment as well, I really hope that he will take that point on board and explain why this should not be the case, rather than bluster about trust.

Thank you.

The Speaker: I call the Member for Douglas Central, Mr Thomas, to speak to the amendments.

Mr Thomas: Thank you, Mr Speaker, and to both the speakers – to the Hon. Ministers who have moved the Government amendment, which I fully support. I will now talk to both amendments.

The first point is I want everybody to remember that there are two fundamental differences between companies and charities. The first one is there is absolutely no fees payable for charities, so this is a budget expense. Anything that happens in terms of publicity and notice is entirely at the expense of the public purse, whereas companies there are fees. It is a very important point that the public interest needs to be taken into account and it is very important that we do work to make sure that notice is given and that notice is received, and that all the information that needs to be out there is disseminated. But there is that fundamental difference which is that there is no intrinsic revenue for charities because you get to do all this for charities for free.

So I can absolutely assure people that the Attorney General must publicise the removal. He has no choice. In that situation I am absolutely sure that there will be publicity and discussion around those sorts of removal, and I can absolutely assure people we will do everything we can to make sure that notices and lists are made available.

The second difference between companies and charities is they are not the same: a company is a registered entity – it is like something that is there registered as such; a charity is a status – charitable purpose is a status. I have already talked about the all-encompassing nature of this Act because the Attorney General has powers in terms of charitable purpose and in terms of the activity of charities, even when the organisation is not registered.

Okay, the section that the Hon. Member asks for is at section 15(3) which is: present charities are exempt with the understanding they are not required to comply with the registration requirements.

If I move to making the formal points to support Minister Harmer in his move. Basically, Minister Harmer's move is, the effect of which is to add a further circumstance in which a charity may be removed from the register, namely if it is exempt from registration. In the event that regulations were made to exempt a charity or class of charities from registration this provision would be used to remove them from the register and thus enable them to take advantage of their exempt status. Otherwise all the statutory requirements which attach to a registered charity would continue to apply. So therefore I fully support this amendment, but I do acknowledge the good point that has been made by the hon. mover of the amendment, that I do need at Third Reading to come back with further clarification about the nature of the information that could vanish in that situation. I will give a precise answer at Third Reading about that.

In terms of Mr Hooper's amendment to clause 15, which prescribes the steps that the Attorney General must take in publicising the removal of an institution from the register, including by the placing of a notice in a local newspaper, the existing sub-clause (3) imposes a requirement on the Attorney General to publicise such a removal in such a manner as the Attorney General thinks fit. It is entirely appropriate that he should or she should have a discretion which would enable him to take any of the steps proposed in the substituted sub-clause (3).

Requiring the Attorney General to place a notice in a local newspaper would result in a requirement for expenditure for which a budget would have to be sought from the Treasury. This is because unlike, for example, the Companies Registry, the administration of the Charities Register is funded entirely by the public purse. So it is an important matter. We will do everything we can administratively to make the information available. Digital inclusion. There have been some decisions made about the use of newspapers. The Legislation Act covers, to some extent, changes in relation to the law requirements and legal requirements in various Acts

about publication using newspapers and other devices. We can look at this, but I urge Members not to overly prescribe the way that this information is publicised.

With that, I move these clauses and urge Members to vote against the amendment from Mr Hooper but for the amendment from Minister Harmer.

The Speaker: Dr Allinson, to speak to the amendments. No? In which case, I will give first opportunity to Mr Harmer to sum up regarding his amendment, if he so wishes. No.

Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I am actually really concerned by the Minister's statement that he is going to come back at Third Reading. We are the second House in this Bill, so if we do not get it right it is not going to go upstairs and get fixed. The Minister clearly has not got a clue what is going to happen to a lot of this information that is about to disappear from the register or he would have been able to answer that, which is quite worrying seeing as we have already approved the clause in respect of this information and the cancelled entries.

So I think we need a very clear answer on that. If you are going to be talking now about removing these institutions from the register, which is this clause 15, I think we need absolute clarity on what happens to that information, because the moment we approve this that is it, Hon. Members. There is no second chance here. We have to get this right. If the Minister cannot provide that clarity I think he needs to go away and have a rethink before moving this Bill onwards.

In respect of some of these changes that I am proposing, the Minister seems to be saying his main argument for not placing these in the Bill is that it would cost money. So he seems to be arguing that we should only be protecting the public interest in cases where we have got money to do so, where the fees exist. I think it is a wholly inappropriate position to be taking and the public interest is worthy of protection even if it is going to be at a small cost to Government. The changes to the Legislation Act are also addressed in the amendment. There is a section in there which relates to publishing the notice in an electronic Gazette, which would replace the requirement to publish things in a newspaper. If the Minister is concerned that that would have a cost to the Charities Register then perhaps he would get moving with the Digital Strategy, bring in our electronic Gazette and those costs would then disappear.

Mr Speaker, thank you. I beg to move.

The Speaker: Mr Thomas to conclude to the clause.

Mr Thomas: Thank you very much.

I just want to bring the hon. mover of the amendment – a controversial amendment – and everybody else in this House to the attention of clause 54 in the Act, which is keeping of records by the Attorney General, so:

> (1) Information and documents held by the Attorney General in connection with any of his or her functions under the Charities Act, under section 18 of the Companies Act 1931 or under regulations made under Section 46 may be kept in any form that –
>
> (a) is approved by the Attorney General; and
>
> (b) is capable of being reproduced in legible form.
>
> (2) The Attorney General is to be taken as having complied with an obligation to maintain information or documents if the Attorney General complies with subsection (1).
>
> (3) The Attorney-General may destroy information and documents maintained by the Attorney General if –
>
> (a) the information or documents are original records which the Attorney General is keeping in a form described in subsection (1);
>
> (b) the information or documents relate to a charity which was removed from the register more than 25 years previously; or

(c) the information or documents were received more than 10 years previously and do not relate to a registered charity.

