

**2. Motion for leave to introduce –
A Bill to amend the Legislation Act 2015 –
Motion carried**

Mrs Lord-Brennan to move:

That leave be given to introduce a Bill to amend the Legislation Act 2015 to enable Tynwald to require expiry provisions in secondary legislation; and for connected purposes.

800 **The President:** Thank you, Hon. Members, we turn now to Item 2 on our Order Paper, which is a motion seeking leave to introduce. I call on the mover, Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

805 Today, I am seeking leave from this Hon. Council to introduce a Bill to amend the Legislation Act 2015. I am seeking leave so that I can continue further consultation with Tynwald Members about this process. My intention is to make amendment – and I am doing this as a Tynwald Member through this Branch – so that Tynwald Members have a further option available when considering and voting upon secondary legislation.

810 Before I set out how I envisage this working I will explain why, as I see it, there is a bit of challenge that requires a change to the legislative process. Hon. Members are of course aware that before Tynwald sittings there are two weeks to consider secondary legislation before they are voted on in Tynwald Court. There is a high proportion tabled for affirmative resolution each month and a great deal of detail to read in a short time, and this is set to become more complex.

815 Members, both here and in the other place, also know and have quite rightly been given advance notice by Government that as we deal with Brexit, in the readiness of that and the aftermath, we will need to act swiftly to put in place legislation required. Much of the substance will come as secondary legislation, which of course holds the same weight as primary legislation, although it does go through a much simpler process. It is simpler because it is faster and because when it reaches our parliament from the Departments, we can only really vote to approve – that
820 is, give it the green light; or vote against – the red light, if you will. So our choice is a binary one.

We cannot amend secondary legislation in a Tynwald sitting. It does not pass through the processes of primary legislation, although some pieces may be approaching the length of a Bill. It is, in some ways, an all-or-nothing affair unless a delay is caused, and I feel that in some instances the perceived pressures will be such that to delay may seem problematic, because
825 there will be an urgency to put the Island in the best position we can to ensure that we are ready for the challenges ahead. This will mean we will be asked to legislate quickly, and it is something that will be very important to do. We can perhaps recall pieces of secondary legislation in recent months where we might have wished to have a different, more helpful process apply. Therefore I think that at the very least, we might need a third option, which I will describe to you as the
830 ‘amber light’. It would work as follows: when a piece of secondary legislation is moved in Tynwald, instead of only being able to vote ‘yes’ or ‘no’, any Tynwald Member could move that some conditionality be attached, and that the secondary piece of legislation be approved for a time period before it will need to be brought back for parliamentary approval. The method for ensuring this is that it would otherwise expire. Effectively a sunset clause, it is a form of saying
835 ‘yes, but ...’. It says, ‘If you must have this legislation, if we must have it now ...’ the approval is granted, but it needs to be brought back before the Court, say in two years’ time. The way I imagine this would be for it to work over a longer time period to see how things play out with how the legislation works. I imagine this option would not be exercised frequently, but selectively, and would give comfort to Members and to Government when otherwise the only
840 other option really would be to vote against or vote for, and still have some reservations. It could be used in situations where we need to move things along, but we actually need a little bit

more time to consider what might be needed in the medium term. In this way I think it could be helpful to parliament and to Government.

845 The benefit of this is that there would be time to see how the legislation is working, if it is the right option and if changes are needed, with the security that the clock is ticking before it will be brought before the Court again. The legislation may be fine, with no change needed, but we must be mindful that much of the legislation we will be asked to approve will be sourced from EU legislation that has been adopted for the UK and then we will seek to put it on our statutory books. We might wish to have chance to reflect on that, when under less pressure, and consider
850 a fully Manx solution or a solution from elsewhere – there is no reason why not. We might find that taking on everything that is put before us from EU-sourced law is not always essential in the longer term.

Hon. Members, with this idea it is not enough to simply set an expiry clause; it must also trigger something else. So I should say now – and I appreciate this may need to be dealt with in
855 legislation or in other ways, perhaps Standing Orders – that I would propose that in applying the ‘amber light’, as I have described it, a process where the secondary legislation is referred to a Committee – who may or may not offer a short report – is brought in.

