

4.1. Trusts (Amendment) Bill 2014 – Council amendments considered and approved

Mr Henderson to move.

The Speaker: Item 4, consideration of Council amendments to the Trusts (Amendment) Bill. I call on the Member in charge of that Bill, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

You will recall that this Bill seeks to make three small amendments to the Island's trust law. These are: the abolition of the two trustee rule; the abolition of the perpetuity period in respect of future dispositions of trusts; and the matters determined by the governing law where a trust is settled subject to the law of the Isle of Man.

The Bill was the subject of much consultation and scrutiny before it was introduced into the Branches. The Bill completed its progress through this House on 6th May. However, during its subsequent progress through the Legislative Council, the Bill was amended. It is therefore necessary for the House to now consider those amendments.

All three amendments were proposed by the Treasury. The Bill seeks to amend a highly complex and technical area of the law. It is critical that there is complete certainty of intention of the effect of the amendments.

It has become apparent that the Bill would benefit from three small further amendments. This is because the amendment in clause 5 in respect of the abolition of the perpetuity period was considered to have introduced an element of uncertainty to the position going forward. This new amendment will achieve the outcome of certainty which is so fundamental to this area of the law.

I will provide a brief description of the amendments to clause 5. Paragraphs 1 and 3 must be moved together or not at all. They relate to the perpetuity period which is being abolished under the Bill. They deal with one small area that remained in respect of easements and options over land, which in certain circumstances remained subject to a period of 21 years, unless registered and agreed.

The reasons for the 21-year period have been lost in time. This rule of 21 years now appears to have been entirely arbitrary. As it was intended that the Bill would abolish the perpetuity period for *all* future Manx trusts in all circumstances, the amendment to clause 5 is considered necessary to provide absolute clarity.

The second amendment to clause 5 is set out in paragraph 2. This clarifies the definition of 'disposition' by making absolutely clear that there was no intention to alter the meaning of the existing definition. The Bill sought only to provide additional certainty to what is within the scope of the definition. As it appears that this might be interpreted one of two ways, paragraph 2 seeks to bring certainty.

Vainstyr Loayreyder, these amendments seek only to add additional clarity and do not alter the purpose or content of the Bill as previously agreed by this House in any way at all.

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

1. Page 7, line 8, for 'section 10(2)' substitute 'section 10(2) and (3)'.

2. Page 7, line 32, for 'In subsection (1) "disposition" includes —' substitute 'Without limiting the application of section 13(2), in subsection (1) "disposition" further includes —'

3. Page 8, line 5 —

(a) re-number paragraph (4) as paragraph (5); and

(b) immediately before paragraph (5) insert —

'(4) In section 10 (options relating to land) —

*(a) at the beginning of subsection (2), for “In” substitute “Subject to subsection (3), in”; and
(b) after subsection (2) insert —
“(3) In relation to a disposition referred to in subsection (2) which is made after section 1A comes into operation —
(a) subsection (2) does not apply; and
(b) the rule against perpetuities is abolished.’.*

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: No Member wishes to speak. We move to a vote and I put the question on the Order Paper that the amendments to clause 5 of the Trusts (Amendment) Bill approved by the Legislative Council be approved by this House. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.