So the law is clear. It is an administrative matter and I will make a clear statement about the Attorney General's intentions in respect of the very important point that has just been made at the level at the Third Reading.

With that, I beg to move these clauses and strongly resist the intention to actually overly prescribed publication regimes and on-the-hoof policy regarding disclosures.

There is also a small point to make about the question in terms of the choice for charities, which apparently exists in England, and I commend the Hon. Member for Ramsey for all of the investigation and the diligence with which he has pursued this matter, but for it to be a personal choice on the part of a charity as to whether it remains on the register will result in confusion. If there is to be a choice that will be the sort of thing that is subject to a wider policy debate and I pledge to include that element in the consultation that we will launch about changing the landscape of charities over the coming months and years.

With that, I beg to move.

The Speaker: I put first the amendment in the name of Mr Harmer. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting next the amendment in the name of Mr Hooper. Those in favour, please say aye; against, no. The noes have it.

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

FOR	**AGAINST**
Miss Bettison	Dr Allinson
Mrs Caine	Mr Ashford
Mr Callister	Mr Baker
Mrs Corlett	Mr Boot
Mr Hooper	Mr Cannan
Mr Peake	Mr Cregeen
Mr Perkins	Mr Harmer
Mr Shimmins	Mr Moorhouse
	Mr Quayle
	Mr Robertshaw
	Mr Skelly
	Mr Speaker
	Mr Thomas

The Speaker: There are 8 for, 13 against. The noes have it. The noes have it.

Putting clause 15 as written, that it stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I am conscious that we are not realistically going to complete the clauses stage of this and there is a presentation on at 1.30 p.m. I am therefore going to adjourn the House and we will reconvene our consideration of this at 2.30 p.m.

The House adjourned at 1.01 p.m.
and resumed its sitting at 2.30 p.m.

Leave of absence granted

The Speaker: Fastyr mie, Hon. Members.

Due to the weather conditions later on today I have given leave to Mr Cannan this afternoon in order to go and catch a flight. I have also given leave this afternoon on a similar basis, to attend Government business, to Mrs Corlett.

Charities Registration and Regulation Bill 2018 –
Consideration of clauses concluded

The Speaker: With that, we continue consideration of the Charities Registration and Regulation Bill and I believe we are up to clause 16. I call on Mr Thomas to move.

Mr Thomas: Thank you very much, Mr Speaker.

I move that clause 16 stand part of the Bill.

Clause 16 requires that every registered charity have a written governing instrument, including those originally registered under the Public Charities Act 1922 or the 1989 Act. A lack of a written governing instrument can cause uncertainty as to the purposes for which a charity was established, as well as regards the powers of the trustees concerning its day-to-day management. In many instances, only the High Court can resolve such uncertainties, which has financial implications for the charity concerned as well as imposing a burden on the public purse, as the current Rules of the High Court require the Attorney General to be named as a defendant in respect of applications concerning charities.

Although adopting a written governing instrument should not be a complex task in most circumstances, particularly given the provisions set out in clauses 21 and 22, clause 16(2) provides that existing charities without written governing instruments will have a period of at least two years from the date the requirement comes into force in order to adopt one. The date that the requirement comes into force is to be prescribed by Regulations and I can indicate to Hon. Members that the intention is that the date will be included in a set of Regulations which will prescribe all matters required under the Bill and which will be brought into force at the same time as the substantive provisions of the Bill. Thus, no existing charity will be left 'hanging in limbo' which was a concern expressed during the Second Reading debate.

I can also repeat the indication given by the Attorney General in another place that model constitutions will be made available and that the staff in his Chambers will work with charities, in particular the smaller charities, to help them.

I beg to move that clause 16 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 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17. Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Clause 17 makes provision for the amendment of the governing instrument. To ensure that a charity's governing instrument remains fit for purpose, except in a case where the High Court has authorised the amendment, the Attorney General's consent must be obtained for any

change to have effect. This does not apply in the case of a foreign charity as any changes will be governed by the laws of the jurisdiction in which it is established, but the charity would be removed from the register if the effect of any changes was that the institution was no longer established for charitable purposes.

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

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Hooper to move amendment 7.

Mr Hooper: Thank you very much, Mr Speaker.

This amendment is quite straightforward and simply provides that requests to amend the governing instruments should not be unreasonably refused.

Mr Speaker, I beg to move:

Amendment to clause 17

7. Page 24, after line 28 insert the following subsection—

'(4) Subject to being satisfied that the requirements of subsection (3) are met, the Attorney General must not unreasonably refuse consent under this section.'.

The Speaker: Mr Shimmins.

Mr Shimmins: I beg to second.

The Speaker: Mr Thomas, do you wish to submit anything in conclusion to the clause?

Mr Thomas: Thank you, Mr Speaker.

The amendment to clause 17, tabled by the Hon. Member, Mr Hooper, I am sure tabled with the best intent, imposes a requirement that the Attorney General not act unreasonably if refusing consent to the amendment of a governing instrument. This amendment is totally unnecessary and, indeed, inappropriate. As a public officer exercising public functions, the Attorney General is required by law, as is every other public officer or authority, to act reasonably when exercising his or her statutory functions. In a common law jurisdiction, it is not the purpose of statute to repeat overarching legal principles and I am not aware of any example of a function given to a public officer under Manx legislation which includes a requirement that a function not be exercised unreasonably. Further, if it were necessary to include such a provision, it would have to be included in relation to each and every exercise of a statutory function under the Bill, as the same principle applies to all.

For this reason, I am unable to support this amendment.

The Speaker: I put first the amendment number 7 in the name of Mr Hooper. Those in favour, please say aye; against, no. The noes have it. The noes have it.

Clause 17, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mr Thomas.

Mr Thomas: Clause 18 re-enacts an existing provision regarding the amendment of a charity's objects.

I beg to move.

The Speaker: Dr Allinson.

Dr Allinson: I beg to second.