Also, in items where the amber light is applied, they could be kept on an online list and also appear as a notice on the Tynwald Order Paper when they are, for example, say six months or
860 even more from expiry, so Members in the future are aware and on notice when they are due to be brought back to the Court. This allows a timeframe and a process to assess if there are any issues with the legislation that need remedying, and how it is working in practice.

This process I hope would offer comfort for Members who have reservations about a piece of secondary legislation and think we may just need to keep an eye on how it may work over the
865 medium term, whilst also being helpful for Government when there is a pressing need to seek parliamentary approval quickly, it is really important to move fast. Overall, I feel that we need to vote as we feel comfortable, not only because there is a sense of urgency to get things done, and that is why this proposed mechanism I see as being a safety catch, which on some occasions might be helpful.

I have consulted with the drafters – just in initial conversations – who have confirmed that
870 pursuing another option apart from voting for or against a piece of secondary legislation, does indeed require amendment of the Legislation Act. I have spoken to some other Tynwald Members and I have had some indications that there is some open-mindedness to this, and part of what I am doing here is so that I can continue to have these conversations with a view to gaining some consensus. Overridingly, I would like to say that I do not think it matters who does
875 this but it is what is done that matters, concerning secondary legislation.

I am bringing the motion in this Branch as a Tynwald Member because I am a Legislative Council Member; if I was in the other place then I would be doing it there. I think it is just something that we need to consider, about how we handle secondary legislation.

880 I am also quite happy that if I am given leave with this today, for the idea to be picked up and run with any other efforts around secondary legislation. It is not something that I feel desperately attached to that I must do myself. I think it is important to have it as an option for Tynwald Members, which is why I am asking for leave to progress it. With that, I beg to move.

885 **The President:** Mr Cretney.

Mr Cretney: Yes, I am happy to second, Mr President, on the basis that I think most Members would acknowledge that secondary legislation would benefit from improved process. The Hon. Member has been open enough to say that she does not necessarily believe she is the only
890 person that can do this but that others putting their minds to improving the scrutiny process of secondary legislation would be a good thing; and I certainly agree with that.

The President: Now, opportunity for further debate.
Yes, Mrs Sharpe.

895 **Mrs Sharpe:** Thank you, Mr President.

I would like to support Mrs Lord-Brennan in bringing this concept before this Chamber for discussion. As I am sure Hon. Members will be aware, there has been much recent debate in the UK regarding expiry provisions, or sunset clauses, in secondary legislation. From what I understand, Mr President, it is estimated that between 800 and 1,000 pieces of legislation will
900 be required in order to update British legislation due to Brexit. In order to comply in a timely fashion, part of the UK's EU Withdrawal Bill sought to delegate powers to the UK Government to make secondary legislation – a legislative shift which has become increasingly popular since the 1970s.

During the drawing-up of the Bill, however, the House of Lords Select Committee on the
905 Constitution expressed concern about such delegated powers, arguing that an appropriate balance between the urgency required to ensure legal continuity and stability on the one hand, and meaningful parliamentary scrutiny and control of the executive on the other, be found. To this end, one of the Committee's recommendations was to insert a sunset clause into the EU Withdrawal Act, section 8, clause (8) under which the power to make secondary legislation
910 expires two years after exit day. I would argue that the Isle of Man is in the same position: we too face a mountain of legislation which must be dealt with before Brexit and using secondary legislation will help move through this. However, I believe it is equally important that Tynwald will be given the chance, for example two years after Brexit, for Members to review decisions made by the current administration. Thank you.

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The President: Thank you.
Mr Henderson.

Mr Henderson: Eaghtyrane, I have a few queries for the Hon. Member, Mrs Lord-Brennan.

920 With regard to leave to introduce, I will fully support that as it is a Member's right to do so in this place, and correct under our Standing Orders. So I have got no problem with supporting that.

