



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 1st February 2011

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The House adjourned at 1.12 p.m.

Present:

The Speaker (Hon. S C Rodan) (Garff);
 The Chief Minister (The Hon. J A Brown) (Castletown); Hon. D M Anderson (Glenfaba);
 Hon. A V Craine and Hon. A R Bell (Ramsey); Hon. W E Teare (Ayre);
 Mr T Crookall (Peel);
 Mr P Karran, Hon. A J Earnshaw and Mr D J Quirk (Onchan);
 Hon. G M Quayle (Middle); Mr R W Henderson and Mr J R Houghton (Douglas North);
 Hon. D C Cretney and Mr W M Malarkey (Douglas South); Mrs B J Cannell and
 Mr C R Robertshaw (Douglas East); Mr C G Corkish MBE and
 Hon. J P Shimmin (Douglas West); Mr G D Cregeen (Malew and Santon);
 Mr J P Watterson, Hon. P A Gawne and Mr Q B Gill (Rushen);
 with Mr R I S Phillips, Secretary of the House.

House of Keys

The House met at 10.00 a.m.

[MR SPEAKER *in the Chair*]

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

5 **Members:** Good morning, Mr Speaker.

The Speaker: The Chaplain will lead us in prayer.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

Hon. Members, I have given leave of absence for today to Mr Cannan and, from around midday, to the Hon. Member for Ramsey, Mrs Craine. Mrs Cannell will be joining us later on during this morning.

Questions for Oral Answer

Matter of Urgent Public Importance Department of Community, Culture and Leisure Reorganisation of staff

The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Community, Culture and Leisure:

- 10 *Can you confirm that employees from your Department hand delivered certain letters to staff of your Department, throughout yesterday, pertaining to their employment, and inviting them to a round of personal meetings with senior managers within your organisation, and –*
- 15 *(a) what was the purpose of these letters and the ‘round of meetings’ set up for these staff;*
(b) how many staff received such letters;
- 20 *(c) is it envisaged that there may be redundancies within your Department, and if so, what sections, and how many staff will be affected by such moves;*
(d) how much consultation has gone on with the unions, and can you confirm that the first that anyone knew of any progression of ‘reorganisation’ was by way of these letters;
(e) will you agree to postpone the ‘one to one’ rounds of meetings with staff to facilitate further consultation with staff sides and unions; and
(f) will you guarantee that if there are to be any redundancies, these will be as a last resort, all other avenues being followed first to ensure jobs?

25

The Speaker: Hon. Members, in turning to Item 1 on the Order Paper, Questions for Oral Answer, I have had an application by the Hon. Member for Douglas North, Mr Henderson, to place a Question of an urgent character on a matter of public importance.

30 I am satisfied that this complies with Standing Order 3.5.1(4) and propose to take that Question ahead of the formally tabled Question 1. A copy of that Question should be on Members' desks for your information, and I call on the Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

35 Ta mee shirrey kied yn eysht y chur ta fo my ennym. I beg to ask the Question in my name.

The Speaker: And to respond I call on the Hon. Member for Douglas South, the Minister for the Department of Culture and Leisure, Mr Cretney.

The Minister for Community, Culture and Leisure (Mr Cretney): Thank you, Mr Speaker.

40 Can I, first of all, indicate that I am happy to try and answer as much as I can in relation to this matter, but I did have half an hour's notice of this Question.

45 Firstly, I would like to stress to all Members of the House of Keys that my priority is with the staff of my Department. The meetings that the Hon. Member for Douglas North refers to are being held currently and efforts have been made to make sure that any employee who could possibly be affected by staffing changes is told personally by my Chief Executive and his senior managers. Staff who are unlikely to be personally affected are to be informed of the situation later in the day. Whilst I accept that the Member wishes to place a Question on the basis of public interest, my view is that the interest of our employees is paramount for the few hours it takes to deliver personal briefings. That being said, of course I will respect the House and answer the Question being put.

50 In respect of part (a), the purpose of these letters was to invite staff to a meeting with senior officers. These meetings are intended to allow staff to be informed about the impact of the Budget challenges on a restructuring programme that was progressing through natural wastage. They are to be informed that the Department will follow the Government's agreed policy to be used in the event of possible redundancies and this requires a period of informal consultation, to which the Department is committed. This period of informal consultation is designed to allow employer and employees to work together to identify alternative solutions, if any exist, to the situation.

In respect of part (b), letters were sent to 34 staff.

60 In respect of part (c), I have stressed that this is at an informal consultation stage at the moment, but it is possible that redundancies may ultimately have to be made in two phases within the Public Transport Division's engineering sections. These sections cover bus and rail operations, and if it transpires that redundancies are necessary, it is possible that 11 posts would go in the first phase in the next financial year, with the possibility of a further phase of 11 posts at a later date. I have been informed that the decision to consult in respect of both phases now is so that staff are advised at an early stage. This will allow us to consider any redeployment opportunities within Government and staff to consider any other options they might wish to adopt.

70 In respect of part (d), I can confirm that all employees who have received letters are, to the best of my knowledge, members of Unite, the union. My Chief Executive and Director of Public Transport notified the full-time officer of this union as to the possibility of the application of the policy in the event of redundancy on 17th January 2011. There have been exchanges of correspondence since then and further meetings are planned.

Mr Speaker, because of the short notice, that is as far as, I am afraid, my officers have been able to get up to in terms of a brief.

75 In relation to the final two parts, (e) and (f), I will not agree to postpone the one-to-one rounds of meetings with staff, because I do believe it is only fair to staff that we have these meetings, so that they can discuss and they can be aware of the situation we are faced with.

In relation to (f), of course I will guarantee that, if there are to be redundancies, they will be a matter of last resort, but we are faced with a real situation and sometimes we have difficult decisions we have to make, Mr Speaker.

80

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

85 I thank the Shirveishagh for his Answer and for gathering what information he has been able to, which I am grateful for.

90 However, given the gravity of the situation, Vainstyr Loayreyder, would the Shirveishagh confirm that, when he speaks of possible redundancies being implemented over a two-phased approach – 11 posts in this financial year and then 11 posts at some subsequent time later – would he agree with me that, in fact, the reality of the situation is that this is more of a likelihood than not? Would he reaffirm his commitment he has just given that, in fact, redundancies will be a last resort by his Department, if they see this as the only way forward?

The Speaker: Minister to reply.

95 **The Minister:** Yes. Obviously, redundancies were a matter of last resort and we will explore any options, but I have to say that the reality of the situation is such that approximately 70% of my Department's budget is staffing and then there are fixed overhead costs which take it considerably higher than that, so there is little flexibility within my Department's budget when we are required, as are all other Departments, to find savings.

100

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, can the Shirveishagh assure this House that the situation is that we are seeing a proportionate response, as far as the financial problems we have got?

105

What assurances can the Shirveishagh give us, allowing for the increase in numbers of management recently appointed into this Department, that we are actually seeing the prioritising of the cuts that are needed by being the furthest away from the Chief Executive and his team?

110

The Speaker: Mr Cretney.

The Minister: I am disappointed with the Hon. Member. The Hon. Member has an interest in this matter. I had a meeting with him. We went through the allegations in relation to increased management in detail and he was properly informed. I hoped, as a result of that, he accepted what was said to him.

115

The situation is that there have been changes in the management structure and, can I say, in relation to areas of the Department where we have been... had to look to see where we can make savings, management have not been exempt from that.

120

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

125

Could the Shirveishagh confirm, by way of... and certainly it is on his organisational chart that, in fact, over the last six to 12 months there have been new management posts created, people have been recruited from the UK to fill certain management posts? Given that, why is it that the ordinary working people at the bottom of the pile have to take the hit when his Department could have been looking at natural wastage further up the chain of command and gone via that method to make the savings that he requires to make?

130

The Speaker: Mr Cretney.

The Minister: I have tried to explain already that I have looked at... I have not looked, but there has been examination across the board in relation to where savings can be made, and that has not just been in relation to the Public Transport Division, that has been across the Department.

135

I think all Departments recognise the reality of the situation we are now in and that we have to make savings. Management have not been exempt from such examination – and I do not know how many times I have to say that.

The Speaker: Mr Quirk.

140

Mr Quirk: Thank you, Mr Speaker.

Can I ask the Minister to seek an assurance that full consultation has been with the Industrial Relations Service?

145

I am a little bit disappointed, really, to... I had a note last night that was sent to me, through my door, regarding this particular issue. Regarding the number of skills that are available there, they are all craftsmen or semi-skilled individuals, which there is a lot of investment in. Have you

instigated, as a matter of course, to the Civil Service department, then, a block on any applications for tradesmen's vacancies in other Government Departments? (*Interjection*)

150 **The Speaker:** That is straying beyond the actual Question, but Mr Cretney, if you wish.

The Minister: [*Inaudible*] ...employ them under Whitley Council, Mr Speaker and, unfortunately, part of the problem appears to be that when matters... in terms of the then Department of Tourism and Leisure in 2009 restructured the Public Transport Division, it became quite clear that certain skills within the Public Transport Division are technically redundant. There are certain skills within that which are no longer required for the efficient running of the operation.

The Speaker: I am going to take two further supplementaries only. First of all, Mr Karran.

160 **Mr Karran:** Vainstyr Loayreyder, can the Shirveishagh inform this Hon. House to say that it is proportionate, as far as throughout the Department? What cuts have been made, as far as management is concerned, allowing for the fact that we all understand that Government Departments have got severe problems at the present time?

165 Can the Shirveishagh assure this House that he is not in a situation where, once again, it appears, if it is not true, that management is going to cut as far away from the front line...? Will he consider, with his record of opening up the dialogue with the staff, who have got many places that they would suggest where possible cuts could take place, in the interests of trying to balance your books with the financial situation, which seem to be ignored at the present time?

170 **The Speaker:** Mr Cretney.

The Minister: I can confirm to this Hon. House that the matter has been proportionate in terms of looking across the Department at areas where potential savings could be made. Indeed, savings have been made in a number of areas across the Department. They have been required to be made. We have looked at closing down certain functions which the Department currently operates. This has been a very challenging piece of work to undertake, but it is a piece of work which is necessary.

175 In relation to the question which has been asked by the Hon. Member for Onchan, Mr Karran, in relation to the consultations which are starting today with staff, those are informal consultations and I welcome the suggestion he makes that if staff have any suggestions in order to assist us in terms of the way we may make savings within the Department, they are in the front line and, obviously, I would welcome them.

The Speaker: Finally, now, Mr Henderson.

185 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

Would the Shirveishagh agree that this is a complete knee-jerk reaction to a situation that should be managed in a more commonsense way?

190 Would he further agree to a face-to-face meeting with the staff sides involved and Whitley Council, or his officers, to discuss this face-to-face? Further, does he realise that if these 22 posts are to go, that the staff affected are the ordinary working people who have specialist skills there and they will find it very, very difficult to be redeployed elsewhere in Government? Therefore, will he give a commitment to this House today that, in fact, his officers will redouble their efforts, to see what can be done to redeploy these staff, should this scenario play out?

195 **The Speaker:** Mr Cretney.

The Minister: Mr Speaker, I am *acutely* aware of the potential impact this will have on members of staff if we have to proceed to redundancy. I am acutely aware of that. I am acutely aware that a number of them are my own constituents. So I do not need to be lectured in terms of the difficulties which we are presently facing.

200 Of course, as I have said to other Hon. Members, if there are other ways within the organisation where we can achieve the savings which are required, then I am obviously very happy to consider those. But I have to say that we have spent a great deal of time over the last few months, in relation with other Departments also, looking to see where we can make savings in order to make sure that this Island can go forward. The priorities have to be the front-line services

in health, in education, in housing. Those areas are the key ones, as far as I am concerned, and all other Departments have to play their part in trying to make savings.

CHIEF MINISTER

**Businesses in financial difficulty
Covert assistance**

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

- 210 (a) *what his Government's policy is with regard to the granting of covert assistance, either financial or otherwise, to businesses that may be experiencing financial difficulties;*
(b) *what the total financial loss to the Government was as a result of the collapse of EuroManx; how much of that was due to covert financial assistance such as allowing due payments to be deferred; and what lessons were learned as a result;*
215 (c) *what the financial loss to the Government is expected to be as a result of the financial difficulties experienced by Aer Arran; and*
(d) *how many businesses have received covert financial assistance from the Government since January 1st 2010; and without naming them if he will state the nature of assistance in each case and the financial amount of such assistance where applicable?*

220 **The Speaker:** Hon. Members, we turn now to the Order Paper proper, and Question 1 in the name of Mr Karran.

Mr Karran: Vainstyr Loayreyder, I ask the Question standing in my name.

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

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

Mr Speaker, it has been a long established policy of the Government that Government does all that it legitimately can, where appropriate and in the public interest, to provide support where a business may be experiencing financial difficulties.

230 In relation to the Hon. Member's Question, it will be recalled that EuroManx Ltd went into liquidation in July 2008, at which time the total debt owed to Government stood at £1,293,802. In the period prior to the eventual collapse of EuroManx Ltd, I understand it was publicly known that each Department was responsible for the collection of its own debt due from the company and that they made separate arrangements for the recovery of those debts, based upon standard practice.
235 In the case of EuroManx Ltd the implementation of 'time to pay' agreements did enable Government to recover a portion of the total debt outstanding at the time that otherwise would have been lost.

With reference to lessons learned, it is clear that the practice of providing 'time to pay' agreements in appropriate circumstances, especially where there is a public interest, is beneficial to all parties.

240 **The Chief Minister:** This is a practice used by other countries.

In respect of Aer Arran, I would remind Hon. Members that this company was placed in a state of examinership during 2010, this being similar to that of administration or receivership.

245 As a result of that exercise, a restructuring of the company followed, which included a proposal to its creditors to accept a dividend on outstanding debt at the rate of 10 pence in the pound. As a consequence of this proposal, which was agreed by the majority of the creditors, the debt due to the Government was effectively discounted by 90%, resulting in a loss of income and tax receipts totalling £182,149, which is due to be written off in the current year.

250 Mr Speaker, Hon. Members will, I am sure, also appreciate that this creditors' agreement enabled Aer Arran to generate the additional investment required by the company to sustain operations throughout the period, which retained the important air links the Island has with London City and Dublin, which are considered important for the public interest and for our financial services sector, as well as providing an important alternative airline operator and air route into London and an air route to Dublin.

255 Mr Speaker, I am advised that there has been no granting of any direct financial assistance offered to any businesses in such circumstances in the period since 1st January 2010. I should,

however, like to make it clear that this does not extend to the application of time-to-pay agreements, which are regarded as routine matters of operation within normal practices of debt management.

260 Thank you, Mr Speaker.

The Speaker: Mr Karran, supplementary.

265 **Mr Karran:** Vainstyr Loayreyder, can the Ard-Shirveishagh just clarify the total financial loss as far as EuroManx was concerned?

Can the Ard-Shirveishagh explain, does he not feel that when issues are not put out to tender, this could be one way of allowing a way of supporting, in a covert way, as far as business on the Island is concerned?

270 **The Speaker:** The Chief Minister, I believe, did give the figure. Chief Minister.

The Chief Minister: I did, Mr Speaker. One is it was £1.2 million and I gave the full figure earlier.

275 Second is that this new terminology, 'covert', I think is unfortunate. What we do is work in the best interests of the Island, sir.

Mrs Craine: Hear, hear.

**Public sector posts
Numbers abolished, recruited for and created**

1.2. The Hon. Member for Rushen (Mr Watterson) to ask the Chief Minister:

280 *Further to his Written Answer 28 in January Tynwald, how many of the staff classified as 'other' were teachers or nurses?*

The Speaker: Question 2, Hon. Member for Rushen, Mr Watterson.

285 **Mr Watterson:** Thank you, Mr Speaker.
I beg leave to ask the Question standing in my name.

The Speaker: I call, again, the Chief Minister to reply.

290 **The Chief Minister (Mr Brown):** Thank you, Mr Speaker.
I am grateful for this opportunity to provide further information, so that Hon. Members and the public can be given a fuller and clearer picture of what is happening on the important but complex issue relating to Government staff numbers.

295 In the Written Question at number 28 in January Tynwald, I was only asked to identify the number of positions in the public sector which had been created, abolished and recruited since 1st April 2010. However, due to time constraints on answering Questions, I was not in a position to provide additional information regarding staff positions which would have been helpful, which related to the total number of changes to posts made within the public sector numbers since 1st April 2010.

300 I am now in a position to provide the additional information, and can advise the House that, in relation to public sector employees, subject to final confirmation, some 285 posts have either been abolished or not refilled since 1st April 2010, this being in addition to the decrease of 99 posts during 2009-10, making a total reduction of 384 public sector posts in two years.

305 Mr Speaker, in relation to teachers, I can confirm that 25 positions were abolished; no positions were recruited internally; 39 positions were recruited externally; with two new positions being created. Fifteen of the 25 positions abolished were limited term and natural discharge contracts which had come to an end.

With reference to nursing posts, I can confirm that since 1st April 2010, no nursing positions have been abolished; 38 positions have been recruited internally; 31 positions have been recruited externally; and no new positions created.

310 I am also pleased to take this opportunity to clarify some of the comments that have recently
been made, which I believe will demonstrate that, contrary to what is being stated by some, the
Civil Service is *not* growing at the expense of the wider public service. The number of Civil
Service positions shown as created since 1st April 2010, as identified in my Answer in Tynwald,
in January 2011, totalled 30. Of those 30 positions, 19 of them represented existing positions
315 transferred into the Civil Service from separate employing authorities. This includes 16 positions
in respect of the Companies Registry and individual posts in the Departments of Environment,
Food and Agriculture, Health and Home Affairs. Nine of the posts were limited term
appointments, of which four are for the Unified Pension Scheme Project team, one of which
remains to be filled and, in response to the Tynwald Select Committee on Pensions, three posts to
320 strengthen and manage other pension change projects; one post to support the Minister and Chief
Executive in the Department of Social Care; and one post to provide administrative support on a
short-term basis for the Commonwealth Youth Games, which are to be held on the Island in
September of this year, sir.

325 **The Speaker:** Mr Watterson, a supplementary.

Mr Watterson: Quite a 'snow' job there! It is going to take a little while to digest it all.
Could the Chief Minister tell us how many of those additional posts were in the Chief
Secretary's Office?

330 **The Speaker:** Chief Minister.

The Chief Minister: Yes, Mr Speaker. I notice that, certainly, accusations have been made by
some that there has been growth in the Chief Minister's Office. What I can say is that the posts
that we have had, where there have been changes, are in relation to immigration. That was
335 answered in a Question that I was asked last year.