The Speaker: I put the question that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 19 and 20, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Clauses 19 and 20, which I would seek to move together, make provision as regards the change to a charity's name, including preserving the existing power of the Attorney General to direct that a charity abandon a misleading or undesirable name. It will remain an offence to fail to comply with a direction, with the existing penalties on conviction being retained. As the purpose of the power is to ensure that an unsuitable name is changed, clause 20 will enable the Attorney General to change the name of the charity following a conviction.

Mr Speaker, I beg to move that clauses 19 and 20 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 19 and 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

The provisions in this clause will enable charities which registered prior to the Act coming into force to seek the consent of the Attorney General to amend their governing instruments, or to adopt a governing instrument, in circumstances where the only alternative would be to make an application to the High Court under the Charities Act 1962, to which the Attorney General would be a party. Enabling the Attorney General to give the necessary consent would make the process of adopting necessary change more straightforward and reduce the cost to both the charity concerned and the public purse.

I would remind Hon. Members of the indication given by the Attorney General in another place that he will be continuing the long-established practice whereby officers in the Attorney General's Chambers provide assistance and guidance to charities concerning all their statutory requirements, including providing model documents and working with charities to ensure that their constitutional arrangements are fit for purpose.

Clause 21 does not limit the court's powers under the 1962 Act and neither does it have any effect on the general principles which must be considered irrespective of whether the necessary approval is given by the court or by the Attorney General.

The Speaker: Beg to move.

Mr Thomas: I beg to move.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: I call on Mr Hooper to move amendment number 8.

Mr Hooper: I do not intend to move amendment number 8, Mr Speaker.

A Member: Hear, hear.

The Speaker: I put the question, then, that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 22 and 23, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

In the case of a charity which has been constituted under an Act of Tynwald, clause 22 enables the Attorney General to make an order, subject to Tynwald approval, amending the Act of Tynwald to effect the necessary amendments. This mechanism will be in addition to, and not in place of, the usual process for amending primary legislation.

To ensure that information on the register is kept up to date, clause 23 provides for the notification to the Attorney General of amendment to the various particulars of registered charities. The existing offence in the 1989 Act for non-compliance with the requirement to notify is retained, as are the penalties on conviction.

Mr Speaker, I beg to move that clauses 22 and 23 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 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 24, 25 and 26, Mr Thomas.

Mr Thomas: Clause 24 defines a 'charity trustee' for the purposes of the Bill.

Clause 25 provides the automatic disqualification of a person for acting as a charity trustee in circumstances which give rise to concern as to his or her suitability to undertake such a role, given the degree of trust involved. Such circumstances include being convicted of an offence of dishonesty, being disqualified for being a company director, being an undischarged bankrupt, being subject to an order of the High Court removing or suspending him or her as a trustee of a charity, or being on the sex offenders' register.

At present, the mechanism for removing an unsuitable trustee is the obtaining by the Attorney General of an order from the High Court, which is administratively burdensome and imposes a cost on the public purse. The proposed automatic disqualification provisions, which mirror those which are in place in England and Wales, do not oust the jurisdiction of the court but, instead, will reduce the need to have resort to it. A person acting as a charity trustee whilst disqualified will commit an offence and be liable, on summary conviction, to 12 months' custody and/or a fine of level 5 on the standard scale, currently £10,000.

As there may be circumstances where a person remains suitable to be appointed as a trustee of a charity notwithstanding the application of the automatic disqualification provisions, clause 25(4) enables the Attorney General to disapply the provisions in relation to any person where he or she considers that it is in the public interest to do so.

Clause 26 provides that a person who is disqualified for acting as a charity trustee is also disqualified for holding an office or employment with senior management functions in a charity.

Mr Speaker, I beg to move that clauses 24 to 26 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 24, 25 and 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Now, amendment number 9 and New Clause 1 in the name of Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.
It has been made quite clear this morning that the view of the House is not to place central requirements on the face of the Bill, instead relying on the trust of the Minister to ensure they are appropriately placed in Regulations. So I do not intend to move New Clause 1.
Thank you.

The Speaker: In which case, we turn to amendment 10 and New Clause 2. Mr Hooper.

Mr Hooper: Apologies, Mr Speaker, exactly the same – if the House is not minded to place these on the front face of the Bill, I do not seek to waste the House's time. I will not be moving New Clause 2, either.
Thank you. *(Interjection)*

The Speaker: It has not been moved.
Clause 27, Mr Thomas.

Mr Thomas: I thought New Clause 2 was eminently sensible. *(Laughter and interjections)*

The Speaker: Well it should have been in the Bill, then! *(Laughter and interjections)*

Mr Thomas: Effective regulation of any sector requires the regulator to be provided with information from which problems, actual or potential, can be identified. In the case of charities, this is presently achieved by the filing of annual accounts at the Registry.
I turn first to clause 27, which re-enacts the existing requirement for the filing of annual accounts, which may be subject to audit or examination depending on the charity's income.
I beg to move that clause 27 stand part of the Bill

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
I beg to second.

The Speaker: Amendment number 11, Mr Hooper?

Mr Hooper: Yes, thank you very much, Mr Speaker.
Clause 27 is interesting in that it refers solely to accounts of registered charities and not to any requirement on a charity to keep and hold financial transactions representing the day-to-day transactions of companies, which was the purpose of my original New Clause 1, and New Clause 2 would have provided for the preservation of those records. Again, there is no reference to the preservation of records in the Bill.
Clause 27 on the other hand allows for regulations to be made in respect to both of these points and I would expect regulations to come forward which do include both the requirement

to keep financial transactions as we currently have, as well as the preservation of those records and the preservation of accounts. I suppose we will turn to that later on.

This amendment that I am moving today is very straightforward. The monetary amounts in this clause in respect of the requirement for independent examination or an audit are fixed on the face of the Bill and there is a provision in the clause whereby these may be increased by order. However, it may be considered appropriate in the future to decrease these amounts, so simply to provide that flexibility I propose to omit the word 'higher' from section 10 of clause 27.