However, I just want the Hon. Member to re-explain the substance of her amber light proposal – what it is that, if enacted, her Bill will actually cause to happen. From the explanation
925 we have had, it looks as if it is up to an individual Tynwald Member if they wish to apply the amber light situation in a Tynwald debate on a particular piece of secondary legislation, but it is not a compulsory situation – if I have got that right. But I would just like that explaining so that we know what we are talking about here. And then if somebody does move to have the amber light situation applied to a piece of secondary legislation, which may well be some form of EU
930 legislation – or appertaining to EU legislation, or UK-EU legislation post-Brexit – we need to know what the effect is of having done so. Presumably they will have to effect a majority vote in Tynwald to achieve the amber light. So we need some clarification on that.

In discussing those points, Eaghtyrane, what does concern me is the fact that at times my
935 view is, whether we like it or not, Government needs to react very quickly to situations, or emerging situations, certainly of an international nature. I am a little concerned that the option to apply an amber brake to it may well cause a real issue for the Government, which may well be acting in the best interests of the Island on international matters. I wonder if the Hon. Member could comment on that particular point whereby there may be some urgent need to pass secondary legislation in the best interests of the Island, or to address a rising constitutional
940 issue, and a stalling mechanism may frustrate that and put us in a more difficult situation than that which we are trying to fix. So I would be interested for some commentary on that.

Eaghtyrane, following on from that I would make the further observations that I note the Hon. Member has said that, if given leave to introduce, she will be consulting with Tynwald

Members, etc. in progressing her ideas and working up a legislative draft; which is fine.
945 However, I would have to say that I would doubly urge the Hon. Member to consult effectively
with other Tynwald Members and with the Council of Ministers, and with legislative drafters and
others, so that they fully understand what the intentions of this are so that it is not seen as an
effective power grab by Legislative Council; or some other kind of interference – and these are
my thoughts, Eaghtyrane – that has the potential for others maybe to see that we are interfering
950 in the process of this, that and the other.

I think it is vitally important that a full consultation process is undertaken. I know this takes
time and it is a considerable effort, having been through the situation many times myself, but
nonetheless with regard to this and the fact we are starting some possible legislation off here in
Legislative Council, I have no doubt that will raise eyes and ears in another place.

955 So it is critical that the Hon. Member, in my view, discusses fully with the Members of the
House of Keys and Council of Ministers, exactly what our intentions are in that they are a helpful
progression in looking at secondary legislation, and that it is nothing to do with a possible
perception of interference or a possible perception of a power grab, or Legislative Council trying
to frustrate the work of the other place.

960 It is being moved with the best of intentions and a pragmatic approach to address ... Other
House of Keys' Members have expressed the same thing, so it is addressing their concerns too. I
understand that there is a possible initiative to look at this from a completely different angle
which may well have a considerable impact on the progression of secondary legislation, far more
so than what the Hon. Member, Mrs Lord-Brennan, is proposing today.

965 So I would urge the Hon. Member to proceed with thoughtfulness, consultation, and see
what that draws together so that then everybody understands what it is that she is trying to do.
Gura mie eu, Eaghtyrane.

The President: I call Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President.

I also welcome the Hon. Member's motion today and an opportunity for this Council to have
this discussion this morning.

975 I would tend to agree that my short experience in Tynwald has shown that there are some
challenges with our secondary legislation process as it stands. Mrs Lord-Brennan has outlined a
number of them but we do have a lot of secondary legislation subject to affirmative procedure.
We do have a relatively short timescale to absorb the detail of that secondary legislation and
then if there are questions or issues about some of that secondary legislation we are left with a
very binary choice, as Mrs Lord-Brennan explained, without the ability to amend.

980 The challenge has been ably outlined by Mrs Sharpe around Brexit, but even before Brexit we
have seen this challenge in our Tynwald proceedings, as we use secondary legislation more and
more to deliver quite complex and detailed pieces of law that are not subject to the process that
we have followed this morning on the Criminal Evidence Bill, where we get to look at the
legislation line-by-line, debate it, ask questions and if necessary move amendments to enhance
985 the law – so that what we are bringing into effect is the best possible legislation that we can
bring into effect. So I welcome the idea that we discuss this.