In terms of any other additional posts, there is only one senior executive post that was created
in the Civil Service and, as far as I am aware, that was not in the Chief Secretary's Office, sir. So,
as far as I am aware, apart from some contract posts which have been linked to it, which is in
relation to shared services, I am not aware of any other posts in the Chief Secretary's Office.

Public spending reduction Impact on employment

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

340 *If he will make a statement on the reduced employment opportunities in the nursing and
teaching professions in the light of reduction in public spending; and how he justifies his
priorities in Civil Service employment?*

345 **The Speaker:** We turn to Question 3. Hon. Member, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I ask the Question standing in my name.

The Speaker: Again, Chief Minister to reply.

350 **The Chief Minister (Mr Brown):** Mr Speaker, as indicated in my Answer to the previous
Question, it is not correct to assume, as implied by the Hon. Member, that Civil Service positions
are being given priority over nurses and teachers, as this is clearly not the case.

355 The reduction in Government spending has affected all areas of service provision, throughout
the public service. As a large portion of Government expenditure is the cost of employing staff, all
Departments, Boards and Offices have had to consider taking opportunities to reduce staff, when
vacancies have arisen, and also how they might ensure more efficient and effective use of staff
resources, whilst endeavouring to maintain effective public services.

360 In most cases, this has led to a reduction in staff costs, which is in line with Government's
stated policy, which is that of reducing staffing costs by 10%. In some areas, this has resulted in
the abolition of posts and in other areas, posts have not been refilled, which has resulted in a

substantial cost saving to Government – which, in turn, is assisting Government in its endeavours to secure, where possible, employment for its existing public sector employees.

365 I can confirm that it is *not* Government policy to reduce employment opportunities in the nursing and teaching professions or, for that matter, in any other areas of the public sector employment, in favour of creating permanent positions in the Civil Service, or in fact in any other area under public sector control, sir.

The Speaker: Mr Karran.

370 **Mr Karran:** Vainstyr Loayreyder, can the Ard-shirveishagh explain, then, the likes of the refusal for his Minister from the Department of Community, Culture and Leisure, when asking about what cuts there were in the management, as far as the emergency Question is concerned?

375 How does he justify the fact that many feel that, once again, it seems to be front-line services that are taking the hammer because of the fact that it seems that the chief executives are making the agenda, as far as the hard financial problems of the Council of Ministers are concerned? Does he feel that maybe we need some sort of real dialogue with the staff about where there could be positive efficiencies that they see, which, because of the present structure, as far as management is concerned, fall on deaf ears when it comes to them trying to help Government, in trying to give them the right ways to try and get the efficiencies in order to help balance books?

380

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

385 I think the answer is relatively simple to this one. Many may feel that front-line services are suffering, because of statements that the Hon. Member and some others are making.

Our priority, as Government, is absolutely clear: first is that we are endeavouring to reduce staff by natural wastage. That is a priority and that is seen in the figures that I gave in answer to Question 2; secondly, we have made it abundantly clear that redundancies are a last resort, but they cannot be ruled out; and, thirdly, we are endeavouring to protect front-line services, public services that are required especially for the needy and those who require our care.

390

Statements the Hon. Member makes, without any foundation, do not help people. It confuses them.

Mr Teare: Hear, hear.

395

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, can the Ard-shirveishagh then actually answer the question: when we have seen the number of blacksmiths, joiners and others in the Department, how much management has actually been cut back, as far as that Department is concerned?

400

I think it is important that the Ard-shirveishagh, instead of ranting on to me, actually substantiates the claims that others are making outside this House in that particular case, where it has not been management that has taken the hit. As usual, it has been the front-line services.

405

The Speaker: You are making statements now.
Chief Minister.

The Chief Minister: I just think it is appalling that the Hon. Member focuses in on one sector of our employees against the other – divide and rule. The point is our responsibility is clear: it is to all our staff, whether they are civil servants, manual workers or whoever.

410

We have a different policy than his. We are there to try and safeguard as many jobs as we can in the public sector, in difficult times, and it is time some Members came into the real world, Mr Speaker. Finances are tight. We expend the bulk of our money on staffing costs and, with the assistance of staff, not only at senior management level in the Civil Service, at junior level in the Civil Service and in manual workers, a lot of things are being done to help improve, create efficiencies and try to save money, which secures jobs for those we already have.

415

So I think the simplistic view he gives out is not helpful at all, and especially not to the staff involved, sir.

420

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, can we have an answer to the question of how much management, instead of the usual rant that I have to put up with from the Hon. Member?

425 **The Speaker:** The Chief Minister just answered your question.
We turn now to Question –

Mr Karran: He has not answered my question – and you are supposed to look after my interests as a Member who represents the people of the Isle of Man.

430 **The Speaker:** The Chief Minister answered your question.

**Water rates
Council of Ministers' Working Group**

1.4. The Hon. Member for Douglas North (Mr Henderson) to ask the Chief Minister:

435 *If he will make a statement on the work of the Council of Ministers' Working Group set up to consider water rates; whether it has yet made a report to the Council of Ministers; and what the next steps are in its programme of work?*

The Speaker: We turn to Question 4 now. Hon. Member, Mr Henderson.

440 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
Ta mee shirrey kied yn eysht y chur ta fo my ennym. I beg to ask the Question in my name.

The Speaker: Chief Minister.

445 **The Chief Minister (Mr Brown):** Yes, Mr Speaker, thank you.
I thank the Hon. Member for giving me an opportunity to provide the House with an update on this matter, in advance of publishing Council's Report.

450 Mr Speaker, the Working Group set up to consider water rates reported to the Council of Ministers in June 2010. On completion of the Report, which contained three principal recommendations, the Working Group was disbanded and, as such, no ongoing programme of work is being detailed. I would take the opportunity to thank the members of the Group for their work in this important matter.

I can advise the House that the Council of Ministers have carefully considered the Working Group's Report, along with its recommendations and, as a consequence, requested further information from Treasury and the Water and Sewerage Authority, in order to further assess the impact of the Group's proposals.

455 The Council of Ministers subsequently gave further consideration to the Report in November 2010 and, as a result, Council requested the Water and Sewerage Authority to re-examine its long-term financial position, which is a matter covered within the Group's Report. This review has now been completed and the Council has endorsed the Authority's position with regard to amending the schedule of water rates increases, as approved by Tynwald in June 1999.

460 I can confirm that the Chairman of the Water and Sewerage Authority, the Hon. Member for Peel, Mr Crookall, will, with Council endorsement, be seeking approval at the February sitting of Tynwald, for the Authority to amend the 1999 schedule of water rates increases, in the light of the recent review, which if approved, will bring some financial benefit to ratepayers. If ratepayers are to benefit during the next financial year, then the Water and Sewerage Authority will have to seek Tynwald approval at the February sitting.

465 I can confirm that the Council of Ministers intend to publish their Report, which includes the Working Group's Report together with the Council's response, and to put the Report before Tynwald at the March sitting. The Council of Ministers' Report will set out for Hon. Members how the Working Group's recommendations will be taken forward by Government over the coming months, sir.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

475 I thank the Ard-shirveishagh for his positive response and detail in that.

He mentions that there may well be some benefits for ratepayers, which is very welcome news, Vainstyr Loayreyder, but could he clarify, in the background of all this, the historical reason for the review was, in fact, the inequities of the water rates and, without pre-empting the publishing of the report, could he give us an indication that, in fact, that particular main background issue will
480 be addressed in the forthcoming years, basically?

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

485 I think my views are well known, in terms of not only water rates but rates, in terms that we have got to try and find a way to overcome the present deficiencies within that system. Certainly, the issue in relation to the Working Group's report does relate to the issue of how we go forward in the future in relation to domestic rates, business rates, water rates, but of course, clearly there is a bit more work to be done on that. Hence why there is a delay.

490 Our priority was, in fact, to try and bring the financial benefit, albeit slight, to the ratepayers who are paying water rates, because we can do that if we go to February Tynwald. All I can say is that we are working to get the detail right for Members in terms of the Council of Ministers' report about the rates issue and how we will go forward.

495 **The Speaker:** Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Again, I thank the Ard-shirveishagh for his positive answer on this thorny issue.

500 Could he give us some indication with regard to the Working Group of the Council of Ministers' intentions moving this forward? Again, I would indicate to him that I am particularly interested in the background inequity that caused this, to start with. Are any of the issues in the way forward that he has seen so far addressing that background inequity with regard to the water rate; and if there are, can he indicate if the Council of Ministers are supportive of those moves to take this forward in a more positive way?

505 **The Speaker:** Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

510 I do not think we can just separate the water rate out from the general rate issue in terms of the equity, unless you abolish the water rate and just bring in a standard charge. So the issue is far more complex than that. It is an issue we are all conscious of in relation to rates.

515 What we are endeavouring to do, because clearly time is an issue for us, is to bring forward the March sitting proposals, which will set the scene and programme so that, after the General Election, if it is the will of the next administration and Tynwald, then we can move forward, hopefully with more speed than we have been able to do in the past. The difficulty is, when you come up with different scenarios, of course there are winners and losers and what we all want to do is try and make sure that we have a system that is as fair as possible for those who have to pay payments for the equivalent of rates or a rates system, and we are trying to look at, and will need to look at, how we can sort that out.

520 There has been work done in the past, Mr Speaker. It always hit a barrier. We are trying to say we are looking to see how we can move that forward and that, hopefully, will be outlined in the report, sir.

TREASURY

Professional reports Ownership of copyright

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

525 *Where a professional report is paid for out of public funds under what circumstances the copyright rests with the Government; and what plans she has to ensure that the Government always owns copyright in such advice?*

The Speaker: Question 5. Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I ask the Question standing in my name.

530 **The Speaker:** On this occasion, I ask the Minister for Treasury, the Hon. Member for Ramsey, Mrs Craine.

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

535 As a basic principle, it is generally the author of a document who owns the copyright in it – that is, the right to control its reproduction and publication. The ownership of the copyright in the document produced for a third party will only belong to that third party if the contractual relationship between the author and the third party expressly makes provision for this.

540 The contractual documents prepared by either the Attorney General's Chambers or by the Treasury's Procurement Services do, as a rule, contain clauses that ensure the ownership of such copyright belongs to Government. That said, there are occasions when the transfer of copyright from the author to the Government may come at a cost and, as such, it may not represent best value for money for the taxpayer to insist that copyright is transferred. On such occasions, the officers responsible for the contract negotiations are required to undertake a case-by-case cost-benefit analysis, in order to determine the most appropriate course of action. I cannot, therefore, 545 give an assurance that the Government will always, and in all circumstances, own such copyright.

550 However, in order to ensure that this matter is both better understood and that the Government's approach is consistent, I have requested the Treasury's Head of Procurement to draft a guidance note to be part of a suite of new procurement practice notes for use by all Government officers when considering the matter of copyright ownership.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I thank the Shirveishagh Tashtee for such a sensible reply on such an important issue.

555 Could the Shirveishagh inform us how many, over the last five years of reports, have we not owned the copyright?

560 Would the Shirveishagh not agree that where we are talking about getting professional reports done, that are being initiated by the Government on behalf of the taxpayer, it is crazy if we have a situation where they would not be writing and reporting on the issue in the first place if they were not doing it for Government. This issue should not be of any financial advantage to the authors of the report, as the item of the report is something that was of interest to the purchaser – namely the Government of the Isle of Man, where the taxpayer is in charge of paying for such information, and then finding out that he will not be able to read it at his leisure because of copyright law.

565 **The Speaker:** Mrs Craine.

The Minister: Thank you, Mr Speaker.

570 I am afraid I do not have the information as to how many reports have not owned the copyright over previous years. I agree with the Hon. Member as to this importance of being able to own the copyright, and as I said in my Answer, the position is, at the present time, that it may be that copyright does have to come at a cost. But I do think that the improvements we intend to make to the procurement of copyright will certainly assist in this matter and give clearer guidance.

Government Departments Spending during March

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

575 *What steps Treasury has taken to stop, or make harder to stop, the high level of spending in March in Government Departments?*

The Speaker: Question 6. Again, I call Mr Karran.

Mr Karran: Vainstyr Loayreyder, I ask the Question standing in my name.

580 **The Speaker:** Minister for the Treasury to reply.

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

I appreciate that the Hon. Member has raised this particular concern previously, over the level of spending that occurs in March, prior to the year end. To that end, I would like to advise Hon. Members that the Value for Money Committee inducted a review into the subject and responded to
585 the Hon. Member, Mr Karran, in February 2008, providing their detailed findings at that time.

Whilst it is acknowledged that the profile of expenditure across most Departments is traditionally higher in March, as compared with other months of the year, there is no evidence to suggest that this spending pattern is peculiar to the Isle of Man Government or calls into question the appropriateness of the expenditure incurred at that time.

590 However, Treasury is mindful of its stewardship over public finances, and I would assure Hon. Members that Treasury does exercise a degree of oversight in challenging spending decisions and scrutinising accruals, especially at year end, to enforce such discipline. In that respect, Mr Speaker, we will continue to strive to achieve spending restraint and value for money all year round and not just at year end.

595

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, can the Shirveishagh assure this Hon. House, and maybe circulate and highlight any issues, where there has been excessive spending in the last month of
600 the financial year?

Can the Shirveishagh Tashtee also tell us that when she talks about the mad March spends as something that is normal, is that not just a case of it being in Government and local government in other jurisdictions? How do we try to address that issue? Allowing for the fact that we have had a number of initiatives over the years with previous Ministers, and managed with Minister Gelling
605 to look at ways of doing it, what ways are we going to do it in the future, if we are in hard financial times, to make sure that we are not ending up allowing money not to be spent responsibly by Departments of Government?

The Speaker: Mrs Craine.

610

The Minister: Thank you, Mr Speaker.

I am not sure what year the Hon. Member is referring to because we have not reached the last month of this year yet, and I am not sure that there are highlights available for previous years that can be circulated to the Member.

615 I think it is worth pointing out that, in fact, it is natural that a certain amount of payments will come together at the financial year end, and so that is to be expected.

As to controlling what goes on in Departments and how they manage their resources, that is incumbent upon all of us in Government, every Department Member, to be aware of the need not to allow accruals to be created and for careful budgeting. As I say, that is for the whole of the year,
620 Mr Speaker, not just for the year end.

The Speaker: Mr Watterson.

Mr Watterson: I just want to pick up on some comments that the Minister made in her first
625 Answer, about making sure that there is scrutiny, particularly over the last month's spending. Will the Minister perhaps just expand on that, and tell us what scrutiny there is done on the March areas of spending that are not done at other times of year? What work is done specifically on this issue?

The Speaker: Mrs Craine.

630

The Minister: I do not think that within Departments... Well, let me start again, Mr Speaker. I think that people in Departments are extremely aware of the criticism that is levelled from this place and another place in respect of year end spending. So it is not only from within their own Departments, within their own financial directorates, that this pressure should be getting applied,
635 but it is also from Treasury in talking to those financial officers, making them aware that this is not a course that is popular with Members and making them aware that there is this continued need to be cautious about our budgets, and not allowing this inflationary measure to take place at the end of the year.

The Speaker: Mr Watterson.

640

645 **Mr Watterson:** Does the Minister feel that the present system we have of strict and rigid annual 12-month budgets are part of the problem rather than the solution? Maybe we should be looking at ways of rolling budgets, rather than strict annual budgets, as part of that financial management, to reduce the peaks and troughs around year ends.

The Speaker: Mrs Craine.

650 **The Minister:** That is something that has always been of interest, certainly when I was in the Department of Education, where the situation is that the year end is of a different timing than the financial year end. Effectively, it is the school year and that has always been quite difficult for them to manage.

655 It is certainly something that is of interest and I would be happy to discuss that with the Hon. Member.

The Speaker: Mr Karran.

660 **Mr Karran:** Vainstyr Loayreyder, would the Shirveishagh Tashtee not agree that we managed to get the Minister of the Treasury, Mr Gelling, to do that for a number of years? Would the Minister not agree that maybe the answer is, over the last five years, to circulate the percentage increase, as far as spending in the last month of each Department, to Hon. Members and allow for when that policy was changed – which it was, right, it was in for a few years –

665 **Mr Bell:** The policy did not change.

Mr Karran: – to change, to be reverted back – so that Members can see whether there is a problem there?

670 Would the Shirveishagh not agree that we, again, need to be able to look at ways of not encouraging money to be spent too easily, but also making sure that we find systems to encourage people to do responsible purchasing, especially in the last month of the financial year, to save on the present financial problems that we have got?

The Speaker: Minister.

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

I do not actually think that there is anything to be gained by circulating what the Hon. Member refers to as the spending increase in the last month of the year because, as I have explained, it is erratic and is not something that I think can be compared, like for like, on a yearly basis. Different Departments have different demands at different times.

680 The policy has not actually changed, but what the Hon. Member is looking at is a way in which to restrain systems, the spending. I think that we have made great strides, actually, in developing the procurement process across Government and that is something that I think needs to be further rolled out across Departments, but the ultimate answer is, Mr Speaker, the best way to restrain spending is to find that you have no money left.

Damage to roads Funding for repairs

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

685 *In the light of the bad state of many roads after the bad weather how much did Treasury allocate for this within the Department of Infrastructure's budget; where this was used; and what action she will take to ensure that the Department of Infrastructure use their funding to do the repairs which are needed?*

690 **The Speaker:** Question 7, Hon. Member, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I ask the Question standing in my name.

The Speaker: Again, I call on the Minister for the Treasury, Mrs Craine.

695 **The Minister for the Treasury (Mrs Craine):** Hon. Members will be aware that the day-to-day maintenance and repairs on the public highway are undertaken and managed by the Department of Infrastructure under the Department's revenue budget and, as such, the Department identifies the priorities for maintaining the highway on an operational basis. I therefore presume the Hon. Member for Onchan is referring to the additional funding approved by Tynwald in
700 November 2010 for strategic highways refurbishment in the sum of £400,000 and also for the refurbishment of unclassified roads programme in the sum of £500,000.

In terms of the strategic highways refurbishment, the Department has a five-year programme of investment in the reconstruction of sections of the strategic highway network. Treasury has been advised that the Department undertakes an extensive survey and testing work to identify areas
705 which have reached the end of their life and are in the most need of reconstruction and resurfacing. It is understood that this is assisted in the development of a prioritised programme of works.

Hon. Members may recall that Tynwald has approved expenditure of £2.5 million a year for additional reconstruction and resurfacing work which could not be funded through the normal revenue maintenance budgets. In this respect, I am able to inform Hon. Members that, for the
710 current financial year, nine projects have been identified as having the highest priority in consideration of their structural condition, the traffic that they carry, and other outside influences such as development proposals and other capital infrastructure improvements. The additional funding of £400,000 relates to two schemes brought forward from 2011-12, namely: Mines Road, Foxdale, which deals with strengthening and resurfacing of the carriageway; and also works at
715 Victoria Road, Douglas, which is primarily that of resurfacing.