Mr Speaker, I beg to move.

Amendment to clause 27
11. Page 31, line 2 omit 'higher'.

The Speaker: Mr Shimmins.

Mr Shimmins: I beg to second.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Yes, indeed the Hon. Member for Ramsey, Mr Hooper, does make a very good point (**A Member:** Hear, hear.) *(Laughter)* that the points in New Clause 2, and New Clause 1, even, can be taken up in the financial regulations made under secondary legislation, and we will certainly give close attention to New Clause 2 about the preservation by charities of the accounting records and accounts because that is eminently sensible.

In terms of this specific amendment, the effect of the amendment to this clause which has been tabled by Mr Hooper will be to enable the Attorney General to lower, as well as to raise, the financial thresholds as regards the need for audit or examination of accounts, as he explains. Although it is difficult to identify any circumstance in which the financial threshold would be lowered, this amendment makes no substantial difference to the principle behind the provision and thus I support it.

A Member: Hurray.

The Speaker: I am taking that as speaking to the amendment, but as no-one else wishes to speak, are you content for me to take that as the summing up of the clause as well?

Mr Thomas: I beg to move.

The Speaker: Thank you very much.

I will put, then, amendment number 11 in the name of Mr Hooper. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27, as amended, that it stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 28, 29 and 30, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Clause 28 contains supplementary provisions about auditors and examiners.

Annual accounts provide only limited information concerning the activities of a charity and, to improve transparency, clause 29 makes provision for a report on the 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 AGM.

Clause 30 clarifies that, in the case of a foreign charity, the requirement as to the filing of annual accounts and reports is in relation to the activities of the charity carried on by it in, or otherwise connected with, the Island. An important element of regulation of charities is the scrutiny of financial information. If that information is not provided in a way which clearly identifies the monies raised and spent with regard to a charity's activities which are connected with the Island, then the regulator is unable to identify whether the charity is operating in compliance with its charitable trusts and the requirements of Manx law. Such an inability represents a significant handicap to the Attorney General in carrying out his responsibilities as both regulator and public guardian of the charitable property.

Mr Speaker, I beg to move that clauses 28 to 30 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

At the Second Reading I raised some very specific concerns in relation to international charities operating on the Island and the impact that these particular clauses 27, 28 and 29 would have on charities that are foreign charities registered elsewhere that have potentially quite complex structures. I note the Minister has made no reference to that in his original moving of these clauses and I would appreciate it if he would.

Has this been addressed? Has this been considered? And, if not, how will it be addressed and considered?

The Speaker: Mr Thomas to reply.

Mr Thomas: Thank you very much.

I think, as I indicated, the Attorney General will make guidance. I clarified the position with this sort of issue with a number of lawyers and we do need to do some further work potentially if we are going to change in any way the landscape of charities, and this is the sort of issue about which we will be further consulting and engaging with stakeholders.

The Speaker: Beg to move.

Two Members: Beg to move.

Mr Thomas: I beg to move.

The Speaker: Good!

The question is that clauses 28, 29 and 30 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 31 to 35, Mr Thomas.

Mr Thomas: Clauses 31 to 35 are new provisions which concern charity mergers.

Clause 31 provides for a register of charity mergers to be kept by the Attorney General.

Clause 32 describes the circumstances which constitute a charity merger for the purpose of clause 31, namely where charity A ceases to exist having transferred its property to charity B; or where following a transfer of their property to charity C, charities A and B cease to exist.

Clauses 33 and 34 make provision in relation to the notification of a charity merger and the details to be entered on to the register of charity mergers.

The main purpose of creating a register of charity mergers is so that registered charities which have otherwise ceased their activities do not have to remain in existence and subject to regulation merely to be able to receive future gifts, such as bequests.

Accordingly, clause 35 provides that where a charity merger has been registered, the gift to a charity which has ceased to exist will take effect as a gift to the charity to which its property was transferred as a consequence of the merger.

Mr Speaker, I beg to move that clauses 31 to 35 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 31 to 35 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 36, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

As well as re-enacting the existing powers under the 1989 Act of the Attorney General to obtain information as to the investments and property of a registered charity, clause 36 provides the power to obtain such other information as may be prescribed, for example, information concerning the charity's safeguarding policies, where relevant, and compliance with such policies. The application of clause 36 is extended to ecclesiastical charities and to trusts of property falling within paragraph 1(2) of Schedule 3 to the Church Act 1992.

A Member: Beg to move.

Mr Thomas: I beg to move.

The Speaker: Good!

Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I would be grateful if the Minister could clarify why this section applies to ecclesiastical charities and trusts of property falling within Schedule 3 to the Church Act and not to other exempt charities, either those exempted by way of religious exemptions or other exemptions under this Act.

The Speaker: Mr Thomas to reply.

I can see eye contact being made, but we do have the opportunity to go into Committee should it be required, Hon. Members.

Mr Robertshaw: I propose that we do, Mr Speaker.

Two Members: I second.

The Speaker: Thank you. Provided the officer, of course, is content to do so. *(Interjections)*
The question is that the House resolve into Committee to take evidence. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In Committee of the Whole House

The Speaker: Miss Norman, I see you have been left single-handed in the Gallery. Are you content to take some technical questions on this?

Miss Norman: Yes, Mr Speaker, I will assist the House to the extent that I possibly can.

The Speaker: Thank you.
I will just remind you that I do not expect you to answer any matters of policy – that will be for the Member; but in terms of any technical detail I would be grateful for your assistance. So thank you.

Miss Norman: I think the reason why this change was made to the Bill, which means it is an insertion, or an extension of the provisions of section 36 to charities to which the exemption is provided by primary legislation; and it reflects the distinction in status between charities whose exemption from registration comes from primary legislation as opposed to those which are provided under secondary legislation. And one of the differences, of course, is – this is clearly in relation to the religious charities regulations – there is a defined list of the religious charities regulations which are exempt, whereas the defined list is much broader in description …
So the distinction in treatment reflects the distinction in treatment under the legislation and is to make sure that we captured those charities from a drafting perspective which are exempt under the primary legislation ...