990 My personal perspective in talking to a number of Members of Tynwald – not only in this
place but in the other place – is that it is increasingly recognised that this is a challenge for us. I
think that consensus that we do have a challenge here – and there are options, or there should
be options to try and improve the process – is one where I certainly am hearing consensus and
helpful discussion, both with Members of this Council and Members of the Keys. I see Mrs Lord-
Brennan's motion today as part of that.

995 I think I heard, but perhaps Mrs Lord-Brennan could confirm when she responds, that it
would absolutely be her intention to see her motion and her suggestion as part of all suggestions
that might be discussed around how we can best improve our secondary legislation programme.

I think it is important, because what we are trying to do is strike the balance, as Mr Henderson and Mrs Sharpe said, between the need sometimes for Government, the executive, to move quickly and bring in secondary legislation in a very quick way, but not at the expense of giving that secondary legislation – quite significant, impactful legislation at times – due parliamentary
1000 scrutiny. That is the balance, I think, that we should strive to achieve.

It might be difficult to find a perfect solution but I think we would fail, all of us, as Members of Tynwald if we do not address our minds to this, look at different options and work together to try and improve the process that we currently have.

That is why I will support Mrs Lord-Brennan's motion today, and I support it in the knowledge
1005 that I think she does bring it with the best of intentions; she does bring it, mindful of other discussions that may take place; she does bring it, mindful of the need to consult and to find solutions that are workable, practicable and that, as I say, seek to strike an appropriate balance between executive imperative at times, but not losing the *very* important role of parliamentary scrutiny.

1010 Thank you, Mr President.

The President: Thank you, very much.
Mrs Hendy.

1015 **Mrs Hendy:** Thank you, Mr President.

I am aware that secondary legislation is a very important tool that we have, in order to take matters forward in effecting sound and good legislation. I am also aware, having worked on the other side of the table within Government and having drafted secondary legislation that then goes forward, you as an officer are wary that it is either going to go through in its entirety, but
1020 there is no opportunity at the moment for it to be tweaked or amended that would enable a very sensible and nimble process to be effected. So I welcome this mover today.

The way this matter might go forward, as some of my hon. colleagues have pointed out, is going to have to be very carefully exercised, including debate in another place when we all meet. But I do think if the intention of this is that we can take measures forward and avoid delay, but
1025 maybe take some clauses out in secondary legislation for further examination – if I am understanding the mover today – this is the intention: to actually make it a clearer and more transparent process and improve the capabilities of secondary legislation, while enabling further scrutiny to take place of certain elements within a secondary legislation aspect. I welcome this. I would support this measure, as long as it is carefully exercised and inclusive.

1030 Thank you.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I am not sure that I have strong views on this, other than to say that I am very taken by the concept of an amber light, but I think I am taken by the concept of an amber light probably because I am not a professional politician, if I am allowed to say that. It strikes me that many things that sit within the world of politics and decision-making are much more comfortable with an amber light than with a red or a green one.
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The truth is, however, that in the end decisions have to be made and the balance clearly that needs to be struck is between scrutiny on the one hand and practical requirement on the other. So I think in principle I would be willing to support this because of the underlying sentiment and thought behind it. But I suppose my other concern would simply be that it does not introduce into political discussion an element of provisionality that works in a sort of reverse engineering,
1040 whereby you can say that actually the decision we are about to make may not matter quite so much because we can always tweak it later on through the amber light process in secondary legislation.
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1050 I think I would be slightly concerned if that took, as it were, some of the steam, and some of
the passion, and some of the strength out of the discussion of the issue itself. In other words we
have, if this were to go through, an expedient to which we can resort; but I would not wish that
actually to be flagged up at this first stage of the discussion and I think the wording of much of
this would need to be very precisely constructed. With those caveats in mind, which I think
overlap with some of what my colleague, Mr Henderson has said, I would be happy I think in
principle to support. Thank you.

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The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

1060 I would just like to ask the hon. mover if she could tell us, or will she be finding out, has any
other jurisdiction progressed this idea? Or, if she has not looked into that for now, would she
give a commitment that she would be looking into it in the progression of consultative process
and Bill construction to have a look at any other countries, inasmuch as how they manage their
secondary legislation?