Mr Speaker, turning to the unclassified roads programme, I am advised that the Department has initially prioritised schemes in Port St Mary, at Queen's Road, Fistard Road, Seafield Road and the Promenade, to be undertaken in this financial year. I should like to assure Hon. Members that, whilst Tynwald approval has been granted for this capital expenditure, formal requests are
720 still submitted to Treasury for concurrence to expend moneys on an individual scheme-by-scheme basis, and regular meetings are held between Treasury and departmental members to monitor and review progress of the programme.

725 **The Speaker:** Mr Karran.

Mr Karran: Vainstyr Loayreyder, can the Shirveishagh circulate the information, as far as the highways where this money has been spent? Can the Shirveishagh also highlight the issue that, with the state of the roads as they are now, does she feel that the money has been well spent in
730 these proposals, instead of having the flexibility in order to address the particular damage that we have had with the bad weather recently?

The Speaker: Mrs Craine.

735 **The Minister:** Certainly, Mr Speaker, I am happy to circulate where the moneys have been spent, but I do wonder why this Question is coming to me in Treasury, instead of the Minister for Infrastructure, who might be able to give a more fulsome reply as to where the moneys have been spent this year, and in fact where their priorities lie. It really is up to the Departments themselves to determine the priorities.

740 **The Speaker:** Final supplementary.

Mr Karran: Vainstyr Loayreyder, would the Shirveishagh not agree that, with the fine title of being Shirveishagh Tashtee, there is also a fine responsibility of that, to try and make sure that the Treasury are making sure that their Departments are actually spending the money that was given
745 by the Treasury, through the Court of Tynwald, in the most effective and efficient way? Would she not agree that the fact is what I am trying to do is to make sure that they put the proper financial control on different Departments, so that we do not end up having to lay off blacksmiths, bricklayers, etc, as far as this is concerned?

750 **The Speaker:** Mrs Craine to reply.

The Minister: Thank you, Mr Speaker.

I thank the Hon. Member for reminding me of my responsibilities. I am all too aware of them!
755 I take his point, though, that he is concerned about the financial control on spending on schemes within Departments. I am very content and confident that my officers work well with

officers in the Departments, to make sure that whatever project is being brought forward, we receive value for money.

INFRASTRUCTURE

Richmond Hill Emerging defects

1.8. The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for Infrastructure:

If he will make a statement regarding the emerging defects on Richmond Hill?

760 **The Speaker:** Question 8. Hon. Member, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.
I beg leave to ask the Question standing in my name, sir.

765 **The Speaker:** I call the Minister for Infrastructure, Mr Gawne.

The Minister for Infrastructure (Mr Gawne): Gura mie eu, Loayreyder.

770 There were three defects noticed on completion of the carriageway work on Richmond Hill back in November: a slight ripple in the road surface near Richmond House; a longitudinal joint ridge in the centre of the uphill overtaking lane, with a maximum step of 15 millimetres at intermittent locations over this section; and a fault with about 10 metres of curbing.

775 The paving operation on Richmond Hill was unlike many of the roads that the Department services in the Isle of Man. Not only did the paving team have to manage a considerable 11% incline but, at the same time, execute several super-elevations of up to 7%, as the road banks around corners. Level control in these situations is particularly difficult. In addition to this, the Department wanted to reduce the number of closures of the road and, in order to do this, undertook the laying operations in 5-metre-wide operations. This additional loading on the machine, combined with wet conditions, caused the machine to lose traction on several occasions, resulting in the step and the ripple. In hindsight, paving these wide widths in these conditions was a mistake and the Department should have spread the work over an additional weekend.

780 I wish to apologise to motorists for the disruption caused by last weekend's final closure. However, work to rectify the defects was completed at a cost of just over £30,000 – about 1% of the total cost of the scheme. It is disappointing that this additional work was required, not least for the staff involved, who take pride in their work and were upset when the defects became evident.

785 A quality improvement team has been set up, to ensure improved controls, techniques and training occurs in the future.

The Speaker: Mr Houghton.

790 **Mr Houghton:** Mr Speaker, when the Minister goes on about quality improvement teams and that they wanted to reduce the number of road closures etc, when the road was closed last weekend, is he aware that works were completed by Saturday lunchtime – a summer's day Saturday, as all Hon. Members will recall (*Interjection*) – and that the road, complete and fully able to take traffic, remained closed for the whole of the remainder of Saturday. Why was that?

795 **The Speaker:** Mr Gawne.

800 **The Minister:** I am aware, from my officers who control the scheme, that the works were completed on Sunday evening. If the Hon. Member for Douglas North has different information, perhaps he could share it with me and we could find out from the officers who is right, but I would have thought that the officers on the ground would know the answer.

The Speaker: Mr Houghton.

805 **Mr Houghton:** Mr Speaker, there were no officers on the ground, when I walked Richmond Hill on Saturday afternoon – not a soul – and the road was fully roadworthy. So even if there were

further roadworks to be undertaken on the Sunday, the road could have been re-closed so that work could have been done – if that was ever to be the case.

810 Mr Speaker, can the Minister take that particular issue back, on the severe inconvenience his Department keeps causing time and time again on motorists, without a care in the world, leaving a main arterial route closed, when it should have been re-opened? Can he agree to do that?

Can he also hold an inquiry in his Department and find out why he keeps coming back to this House and another place with tales that no-one believes? (*Interjection by Mr Watterson*)

815 **The Speaker:** Mr Gawne.

The Minister: I am amazed that the Hon. Member for Douglas North believes that I can answer questions he has just posited in this Question Time – some information which is totally contrary to what I have been told by my officers.

820 In answer to the second part, I have already had an investigation in the Department to find out what went on, what the issues were, and that is why I gave the information in the Answer, because I feel it is important that people know.

I have already apologised for the inconvenience caused to motorists as a result of these closures. I am not sure that I can do any more than what I have already done. The Hon. Member for Douglas North asks me to do it again. I am not going to do it again, because I cannot really see much point in that. What is the point in me apologising if the Hon. Member then gets up and says, 'I think you should apologise'? Well, I just have done.

825 What is the point of me having an investigation if the Hon. Member then says, 'I think you should have another investigation'? We have already done it, and we are not going to do it again, if that is okay.

The Speaker: Mr Houghton.

835 **Mr Houghton:** Thank you, Mr Speaker.

The Minister has apologised, but he has not assured this House that issues like this – incompetence like this – such as last Saturday, will not happen again, and the issue is it happens time and time again.

840 **The Minister:** Is that a question?

Mr Houghton: Mr Speaker, may I ask the Minister, is he aware that there is a totem pole in his Department with naïve Ministers' heads carved therein? Does he realise and is he aware that his head is carved on such a totem pole of a naïve Minister, yet again, sir?

845 **The Speaker:** A rhetorical question, I think. Mr Gawne.

The Minister: I am sure there are Standing Orders against such things, (**Mr Brown:** Hear, hear.) but I will have a go at answering it.

850 I think it is unfortunate the Hon. Member reverts to personal and abusive attacks, not least on myself, but also on the officers which, as I understand it, as the Chairman of the Civil Service Commission, he represents. I am sure he knows, as Chairman of the Civil Service Commission, what is and is not appropriate in terms of questioning the ability of officers. I have done an investigation and I am satisfied with the results of that investigation, that the appropriate actions are going to be taken, to ensure that we reduce or minimise the opportunity for making mistakes in the future.

855 But when you do major capital works, things occasionally go wrong. This is what happens everywhere in the world; it is not just limited to the Department of Infrastructure. Every Department, every private sector company makes mistakes. Snagging issues are common, and they are dealt with and they are almost built into the costs of schemes – well, they *are* built into the costs of schemes. It is anticipated that, at the end of a major project, you will have to rectify some mistakes. That is what we have done in this case and I again apologise to motorists for the inconvenience caused.

865 **The Speaker:** Hon. Members, we have reached the end of our allotted time.

**Suspension of Standing Order 3.5.1(2) to allow continuation of Question Time
Motion lost**

870

The Speaker: I call Mr Karran.

875

Mr Karran: Vainstyr Loayreyder, I move that Standing Order 3.5.1(2) be suspended to enable the remaining Questions for Oral Answer to be taken at this sitting.

Mr Houghton: I beg to second, sir.

The Speaker: The suspension of Standing Orders having been moved, those in favour, say aye; against, no. The noes have it.

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

FOR	AGAINST
Mr Karran	Mr Earnshaw
Mr Crookall	Mr Brown
Mr Anderson	Mrs Craine
Mr Cregeen	Mr Quayle
Mr Houghton	Mr Teare
Mr Henderson	Mr Corkish
Mr Malarkey	Mr Shimmin
Mr Robertshaw	Mr Watterson
Mr Cretney	
Mr Gawne	
Mr Gill	
The Speaker	

880

The Speaker: Sixteen votes required, Hon. Members. With 12 votes for and 8 against, the motion, therefore, fails to carry.

Procedural

Questions 9-13, 11-15 and 17 deferred; Questions 12 and 16 to Written Answer

885

The Speaker: Questions on the Order Paper can be answered in writing from 12 noon tomorrow, but I will give questioners the opportunity to indicate whether they wish to withdraw the Question, have it tabled at the next sitting of the Keys, or to be answered in writing.
First of all, Mr Houghton, in respect of Question 9.

Mr Houghton: For next sitting, sir.

890

The Speaker: For next sitting.
Mr Karran, in respect of Questions 10, 11, 13 and 17?

Mr Karran: Next sitting.

895

The Speaker: Next sitting.
Mr Watterson, in respect of Question 12?

Mr Watterson: In writing, please, sir.

900

The Speaker: Sorry, I did not hear that?

Mr Watterson: In writing, please.

905

The Speaker: In writing, Question 12.
And finally, Mr Henderson, Questions 14 and 15?

Mr Henderson: Next sitting, sir.

The Speaker: Next sitting.

910

Finally, Mr Quirk? Mr Quirk is not here. That will be answered in writing.
Hon. Members, the Questions for Written Answer will be circulated shortly.

Questions for Written Answer

SOCIAL CARE

Home care workers 'Cluster working' arrangements

1.12. The Hon. Member for Rushen (Mr Watterson) to ask the Minister for Social Care:

If the Minister will make a statement on the new 'cluster working' arrangements for home care workers?

915

Answer: The Home Care Service provides vital support for many older people, allowing them to remain in their own homes. We aim to increasingly tailor our services to the individual needs of those that use them, based on their personal care requirements and individual circumstances. Therefore, the Home Care Service has to be flexible and available throughout the day and evening to meet those needs seven days a week. We regularly refine our operations to improve our services further.

920

To date we have, wherever possible, allocated one worker to each service user. This was not always possible to implement as it is often difficult for one person to work both in the early morning and in the evening. Currently, the service at weekends is limited and generally involves different staff.

925

In order to provide a more flexible service that better meets people's needs seven days a week, my Department has introduced, from 31st January 2011, a system of 'cluster' working, whereby a team of home care workers, co-ordinated by a supervisor, work with a group of service users in a defined geographical area. This improved method of working allows us to provide a service to people between the hours of 8.00 a.m. and 10.00 p.m. seven days a week in a more efficient and responsive way than the previous approach of allocating one worker to one service user.

930

The refined method of working has required some adjustments to home carers' working practices and there has been consultation with staff who have contributed to the effective transition to this revised system. I am confident that 'cluster' working will result in an improved service which better meets the individual needs of service users while also making the most efficient use of the resources available and so delivering better value for money. The new arrangements have cost no more money than is currently spent and will reduce travel and costs, thus releasing more time for direct care for people.

935

We are closely monitoring the introduction of this new scheme and will make operational adjustments if they are required to further improve the service.

940

In conclusion, the Department will be able to provide an expanded and improved service within existing resources and I congratulate those creative managers and staff who have been involved in developing this initiative.

HOME AFFAIRS

Parking in residential areas Large vehicles

1.16. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Home Affairs:

If he will make a statement on parking large vehicles in residential areas; and whether his Department has submitted any views on the consultation from the Department of Infrastructure?

945 **Answer:** Consideration is being given to this matter by the Police and the Fire and Rescue Service and a response will be provided to the Department of Infrastructure, by the consultation deadline which is 18th February 2011. Until our response has been formulated, it would not be appropriate to make a statement on this matter.

CHIEF MINISTER

**Freedom of Information Bill
Introduction to Branches**

2.1. The Hon. Member for Rushen (Mr Watterson) to ask the Chief Minister:

950 *When the Freedom of Information Bill will be introduced into the branches?*

Answer: Progress continues to be made in bringing forward a Freedom of Information Bill, for which Government remains committed to its introduction into the branches during the current legislative session.

955 It is acknowledged that progress on the Bill has been slower than originally anticipated. I can confirm that the responses to the consultation exercise, some of which have been quite detailed, have been collated and work continues to consider the comments received, and to consider whether there should be changes made to the proposed legislation, for final consideration by the Council of Ministers prior to the Bill being introduced into the House.

**Shared service teams
Breakdown of savings**

2.2. The Hon. Member for Rushen (Mr Watterson) to ask the Chief Minister:

960 *If he will provide a breakdown of the (a) £389,100 savings for the finance shared service team and (b) £166,700 for the HR shared service team for 2012-13?*

965 **Answer:** The savings figures for the Finance and the Human Resource shared service centres have been calculated by estimating the current cost of common activities across Government and applying a benchmark saving percentage. In this case, benchmarks from the UK Government's final report on the Operational Efficiency Review (April 2009) were used. These benchmarks were then adjusted to reflect the specific factors found in the Isle of Man Government.

970 (a) The estimated savings for finance-shared services was based on a benchmark figure of 20% reduction in overall costs over three years. This is a cumulative figure and the £389,100 represents a saving of 15% in costs at year 2 of the project. These are recurring savings which will apply year over year.

(b) The estimated savings for HR shared services are based on a benchmark figure of 7% reduction in overall costs over two years, which equates to £167,700 per annum as a recurring saving.

975 It is anticipated that the new centralised HR team will play a key role in delivering further savings on corporate and strategic HR initiatives, which will contribute to reducing staff costs across all Departments, and which will provide a more consistent approach to HR for the whole of Government.

TREASURY

**Legal and consultancy work
Breakdown of charges**

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

980 *What the costs are of legal and consultancy charges in each Department and Statutory Board and the Clerk of Tynwald's Office since April 2010; how much was done by the Manx bar; how much was done by the non-Manx bar; and what hourly rate Government is charged?*

Answer: The table below outlines the charges incurred by each Department and Statutory Board and the Clerk of Tynwald's Office since April 2010, relating to Manx bar and non-Manx bar:

985

	Department	Manx Bar £	non-Manx bar £
	Community, Culture & Leisure	Nil	636
	Economic Development	58,296	47,433
	Education & Children	Nil	3,875
990	Environment, Food & Agriculture	Nil	100
	Health	45,754	Nil
	Home Affairs	25,621	Nil
	Infrastructure	48,556	54,000
	Social Care	22,062	Nil
995	Treasury	9,080	91,696
	Sub-total	209,369	197,740
	Statutory Board		
	Communications Commission	Nil	Nil
1000	Gambling Supervision Commission	6,781	6,576
	Financial Supervision Commission	32,615	Nil
	Insurance & Pensions Authority	Nil	Nil
	Office of Fair Trading	Nil	Nil
	Isle of Man Post Office	20,093	Nil
1005	Water & Sewerage Authority	86,364	22,020
	Manx Electricity Authority	16,407	Nil
	Sub-total	162,260	28,596
	Clerk of Tynwald's Office	2,832	Nil
1010	Gross Total	374,461	226,336

Following a tendering exercise (circa 2005), various rates were agreed for different classes of legal services, with the maximum being £240 per hour. Details were circulated to all Chief Officers in October 2005. This has subsequently been uplifted in line with inflation.

1015

If the service required is of a specialist nature, and/or requires off-Island expertise, the subsequent charges may be in excess of the locally negotiated rates. Requirements of this nature and the engagement of official and legal services are still engaged through the Attorney General's Chambers.

HEALTH

NHS employed dentists Numbers on Island

2.4. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Health:

1020

How many 'NHS employed dentists' are on the Island; whether this figure reflects the full complement of dentists there should be, and, if not, how many posts are filled?

1025

Answer: In answer to the Hon. Member's Question, I can advise that there are currently 17 NHS dentists employed within the Department's Salaried Dental Service, with a whole time equivalent (wte) of 14.6. The establishment figure for the service is 16.4 wte and, therefore, at the present time, there are 1.8 posts vacant.

**NHS dental service
Buying in private dentist hours**

2.5. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Health:

Whether his Department has made any attempts to 'buy in' private dentist hours for NHS purposes; if so, what has been organised; and whether this is on a continuing basis?

1030 **Answer:** In answering the Hon. Member's Question, I am assuming that he is referring to the potential for contracting services from dental practitioners who at present are not providing such services under the NHS. If that is the case, then I can advise that the Department has not made any attempts to 'buy in' private dentist hours for NHS purposes, nor does it intend to do so.

1035 The basis of this position is that there are currently a number of NHS dental practices who would be willing to extend their contractual arrangements so as to take on additional NHS patients. This is, however, dependent upon further resources being identified by the Department to enable services to be expanded. Should such resources become available, then the expansion of existing NHS dental contracts, or the creation of new ones, is seen as the most appropriate option.

**NHS dental service
Waiting lists**

2.6. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Health:

1040 *How the waiting list for patients to be seen by an NHS dentist works at their own surgery whether there is a central allocation list held by the Department; and what the longest waiting time is anyone can expect to be seen for a routine examination (a) at their own NHS dentist and (b) if there is a central allocation list by way of allocation to a dentist via this 'central list'?*

1045 **Answer:** In answer to the Hon. Member's Questions (a) and (c), I will provide information in relation to the Department run Salaried Dental Service separately from those patients allocated to a general dental practitioner who holds a NHS General Dental Services contract with the Department.

(a) Salaried Dental Services –

1050 In the Salaried Dental Service clinics in Douglas, where recruitment difficulties have led to a delay for patients wanting check-up appointments, a system to manage this situation has been implemented this month, following the appointment of an additional dentist. This will have a positive impact on waiting times.

General Dental Services –

1055 In relation to the General Dental Practitioners contracted to provide a NHS dental service, the number of patients they take on, together with the level and type of treatment required, forms the basis of their contract obligations.

1060 The Department works closely with the practices so that, in circumstances where they are in a position to take on additional patients so as to continue to meet their contract obligations, these patients will be allocated from the central list. It would, therefore, be unusual for them to hold a separate waiting list.