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
Unfortunately that does not really answer the question: either the Attorney General needs the power to require exempt charities to furnish documents, or he does not. This is an addition to the existing Act, this particular clause does not appear in the 1989 Registration Act. So these ecclesiastical charities appear to be at least exempt from this provision that currently exists.
So I am struggling to get my head around why the Attorney General needs the ability to request these particulars in this respect of these types of charities but not others, especially seeing as the next clause allows him to institute general inquiries that covers everybody, whether they are registered or not. It just seems a really unusual change to have made for no apparent purpose.

Miss Norman: As I said, it was an acknowledgement that charities which are exempt because of the provisions of the Bill are a class which is access ready, identifiable and those charities which are exempt because specific exemption regulations have been made, and under the circumstances there was less of an argument as to the rationale as to why the provisions of section 36 should not also apply to the exempt charities.
Extending the provisions of section 36 to charities which are exempt under regulations is something that can certainly be looked at for the future. It is not prevented by the Bill as it is

drafted now. And there may be other things that point out your future discussion as to the nature of exemptions, who should be exempted and how.

The Speaker: Mr Hooper.

Mr Hooper: I am sorry, Mr Speaker, I am still not really seeing why this treatment is there, why the need is there – either the Attorney General needs it … It is not about identifying the charities, this refers to being provided with copies of documentation that sits underneath the charities. So either he needs this power or he does not. It would appear that he does not have this power currently in respect of non-registered charities; and he still does not, except for this very particular class. I am struggling to see why, again, there has been a separate treatment for these types of charities that does not seem to have any understanding of the basis behind it. And if you say that it can be extended to further exempt charities under regulations in due course, was that considered as part of the drafting of this Bill? It just seems a bit ...

I do not think I am going to get an answer unfortunately, Mr Speaker, it does not seem clear-cut enough.

The Speaker: I think we also may be straying potentially into the policy elements that have been determined by the Member, rather than the drafter.

Miss Norman, do you have anything to add? *(Interjection by Miss Norman)* Okay.

Mr Robertshaw.

Mr Robertshaw: Mr Speaker, I move that we return to normal business of the House.

The Speaker: Mr Cregeen.

May I put the question that business be resumed? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The House moved out of Committee and business was resumed.

The Speaker: Mr Thomas, to conclude your summing up of clause 36.

Mr Thomas: Thank you very much.

It is an issue that those responsible for the policy in this respect can look at … Not at this stage because obviously we are looking at the clauses, but in future years.

I think Miss Norman presented the drafting arguments well from my point of view. And I beg to move.

The Speaker: The question is that clause 36 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 37 to 39 and the Schedule.

Mr Thomas: Thank you very much, Mr Speaker.

Clause 37 re-enacts the power of the Attorney General to institute inquiries into an institution which is, or purports to be, established for charitable purposes. The existing offence provisions and penalties are preserved.

Clause 38 makes new provision for the obtaining of search warrants in connection with an inquiry under clause 37, the detailed provisions concerning their obtaining and use being set out in the Schedule.

Clause 39 re-enacts the existing powers of the High Court, on the application of the Attorney General, to make orders for the protection of charities and their property, such as for the removal or suspension of a trustee.

Mr Speaker, I beg to move that clauses 37 to 39 and the Schedule 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 37, 38, 39 and the Schedule stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 40 and 41, Mr Thomas.

Mr Thomas: To ensure accountability within the Island of the activities of a foreign charity – that term being defined in clause 40 – clause 41 imposes a requirement that if none of its trustees are ordinarily resident in the Island, a foreign charity must appoint a person resident in the Island as the 'responsible person', who will be responsible for the compliance by or on behalf of the charity in respect of all applicable statutory requirements. This will avoid the difficulties that can arise at present if none of the persons carrying on the charity's activities in the Island have the necessary authority within the charity to ensure, for example, that the annual accounts are prepared and filed and those persons that do have that authority are outside our jurisdiction.

This requirement reflects the principle that, as an Island which seeks to uphold its reputation on the international stage as a mature jurisdiction which makes proper and effective provision for regulating financial activities, it is necessary that institutions which seek a connection with the Island can properly be held to account here in the Island.

I beg to move that clauses 40 and 41 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 40 and 41 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 42 and 43. Mr Thomas.

Mr Thomas: Part 10, of which clauses 42 and 43 are a part, concerns appeals.

The Bill increases the number of decisions 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 solely within the jurisdiction of the High Court, such as the approval of the adoption or amendment of constitutional documents.

As a public authority, decisions of the Attorney General are subject to judicial review by the High Court by way of a doleance claim. In order to provide a more straightforward and cost-effective mechanism for challenge, however, clauses 42 and 43 provide for the creation of a Charities Tribunal to hear appeals in respect of decisions taken by the Attorney General. These decisions will not include those concerning the exercise of the Attorney General's regulatory powers, namely those set out in Part 8 and clause 51 – consent to a prosecution – as the legality of such decisions would be addressed in the relevant court proceedings.

As is usual in relation to the decision of an administrative tribunal, a further appeal lies to the High Court on a point of law.

Mr Speaker, I beg to move that clauses 42 and 43 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I think if the Minister could be slightly clearer on why the regulatory aspects have been taken outside the appeal process … It seems reasonably standard that where there is a regulator then there should be the ability of people being regulated to appeal their actions to a tribunal before having to go to court. That seems to be the way we do things with our other regulators.
I would just like to get some more clarity on exactly why it was decided to specifically exclude the regulatory powers from the appeal process.

The Speaker: Mr Thomas to reply.