1065 **The President:** I will give the mover, if she wishes this opportunity at this moment, to
comment on what has been said. I will give her the right of reply at the end, but it might be
helpful if you deal with some of the points that have come up so far.

1070 **Mrs Lord-Brennan:** Thank you, Mr President; and I welcome all the comments and the
questions that have come along so far. If I deal with the Hon. Member, Mr Henderson's
questions first. First of all, I think the entire notion behind what I am suggesting is that it would
not cause a delay. At the moment, we can say 'yes' or 'no' – and 'no' might cause a delay and
that might not be ideal at all. So where there is a need to legislate urgently, this would still
attach some scrutiny to that, but at the same time allow us to crack on and do things. So I am
not concerned about this slowing anything down. It is exactly the opposite really, it would allow
us to carry on but still have some assessment of reviewing the legislation again. So I think it
would be helpful in that way. I think that the second comment was how it would work in
Tynwald and, yes, it would be voted on so there would be the chance that Tynwald would vote
on whether this option is used. I think it is important that Tynwald Members have that within
their decision and their power. So it would be voted on and it would not apply to everything,
which is the other key point. What I am suggesting is not something that would be attached to a
group of legislation or just attached to legislation to do with Brexit. It would not be automatic; it
would be another option that a Tynwald Member could move for in that sitting. So I think it is
selective in that way. To address the comments about interference – which I think is really good
to talk about now –and I suppose whether or not the Legislative Council should be doing this,
and how it may be perceived, I think it is helpful to have a bit of openness about that. I think that
what I am proposing about how we address secondary legislation – in fact I am certain that it is
going to come up in other ways, from other places; so what I am proposing with this is that it
could just be a lever that fits into other efforts elsewhere. This will clearly not succeed without
consensus and the Keys would need to take it forward.

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1090 I really see this about process. I am somebody who is interested in the process and the detail,
and actually many people will not be interested in this because they will just move on. There is a
difference between what we do in the Legislative Council and what happens in the other place,
and this really concerns the details. So I am going to keep talking to other Tynwald Members.

1095 I have spoken to the Chief Minister and I have spoken to the Minister for the Department of
Environment, Food and Agriculture who have, in the first instance, indicated an open-
mindedness to what I am suggesting. So I am happy to continue these conversations and if there
is consensus that can be built then that is excellent. If somebody was to turn round and say
actually instead of the Legislative Council or you doing this, there is another way, I am totally

1100 happy for that as well. So if it could dovetail with other efforts then at least we have got the ball rolling here and we have had a conversation about it for an issue that we know could do with being addressed. So I am happy to keep the conversations going. I hope that answers the question.

1105 I welcome Mrs Poole-Wilson's support and she also said that it is important we get consensus. I totally agree. The benefit of us discussing some of this today is that we are doing it about a certain process; we are not doing it in the context of a broader Bill, an enabling Bill. We are not doing it about one particular issue, we are getting to talk about the process – and the benefit is that we can discuss this here, not under pressure in another situation. I think part of my intention of what I am doing today is actually it starts a conversation, or a discussion, about
1110 how we approach secondary legislation. We have had a bit of that, but it brings it out again.

So I take on board the cautions and the need to get a consensus. I welcome the support and I will keep those conversations going. I think I have said before that I am really happy if somebody else wanted to progress this in a different way, I am very happy about that, and I am happy for it to fit in with other efforts to do with how secondary legislation is handled.

1115 I appreciate Mrs Hendy's support, and she has also reiterated about how we need to have some clarity about how it might allow for further scrutiny of certain elements. I think with that, it is really the amber light is just a way of flagging, 'Okay, yes, but we want to have another look at it'. It could just be some parts of it, and it might just be a general, 'We'll see if this fits down the line'. So I think what I am providing for is that the wording would be developed so it could
1120 pin that down exactly. Obviously I am in the early stages here, so I think there is definitely still scope for that to work. To respond to the Lord Bishop's comments about the element of provisionality and how that might work in the opposite way, I think that is really important to consider because if this was to turn out to be something that was used all the time, that would be a problem. If it was never going to be used it would be a problem, but for us to assess that we
1125 need to have an ability for it to be exercised in the first place. So I take on board the comments and the concerns about how it would be used there and I totally agree it would be not ideal if it was something that became an expedient thing to do in itself. So again, I agree that the precise wording is important. And perhaps, Mr President, I am not sure if I could ask Mr Henderson if I have addressed his final point or not? I am sorry, I may have not addressed his final question.