(b) I can confirm that there is a central allocation list held.

(c) In relation to waiting times for a routine examination at an NHS dentist:

Salaried Dental Services –

1065 It is anticipated that patients should, from now, have to wait no longer than 12 weeks for a check-up appointment: however, this figure is an estimate at present. Over the next few weeks, it is anticipated that the waiting time will be known more accurately.

In the Ramsey clinic, patients can expect to wait a maximum of six weeks for a check-up appointment.

General Dental Services –

1070 With reference to (a) above, I would like to point out that a recall period for a routine examination will be determined by the dental practitioner's clinical opinion, in line with the National Institute for Clinical Excellence Dental Recall guidance and will vary, depending upon the clinical needs of the patient.

1075 The length of time a patient from the central allocation list has to wait to be allocated will be dependent upon that patient's wish for allocation to a particular practice or geographical area or those with no such preferences. In addition, the timescale is dependent upon factors such as the capacity for dentists to be able to accept new patients into their practices and the financial resources available to the Department.

1080 Generally, at present, the longest time anyone has been waiting to be allocated to a NHS dentist is 12 months, although there are a small number of patients who have been waiting longer than 12 months, who have indicated a wish to be allocated to a dentist in a specific geographical area of the Island when such an opportunity arises, and that opportunity has not yet arisen.

**NHS dental service
Initiative to reduce waiting lists**

2.7. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Health:

1085 *Whether his Department will consider introducing a waiting list initiative to reduce 'NHS dental waiting lists'?*

Answer: In answer to the Hon. Member's Question, I would like to make it clear that the NHS dental waiting list consists of people who have contacted the Department seeking allocation to a NHS dentist in respect of their ongoing dental care – they are not awaiting specific treatment. Any patient who is not 'registered' with a dentist and who is in need of urgent or emergency treatment will be seen by the Salaried Dental Service in respect of that treatment and any resultant treatment.

1090 The Department has been able to allocate 4,161 patients to NHS dentists within the last 24 months. It is taking all steps possible to continue that allocation programme, within the resources that are available.

1095 It is considered more appropriate, and a better use of any resources that may become available to the Department, to allocate patients so that they receive care and treatment from an NHS dentist on an ongoing basis, as opposed to a one-off waiting list initiative which may not address their longer term needs. As mentioned above, patients on the waiting list for allocation are not generally in immediate need of treatment. It is, of course, perfectly in order for dentists who are currently providing only private services to seek an NHS contract.

**NHS dental service
Recruitment policy**

2.8. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Health:

1100 *What his Department is currently doing to replace any dentists who have left the NHS; and what the recruitment policy is?*

1105 **Answer:** The Department has experienced significant difficulties in relation to the recruitment of salaried NHS dentists in recent years, but has attempted, in line with its policy, to fill vacant posts as they arise.

The Salaried Service has recently been the subject of an independent review and an opportunity was taken to include recruitment difficulties within the remit of the review.

The Department will be mindful of any recommendations made by the review in relation to the recruitment of dentists.

HOME AFFAIRS

**Douglas East by-election report
Cost; date of publication**

2.9. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Home Affairs:

1110 *What the cost to his Department has been of examining the Douglas East by-election to date; and when the report is to be published?*

Answer: The additional costs to date have been £7,500. At this stage it is not known when the Department may publish a report.

Orders of the Day

BILLS FOR THIRD READING

Social Services Bill 2010 Third Reading approved

3.1 Mr Teare to move:

1115 *That the Social Services Bill 2010 be read the third time and be sent to the Council.*

The Speaker: We turn to Item 3 on our Order Paper, Bills for Third Reading, and I call on Mr Teare to move the Third Reading of the Social Services Bill 2010.

1120 **Mr Teare:** Thank you, Mr Speaker.

At this Third Reading, I would respectfully like to remind Hon. Members that the aim of the Social Services Bill is to provide a modern and cohesive framework for Social Care Services as a whole. It gives a clear, full and accurate statement of the duties and powers of the Department of Social Care in relation to providing information and advice, assessment and service provision to service users and carers. It ensures that services are provided according to an assessed need for those services, as opposed to providing services based on a defined age, disability or illness. The Bill also includes an independent element for the complaints process.

1125 The statute includes relevant financial and general provisions that enable the Department of Social Care to obtain the best value for money within a fair and equitable system, by introducing:
1130 firstly, clear eligibility criteria for services; secondly, powers to charge for all services; thirdly, to prevent people disposing of assets to avoid paying for services; and, finally, clear powers for the provision of services by the Department, voluntary and/or the private sector.

The Bill provides more choice for service users in several ways. It allows residents, supported by Social Security, to upgrade to more expensive care accommodation, if they cover the additional cost. It allows deferred payments for accommodation costs, so that residents do not have to sell their property immediately on entering care accommodation. It also permits arrangements for the provision of care accommodation off the Island, when appropriate.

I would like to thank the Hon. Member for Middle for two amendments: firstly, to ensure residents who are ordinarily resident in the Island before clause 6 is enacted to be considered as meeting the eligibility criteria for access to Social Care Services; secondly, to give the Department, or the High Court, the power to amend the constitution of endowment committees and allow for the legal dissolution of an endowment committee, if it has not become a registered charity by one year after the commencement of schedule 4 of the Social Services Bill.

1140 I would also like to thank Mr Speaker for pointing out a minor error in the numbering in the Bill.

1145 I would like to take the opportunity to place on record my thanks to Hon. Members for their input into the in-depth discussion on the clauses and their support for the Bill.

Finally, I wish to reiterate that this legislation is primary legislation and that it will be supported by secondary legislation, codes of practice, policies and procedures. These documents will provide the detailed information requested by Hon. Members during the comprehensive discussions that have taken place in this House.

1150 Mr Speaker, I beg to move that the Social Services Bill be read for a third time.

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

1155 **Mr Quayle:** Thank you, Mr Speaker.

I rise to second the Third Reading of this Bill, a very important Bill, and I would like to take this opportunity to put on record the appreciation of myself and my Department to the mover of the Bill, the former Minister for Health and Social Security, Mr Teare, for all of his hard work in having brought about this Bill, for it to have been brought before this House and for it to have been dealt with in such a timely manner.

I do think, on behalf of the Department of Social Care, that this Bill is very, very important to us, putting into legislation, if it proceeds through the branches... It will actually update a lot of the legislation that we have, and in many areas there is not current legislation, so that this actually puts us on a sound footing. I do also thank Hon. Members for their support for this Bill and I hope that they can now support the Third Reading.

The Speaker: Mr Karran, Hon. Member.

Mr Karran: Vainstyr Loayreyder, as far as this Bill is concerned, there are some good points in it, but the fundamental point that has not been addressed, which I believe is way overdue as far as this Bill is concerned, is the total lack of any real, independent audit.

A social services department in the United Kingdom and the Irish Republic would have to include the independence of having a social services committee in order to put some sort of audit onto the management. The present structure that we have got in Social Services has not allowed for such a function. I believe that the time is long overdue. We have got a litany of damage as far as childcare is concerned. Whilst childcare is more likely one of the most... a major problem, as far as *anyone* is concerned, what is important is the fact that we have no real audit in the system. As far as I am concerned with Social Services, that should have been put in the system. I know that we have lost the proposals to do so.

I feel that supporting this Bill will only highlight the fact that we are supporting the bad practice, the bad management that we see far too often in Social Services. We all know that childcare has a difficult, arduous time as far as getting it right, but I think far too often we have seen there is a total imbalance, and by supporting this Bill I will be condoning the present political system.

I have also circulated a response to the Hon. Member from his letter from the clauses stage, which maybe now I will have to make sure I respond to every Member within this House, but I feel it is once again a fundamental opportunity where we should have put some proper audit to make sure that the public service serves the public and not itself, expecting the public to serve it. That is what concerns me about this piece of legislation fundamentally.

I think the issue of whether we have a restriction, as far as the residency is concerned, that is something that has been debated and has been supported by this House, but I do feel that the lack of an independent Social Services committee makes this whole procedure, as far as this Department is concerned, of great concern to myself and to most of the people who you think about, all the people who are outside who have not got the ability, as far as finance, to go to a lawyer, have not got the education to be able to take on the officialdom within this Department and, once again, we have missed a golden opportunity in order to make sure that we put some of the good systems that are so lacking.

No-one outside this House can condemn Government or Tynwald Court for the resources that have been put into this Department. They are second to none. What we can condemn is the way it has been allowed to operate, a way that was recognised from day one, when Social Services was originally set up, that we do not have those good systems in and that is why we are getting a situation where our people are getting a very poor deal, when it comes to Social Services.

The Speaker: Mr Teare, mover to reply.

Mr Teare: Thank you, Mr Speaker.

I think, really, with due respect to the Hon. Member, he has missed the point here. This Bill was intended to codify various elements of legislation and bring it into a single point of reference, so those people who needed access to social care would be able to identify quickly what their rights would be and, with rights, the responsibilities of the Department. He did concede the Bill had some good points, but also the Bill brought in an obligation on the Department to deliver services, where previously it had been done as part of an evolution process. It has been made clear in another place that, as the pressure on Government finances increases, those areas which are outwith our legislative responsibilities will be vulnerable. So I feel that this is a very positive approach.

1220 Now, he has made a major point on the lack of an independent audit. Hon. Members will recall that, in another place, there was a motion put down about childcare in particular, and there was an undertaking given then that, in 2012 – which is now next year – there will be an external independent audit taken of how we are responding to our responsibilities for childcare and the provision of children’s services, which were identified by the Everall Report. So I feel that we are moving in the right direction.

1225 He said that supporting the Bill supports bad practice and bad management. I, as he would expect, could not agree less. I feel that this puts clear obligations on the Department and, as I said before, potential service users will know exactly what the Department should be delivering and, as far as an appeal process is concerned, this Bill, if it is accepted and enacted, puts an extra layer of appeal process in place, and this final level of appeal stands outside the Department. It is independent from the Department so that will enable those who do have an issue to make their complaints in an appropriate manner.

1230 So, Mr Speaker, I beg to move the Third Reading of the Social Services Bill 2010 now be held.

The Speaker: Hon. Members, the motion is that the Social Services Bill be read for the third time. All those in favour, please say aye; against, no. The ayes have it.

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

FOR	AGAINST
Mr Quirk	Mr Karran
Mr Earnshaw	
Mr Brown	
Mr Crookall	
Mr Anderson	
Mrs Craine	
Mr Quayle	
Mr Teare	
Mr Cregeen	
Mr Houghton	
Mr Henderson	
Mr Malarkey	
Mr Robertshaw	
Mr Corkish	
Mr Shimmin	
Mr Cretney	
Mr Watterson	
Mr Gawne	
Mr Gill	
The Speaker	

The Speaker: With 20 votes for and 1 against, the motion therefore carries.

Anti-Terrorism and Crime (Amendment) Bill 2010
Third Reading approved

3.2 Mr Malarkey to move:

1235 *That the Anti-Terrorism and Crime (Amendment) Bill 2010 be read the third time and be sent to the Council.*

1240 **The Speaker:** We move now to the Anti-Terrorism and Crime (Amendment) Bill and I call on the Hon. Member, Mr Malarkey, to move the Third Reading.

Mr Malarkey: Thank you, Mr Speaker.

1245 Mr Speaker, the Bill is promoted for two principal reasons. Firstly, since the Anti-Terrorism and Crime Act 2003 was passed, there have been considerable developments in the legislation that provides protection against terrorism for residents of the United Kingdom and in the Channel Islands. The Island’s legislation is therefore, at present, out of step with neighbouring jurisdictions.

Secondly, the international community maintains a watching brief on the work the countries of the world undertake to combat terrorism and comply with international convention in this matter.

1250 The Bill, therefore, forms the third and final element in this programme of legislation designed to update and improve the Island's compliance with international standards and regulatory requirements. The other two are the Organised and International Crime Act 2010 and the money-laundering Codes .

Mr Speaker, during the clauses stage of the Bill, some questions were asked and, before I move the Third Reading, I would like to take this opportunity to expand further on some of those answers and correct one or two minor errors made at the time of the clauses, sir.

1255 Mr Speaker, in clause 11, on line 1672 of *Hansard*, where I referred to a 'convicted person', I would like to clarify that new section 16C enables a person who is *not* the convicted person – I repeat, *not* the convicted person – but who claims to have an interest in the property to be forfeited, to be heard by a court before the forfeiture order under sections 16, 16A or 16B may be made.

1260 In respect to notification requirements set out in clause 12, the Hon. Member for Rushen, Mr Gill, asked about the requirement in section 18F(a) in respect of those serving life or an indeterminate sentence. Further to my answer I gave at the time, I would like to confirm, those released from custody are subject to supervision by the Probation Service, though the supervision requirement can be suspended. What this provision does is it makes it clear, notwithstanding any
1265 other terms of their release, that persons convicted of an offence under the Anti-Terrorism and Crime Act 2003 are required to register with the Police.

The second question Mr Gill asked related to section 18L(2)(b), where a person convicted of a terrorism offence who wishes to travel outside the Island must notify the Police of the country, or the first country, visited. If there is more than one to which he or she intends to travel, only the
1270 country they are travelling to would be required to be informed, as the Police would notify their colleagues in the next country of that person's initial travel plans and it would be up to the Police in that jurisdiction to meet the visitor and take any details they require, according to the laws in force in that country.

1275 **Mr Watterson:** Right. It makes more sense in *Hansard*...

Mr Malarkey: Mr Speaker, Mr Gill asked some very important questions concerning clause 21, which relates to the offence of incitement of terrorism. Further to the response I gave in this
1280 House on 21st December 2010, I would like to add that the matter is very important, because it seeks to balance every citizen's right to freedom of expression, on the one hand, with, on the other hand, their right to be protected by the state from known risks of serious harm to their lives posed by those who wish to incite others to commit terrorism acts. It is for that reason the clause places the responsibility on the Attorney General, not on the Minister or the Constabulary – I repeat, Mr
1285 Speaker, *on the Attorney General* – to determine – in the clause, 'certify' – the following: prosecution is in the public interest and is proportionate to the harm, or the risk of harm – which may be realistic – giving rise to the offence.

The clause additionally provides a defence that the statement was a proportionate exercise of the right of freedom of expression. The key words are 'harm' or 'risk of harm', 'public interest' and 'proportionality'. I hope, Mr Speaker, I have provided some reassurance on this matter.

1290 Mr Speaker, in respect of clause 24, the Hon. Member for Rushen, Mr Gill, asked about the linkage between dirty bombs, chemical weapons, etc to weapons of mass destruction. A nuclear weapon may, indeed, have other elements connected with it and, in any event, the end result is deadly. Clause 31, which deals with making, possessing or misusing radioactive material also covers this point, sir.

1295 Mr Speaker, in my opening remarks to clause 37, I would like to clarify that it inserts a new section 76A into the Act.

In respect of clause 48, which makes some amendments to schedule 8 to the Act, in connection with the treatment of detained persons, I would like to clarify that the Chief Constable is not given any new powers. The clause really makes minor amendments to an existing power, sir.

1300 Mr Speaker, I believe I have covered most, or all, of the points that required commenting on, sir. I would like to take this opportunity of, firstly, thanking my officer, Mr Tom Bateman, of the Department, for the hard work he has put into this; also to the Members for Rushen, Mr Gill and Mr Watterson, who have given me a lot of input with the Bill. I thank them for their help in moving this forward, and progressing this Bill, which will assist the Isle of Man to comply with
1305 the Financial Action Task Force 16 core recommendations. These recommendations are central to the Island's international reputation, sir.

Mr Speaker, I beg to move that the Third Reading of the Anti-Terrorism and Crime (Amendment) Bill be approved, sir.

The Speaker: Mr Earnshaw.

1310

Mr Earnshaw: Thank you, Mr Speaker.

I beg to second and I would just like to echo some of the comments that my colleague, Mr Malarkey, has said. I would like to thank Mr Tom Bateman, but I would also like to thank Mr Malarkey for all the effort that he has put into this Bill. (**Mr Watterson:** Hear, hear.) They are not always easy, these pieces of legislation, and he has worked hard on this. I know that from what I have seen personally.

1315

Terrorism, as we all know, in its many guises is a real threat in the world today. We see it on our TV screens all too often, and we do not know where, and we do not know when, it is going to happen. The risk in the Isle of Man, in my view, is not high, but we can be a threat for the movement of funds on the international stage, so it is something we have to take seriously. We are a sophisticated economy in the Isle of Man. We are seeking to maintain our international standards. We must keep pace by embracing appropriate controls and legislation.

1320

I do thank everybody. I would like to echo the comments, also, of Mr Malarkey in thanking Members on the Rushen bench for the interest that they have shown in this piece of legislation, and I do hope Hon. Members will all support the Third Reading.

1325

Thank you.

The Speaker: Hon. Member, Mr Gill.

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Mr Gill: Thank you, Mr Speaker.

I understand the pressure that the Department is on to move this type of legislation and, indeed, the form this legislation is presented before us is largely determined by external forces, rather than domestic forces, and I think the Minister has just alluded to that in his seconding speech

1335

Just two points I would like to make. One is about a detail. The detail that Mr Malarkey confirmed, where we were thinking about where a suspect or a person is required to give details of the country that they are going to. As I understand his explanation, if somebody is going on a trip to, let us say, a coach trip around Europe, and they are going to England, then they go to France, then they go to Belgium, the Netherlands, Germany, they go to five or six countries. Are we seriously being told that the police in France will, in the time it takes that journey, or it might have been in an individual car, that they will convey those to the next jurisdiction, those details? It just sounds a very remiss system, where you would not ask for all the countries that were intended to be visited at the original point. It is a small issue, but it does seem a very peculiar way of responding to that situation.

1340

The second point I wish to suggest to the Minister and to the Government generally, is that, not for the first time, we have a lengthy Amendment Bill and the requirement for anybody considering the provisions of such a Bill is that they have to compare it with the statutes that are being amended. If we think back to – far too long in my opinion – the Criminal Justice (Miscellaneous Provisions), 78 clauses, 26 statutes being amended (**Mr Brown:** A committee.) – a tremendous challenge for anybody –

1350

A Member: How are you getting on with it?

Mr Gill: – and – well – and I am sorry the Minister regards this as a flippant matter, because I thought Government was committed to transparency. I thought Government was committed to simplicity, where that is possible, but surely the thing that the Department, – in this case, the Home Affairs Department – have got previous in this regard, could consider – all Departments could consider, is where there is a wide-ranging Amendment Bill, if they can actually have a template that shows us what the final provision will look like in the context of the amendment that it is making to the original statute. I do not think that is too difficult.