Mr Thomas: Thank you very much.
I think the crucial point here is that the Charities Tribunal is about administrative issues, it is not about prosecution issues.
The hon. questioner is correct. There are, in the financial services world, for instance, cases where there are tribunals that can hear certain enforcement action and that is one possibility, but in this case we have got the tribunal for decisions about administration – a decision of a charity tribunal which can be appealed on the point of law to the High Court – and then we have got prosecutions which need to be addressed inside the relevant court proceedings.
So there are different worlds and there are different arrangements in those different worlds and it is quite clear that this is an administrative tribunal about administrative decisions. And unless I get anything else that I should add, I will leave it at that.
I beg to move.

The Speaker: I put the question that clauses 42 and 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 44 and 45. Mr Thomas.

Mr Thomas: Thank you very much.
Clause 44 imposes a requirement for a decision or a direction which is subject to a right of appeal to be given in writing and to include a statement of reasons. This is in keeping with the status of the Attorney General as a public authority.
As already stated, the Bill increases the number of decisions to be taken by the Attorney General in respect of charities. So that this does not become administratively burdensome, clause 45 enables the Attorney General to appoint a person employed as an officer in the Attorney General's Chambers to perform certain specified functions, namely those which are functions which relate to the maintenance of the register and the taking of certain steps by the charities.
In practice, much of this work is presently undertaken by a senior lawyer in Chambers, in advising the current Registrar or the Attorney General as to the exercise of their functions. Functions such as making an application to the court for the removal of a trustee, issuing a direction that the name of a charity be changed, or exercising the regulation and inspection powers under Part 8 will continue to be exercisable solely by the Attorney General.
For the purpose of any appeal, a decision of a person appointed under clause 45 is treated as if it were a decision of the Attorney General.
Mr Speaker, I beg to move that clauses 44 and 45 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 44 and 45 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 46, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
Clause 46 makes provision as regards the making by the Attorney General of regulations to carry the provisions of the Bill into effect. Tynwald approval is required.
Mr Speaker, I beg to move that clause 46 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
I beg to second.

The Speaker: Thank you.
I call on Mr Harmer to move amendment number 14.

Mr Harmer: Thank you, Mr Speaker.
This is an amendment which, on reflection, the Council of Ministers have agreed should be included. Clause 46 is principally a re-enactment of section 11 of the Charities Registration Act 1989. The amendment is typographical to correct an error in subparagraph (a) which arose during the transcribing of the text of the existing provision the effect of which is to bring clarity to the interpretation of this subparagraph.
Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 46
14. Page 39, line 35 after 'registered charities' insert 'and'.

The Speaker: Mr Ashford.

Mr Ashford: I beg to second, Mr Speaker.

The Speaker: Mr Hooper to move amendments 13, 15 and 16 together, please.

Mr Hooper: Thank you very much, Mr Speaker.
These amendments 13, 15 and 16 will place in the Bill an exemption for small charities. This exemption will sit in the regulations that are made under this section and not in the Bill itself. This is in common with nearly all the other exemptions in the Bill.
It seems to me very appropriate that the smallest of our charities that are dealing with the smallest amounts of money should be exempt from these Registration and Regulation requirements, although it will only be from the Registration requirements as far as I understand the Bill. This exemption may also in fact cover the ecclesiastical charities we talked about earlier on as their income will be negligible, as I am led to believe. This will take the approach of replicating the UK's approach of deciding that the small charities which are defined here as charities with a gross income of less than £5,000 would not be required to register under this Act.

I think we all accept that this Bill places an increased burden on charities on the Island. That is exactly the point that was made by the Lord Bishop and exactly the point that has been made by Minister Thomas and by Mr Robertshaw, that this Bill will place an increased regulatory burden on charities; and I think this burden might be too much for the smallest of our charities.

The main thrust of this Bill is aimed at protecting both the public and the reputation of the Island and in my view neither of those are put at significant risk by the actions of small local charities who are not handling significant amounts of public funds. And so it seems disproportionate to subject them to the full extent of this Bill. This issue was in fact raised by a few people in the consultation – 10% of respondents, I believe – but it was dismissed simply on the grounds that it was not on the cards right now.

Mr Speaker, it is a very straightforward amendment and I beg to move:

Amendments to clause 46

13. Page 39, on line 31 renumber the existing text as subsection (1) and at the beginning of the line insert 'Subject to subsection (2),'.

Adjust cross-references accordingly.

15. Page 40, omit line 9.

16. Page 40, after line 9 insert—

'(2) Regulations under subsection (1) may confer a discretion on the Attorney General to determine any matter.

(3) Regulations under subsection (1) must provide an exemption from the requirement to register in the case of a charity which has a gross income not exceeding £5,000.

(4) The Attorney General may by order increase the amount specified in subsection (3)

(5) In this section a reference to a charity's gross income is to be read, in relation to a particular time as a reference to the charity's gross income in its financial year preceding that in which the question of the requirement to register arises.

Tynwald procedure for regulations under subsection (1) and orders under subsection (3) — approval required'.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr. Speaker.

I rise to second and this is an issue I raised at the Second Reading of this Bill.

It is interesting to hear from Mr Harmer earlier today who suggested that this posed a very real threat to very small charities. Mr Cannan also highlighted that the high levels of bureaucracy would really make small charities struggle. So it was a slightly different context but it is the same principle, clearly.

My hon. friend, Mr Hooper, has pointed out that this would be consistent with the approach – the tried and tested approach – that is adopted in the United Kingdom; and I would suggest to Hon. Members, to use the words of Mr Thomas as he said earlier, this would be eminently sensible. So I urge you to support this amendment.

Thank you.

The Speaker: Mr Thomas.

Mr Thomas: Thank you.

Amendment 14 tabled by Mr Harmer makes what was a typographical correction to paragraph (a) which is a re-enactment of an existing provision. This corrects a mistake and of course I am pleased to support this amendment.