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The President: Yes, Mr Henderson, if you wish to come back at this stage?

Mr Henderson: Gura mie eu, Eaghtyrane. Yes, I am most displeased. *(Laughter)*

1135 Joking aside, Eaghtyrane, the only matter outstanding is the issue of what actually this causes to happen. So perhaps if I could advance an example: I am the Chief Minister in Tynwald moving a Brexit secondary legislation Order, it is 100 pages thick. Members are justifiably concerned about it but can see the urgency of it. The Hon. Member, Mrs Lord-Brennan, jumps up and moves to move her amber scenario situation on that Order. Tynwald votes to accept the amber
1140 light. What happens to me, as the Chief Minister, with my Brexit Order of 100 pages? Does that still get voted on and goes through and becomes law, as it were, and continues – but something happens in the background whereby it has got to come back again and get some sort of examination in the background? But the legislation is still advanced, though, and whatever it is intended to do to cause to happen, that happens – but there is a check in the background, if I
1145 have got it right? So we see that everything it intended to do, it has done, and there have been no hiccups, and it can be brought back to be amended.

I would just like Mrs Lord-Brennan to explain what it does to my Brexit Order. I think I will have a clearer picture of it then.

Mrs Lord-Brennan: Thank you, Mr President; and I thank the hon. questioner.

1150 In my proposal, that Order would get approved and then it would also have attached to it a condition where it would need to be brought back to the Court again at a later date. It would

also, with that approval, after it was voted on, trigger a process where it was referred to a Committee. I am not sure about where that would go – the details – and that is exactly the sort of thing that you need to talk about and have the engagement over, so that the legislation could be effectively kept an eye on and then at some point reported back as to ... ‘There were concerns at that time in the sitting; were they valid? Do we need to look at it again? Actually, is it fine? Was there something that was found out, that actually this really is not working well? And isn't it great that we have captured it so we know that we can bring it back?’ So it would trigger the process to review, but it would still get approval first so it would still become law, and then it would allow for that review to be captured and it would have a timescale where it would come back on to the Tynwald Order Paper that would be known in advance for Tynwald Members. So I think that is the thing: it does not just disappear, it brings it back to the attention of Members again, but over a medium time.

1165 **The President:** Thank you.
Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1170 Just to add at this stage that I think the discussion we are having is exactly the sort of discussions that should be going on. I think if Members of Tynwald can see there are problems with the current situation, the challenge for us is to find the right solutions to address the situation. The obvious solution would be to front load the scrutiny, because then you would knock out the point the Lord Bishop raised, about is there an element of provisionality? However, we know that is probably highly difficult in practice because of volume, complexity, 1175 resource and other reasons. So if it becomes too difficult to front load scrutiny ... And there are other questions as well, there are questions about should we triage better our secondary legislation? Should we have as much of it coming through for affirmative procedure in Tynwald?

So there are different aspects to this that I think are important they are discussed and explored fully in the round, in order that the solutions absolutely improve the situation and do not give rise to other problems. There is just one other interesting point that the Lord Bishop's comment made me start thinking about, and that is one of the justifications sometimes for bringing certain things through as secondary legislation is that it is easy to change it. We can be nimble. We can bring it in today knowing that if we find there are problems with it, it is easier to change that secondary legislation than to change primary legislation.

1185 So I hear the provisionality point which I think is an important one to air and it is a good thing that we start talking about it. You could argue there is a sort of existing provisionality that sits across secondary legislation because it is relatively easier to make the change. But these are all the discussions that I think are so helpful for us to have, not just in this Council but with Members in the other place to develop our thinking and to work towards sensible 1190 improvements. Thank you.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1195 I would like to support my colleague in the Legislative Council, Mrs Lord-Brennan, as well in relation to this. I do believe it is about efficiency and effectiveness and it is not about delay.