1355

It is another task, but it is certainly not impossible, I would have thought, and I would have thought that, just in terms of simplicity and transparency, that would be something that any Department would aim for. I just wonder if, maybe, the mover is not... it is appropriate for him to respond to that, other than perhaps, with respect, if he could confirm that he would formally convey that to the Department and maybe in turn the Department could pass that message along, that request, on my behalf, to the Council of Ministers. I do not think there is anything unreasonable or onerous in what I am asking for, and I hope that the mover will accede to that.

1360

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I would echo the Minister's comments in relation to the hard work that, quite clearly, Mr Malarkey has put into understanding this Bill and moving it and, indeed, his colleagues in the Department, not least Mr Bateman. It is a big piece of work, but unfortunately it is a big piece of

1370 work that is not very transparent and maybe that challenge is one that the Department could rise to, sir.

The Speaker: I call on Mr Malarkey to reply.

1375 **Mr Malarkey:** Thank you, Mr Speaker.

In relation to the first point, maybe I did not make it too clear in my speaking notes. This is now bringing us in line with all other countries by the fact we are bringing this legislation through. It is quite clearly laid out in the legislation that these people who are registered with the Police, who wish to travel, have to inform the Isle of Man Police of their travel. The Isle of Man Police will then inform the country they are travelling to of what the intention of that person is. At that stage, it is no longer the Isle of Man Constabulary's responsibility to tag that person any further.

1380 Because we are actually dealing with terrorism here, I think it will be quite important and other jurisdictions will take it extremely seriously that if this person, who must report to the Police – and, in fact, if the Police are very concerned about him, I am quite sure they will meet him at the port destination to find out exactly what his intentions are going to be, depending upon what crime the person has actually committed and the seriousness of it. But from there on in, it is then... From that jurisdiction, if that person wants to travel to another country, he has to inform the Police in that jurisdiction of where he intends to move to. It is quite clearly laid out in the legislation and, as I say, the legislation does bring us in line with other jurisdictions.

1390 I take the Hon. Member's comments on board with regard to templates, but the template was actually in the consultation document that we sent out initially. What makes this Bill very complex is the fact it is an amendment Bill which, for me, Mr Speaker, has made it a little bit more complicated because we have been amending so much of a previous Bill.

1395 I was quite surprised to find out, in doing my research, in fact this original Bill was put through in this Hon. House in 2003 and the Hon. Member for Rushen, Mr Gill, was in the Department at the time and actually seconded the original Bill going through, which obviously has given him much more of an insight into the Bill than I had before starting down a road of trying to amend the Bill. Indeed, I take his comments on board and we shall take that back to the Department.

1400 These parts of the legislation are very complex. They are very difficult to get your head round when you are amending something that is already there. So I hope, Mr Speaker, that I have managed to assure him that I do just about know what I am talking about within the Bill and that the Bill is definitely for the good of the Island, sir.

At that, I would like to move the Third Reading be taken, sir.

1405 **The Speaker:** The motion is that the Anti-Terrorism Crime (Amendment) Bill be read for the third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Debt Recovery and Enforcement Bill 2010
For Third Reading
Motion not moved**

3.3. Mr Houghton to move:

That the Debt Recovery and Enforcement Bill 2010 be read the third time and be sent to the Council.

1410 **The Speaker:** The Debt Recovery and Enforcement Bill for Third Reading is not to be moved this morning.

**Children and Young Persons (Amendment) Bill 2010
Third Reading approved**

3.4. Mr Quirk to move:

That the Children and Young Persons (Amendment) Bill 2010 be read the third time and be sent to the Council.

1415 **The Speaker:** We therefore move on to the Children and Young Persons (Amendment) Bill
2010.

I call on the Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

1420 At the Third Reading, I wish to remind Hon. Members that the aim of the Children's and
Young Persons (Amendment) Bill is to make provisions for special guardianship orders.

1425 This simple but very important Bill sets out clearly the necessary process for making a special
guardianship order, and the effects of those orders, which provide legal recognition and stability to
the situation where a child or young person is living with a person who is not their parent but is
acting as if they were their parent. In doing this, the Bill provides another option for legal
permanency for a child or young person who, for whatever reason, cannot grow up with its natural
1430 birth parents. This Bill will significantly improve the lives of a number of children and young
persons in care by increasing the sense of belonging and security of the child or young person and
strengthening the position of their carers by allowing them to make the day-to-day decisions that
their parents would normally do.

1430 I would like to thank the Hon. Member, Mr Quayle, for his amendments and the support of his
Department in developing and progressing the Bill. At this point, I would also like to thank and
give my hearty support to Mr Malarkey, who is in the Department. I have seen the benefit of
actually working with the Department on this, when I originally had the concept: when Mr
1435 Malarkey was made a member of the Department, it certainly made it easier for me, sir.

I would like to take this opportunity to place on record my thanks to Hon. Members for their
contributions to the debate and for their support of the Bill.

Mr Speaker, I beg to move that the Children and Young Persons (Amendment) Bill be read for
the third time, sir.

1440 **The Speaker:** Hon. Member for Onchan, Mr Earnshaw.

Mr Earnshaw: Yes, thank you, Mr Speaker.

1445 It gives me very great pleasure to second this and I would like to put on record my praise and
compliments to the mover, Mr Quirk, for the initiative he has shown. I think it will be a very
helpful piece of legislation and there have been quite a few parties across government involved
with this, so I think it is a great move.

The Speaker: Mr Quayle, Hon. Member.

1450 **Mr Quayle:** Thank you, Mr Speaker.

1455 I rise, obviously, to support the Bill and to congratulate the Hon. Member for Onchan, Mr
Quirk, on his initiative in actually bringing forward this legislation. I obviously acknowledge the
fact that the Department would have been intending to bring forward legislation, but, actually,
with Mr Quirk being a private member and bringing this Bill forward, then it has reached the
statute book, hopefully with Legislative Council support, earlier than would have been the case if
it was left to the actual Government programme of legislation, due to the vast amount of
legislation that is either before the House or the branches, or is being worked up as legislation to
come before the House in due course. So I really do congratulate, again, the Member for Onchan.

1460 **The Speaker:** Mr Quirk to reply.

Mr Quirk: No, I am quite happy, sir.

1465 **The Speaker:** In that case, the motion is that the Children and Young Persons (Amendment)
Bill be read for the third time.

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

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

FOR

Mr Quirk
Mr Earnshaw
Mr Brown
Mr Crookall
Mr Anderson

AGAINST

None

Mrs Craine
Mr Bell
Mr Quayle
Mr Teare
Mr Cregeen
Mr Henderson
Mr Malarkey
Mr Robertshaw
Mrs Cannell
Mr Corkish
Mr Shimmin
Mr Cretney
Mr Watterson
Mr Gawne
Mr Gill
The Speaker

The Speaker: With 21 votes for and no votes against, the motion therefore carries.

BILL FOR SECOND READING

**Broadway Baptist Church Bill 2011
Second Reading approved**

4.1. Mr Anderson to move:

That the Broadway Baptist Church Bill 2011 be read the second time.

1470 **The Speaker:** We turn now to the Bill for Second Reading, the Broadway Baptist Church Bill 2011, and I call the Hon. Member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker and I thank Hon. Members for giving leave to introduce a few weeks ago.

1475 Broadway is an active church on the edge of Douglas town centre. They have over 100 members and a congregation of about 180 on a Sunday morning. It is very much a local community-based church. For example, the members are active in helping the homeless, those with alcohol and drug addictions, and they also work with young people in outreach activities, such as mums and tots and single-parent groups. The church also has a café called the Well, which
1480 is open five days a week. So the church building is no longer a place where the doors are only open once or twice on a Sunday; it is a vibrant part of the community all through the week.

Broadway Baptist Church was formed by a trust deed dating back to 1895. A statement of faith was written into the trust deed, but for the past 40 years or so, the church has adopted a more modern attitude in its beliefs and prefers to keep in step with the Evangelical Alliance statement of
1485 faith. The Evangelical Alliance is a Christian organisation in the United Kingdom.

The trust deed is also very limiting in terms of administrative issues. Over the past 20 years, any new assets that have been acquired – for example, the purchase of the two hotels next to the church building and the establishment of the Well Coffee Shop, has been placed in separate trusts, in a bid to avoid the original church trust and the problems that are attached to that trust. A further
1490 two trusts have been established.

They are now looking to transfer all the assets, including the church premises and the two hotels, from three trusts into one, limit it by a guaranteed company and terminate the three trusts. This will allow them to adopt their own statement of faith and completely streamline their administration. The Bill which is proposed effectively and neatly does everything that the church
1495 members need to achieve. This process is something that has been discussed and considered within the church over the last 10 years.

The church was advised by Clare Faulds, the Vicar-General, back in 2000, that a High Court cy près application would fail, if there were any differences between the original trust statement of faith and the one that is proposed. On the basis that the changes in their statement today is one of
1500 the main reasons for looking to review the church's constitution, a High Court application, therefore, is not an option. By moving to a company limited by guarantee, they will establish a

situation in which the church can take responsibility for its own governance and membership rules, while operating within the normal safeguards of company law and charity law.

1505 Mr Speaker, I would take this opportunity to thank Members who attended the presentation by Ruth Douthwaite, with the support of a church legal adviser, Shona Quayle, last week.

Therefore, Mr Speaker, I beg to move the Second Reading of the Broadway Baptist Church Bill.

1510 **The Speaker:** Hon. Member, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

1515 I have great pleasure in seconding this Bill and I can only restate what the Member for Glenfaba has said in his opening speech, in his opening remarks. The way that this church organisation conducts its business can be nothing less than commendable, for the way it looks after all the homeless people.

It has modernised and its modern way and approach to matters that are relevant to the operation of a modern-day church, and also all the other businesses that it runs in trusts that require, of course, to be aligned and brought in to a modern-day approach, such as what is set out in the Bill...

1520 I can only wish the Hon. Member well with moving his Second Reading and with the clauses stage and the rest of the Bill, and I thank Hon. Members.

The Speaker: Mr Anderson, do you wish to reply?

1525 **Mr Anderson:** No. I just thank the Hon. Member for seconding and my co-sponsor, Mr Cretney.

1530 **The Speaker:** In that case, we move to the vote. Those in favour that the Broadway Baptist Church Bill be read for the second time, please say aye; against, no. The ayes have it. The ayes have it.

BILL FOR CONSIDERATION OF CLAUSES

Housing (Miscellaneous Provisions) Bill 2010 Clauses considered

5.1. Mr Quayle to move.

The Speaker: We finally turn to Item 5, the clauses stage of the Housing (Miscellaneous Provisions) Bill and I call on the Hon. for Middle, the Minister, Mr Quayle.

1535 **Mr Quayle:** Thank you, Mr Speaker.

I would, first of all, like to thank those Hon. Members who either contributed to the debate at Second Reading or who raised various queries at the Department's presentation to Hon. Members on 3rd December 2010. I hope to be able to answer many of the issues raised during the consideration of clauses.

1540 Part 1 of the Bill deals with opening provisions, and clause 1 relates to the title. The clause gives the Act resulting from the Bill its short title.

Mr Speaker, I beg to move that clause 1 do stand part of the Bill.

The Speaker: Mr Henderson.

1545 **Mr Henderson:** I beg to second, sir, and reserve my remarks.

The Speaker: The motion is that clause 1 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

1550 **Mr Quayle:** Clause 2 deals with commencement. This clause sets out the provisions which will come into force upon the passing of the Bill, parts 1 and 2 and section 39 and schedule 3.

1555 The remaining provisions will come into force on such day or days as appointed by the Department of Social Care, following consultation with the Department of Environment, Food and Agriculture and the Department of Infrastructure.

I think it is worthwhile bearing in mind the likely timetabling of different parts or sections, for example the Department of Environment, Food and Agriculture would need to take into account phasing in of housing standard regulations under section 11 so as to allow time for improvement works to be undertaken by property owners.

1560 Mr Speaker, I beg to move that clause 2 do stand part of the Bill.

The Speaker: Mr Henderson.

1565 **Mr Henderson:** Gura mie eu Vainstyr Loayreyder, I beg to second and reserve my remarks.

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

Clause 3 sir.

1570 **Mr Quayle:** Clause 3 deals with interpretation. This clause provides for the interpretation of certain words and phrases used throughout the Bill.

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

The Speaker: Mr Henderson.

1575

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

1580 **The Speaker:** The motion is that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Quayle: Thank you, Mr Speaker.

1585 We now move on to part 2, and this is dealing with housing assistance.

Clause 4 is relating to the House Purchase Assistance Schemes.

Subsection (1) provides new powers which enable the Department of Social Care, after obtaining Treasury concurrence, to make schemes to assist Isle of Man residents to purchase accommodation or to continue residing in accommodation which they may have purchased. Such schemes will also be subject to Tynwald approval.

1590 Subsection (2) provides that, until any new scheme comes into effect, the existing schemes – the House Purchase Assistance Scheme 2007 and the House Purchase Assistance (Persons Aged 45 or Over) Scheme 2005 – will continue to have effect as if they had been made under this section, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.

1595 Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mr Henderson.

1600 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: The motion is that clause 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Quayle.

1605

Mr Quayle: Clause 5, relating to the Housing Improvement Schemes: subsection 1 provides new powers which enable the Department of Social Care, after obtaining Treasury concurrence, to make schemes to assist Isle of Man residents to make specified improvements to their homes or to accommodation they intend to occupy, once specified improvements have been made. Such schemes will also be subject to Tynwald approval.

1610

Subsection 2 sets out the transitional powers which enable the House Improvement and Energy Conservation Scheme 2010 to continue to have effect, as if it had been made under this section,

but not so as to make any person guilty of an offence in respect of anything done, or omitted to be done, before the coming into operation of this section.

1615 I beg to move that clause 5 do stand part of the Bill.

The Speaker: Mr Henderson.

1620 **Mr Henderson:** Gura mie eu Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: The motion is that clause five stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 6.

1625 **Mr Quayle:** Thank you, Mr Speaker.

Clause 6, dealing with historic buildings conservation schemes: subsection (1) provides new powers, which enables the Department of Infrastructure, after obtaining Treasury concurrence, to make schemes to provide funding to assist Isle of Man residents to maintain historical buildings, in particular the maintenance of either registered buildings, non-registered buildings in a conservation area, or buildings not falling into either of those categories but which the Department of Infrastructure are of the opinion would make an important contribution to an historic townscape or to the rural landscape. Such schemes will also be subject to Tynwald approval.

1630 Subsection (2) sets out the transitional provisions, which mean that the Historic Building Conservation Scheme 2005 continues to have effect as if it had been made under this section, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.

1635 Subsection (3) defines the terms 'conservation area' and 'registered building'. 'Conservation area' means an area designated under section 18(1) of the Town and Country Planning Act 1999 and 'registered building' has the meaning given in section 45(1) of that Act.

1640 Mr Speaker, I beg to move that clause 6 do stand part of the Bill.

The Speaker: Mr Henderson.

1645 **Mr Henderson:** Gura mie eu Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.
The Department would like to put an amendment to clause 6.

1650 *On page 4, for lines 35 to 39 substitute —*
'(2) Until the coming into operation of the first scheme under this section the Historic Buildings Conservation Scheme 2011 and (insofar as it continues to have effect) the Historic Buildings Conservation Scheme 2005 have effect as if each were such a scheme, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.'

1660 The reason is that clause 6(2) currently sets out the transitional provision which will enable the Historic Buildings Conservation Scheme 2005 to continue to have effect, as if it had been under this section, but not as to make any person guilty of an offence in respect to anything done, or omitted to be done, before the coming into operation of this section.

The Historic Buildings Conservation Scheme 2005 is due to expire on 31st March 2011 and, until very recently, the Department of Infrastructure was undecided as to whether this new scheme would be made and administered for 2011-12.

1665 On 14th January the Department agreed that grant funding for historic buildings should be made available for 2011-12 and that the new scheme was, therefore, required. As the original wording for clause 6(2) of the Housing (Miscellaneous Provisions) Bill 2010 only makes reference to the Historic Buildings Conservation Scheme 2005, there is a requirement to move an amendment to also allow to include reference to the Historic Buildings Conservation Scheme 2011.

1670 I beg to move that the amendment stand part of the Bill, sir.

The Speaker: Mr Quirk.

1675 **Mr Quirk:** I beg to second, sir.

The Speaker: Putting the amendment to the House, those in favour of the amendment tabled in the name of Mr Malarkey, please say aye; against, no. The ayes have it. The ayes have it.

1680 Clause 6, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7. Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 7 deals with the schemes under section 4, 5 or 6: supplemental powers.

1685 Subsection (1) states that any scheme made under section 4, 5 or 6, may contain provision, as specified in subsection (2).

1690 Subsection (2) allows schemes to include the provision about: (a) eligibility for assistance in types of property eligible for assistance; (b) the manner of the application form and the information to be provided; (c) how an applicant's income is to be calculated; (d) the form of any assistance and the conditions it would be subject to; (e) the repayment of assistance, including payment of any interest; (f) the security and its ranking which the relevant Department will have over the property; (g) powers for the relevant Department to inspect the property; (h) the circumstances in which the assisted person may sell the original property and acquire a further property; (i) circumstances in which the relevant Department may acquire the applicant's estate or interest in the property; (j) the circumstances in which the repayable amount of assistance may be reduced; (k) matters about which the relevant Department needs to be satisfied before providing assistance; (l) any fees due in connection with the application; (m) costs and expenses which the relevant Department can recover if there is a failure to comply with terms on which assistance is granted; (n) appeals to the High Bailiff against a decision of the relevant Department, including conditions about going through any of the Department's internal review procedures that may have been prescribed.

1700 Subsection (3) allows matters in schemes to be subject to approval by the relevant Department and for such approval to be given by means other than a scheme.

1705 Subsection (4) allows the Department of Social Care, after consulting the Department of Infrastructure, to amend subsections (2) and (3) by order, thus avoiding the need to make amending provisions by primary legislation.

Subsection (5) enables a scheme under section 4, 5 or 6 and an order under subsection (4) to contain consequential supplemental and transitional provisions.

1710 Subsection (6) states that a scheme under section 4, 5 or 6 and an order under subsection (4) need Tynwald approval before coming into operation. However, this provision does not apply to any schemes treated as being made under section 4, 5 or 6 by virtue of subsection (2) of each of those sections, that is, the existing schemes listed there.

1715 Subsection (7) defines 'relevant Department' as a Department by which a scheme under part 2 is made – either Department of Social Care or Department of Infrastructure – and defines 'relevant property' as meaning a property purchased under section 4, including a further property purchased under the terms of section 7(2)(1) or improved with assistance under section 5 or 6.

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

The Speaker: Mr Henderson.