Mr Hooper's, and seconded by Mr Shimmins, amendments 13 and 15 are necessary only if amendment 16 is approved so I am going to focus on amendment 16 as such. The basic point is that amendment 16 tabled inserts a number of additional provisions into clause 46 and whilst the proposed subclause (2) may appear non-controversial, the effect to the proposed subclauses (3) to (5) is to require regulations to be made which will exempt small charities – those with a gross income of £5,000 or less.

This is a major policy change which would have a significant effect on the local charity sector and as such should not be brought forward without express public consultation on the principle. Whilst one or two accountant responses to the consultation on the Bill did suggest that there may be clear means of exemption for small local charities, this is not the same as suggesting that small charities be exempted at this stage, which proposition was not raised by any respondents and crucially there has been no request from the charity sector or the public at large that small charities should be exempt from registration.

Whilst registration does bring with it a burden on the charities concerned in terms of complying with reporting requirements, it does provide a benefit to the public in that they have ready access to information from the Registrar, a point that has been argued previously, as well as the comfort that there is scrutiny of the activities which their donations are funding. This benefit to the public can be a positive for the charities themselves which should not be discounted too lightly.

As I have already indicated, the public consultation exercise that I am initiating this week will solicit views as to whether small charities should continue to be required to register. In terms of means to exempt small charities, this is already provided by clause 10(3) which provides for regulations to be made under clause 46 and the exemption of any charity or class of charity from the requirement to register under the Bill. In other words, there is proportionality already under the Audit Act and various other provisions of proportionality in all of this.

Accordingly, at this time, I am unable to support any of the amendments to clause 46 which have been tabled by Mr Hooper, although I acknowledge and appreciate the raising of the issue in this way by this amendment. I urge Members to reject them at this stage. We can look at them ...

Mr Gawne came to speak to all Members on behalf of the Council of Voluntary Organisations and he expressed satisfaction with this Bill as proposed, and his pleasure that it had been proposed in this way. It might be that this is a useful way forward but we certainly should not initiate such a major policy change at this stage.

I beg to move that clause 46 stands part of the Bill and I urge Members to support the technical amendment from Mr Harmer, but reject the quite significant policy changes proposed by Mr Hooper.

The Speaker: I had taken that you were speaking to the amendments so I need to give the right of reply to the two people who have moved amendments.

Mr Harmer? No.

Mr Hooper, do you wish to reply to the debate on your amendments?

Mr Hooper: Yes, thank you very much, Mr Speaker.

It is quite interesting that earlier on we were being told there was no requirement at all to register small ecclesiastical charities because people were not interested. And now, apparently, registration would have provided people with a massive benefit if we had gone ahead with that – ready access to information and scrutiny of activities, which is fantastic. Mr Thomas has done a complete 180° on this.

He also said this would be a major policy change: earlier on he said major changes in policy should be made here in the Branches, not in regulations, which is what he is proposing we allow to happen. So, again, another complete 180° from his earlier position.

He is absolutely right that he did not ask in the consultation whether there should be an exemption for small charities and inevitably it is a truism that if you do not ask something you are not going to get a response on it. So the fact that there was not a wide response from the public or from the small charities on the Island is not a surprise. He mentioned that the Council of Voluntary Organisations made no representations about this. I wonder, when he does sum up on the clause, if he could confirm that that organisation does actually consist of a lot of small charities and does represent them and their interests? My understanding is that body represents primarily the larger charities on the Island and so perhaps would not have raised this as a significant issue.

I think it is a simple point of principle, we accept that when you increase the level of regulation you increase the burden on small organisations and I think it is the right thing to do, to say that those small organisations should be exempted in line with what they are doing in other modern 21st century jurisdictions. Again, the existing provisions in the Act may require … which means they allow the Attorney General to make this should he decide it is appropriate at some later date. I do not see why we should wait for that process. I cannot see small charities coming back and decrying, 'Oh, no, we demand absolutely to be regulated. We demand to have all this burden placed on us. Really, really Mr Thomas, regulate us into the ground, we would love it!'

I cannot see why that would happen especially of course if there is provision to enable voluntary registrations, so if any of those charities did decide they were minded to be so regulated they could opt to do so. I do not see why this would be a problem. So as far as this goes, Mr Speaker, I think it is an eminently sensible suggestion.

In respect of the rest of the clause though, I did not comment earlier and I would like to now. These regulations do allow the Attorney General to make provision for certain things, specifically requiring the keeping of records with respect to transactions and the financial position of registered charities, and for the keeping of those records on Island. It does not make specific reference to the keeping of accounts. I assume that that is covered somewhere – it is just that in all the other subsections of this it makes specific reference to the form and content of annual accounts, and so I think it would be absolutely clear whether or not these record-keeping powers underneath this Act do extend to some of those other things that are not specifically mentioned as well.

Mr Speaker, I beg to move those three amendments in respect of small charities exemptions.

The Speaker: Mr Thomas to reply on the clause.

Mr Thomas: Thank you.

As always, some good points made by the Hon. Member for Ramsey, Mr Hooper.

To start off with, let's just put this into some sort of perspective. Let's talk about what exactly this *huge* burden is that we are imposing on charities. The only additional burden is filling out a slightly longer application form and making an annual report for which a model is provided by the Attorney General's Chamber which can be used. It is hardly a huge burden.

A point that the other Hon. Member for Ramsey does not mind me sharing with this House, is that we have talked about this quite a lot, him and I, and what we think, I think, is that small charities grow up to be big charities one day and in fact it is better to make your mistakes when you are a small charity and you can do it in a safer environment than when you are a bigger charity, and so on, and so on. So, for the time being before we have this major policy debate with small charities, it is right whether we change it in primary law which is always going to be my preference for policies, or whether we change it by regulations – it is my point to actually engage with people. And it is a small point, it is a debating point, but although Mr Gawne spoke with us and he is Vice-Chair of the Council of Voluntary Organisations and he is a person with a long-standing history and experience and acknowledged expertise with regard to all sorts of

charities, small to large, and I do think I would trust his words in respect of *all* charities not just the ones that are currently members of the Council of Voluntary Organisations.