A balance, like Mrs Poole-Wilson has said, that needs to be struck between speed and proper scrutiny of secondary legislation. Sunset clauses, in my understanding, are included in legislation when it is felt that parliament should have the chance to decide on its merits after a fixed 1200 period. So, for example, just in its extreme if we go back to the European Union and Trade Bill, I feel that the benefits of sunset clauses are twofold: first, that it sets the timetable for the process of the transposition of EU secondary legislation into domestic law, which provides a level of legal certainty; and I have actually found that it is described as an alarm clock as well,

1205 creating incentive for comprehensive legislative evaluation of delegated powers that minimises
any risk of abuse – not to say that there would be, but it minimises any risk. In my view, as a
Member of Tynwald and a member of parliament, I believe that Members should be able to be
given sufficient opportunity to scrutinise that secondary legislation whether it is about Brexit or
not and I have found that – alongside other Members of Legislative Council, and certainly talked
1210 about it with Members of another place as well – pretty much from the moment that I got in and
was elected.

I do have a couple of questions. You mentioned, Mrs Lord-Brennan, dovetailing with any
other efforts. Are you aware of any other workstreams that might well be going on? I just
wondered that.

1215 Also, what exactly it will provide us with in terms of this amber situation: what exactly would
it provide us with that we do not already have in Standing Orders, which you have explained to
some extent? I just wanted some absolute clarity on that, if that is all right?

I was going to ask a question about conditionality as well, which I think is rather a good idea,
but I think that the hon. questioner, Mr Henderson, has been given his answer by the hon.
mover, so I feel quite comfortable with that now.

1220 I do think that there is a positive benefit in improving our ability to address secondary
legislation; it is just about how we do it, I suppose. And it is about Tynwald as a whole, not about
Legislative Council in any way separate from Keys, it is about all of us together finding a more
beneficial way forward.

Thank you, Mr President.

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The President: Does any other Member wish to speak in the debate? In that case, just before
I ask the mover to sum up, I wonder if she might comment on the following. Part of the case for
this legislation that is being made is that, in Tynwald Court, Members only have the opportunity
to vote for or against the secondary legislation in its entirety. Of course there is a third option
1230 that if a flaw or a concern has been raised the legislation can be withdrawn altogether. However,
in recent years it has been perfectly possible for a Member raising a concern to move – while
they cannot move an amendment – that the secondary legislation be referred to a Standing
Committee of Tynwald for examination and report. That could be time-limited and it could
address the particular concern raised, or a number of concerns. Now, not a lot of comment has
1235 been made this morning about that particular mechanism and I just wondered what the mover
thought about it and whether it would still apply, and how relevant it might be in the issue
before us this morning as an alternative to an expiry clause. Clearly if legislation does not go
through with a clean bill of health in Tynwald and concerns have been raised such as to warrant
a sunset clause, or for it to come back – which could be thought of as giving the benefit of the
1240 doubt to the mover. There are concerns, but it is urgent so we will let it go through, but you
have got to come back; and whether in the interim it has been before a Scrutiny Committee of
some sort, which you touched upon, or not. If there are concerns though, it could be argued that
they ought to be dealt with at the time and referral to a Standing Committee with an instruction
to report in a timely fashion could be seen as another way of doing this. So I just wondered if the
1245 Member might comment in her summing up. Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

1250 I think in short answer, yes, those things that you have mentioned there could still apply and
it is very important that the option for Tynwald Members to be able to refer to a Standing
Committee of Tynwald a piece of secondary legislation. So I would imagine that still stands. The
case where there is more time pressure, and we are dealing with month-to-month sittings, could
mean that another option might also be helpful. I suppose the main thing would be that it would
be down to Tynwald Members to decide what option they would like to choose.