1720 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: The motion is that clause 7 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1725 Clause 8, Mr Quayle.

1730 **Mr Quayle:** Mr Speaker, clause 8 deals with rights of entry. This clause applies the provisions of section 35 of the Local Government Act 1985, powers to enter on land, to part 2 of this Act. These powers will allow officers from the relevant Department – Social Care or Infrastructure – to enter on land, including buildings, in connection with the provisions of part 2 so as to undertake inspections of the property and any works undertaken.

I can advise Hon. Members that the provisions of section 35 of the Local Government Act 1985 require the relevant officer to provide the occupier of any land, including a house, with at least 24 hours' notice of intended entry. In addition, the officer, if asked, is required to produce his

1735 authority and ensure that the land is left as secure as he found it. These powers of entry have, therefore, been in existence since this Act and they are used with the utmost discretion and, I understand, have not been, to date, a cause for concern. This is giving further information to one or two questions that were posed at the briefing, and I do hope that reassures Hon. Members.

1740 Mr Speaker, I beg to move that clause 8 do stand part of the Bill.

The Speaker: Mr Henderson.

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

1745

The Speaker: Hon. Member, Mr Gill.

Mr Gill: Thank you, Mr Speaker.

1750 Could the mover advise us a little bit more about 'utmost discretion' and what that actually means, rather than just as a glib comment, perhaps? What does 'utmost discretion' mean in relation to current practice and what safeguards and administrative protocols are in place to ensure that that 'utmost discretion' is applied fairly and openly?

1755 **The Speaker:** Mover to reply.

Mr Quayle: Thank you, Mr Speaker.

1760 Relating to power of entry for inspection, any person authorised in writing by a local authority or a relevant Department, stating the particular purpose or purposes for which the entry is authorised, may at all reasonable times, on giving 24 hours' notice to the occupier – and to the owner, if the owner is known – of his intention to enter any house, premises or buildings... In terms of discretion, to which I referred, I was really trying to reassure Hon. Members of the House that these powers have been in existence since the Act of 1955. I am advised that they are used with utmost discretion and I can only say that, as there have not, to my knowledge, been any problems, then the discretion which they have been exercising has obviously worked, but if there is anything to add to what I have just mentioned, then, of course, I could comment at the subsequent reading.

1765

The Speaker: The motion is that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1770

Clause 9, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

This deals with powers to require information.

1775 Subsection (1) allows an authorised officer from the relevant Department of Social Care or Infrastructure to request information in connection with the exercise of their functions under part 2, Housing Assistance, or for the purposes of investigating whether any offence has been committed in relation to those premises.

1780

Subsection (2) allows an officer from the Department of Social Care or Infrastructure to give notice to the relevant person: a person who has an interest in the premises; a person who is, or is proposing to be, managing or having control of the premises; or an occupier of the premises, to produce specified documents to a specified person at a specified time and place.

Subsection (3) states that the notice must indicate the possible consequences of not complying with the notice.

1785

Subsection (4) allows the officer from the Department of Social Care or Department of Infrastructure to copy the information provided to them.

Subsection (5) exempts a person from the requirement to submit documents on the grounds of legal privilege.

Subsection (6) defines certain words within this section.

1790

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

The Speaker: Mr Henderson.

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

1795

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

Clause 10, sir.

1800 **Mr Quayle:** Thank you, Mr Speaker.

Clause 10, dealing with offences.

Subsection (1) states that it is an offence if a person, for the purposes of obtaining a payment under a scheme under part 2, makes a false statement or produces any false documentation or information.

1805 Subsection (2) creates a new offence where a person guilty of an offence under subsection (1) is liable, upon summary conviction, to a fine not exceeding £5,000 or to custody for a period not exceeding six months.

1810 Subsection (3) allows the court, if any person is convicted for an offence under subsection (1) regarding the House Purchase Assistance Scheme or the House Improvement Scheme, to make an order depriving that person of their interest in the property obtained or improved with money provided under the Scheme.

Subsections (4) and (5) create an offence if a person fails, without reasonable excuse, to comply with a notice under section 9, powers to require information.

1815 Subsection (6) specifies the maximum penalty, £5,000, that may be imposed for an offence under subsection (4).

Subsections (7) and (8) create an offence if a person deliberately alters a document requested under section 9 and provides for a maximum penalty of £5,000 upon summary conviction, or an unlimited fine on conviction on information.

1820 Subsection (9) defines the term 'document' so as to include information held electronically.

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

The Speaker: Mr Henderson.

1825 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

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

Clause 11, sir.

1830 **Mr Quayle:** Thank you, Mr Speaker.

We are moving on to part 3 now, control of flats and houses in multiple occupation. Clause 11 is linked with schedule 1 so, with your agreement, I will move both.

1835 **The Speaker:** Clause 11 and schedule 1. Thank you.

1840 **Mr Quayle:** This clause specifies that the Department of Environment, Food and Agriculture must make housing standards regulations about the facilities provided in flats and houses in multiple occupation. The details of the content of the regulations are specified in schedule 1. The regulations are subject to Tynwald approval under section 42(1).

Subsection (2) makes it clear that such regulations still apply even if the flat or house in multiple occupation does not require to be registered under clause 12.

1845 The details relating to schedule 1, housing standards, are as follows: paragraph 1 provides that housing standards regulations made by DEFA may make provision about, or provide for, the application of standards or codes of practice to flats and houses in multiple occupation in relation to the matters in table 1 – for example, minimum space standards, general storage, ventilation, heating, lighting, sanitary provision etc.

1850 Paragraph 2 provides that such regulations may also make provision with regard to the building of which a flat or house in multiple occupation forms part. The matters are contained in table 2 and, for example, include issues relating to inspection, repair and lighting of communal areas of the building.

1855 Paragraph 3 provides that such regulations must make provision so that premises to which they apply must not be used as flats or as houses in multiple occupation unless they, and any building containing them, comply with applicable requirements by regulations made under part 1 of schedule 8 of the Fire Precautions Act 1975.

Paragraph 4 allows such regulations to make provision enabling environmental health officers from DEFA to serve enforcement notices requiring a person specified in the notice to execute works necessary to ensure compliance with the regulations. A person who fails to comply with an enforcement notice will, on summary conviction, be liable to a fine not exceeding £20,000.

1860 Paragraph 5 provides that powers of entry under the Local Government Act 1985 apply to housing standards regulations. Additionally, other various miscellaneous provisions from that Act, including legal proceedings, have effect in relation to the exercise of functions of DEFA under housing standards regulations as if references in those provisions to a local authority were references to that Department.

1865 Paragraph 6 provides that local authorities must enforce housing standards regulations within their district, but DEFA may enforce regulations within any district where the local authority has failed to do so and recover any expenses incurred from the local authority.

Paragraph 7 allows DEFA to amend paragraphs 1 and 2, the content of housing standards regulations, by an order which will be subject to Tynwald approval.

1870 I would like to take this opportunity to mention to Hon. Members that the overall objective of clause 11 and schedule 1 is to ensure that occupants of flats and houses in multiple occupation have a reasonable place to live.

Mr Speaker, I beg to move that clause 11 and schedule 1 do stand part of the Bill.

1875 **The Speaker:** Mr Henderson.

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

1880 **The Speaker:** Hon. Member, Mr Gill.

Mr Gill: Thank you, Mr Speaker.

1885 The mover told us about the fine of £20,000 and I do entirely commend the Department and mover for the principle that they are promoting here. The £20,000 – I do not know if that is high or low. It seems to be high: maybe the mover could advise us how that figure was determined as appropriate.

I did not hear the mover say if there was any custodial sentence in lieu of non-payment of whatever that fine might be and, indeed, if there is a custodial sentence, what is the maximum length that custody would be under these provisions, sir?

1890 **The Speaker:** Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

1895 Could I clarify an issue there? The Minister mentioned regarding enforcement issues: a number of local authorities do not have any officers to enforce and therefore the Department acts on their behalf. I am just wondering whether, from my knowledge, I think it is only Douglas Corporation and a minor bit from Onchan now that have their own officers to attend, so most of the functions will be by... would that be by Social Care or DoI? Oh, sorry, I had forgotten!

1900 **The Speaker:** Mr Quayle to reply.

Mr Quayle: Thank you, Mr Speaker and I thank the Hon. Member for Rushen, Mr Gill, for his enquiries relating... or comments relating to the fine.

1905 I have to say that I am not fully aware of whether that is seen as too high or too low. I think it was felt to be proportionate with what is felt to be correct, but I would also just make the point that custodial sentences could be imposed for default, but I would obviously have to come back to Hon. Members to check the time limit involved: so I can certainly provide that information separately. I am now just advised that £20,000 is the same penalty as applicable in England and Wales, so I hope that will deal with that.

1910 I think the Hon. Member for Onchan was questioning about the enforcement by local authorities and, of course, the Department of Infrastructure are the ones who are associated principally with local authorities.

With that, Mr Speaker, I beg to move.

1915 **The Speaker:** I put the motion that clause 11 and schedule 1 stand part of the Bill. Those in favour, say aye, against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Quayle: Thank you, Mr Speaker.

1920 Clause 12 deals with flats and houses in multiple occupation to be registered. This clause imposes a duty on the Department of Environment, Food and Agriculture to make registration regulations specifying the circumstances in which flats and HMOs are to be registered by the local authority in whose district they are located.

1925 Subsection (2) makes specific provision, which means flats and HMOs will need to comply with fire regulations made under part 1 of schedule 8 to the Fire Precautions Act 1975 before they are registered.

1930 Subsection (3) and (4) provides for exceptions from all or any of the requirements of the registration regulations, except that imposed by subsection (2). Exceptions could be framed by reference, for example, to the structure of the premises, the facilities available and the circumstances in which premises are occupied. This provision would allow DEFA to rank premises in terms of the level of risks and to prioritise inspections accordingly. Additionally, it would allow DEFA to exempt certain low-risk properties from the requirement to register.

Subsections (6) and (7) provide that a registration fee may be charged and for the regulations be subject to Tynwald approval.

1935 Subsection (8) specifies the maximum penalty, £20,000, that may be imposed if a person allows an unregistered flat or HMO to be occupied.

Mr Speaker, I beg to move that clause 12 do stand part of the Bill.

The Speaker: Mr Henderson.

1940 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: Mr Quirk.

1945 **Mr Quirk:** Thank you, Mr Speaker.

The Minister mentioned the local authorities and the list. Can I just ask whether the list would be in the public domain, so persons could then see, before going into accommodation, that the flat was up to standard and would it be available electronically, as well, from the Department, that is DEFA?

1950 **The Speaker:** Hon. mover to reply.

Mr Quayle: Yes thank you, Mr Speaker.

1955 I am not aware of the actual finer details of how that would be dealt with, so I am having to say that I will have to provide that information, having checked out the particular matters that he has raised. I think he is asking that, if the lists could be made available electronically, so that people could see which ones are actually registered, if that is what I am understanding. I need to check that, because it is certainly not mentioned within the details that I have, but I am happy to provide that at a later date.

1960 Thank you.

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

Clause 13, Mr Quayle.

1965 **Mr Quayle:** Thank you, Mr Speaker.

Clause 13 deals with flats and houses in multiple occupation, to which this part applies.

1970 Subsection (1) enables the Department of Environment, Food and Agriculture to specify, in an order, the descriptions of the types of flats and HMOs to which part 3 will apply. This will allow the Department to consult with all interested parties before introducing the relevant secondary legislation.

Subsection (2) provides that an order under subsection (1) requires Tynwald approval before coming into operation.

1975 I would like to reiterate to Hon. Members that when it comes to enforcement of the provisions of part 3, that DEFA's priority will be not to regulate genuine house shares, but rather to focus enforcement resources on premises which are currently being used as illegal houses in multiple occupation, for example, former guesthouses.

1980 DEFA intends to specifically exempt certain types of house shares from the provisions of part 3 of this Bill. It would also be DEFA's intention, where appropriate, to phase in the implementation of housing standards regulations, so as to allow landlords and property managers adequate time to ensure the premises are brought up to the necessary standard. There were concerns expressed at the briefing about, potentially, people being made homeless when new legislation is introduced... I think that is the reason I am highlighting the fact that DEFA will take this forward in the proportionate and measured way so as not to cause, unduly, any problems.

1985 Mr Speaker, I beg to move that clause 13 do stand part of the Bill.

The Speaker: Mr Henderson.

1990 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 14.

1995 **Mr Quayle:** Thank you, Mr Speaker.

2000 This deals with enforcement and information powers and the clause confers on officers from the Department of Environment, Food and Agriculture, for the purposes of part 3 and regulations made under it, some standard enforcement provisions which apply to local authority officers under the Local Government Act 1985. These powers include powers of entry, as explained in connection with clause 8 previously, and other powers relating to recovery of expenses and charges.

2005 I think I would just highlight, again, as background information, really, that the provision of section 35 of the Local Government Act requires the relevant officer to provide the occupier of any land, including a house, with at least 24 hours' notice of intended entry and obviously, if asked, could produce his authority to ensure that the person would know who it is they are dealing with.

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

2010 **The Speaker:** Mr Henderson.

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

2015 **The Speaker:** I put the motion that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Part 4, clause 15.

Mr Quayle: Thank you, Mr Speaker.

2020 This deals with the appointment of managers and clause 15 is premises to which this part applies.

2025 This clause specifies the premises to which part 4 applies. The building has to contain at least two flats, not belong to a charity, and be premises where the landlord's interest is held by a person who is not an exempt landlord, as defined in clause 16 or a resident landlord, unless at least 50% of the flats within the premises are held on long leases, that is a lease granted for at least 21 years. The definitions of 'resident landlord' and 'long lease' are defined in clause 3.

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

The Speaker: Mr Henderson.

2030 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I beg to second, sir and reserve my remarks.

2035 **The Speaker:** The motion is that clause 15 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

Mr Quayle: Clause 16, Mr Speaker, deals with the interpretation for the purposes of this part.

2040 This clause defines certain terms which apply to part 4. The definition of ‘exempt landlord’ means that the provisions of part 4 will not apply to premises where the landlord is a Department or local authority. However, an additional provision has been inserted, which will remove the Treasury in its capacity as the holder of *bona vacantia* from the definition of an exempt landlord.

2045 Manx law on *bona vacantia* law reflect that in England and Wales and vests property in the Treasury on behalf of the Crown in cases where companies are dissolved, or where someone dies intestate, without any eligible relatives. The reason for the exception is to permit the making of orders under this part, even if the original landlord of the premises, which is the subject of an application, is struck off the register of companies.

Mr Speaker, I beg to move clause 16 do stand part of the Bill.

2050 **The Speaker:** Mr Henderson.

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

2055 **The Speaker:** The motion is that clause 16 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 17.

Mr Quayle: Clause 17, Mr Speaker.

2060 Subsections (1) and (2) provide for a tenant, or tenants, of a flat or flats contained in relevant premises, as defined in clause 15, to apply to the Rent and Rating Appeal Commissioners – ‘the Commissioners’ – for a management order.

Subsection (3) covers circumstances where a tenancy may be held by joint tenants and allows the application to be made by one or more of those joint tenants.

2065 Subsection (4) stipulates that an application to the High Court under other powers to appoint a manager or receiver shall not be made in circumstances in which the tenant could apply for a management order in relation to the premises.

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

2070 **The Speaker:** Mr Henderson.

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

2075 **The Speaker:** The motion is that clause 17 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 18.

Mr Quayle: Thank you, Mr Speaker.

2080 Clause 18, subsection (1), specifies that, before applying for a management order, a tenant must serve a management application notice on the landlord and any other interested party who has obligations under the lease relating to the management of the premises – for example, the maintenance trustee or management company.

2085 Subsection (2) specifies the information to be included in the notice, including the grounds under which a management order will be sought and, if applicable, requiring the landlord reasonable time to effect necessary repairs.

Subsection (3) allows the commissioners, in certain circumstances, to make an order which dispenses with the requirement to serve an application notice and, instead, allow another form of notice to be served.

2090 Subsection (4) provides that, in cases where an application notice has been served on the landlord and the premises are subject to a mortgage, then the landlord has to serve a copy of the notice on the mortgagee.

Subsections (5) to (7) provide for details of the management application notice to be recorded in the deeds register as a burden on the landlord’s property.

2095 Mr Speaker, I beg to move that clause 18 do stand part of the Bill.

The Speaker: Mr Henderson.

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

2100

The Speaker: The motion is that clause 18 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

2105

Mr Quayle: Thank you, Mr Speaker.

Clause 19 stipulates the preconditions that must be met before a management application order may be made to the commissioners. This provision would ensure that, if applicable, the landlord had been allowed time to effect necessary repairs which had been specified by a tenant under clause 18(2)(d) or, in a case where the commissioners had dispensed with the need to serve a management application notice, to carry out any steps or direction stipulated by the commissioners under clause 18 subsection (3).

2110

Mr Speaker, I beg to move that clause 19 do stand part of the Bill.

2115

The Speaker: Mr Henderson.

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

2120

The Speaker: The motion is that clause 19 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

2125

Mr Quayle: Thank you, Mr Speaker.

Clause 20(1) and (2) provides for the commissioners to make an interim, or final, management order, appointing a manager to carry out either such functions relating to the management of the premises, or a receiver or both, as the commissioners think fit. Subsection (3) stipulates that the commissioners may make a management order only if satisfied it is just and convenient to do so in all the circumstances of the case, and that:

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(a) any relevant person, as defined in subsection (5), either is in breach of a tenancy obligation to the tenant, relating to the management of the relevant premises or, in the case of an obligation dependent on notice, would be in breach of any such obligation, but for the fact that it has not been reasonably practicable for the tenant to give the relevant person the appropriate notice;

(b) unreasonable service charges, as defined in subsection (6), have been made or are proposed, or are likely to be made;

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(c) no service charges have been made or are proposed, or likely to be made, in circumstances where it would be reasonable to expect such charges to be made;

(d) there has been a failure to comply with a duty imposed, or by virtue of section 11 of the Property Service Charges Act 1989, tenants' contributions to be held in trust, or;

2140

(e) the state of repair of the relevant premises, or a part of them, or their management, is likely to improve significantly if a management order were made.

Mr Speaker, it may be helpful if I mention to Hon. Members as to the meaning of service charges. Although it is defined in clause 3 as having the meaning given by section 1 of the Property Service Charges Act 1991, that section states: section 1, meaning of 'service charge' etc.

2145

Subsection 1, for the purposes of this Act, a service charge is an amount payable by the tenant of a dwelling as part of, or in addition to, the rent;

(a) which is payable directly or indirectly for services, repairs, maintenance or insurance, or the landlord's expenses of management and;

(b) the whole or part of which varies, or may vary, according to the relevant expenses.