And just to be completely clear on the very specific question, the records in clause 54 include all documents received by the Attorney General under this Bill, so the accounts are included in that.

I beg to move, Mr Speaker.

The Speaker: I will put first amendment number 14 in the name of Mr Harmer. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting now amendments 13, 15 and 16 together in the name of Mr Hooper. Those in favour, please say aye; against, no.

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

FOR	**AGAINST**
Mr Baker	Dr Allinson
Miss Bettison	Mr Ashford
Mrs Caine	Mr Boot
Mr Callister	Mr Cregeen
Mr Hooper	Mr Harmer
Mr Moorhouse	Mr Quayle
Mr Peake	Mr Skelly
Mr Perkins	Mr Speaker
Mr Robertshaw	Mr Thomas
Mr Shimmins	

The Speaker: With 10 for, and 9 against, the ayes have it. The ayes have it.

Putting clause 46, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 47 and 48, Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

Clauses 47 and 48 re-enact existing provisions under the 1989 Act regarding the winding-up of institutions by the High Court and as to the invalidity of certain transactions of charitable companies.

I beg to move that clauses 47 and 48 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 47 and 48 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 49.

Mr Thomas: Clause 49 makes provision as to the reference on a registered charity's correspondence and other documents to matters to be prescribed. This will enable charities to be required to include information such as charity number, contact details and names of trustees on its correspondence and other communication methods such as its website, social media platforms and publicity documents.

Mr Speaker, I beg to move that clause 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 clause 49 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 50 and 51. Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
Clause 50 re-enacts the existing offence of knowingly or recklessly to furnish any information which is false or misleading in a material particular.
Clause 51 sets out supplementary provisions in relation to offences under the Bill, including re-enacting a provision which makes certain persons connected with an institution, which is not a body corporate, liable for its non-compliance. In the case of an institution which is a body corporate, the necessary liability of persons connected with it is provided by section 54 of the Interpretation Act 2015. Thus, it is unnecessary to repeat them in the Bill.
I beg to move that clauses 50 and 51 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 50 and 51 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 52. Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
Clause 52 makes provision as to the delegation by charity trustees of their functions so that, notwithstanding that a particular charity is not constituted as a trust to which the provisions of the Trustee Act 2001 apply, only those functions which are described as 'delegable functions' in section 11(2) of that Act, i.e. those which may be delegated by the trustees of a charitable trust, may be delegated by charity trustees.
I beg to move that clause 52 stand part of the Bill, Mr Speaker.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
I beg to second.

The Speaker: I put the question that clause 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 53 and 54. Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
Clauses 53 makes provision as regards approved forms to be used for the submission of information and clause 54 makes provision as regards the keeping of records by the Attorney General, and for their destruction.
I beg to move that clauses 53 and 54 stand part of the Bill.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker. I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I would be grateful if the Minister could confirm that the keeping of the records under this clause actually enables the Attorney General to continue to publicise those records and the information that is held, as that actually is not specifically mentioned in the clause, enabling this information to be made public.

Thank you.

The Speaker: Mr Thomas to reply.

Mr Thomas: Thank you, Mr Speaker.

I guess I can confirm that the purpose of prescribing information to be held on a register is so that institutions can be required to provide it. Once that information is provided it forms part of a public authority's records and thus subject to general disclosure provisions. I was asked earlier about specifics of removal and that sort of change – the removal of a charity from the register does not mean that it will be expunged from the record. The intention is that the register will include a notation that a charity has been removed together with the date, circumstances, etc. The records will continue to be held for at least 25 years and may form part of the Island's public records if accepted by the Public Record Office.

Any removal will be publicised on the website and I can confirm that it is the Attorney General's intention to do everything possible to use the website and to make the website as good as possible, and to use access to officers whenever possible to actually make sure all this information is as easily available as it possibly can be, given resources.

I beg to move.

The Speaker: Thank you.

I put the question that clauses 53 and 54 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 55, Mr Thomas.

Mr Thomas: I turn now to clause 55 which, to enable the efficient use of public resources, empowers the Attorney General to enter into arrangements with the Registrar General for the provision of 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 in the Department for Enterprise, thus taking advantage of existing IT provision.

Mr Speaker, I beg to move that clause 55 stand part of the Bill; and just to say actually that I think it is subject to the Appointed Day Order on the Central Registry Act.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I beg to second.

The Speaker I put the question that clause 55 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 56, Mr Thomas.

Mr Thomas: Clause 56 makes provision as regards the refusal of unacceptable documents.

I beg to move that clause 56 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 56 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 57 to 59, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
Clauses 57 to 59 provide for the disclosure of information between public authorities and the Attorney General for the purpose of enabling them to discharge their respective functions.
I beg to move that clauses 57 to 59 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 57, 58 and 59 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 3, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
As the substantive provisions of the Bill have now been adopted I shall turn to clause 3, which sets out the interpretation of certain terms used in the Bill.
Mr Speaker, I beg to move that clause 3 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 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Finally, I call on Mr Thomas to move clauses 60 to 69.

Mr Thomas: Thank you, Mr Speaker.
Clauses 60 to 69 provide for certain consequential amendments as well as for the repeal of the Charities Registration Act 1989.
I would like to thank my seconder, Dr Allinson. I would like to thank everybody who has contributed to this debate. And with that, Mr Speaker, I beg to move that clauses 60 to 69 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 60 to 69 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
That concludes consideration of clauses of the Charities Registration and Regulation Bill.

Leave granted to Mr Speaker for 14th May to attend BIPA

3310 **The Speaker:** Before I release you to your afternoon's work, I do need to request the leave of the House to attend the biannual meeting of the British-Irish Parliamentary Association on 14th May. Is that agreed, Hon. Members? (**Members**: Agreed) Thank you very much.

With that, the House stands adjourned until next Tuesday at 10.30 a.m. in Tynwald Court.

Thank you.

The House adjourned at 3.23 p.m.