1255 I think sometimes we are dealing with different things. If somebody wants to move to refer
something to a Standing Committee they could be delving into the deeper substance of what has

1260 been put before the Court. If somebody in the round felt, 'Okay, in principle this looks fine and we feel happy overall, but I feel it is something that we need to maybe keep an eye on, or look over how it works over the longer term' – that is where my suggestion would come in. So it would not take away anything that would already be available in Standing Orders, but it would offer something different I think in terms of a time imperative.

So it would add to it really; not be an alternative. It would be a different option that Members can avail themselves of and could be voted on in Tynwald under time pressure. But I thank Mr President for drawing out some of the other options that are available under Standing Orders and all those are very important too.

1265 Mr President, if you will permit me, I have remembered one of the questions that the Hon. Member of Council, Mr Henderson had, so if I can address that before I address the final question?

1270 **The President:** Yes, of course, you can sum up in any way you wish – the whole debate – by all means.

Mrs Lord-Brennan: Thank you.

1275 The Hon. Member, Mr Henderson asked if I would be in part of the consultation be looking at what they do elsewhere in other jurisdictions, (**Mr Henderson:** Yes.) to do with the handling of secondary legislation. I will be happy to look at that, I think it is really useful to have a comparison. Part of the work that I have done on that so far in bringing myself up to speed on how we handle secondary legislation – which has actually interested me since I became elected, too – I noticed that we have a different process here, that Mrs Poole-Wilson has mentioned, insofar as we do not have much going on in terms of the pre-legislative process, so the pre-
1280 scrutiny process for all secondary legislation. I think there are going to be other things that need to be addressed, certainly aside from what I am suggesting. So in terms of what happens elsewhere, what will commonly happen in Scotland and in Northern Ireland and Wales, and the House of Commons – the Houses of Parliament, I should say – is that there will be a committee stage before secondary legislation is voted on, or debated. We do not have that. What I am
1285 looking for is something else that we can get comfort from and use to have some scrutiny and feel comfortable with the decisions that are made. So that is one example of something that happens elsewhere. In other places, too, they have a much longer time period to review papers before they are voted on and debated on. It could be up to 40 sitting days – it is longer elsewhere, and in the Scottish Parliament up to 40 days. So I am quite happy to look at this in
1290 the context of how we deal with secondary legislation, notwithstanding the fact that I am dealing with one isolated issue which I think could be a very helpful one in the coming months.

I suppose that links in with the Hon. Member, Miss August-Hanson asking about how I see this dovetailing with other efforts and if I am aware of any other workstreams. I suppose I have to say formally and officially, no, but I do know that I think there is a wish to see things done
1295 differently; and if what I am proposing can be a lever in that and be used by other people who share similar concerns, I am not going to be precious about this. I will be quite happy for it to go into other efforts. I hope that answers. The other question was: what would it provide that we do not already have in Standing Orders? Well, in Standing Orders we have got the measures that Mr President has mentioned too, but what we do not have is a third option of saying, 'Yes, we
1300 will approve it, but we still want to keep an eye on it; we still want to look at it and we want it to be bought back'. So it gives a bit of a weight behind the conditionality ... And remember, I do not think this is going to be used all the time – if it was, that would be a problem. But if a Tynwald Member felt really strongly that this needed to be looked at ... we really need to see how this goes. And also, instead of looking at orders that are perhaps 14 pages long – as we deal with –
1305 we could be looking at something which is 40 pages long just for one item. We just might want a bit of comfort.

1310 So, change to the Legislation Act does something that Standing Orders does not, in that by providing for an expiry of the legislation it gives a bit of energy and a bit of momentum and saying 'Okay, we will approve this, but we think it is important enough to watch how it goes and to put a bit of process around how we watch it, and for it to be brought back'. So with that, Mr President, I beg to move.

1315 **The President:** The motion before the Council is that leave be given to introduce a Bill to amend the Legislation Act 2015 to enable Tynwald to require expiry provisions in secondary legislation and for connected purposes. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Thank you, Hon. Members, that concludes business this morning. Council will meet next on 30th October here in our own Chamber. I declare this session adjourned.

The Council adjourned at 12.20 p.m.