2150

Subsection (2). In this Act, relevant expenses are the expenses or estimated expenses, including overheads, incurred or to be incurred, in any period by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable, whether they are incurred, or to be incurred, in the period for which the service charge is payable, or an earlier or later period.

2155

The Hon. Member for Onchan, Mr Earnshaw, raised a query about this particular matter at the presentation and I think that should, hopefully, reassure himself and other Hon. Members.

Subsection (4) stipulates that the commissioners must direct the Chief Registrar to arrange for the management order to be registered as a burden on the landlord's title or, in the case of unregistered land, to be recorded on the register of deeds.

2160 Subsection (5) defines 'relevant person' and subsection (6) defines what constitutes unreasonable service charges.

Subsections (7) and (8) allow the commissioners to make a management order, which applies to premises which are more or less extensive than that originally specified and for the order to include various incidental or ancillary matters.

2165 Subsection (9) provides for the management order to include various powers to assist the manager and also for remuneration to be paid to the manager by any relevant person, for example, landlord or tenant.

2170 Subsections (10) and (11) allow the commissioners, when making a management order, to impose conditions which may include the suspension of the order and also, if applicable, allow the commissioners to still make an order, even though the period specified in a management application notice to effect repairs, for example, may not have been reasonable under section 18(2)(b), or despite the fact that the notice may have failed to comply with other requirements under section 18(2).

2175 Subsection (12) provides that a management order is enforceable against any person deriving title from the landlord's interest in the premises, but without prejudice to section 29 of the Registration of Deeds Act 1961, registration of encumbrances affecting unregistered land, or section 31(4) of the Land Registration Act 1982, effect of transfer of registered land.

Mr Speaker, I beg to move that clause 20 do stand part of the Bill.

2180 **The Speaker:** Mr Henderson.

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

2185 **The Speaker:** The motion is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 21, sir.

Mr Quayle: Thank you, Mr Speaker.

2190 Clause 21, subsections (1), (2) and (3) provide for the commissioners to vary or discharge a management order on the application of any interested party, with liberty to impose conditions on the variation or discharge of the order, if satisfied that it is just and convenient to do so in all the circumstances of the case and that the variation or discharge would not result in a recurrence of the circumstances which led to the management order being made.

2195 Subsection (4) stipulates that the commissioners may not discharge a management order only because the premises relating to the order have ceased to be relevant premises, (a) by becoming part of the functional land of a charity, or (b) by reason of the landlord's interest becoming invested in an exempt landlord, as defined in section 16(1).

Mr Speaker, I beg to move that clause 21 do stand part of the Bill.

2200 **The Speaker:** Mr Henderson.

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

2205 **The Speaker:** I put the motion that clause 21 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 22.

Mr Quayle: Thank you, Mr Speaker.

2210 This clause provides for the Department to specify and amend the form and content of any notices required or authorised to be served under, or in pursuance of, any provisions in part 4, subject to the Department making sure it notified those likely to be affected.

Mr Speaker, I beg to move that clause 22 do stand part of the Bill.

2215 **The Speaker:** Mr Henderson.

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

2220 **The Speaker:** I put the motion that clause 22 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Part 5 and clause 23.

2225 **Mr Quayle:** Thank you, Mr Speaker.
Clause 23(1) specifies that qualifying tenants, as defined in clause 25, may apply to the court for an acquisition order, providing that the person nominated by them may acquire the landlord's interest in the premises without the landlord's consent.

Subsection (2) specifies that the premises to which part 5 applies are buildings that comprise two or more flats, where two thirds of the flats are owned by qualifying tenants.

2230 Subsections (3) and (4), however, specify that the provisions do not apply in cases where: the landlord is a Department or local authority; more than 50% of the internal floor area of the premises is used for non-residential purposes; the premises are included within the functional land of any charity; or where the landlord's interest is held by a resident landlord or an exempt landlord within the meaning of section 16.

2235 Subsection 5 allows the Department to make an order varying the fraction specified in subsection (3)(b), which is presently $\frac{1}{2}$.

Mr Speaker, I beg to move that clause 23 do stand part of the Bill.

2240 **The Speaker:** Mr Henderson.

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

2245 **The Speaker:** I put the motion that clause 23 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 24, Mr Quayle.

2250 **Mr Quayle:** Thank you, Mr Speaker.
This clause provides for the interpretation of certain words and phrases used throughout this part.

Mr Speaker, I beg to move that clause 24 do stand part of the Bill.

The Speaker: Mr Henderson.

2255 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

2260 **The Speaker:** I put the motion that clause 24 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 25.

2265 **Mr Quayle:** Thank you, Mr Speaker.
This clause specifies that, in order to be a 'qualifying tenant', a person has to be a tenant under a long lease, 21 years or over. However, a person would not be a qualifying tenant if they also own more than two other flats contained in the premises. In computing whether a tenant owns more than two other flats, any flats occupied under business tenancies are disregarded.

Mr Speaker, I beg to move that clause 25 do stand part of the Bill.

2270 **The Speaker:** Mr Henderson.

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

2275 **The Speaker:** The motion is that clause 25 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 26.

2280 **Mr Quayle:** Clause 26, subsections (1) and (2) specify that, before an acquisition application is made to the court by or on the behalf of the requisite majority – not less than two-thirds of the qualifying tenants – an acquisition application notice must be served on the landlord.

Subsection (3) allows the court, in certain circumstances, to make an order which dispenses with the requirement to serve an application notice and instead directs that another form of notice be served.

2285 Subsection (4) specifies the information to be included in the acquisition application notice, including the names and addresses of the qualifying tenants and also the names and addresses of another person on whom the landlord may serve a notice in connection with this part. The acquisition application notice must also state that the tenants intend to make an acquisition application to the court, but they will not do so if the landlord complies with any requests to remedy matters – for example, carrying out repairs within the reasonable amount of time, as specified in the notice.

2290 Mr Speaker, I beg to move that clause 26 do stand part of the Bill.

The Speaker: Mr Henderson.

2295 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: The motion is that clause 26 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2300 Clause 27. Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

2305 Clause 27, subsections (1) and (2), provide that an acquisition order to the courts may only be made by a requisite majority – two-thirds of the qualifying tenants – and only if, in a case where an acquisition application notice has been served, the period allowed for the landlord to effect repairs, for example, has expired, or in a case where the court had dispensed with the requirement to serve such a notice, any applicable direction stipulated by an order of the court under clause 26(3) has been complied with.

2310 Subsection (3) provides that an acquisition application could also apply to two or more premises, as defined in clause 23, subsection (2), as buildings that comprise two or more flats, where two-thirds of the flats are owned by qualifying tenants.

Subsection (4) allows for rules of courts to apply with regard to the procedures relating to the service of an acquisition application notice.

2315 Subsection (5) allows the applicants to register an acquisition order as a pending action under the Land Registration Act 1982.

Mr Speaker, I beg to move that clause 27 do stand part of the Bill.

The Speaker: Mr Henderson.

2320 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 27 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2325 Clause 28.

Mr Quayle: Thank you, Mr Speaker.

2330 Subsections (1), (2), (3) and (4) provide the conditions that have to be met before the court – assuming the court considers circumstances are appropriate – makes an acquisition order. The court has to be satisfied that the premises were, at the date when the acquisition application notice was served, and still are, premises to which the provisions of part 5 apply, that is, buildings that comprise two or more flats, where two-thirds of the flats are owned by qualifying tenants and either the landlord is in breach of any obligation under the applicants' leases in relation to the repair, maintenance, insurance or management of the premises and the breach is likely to continue, or that an order for the appointment of a manager of the premises, which has been made by the Rent and Rating Appeal Commissioners, has been in force for at least two years before the date of the application.

2335 Subsection (5) provides discretion for the court to include, or exclude, in the application order any yard, garden or outhouse belonging to the premises, whilst subsection (6) provides that, even if all the preconditions have been met, the court must not make an acquisition order if the application consists of part of more extensive premises in which the landlord has an interest and

the court considers that the landlord's interest is not capable of being severed or excluded under subsection (5).

2345 Subsection (7) allows the court to still make an acquisition order, even though the period specified in the acquisition application notice – to effect repairs, for example – may not have been reasonable under section 26(4)(d) or despite the fact that the notice may have failed to comply with other requirements under section 26(4), or imposed by the Department.

2350 Subsection (8) provides that the provisions of section 28 and part 5 still apply to premises which are the subject of an acquisition application, even though the landlord's interest may subsequently become held by an exempt landlord, as defined in section 16, or residential landlord, or the premises become part of the functional land of any charity before the final acquisition order is made.

Mr Speaker, I beg to move that clause 28 do stand part of the Bill.

2355 **The Speaker:** Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

2360 **The Speaker:** The motion is that clause 28 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29.

Mr Quayle: Thank you, Mr Speaker.

2365 Subsection (1) provides that, unless the landlord cannot be found, the acquisition order must provide for the nominated person – that is, the person nominated by those making the acquisition order – to be entitled to acquire the landlord's interest in the premises on such terms as may be agreed between the landlord and the qualifying tenants or, failing such agreement, by the court, as provided for under section 30.

2370 Subsection (2) provides that an acquisition order may be granted, subject to such conditions, including its suspension, as the court thinks fit.

Subsection (3) provides that the applicants must ensure that the nominated person is joined as a party to the application.

2375 Subsection (4) provides that, once the acquisition order is made, the applicants may, with the court's approval, nominate another person for the purposes of part 5, either in addition to, or as a substitute for, the original nominated person.

2380 Subsections (5) and (6) provide that if the landlord's premises are subject to a covenant or condition, which means that the landlord can only dispose of the premises with the consent of another person, then the landlord must try and ensure that consent is obtained. If such consent is withheld, then the landlord must seek a declaration from the court to that effect and if the court fails to make such a declaration then the acquisition order will cease to have effect.

2385 Subsection (7) provides that the provisions of the Land Registration Act 1982 apply to an acquisition order the same as to any other court order which enforces a judgment and also provides that, on a conveyance in pursuance of an acquisition order, the nominated person must register the title acquired by virtue of the order under the 1982 Act.

Mr Speaker, I beg to move that clause 29 do stand part of the Bill.

The Speaker: Mr Malarkey.

2390 **Mr Malarkey:** I beg to second and reserve my remarks, sir.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

2395 I wish to move an amendment to this clause. It is a departmental amendment and it is basically, very simply, to correct an erroneous cross reference:

On page 24, in line 31 for 'section 32(1)' substitute 'section 32(2)'.

2400 It is set forth on the Order Paper and is a straightforward, technical issue, sir.

The Speaker: Mr Cregeen.

Mr Cregeen: I beg to second.

2405 **The Speaker:** I put the amendment to clause 29 in the name of Mr Henderson. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29, as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2410 Clause 30, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

2415 Subsections (1) and (2) provide that the court may determine, on the basis of what is fair and reasonable, the terms on which the landlord's interest in the relevant premises may be acquired by the nominated person. This provision only applies with regard to those terms which had not been previously agreed between the landlord and either the qualifying tenants or the nominated person.

2420 Subsection (3) provides that, where an application is made to the court to determine the amount payable to acquire the landlord's interest in the premises, the court shall do so by determining an amount equal to the amount which, in the opinion of the court, might be expected to be realised, if sold on the open market by a willing seller on the appropriate terms and assuming that none of the tenants were buying, or seeking to buy, that interest.

Subsection (4) defines appropriate terms used in subsection (3) as meaning all the terms to which the acquisition of the landlord's interest under the order is to be subject, apart from those relating to the consideration payable.

2425 Subsection (5) provides that, if an application under subsection (3) is made to the court, then the interests of the qualifying tenants shall be represented by the nominated person and, consequently, the parties to any such application shall not include those tenants.

Mr Speaker, I beg to move that clause 30 do stand part of the Bill.

2430 **The Speaker:** Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

2435 **The Speaker:** The motion is that clause 30 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 31 and schedule 2. Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

2440 Subsection (1) provides that, if the landlord's interest is acquired following an acquisition order, the instrument by which it is acquired shall, subject to the procedure specified in schedule 2, operate to discharge the premises from any mortgage on that interest, in order to secure the payment of money or the performance of any other obligation by the landlord or any other person.

2445 Subsection (2) provides that the provisions in subsection (1) do not apply to a mortgage if agreement has been reached, between the landlord and the qualifying tenants or nominated person, that the landlord's interest should be acquired subject to the mortgage or the court is satisfied, and orders accordingly upon receipt of an appropriate application that, in the exceptional circumstances of the case, it would be fair and reasonable that the landlord's interest should be acquired subject to mortgage.

2450 The details relating to schedule 2 relate... for example, paragraph 1, defining certain terms used in the schedule.

2455 Paragraph 2, subsections (1) and (2), provides for the instrument that applies when a nominated person, as defined, uses the consideration payable – the amount realised by the sale of the landlord's premises – to discharge any charges, such as a mortgage, that applies in respect of the premises. Any such payment would need to apply on the basis of the priorities of the charges and would still apply even if the consideration payable was insufficient to redeem the charges in full or was paid into the court, in accordance with paragraph 5.

2460 Paragraph 2, subsection (3), provides that the provisions of this paragraph do not apply to a debenture holder's charge, as defined, unless the charge is in favour of trustees and, at the relevant time, is a specific and not a floating charge. However, the provisions of paragraph 4, a charge in favour of a related person, do apply to this paragraph.

Paragraph 3, subsection (1), provides that a person entitled to receive the benefit of a charge, under paragraph 2, shall not be allowed to consolidate that charge by a separate charge on other property.

2465 Paragraph 3, subsection (2), provides that, for the purposes of discharging any premises from a charge, a person may be required to accept at least three months' notice of the intention to pay the whole, or part, of the principal secured by the charge, together with interest.

Paragraph 3, subsection (3), provides that a recipient of a notice under paragraph 3, section 2 is, provided he gives notice, entitled to receive reasonable additional payment in respect of incidental costs and expenses, for example.

2470 Paragraph 4, subsection (1), provides for the court to take proceedings – a court order – when it has concerns about the way a charge has been executed by a landlord in favour of a related person.

Paragraph 4, subsection (2), provides for the court to give notice of any intended court order to the related person.

2475 Paragraph 4, subsections (3) to (5), define various terms, including the meaning of 'related person'.

Paragraph 5, subsections (1) to (4), provides for cases where the nominated person may be unable, for a variety of reasons, to pay the consideration payable to the person who may be entitled to receive it. In such circumstances, the nominated person must pay into the court, on account of the consideration payable, either the amount due in respect of the charge or, if the amount of charge is not known, the amount required to provide for the consideration payable.

2480 Paragraph 5, subsection (4), provides that a nominated person must also pay into court the whole or part of the consideration payable when they receive notice that it may be necessary to protect the rights of anyone entitled to the benefits of a charge, or for reasons related to the bankruptcy or winding up of the landlord, or steps are in place to enforce any charge on the landlord's property by other legal proceedings or by the appointment of a receiver.

2485 Paragraph 6 provides for various savings provisions to apply with regard to schedule 2.
Mr Speaker, I beg to move that clause 31 and schedule 2 do stand part of the Bill.

2490 **The Speaker:** Mr Henderson.

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

2495 **The Speaker:** The motion is that clause 31 and schedule 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 32.

Mr Quayle: Thank you, Mr Speaker.

2500 Subsections (1) and (2) provide that, if the court makes an application order and the landlord cannot be found or his identity cannot be ascertained, then the order must provide for the landlord's interest in the relevant premises to vest in the nominated person on such terms as are specified in subsection (3) and such other terms, if any, as the court considers applicable in the circumstances.

2505 Subsection (3) provides the means of computing the amount required to be paid into court. It is the sum of such amount as a surveyor selected by the court may certify as the amount which the landlord's interest might be expected to realise if sold, as referred to under section 30(3) – for example, if sold on the open market by a willing seller – and any amounts or estimated amounts determined by the court as being due from the tenants to the landlord.

2510 Subsection (4) provides that, once any amount due by virtue of subsection (3) is paid, then the landlord's interest will vest with the nominated person.

Subsection (5) defines the term 'surveyor' referred to in subsection (3)(a).

Mr Speaker, I beg to move that clause 32 do stand part of the Bill.

2515 **The Speaker:** Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker. I beg to second and reserve my remarks, sir.

The Speaker: Mr Henderson.

2520 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I wish to move an amendment to this particular clause. It is again a departmental amendment, as laid down in our Order Paper this morning. It is basically technical in nature and it is simply to correct an erroneous cross reference within these sections.

2525 *On page 44, in Schedule 2, paragraph 2(2)(b) for 'paragraph 4' substitute 'paragraph 5'.*

I beg to move, sir.

2530 **The Speaker:** Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker, I beg to second.

The Speaker: I put the amendment in the name of Mr Henderson to clause 32. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2535 Clause 32, as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 33, Mr Quayle.

2540 **Mr Quayle:** Thank you, Mr Speaker.

Subsection (1) allows the court to discharge an acquisition order when it is satisfied that: the nominated person has failed to effect the acquisition of the landlord's interest, despite having had reasonable time to do so; the number of qualifying tenants is less than the requisite majority; or the premises have ceased to be premises to which part 5 applies.

2545 Subsection (2) provides that, if the qualifying tenants or nominated person notify the landlord that they are no longer content to proceed with the acquisition of the landlord's interest in the premises, then the landlord may, except where subsection (4) applies, recover any reasonable expenses incurred up to the time when the notice was served. If the notice was served after an acquisition order has been made, then that order would cease to have effect.

2550 Subsection (3) states that if the nominated person, either before or after the making of an acquisition order, becomes aware that the number of qualifying tenants is less than the requisite majority, or the premises have ceased to be premises to which part 5 applies, then he or she must notify the landlord immediately that they no longer intend to proceed with the acquisition of their interest. The landlord would then be entitled to recover his expenses, as provided for in subsection (3).

2555 Subsection (4) provides that if at any time, when any proceedings are pending before the court, any of the following circumstances occur – a notice under subsections (2) or (3) is served on the landlord; the nominated person indicates that they are no longer prepared to act in the matter and nobody else is nominated; the number of qualifying tenants falls below the requisite majority; the premises cease to be premises to which part 5 applies; or the court discharges an acquisition order under subsection (1) – the landlord may recover such costs as the court may determine.

2560 Subsection (5) specifies that the costs incurred by the landlord under subsections (2) or (4) may include costs relevant to part 5, but do not include any proceedings before the Rent and Rating Appeal Commissioners.

2565 Subsection (6) provides that any costs arising under section 33, as well as being the liability of any nominated person, would also be the joint and several liability of – if the liability arises before the making of an application for an acquisition order, the tenants who served the acquisition application notice, under section 26(1); or if the liability arises after the making of such an application, the tenants who served the application.

2570 Subsection (7) provides that the provisions of subsection (6) would also apply to any successor in title of the tenants' interests. (**Mr Watterson:** Hear, hear.)

Subsection (8) provides that this section does not allow the court to discharge an acquisition order if the landlord's interest has already been acquired under that order.

2575 Subsection (9) provides that if an acquisition order is to start, or ceases to have effect, under part 5, and the order was protected by entry under the Land Registration Act 1982, then the court may by order cancel that entry.

Mr Speaker, I beg to move that clause 33 do stand part of the Bill.

The Speaker: Mr Henderson.

2580 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I beg to second, sir and reserve my remarks.

The Speaker: The motion is that clause 33 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2585 Part 6 and clause 34, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Subsections (1) and (2) provide that any party, including the landlord, to a long lease of a residential flat may apply to the Rent and Rating Appeal Commissioners for an order varying the lease on the basis that the lease fails to make satisfactory provision about: the repair or maintenance of the flat; the building or any land or building which is let to a tenant under the lease; the insurance of the building containing the flat or any land let to the tenant; the repair or maintenance of any installations; or the provision or maintenance of any services which are necessary to ensure the tenants enjoy a reasonable standard of accommodation; the recovery of expenditure under the lease; whether a service charge is payable under the lease and the calculation of the charge; or any other matter that the Department may prescribe by regulations.

Subsection (3) specifies that, for the purpose of determining what constitutes a reasonable standard of accommodation under subsections (2)(c) and (e), account needs to be taken of factors such as the safety and security of the flat and its occupiers.

Subsection (4) specifies that, for the purposes of determining whether the lease makes satisfactory provision in relation to a service charge, consideration should be given to whether it makes provision for an amount to be payable in respect of a failure to pay the service charge by a due date.

Subsection (5) specifies that a lease fails to make satisfactory provision for a calculation of a service charge, if the sum of the contributions payable by all the tenants in respect of expenditure incurred by their landlord differs from the total expenditure, which is likely to be, or may have been, incurred by the landlord or a superior landlord.

Subsection (6) allows the Department to make regulations requiring notices of any applications relevant to part 6 to be served on all persons who are likely to be affected and allowing such persons to be regarded as parties to the proceedings.

Subsection (7) provides that, for the purposes of part 6, a long lease shall not be regarded as a long lease of a flat, if the demised premises consist of, or include, three or more flats in the same building or the premises are occupied for business, trade or professional purposes.

Mr Speaker, I beg to move that clause 34 do stand part of the Bill.

The Speaker: Mr Henderson.

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

The Speaker: The motion is that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 35.

Mr Quayle: Thank you, Mr Speaker.

Subsection (1) provides that when a party to a lease makes an application under section 34, any other party to that lease may apply to the commissioners, requesting that if they make an order which varies the lease, then they should also consider whether another order may be required which varies the leases specified in the later application.

Subsection (2) provides that the leases specified in the later application must also be long leases of flats held by the same landlord as in the original application, but the flats do not have to be in the same building, nor do the leases have to be drafted in identical terms.

Subsection (3) provides that the grounds on which the later application may be made are that each of the leases specified in the later application failed to make a satisfactory provision with respect to the matters specified in the original application made under section 34 – for example, repair and maintenance of flats etc – and if any variation was effected with the original application, it would be in the interests of the person making the later application, or other persons party to that application, to have all the leases varied to the same effect.

Mr Speaker, I beg to move that clause 35 do stand part of the Bill.

The Speaker: Mr Henderson.

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

The Speaker: I put the motion that clause 35 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

2650 **Mr Quayle:** Thank you, Mr Speaker.
Subsection (1) provides that an application may be made to the commissioners in respect of two or more long leases for an order varying each of those leases, but subject to the provisions in section 36.

2655 Subsection (2) provides that the leases must be long leases or flats held by the same landlord, but the flats do not have to be in the same building, nor do the leases have to be drafted in identical terms.

Subsection (3) provides that the grounds for an application are that the object to be achieved by any variation cannot satisfactorily be achieved unless all the leases are varied to the same effect.

2660 Subsection (4) provides that the application can be made by the landlord or any of the tenants under the leases, but only if at least 75% of the tenants consent to it.

Subsection (5) provides that, for the purposes of subsection (4), a person who is a tenant under a number of leases shall be regarded as constituting a corresponding number of tenants.

Mr Speaker, I beg to move that clause 36 do stand part of the Bill.

2665 **The Speaker:** Mr Henderson.

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

2670 **The Speaker:** Mr Quirk.

Mr Quirk: Just a technical point, Mr Speaker, if I could. The Minister mentioned 75%, but I think in the Bill it says three-quarters.

2675 **The Speaker:** Mr Quayle.

Mr Quayle: Yes, thank you, Mr Speaker.
Well, they are one and the same thing, 75% or three-quarters, so I am content with what is in the Bill and I beg to move.

2680 **The Speaker:** I put the motion that clause 36 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 37.

2685 **Mr Quayle:** Thank you, Mr Speaker.
Subsections (1), (2) and (3) give the commissioners powers to make orders varying the leases as a result of applications made under sections 34, 35 and 36. However, before making any such order, the commissioners would need to be satisfied that the grounds under which the applications had been made were satisfactory.

2690 Subsection (4) provides that, when making an order varying a lease, the commissioners must take account of the provisions in subsections (7) and (8).

Subsection (5) provides that when the commissioners make an order under sections 34 or 35 they may vary it on the basis of the relevant application, or on such other basis as they think fit.

2695 Subsection (6) provides the commissioners with restricted powers when making an order under sections 35 and 36 so that they can only make an order so that it applies to those leases which they are satisfied fulfil all the relevant grounds.

2700 Subsection (7) specifies that the commissioners must not make an order under sections 34 to 36 if they feel that the variation would be likely to prejudice any respondent to the application or anyone who is not a party to the application and, assuming any award under subsection (12), would not offer adequate compensation, or for any other reason it would not be reasonable for the variation to be effected.

2705 Subsection (8) specifies that when the commissioners are dealing with a matter relating to insurance in a lease, they must not make an order varying the lease by terminating any existing right the landlord has to nominate an insurer, by requiring the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer, or where the lease requires the tenant to effect insurance by requiring the tenant to effect insurance with an insurer who is not specified in the lease.

Subsection (9) allows the commissioners, instead of making an order varying the lease, to make an order directing the parties to the lease to vary it as specified in the order.

2710 Subsection (10) provides that any reference, in part 6, to an order effecting any variation of a lease or any variation effected by an order also includes reference to a order which directs the parties to a lease to effect a variation to it, or to any variation effected, in pursuance of such an order.

2715 Subsection (11) allows the commissioners to make an order directing that a memorandum of any variation of any order made under sections 34 to 36 shall be endorsed on such documents as are specified in the order.

Subsection (12) allows the commissioners to include provision for compensation to be paid by any party to the lease to either: any other party to the lease; or to any other person who the commissioners feel is likely to be disadvantaged by the variation.

2720 Mr Speaker, I beg to move that clause 37 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

2725 I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 37 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 38.

2730 **Mr Quayle:** Thank you, Mr Speaker.

2735 Subsection (1) provides that any variation effected by an order under section 37 is binding not only on the parties to the lease but also on other persons, regardless of whether or not they were parties to the proceedings in which the order was made or they were persons likely to be affected by the order – that is, they have been served with a notice in accordance with regulations made by the Department under section 34(6).

Subsection (2) provides that, notwithstanding the effect of subsection (1), a variation effected by such an order binds any surety who has guaranteed the performance of any obligation varied by the order.

2740 Subsection (3) provides that if an order is made and the person likely to be affected by it was not served with a notice in accordance with regulations under section 34(6), then that person may bring an action for damages against the person who should have served the notice and apply to the commissioners for the cancellation or modification of the variation in question.

2745 Subsection (4) provides that the commissioners, when considering an application under subsection (3)(b), may make an order cancelling or modifying the variation specified in the order or make an order for compensation under section 37(12).

2750 Subsection (5) allows the commissioners to make an order, under subsection (4)(a), effective from the date it was made or such other date they may specify, and make another order directing that a memorandum of cancellation or modification shall be properly endorsed, and in a case where a variation is modified, subsections (1) and (2) shall apply with effect from the date when the modification takes effect to the variation as modified.

Mr Speaker, I beg to move that clause 38 do stand part of the Bill.

The Speaker: Mr Henderson.

2755 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder. I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 38 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2760 Hon. Members, background conversation has been taking place that I am advised affects the quality of the voice recording for *Hansard*. It is also discourteous to the Member who is speaking, needless to say, but I would simply put that point, that *Hansard* will have difficulty, if this persists.

We turn now to clause 39 and, again, Mr Quayle and schedule 3.

2765 **Mr Quayle:** Thank you, Mr Speaker.

This clause introduces schedule 3, which contains various amendments to housing legislation. Of schedule 3, paragraphs 1 to 4 amend various sections of the Housing Act 1955.

2770 Paragraph 1 amends section 9, ‘use of premises in contravention of closing order or undertaking’, of the Housing Act 1955. The additional provision will allow legal proceedings to be taken: where an offence is committed by a body corporate and it is proved that the offence was committed with the consent or connivance of a connected person, as defined, or that person had neglected to take steps to prevent an offence being committed, then the connected person is also guilty of the offence.

2775 Paragraph 2 amends section 47 of the Housing Act 1955, which deals with the management of a local authority’s houses by the insertion of a new section 47(1A), which specifies that section 47(1) of the 1955 Act, management and regulation of local authority public sector houses, is subject to section 47A of the 1955 Act and to schedule 3 of the Housing (Miscellaneous Provisions) Act 1976.

2780 As background information – this is similar to clauses 8 and 14 – the provisions of section 72 of the Housing Act 1955 require the relevant officer to provide the occupier of any house, premises or building, with at least 24 hours’ notice of intended entry. Additionally, Hon. Members may need to note that the provisions in the substituted section 47(2), which relate to powers of entry, are very similar to what was originally in the 1955 Act. The wording has just been modernised.

2785 Paragraph 3 inserts new section 47A into the Housing Act 1955, which provides that each local authority that is a housing authority shall operate a housing revenue account in a form approved by the Department and only charge to that account expenditure which is of a description approved by the Department. Additionally, authorities may only borrow money for capital expenditure on housing accommodation with the consent of, and on terms provided by, the Treasury.

2790 Provision is also included so that authorities will have to have their annual revenue and capital expenditure estimates approved by the Department.

2795 Paragraph 4 inserts a new definition of ‘sanitary defects’ in section 92 of the Housing Act 1955. The amended provision will include details relating to the health, safety and welfare of occupants of any house. This covers private, as well as public sector houses, and the application of these powers enables environmental health officers from DEFA to investigate complaints from the occupiers of such houses about, for example, alleged dampness, condensation, etc. These powers will supplement the powers in part 3 of this Bill which relate to the regulation of flats and HMOs.

2800 Paragraph 5 amends section 3(a) of the Ramsey Town Act 1970, so as to include a requirement for the Department of Infrastructure consent if Ramsey Town Commissioners wanted to sell land it owns at the Mooragh. Under section 25 of the Local Government Act 1985, a local authority needs Department of Infrastructure approval before it acquires or sells other land, but this does not at present apply to the Mooragh.

2805 Paragraph 6(1) to (5) amends schedule 3 to the Housing (Miscellaneous Provisions) Act 1976, by making new provisions which enable the Department to adopt an all-Island policy for the allocation of public sector housing. Such a policy would be subject to consultation with local authorities and Tynwald approval, treats the existing policy as if it had been regularly adopted from its inception, and creates an offence if a person obtains public sector housing based on false statements or the use of false information. Any person found guilty of such an offence would be liable, on summary conviction, to a fine not exceeding £5,000 or to prison for up to six months, or both.

2810 Additionally, the court may make an order depriving the person of the interest in a property obtained by such deception.

2815 Paragraph 6 introduces special provisions which provide that the provisions of subparagraphs (1) to (4) shall be deemed to have come into operation on the dates when Tynwald approved the policy originally adopted by the former Department of Local Government and the Environment. This provision is intended to put beyond doubt the legality of the processes that have applied for some years.

Paragraph 7 provides for a minor amendment of section 12 of the Property Services Charges Act 1989; following amendments in 2003, there are now three schedules in this Act.

2820 Paragraph 8 inserts a new section 12A in the Property Services Charges Act 1989 which deals with offences committed by persons connected with the body corporate. The insertion provides that, where an offence is committed by a body corporate and it is also proved that the offence was committed with the consent or connivance of a connected person, as defined, or that person had neglected to take all reasonable steps to prevent the offence being committed, then the connected person is also guilty of the offence.

2825 Mr Speaker, I beg to move that clause 39 and schedule 3 do stand part of the Bill.

The Speaker: Mr Henderson.

2830 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder, I beg to second, sir, and reserve my remarks.

The Speaker: Mr Quirk.

2835 **Mr Quirk:** Mr Speaker, can I just ask the Member, on section 47A, which is the operation of local authority accounts – revenue accounts which are approved by the Department – I wonder whether the Minister can actually provide us with a copy of the format? It indicates there the format that is required by Treasury and I am just wondering if Treasury, then, are obliged to disclose the format with the figures in it, sir?

2840 **The Speaker:** Minister to reply.

Mr Quayle: Yes, thank you, Mr Speaker.

I am sure I will be able to circulate some information in respect of that. However, I think a lot of what is contained here is already custom and practice and it is merely putting into legislation what really ought to have been there before, perhaps.

2845 With that, Mr Speaker, I beg to move.

The Speaker: The motion is that clause 39 and schedule 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2850 Clause 40.

Mr Quayle: Thank you, Mr Speaker.

Subsection (1) provides that the rent and rating appeal commissioners shall not be liable in damages for any act done or admitted to be done in good faith in the exercise of the functions conferred upon them under this Act.

2855 Subsection (2) provides that subsection (1) does not prevent the award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 2001.

Mr Speaker, I beg to move that clause 40 do stand part of the Bill.

2860 **The Speaker:** Mr Henderson.

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

2865 **The Speaker:** I put the motion that clause 40 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 41.

Mr Quayle: Thank you, Mr Speaker.

2870 Subsection (1) gives the Rent and Rating Appeal Commissioners power to make rules of procedure under section 8 of the Tribunals Act 2006 in respect of their functions under this Act.

Subsection (2) provides that this section does not limit the application of section 3(3) of the Rent and Rating Appeals Act 1986 – rules in respect of the Commissioners' functions – under that Act.

2875 Subsection (3) provides the Rent and Rating Appeal Commissioners with powers to refer to the courts any case where a person has acted in a way which would constitute contempt of court if the proceedings had been before a court, or otherwise contravened an order or failed to comply with a decision of the Commissioners.

2880 Subsection (4) allows the court to investigate any matter referred under subsection (3) in the same way it would deal with similar cases before it.

Subsection (5) provides a party to the proceedings with a right of appeal to the court.

Subsection (6) provides that the court, when dealing with an appeal, may exercise any power which is available to the Rent and Rating Appeal Commissioners under this Act.

2885 Mr Speaker, I beg to move that clause 41 do stand part of the Bill.

The Speaker: Mr Henderson.

2890 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder, I beg to second, sir and reserve my remarks.

The Speaker: The motion is that clause 41 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 42 sir.

2895 **Mr Quayle:** Thank you, Mr Speaker.

Subsection 1 deals with the Tynwald procedure which is to apply in respect of different types of secondary legislation, schemes, orders and regulations, made under the provision of the Bill.

2900 The following require Tynwald approval before they come into effect: housing schemes under part 2, see clause 7(6); orders under section 7(4), amending the enabling provisions of housing schemes, see clause 7(6); housing standards regulations applying to flats and HMOs, see clause 11(4); housing registration regulations under section 12(1), flats and HMOs, see clause 12(7); an order under section 13(1), flats and houses in multiple occupation, to which part 3 applies, see clause 13(2).

2905 Orders under paragraph 7 of schedule 1, power to amend paragraphs (1) and (2) of that schedule. All other public documents are subject to negative resolution procedure.

Subsection (2) provides that orders of the Rent and Rating Appeal Commissioners under this Act are not public documents.

I beg to move clause 42 stand part of the Bill.

2910 **The Speaker:** Mr Henderson.

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

2915 **The Speaker:** I put the motion that clause 42 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 43, Mr Quayle.

2920 **Mr Quayle:** Thank you, Mr Speaker.

This clause provides that where an offence is committed by a body corporate and it is also proved that the offence was committed with the consent or connivance of a connected person, as defined, or that person had neglected to take all reasonable steps to prevent an offence being committed, then the connected person is also guilty of the offence.

2925 Mr Speaker, I beg to move that clause 43 do stand part of the Bill.

The Speaker: Mr Henderson.

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

2930 **The Speaker:** The motion is that clause 43 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 44, Mr Quayle.

2935 **Mr Quayle:** Thank you, Mr Speaker.

This clause introduces schedule 4, which lists the enactments which are repealed in column 1 and the extent of repeal in column 2.

2940 Schedule 4 repeals provisions which are either unnecessary in consequence of the Bill's other provisions or of no further practical utility. The enactments in the latter category are those relating to the Borough of Douglas, which were expressed to be revoked, as respecting the Borough, which begged the question as to their continuing effect for other purposes. To put matters beyond doubt, they are now repealed for all purposes.

2945 Mr Speaker, as this is the final clause, I really do take the opportunity to thank Hon. Members for their support this morning, and for yourself, Mr Speaker, in having allowed the Bill to have been brought forward in such a timely fashion.

Thank you, Mr Speaker.

The Speaker: Mr Henderson.

2950 **Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: Mrs Cannell.

2955 **Mrs Cannell:** Thank you, Mr Speaker.
I just want to give some praise to the Minister for the expedient manner in which he has pursued the clause readings today, (**Several Members:** Hear, hear.) and also to thank Hon. Members in the House for being very considerate throughout the reading of the clauses of this Bill, which is a *very* important Bill. (**A Member:** Hear, hear.) The sooner we see the regulations coming forward to another place to enact certain parts of it, the better.

2960 So, I thank the Minister, I thank the House and Mr Speaker. It is a very, very good day for me, in particular, for Douglas East today. Thank you.

The Speaker: I put the motion that clause 44 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2965 Thank you, Hon. Members. That concludes the business of the House today.

Procedural

2970 **The Speaker:** I have been asked to remind you that there is a presentation on the European Union (Amendment) Bill, which was requested by some Members of this House. This is to take place at 1.30 in the Barrool Suite.

2975 The House will now stand adjourned until next sitting, which will take place on 8th February in this Chamber.

The House adjourned at 1.12 p.m.