

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

Mr Malarkey to move.

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

I call on you to move.

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

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

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

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

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

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

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

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**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

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

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

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

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

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

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

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

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

I beg to move.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

2245 **The Speaker:** I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 10, Mr Malarkey.

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

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

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

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

**The Speaker:** Dr Allinson.

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

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I beg to second and reserve my remarks.

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

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

Clauses 11 to 14, Mr Malarkey.

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

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

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

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

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

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

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

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**The Speaker:** Dr Allinson.

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

I beg to second.

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

Clauses 15 to 24, Mr Malarkey.

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

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

2305 Clause 15 specifies how an application for a licence other than a class licence is to be made, and follows the current process for applying for a licence. The matters which the Commission may or must take into account in considering a licence application are laid out in Schedule 1.

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

2310 Clause 17 deals with the grant of a class licence. This is a general authorisation, which usually contains restrictions on the size and extent of the system and the services that can be offered. The class licence could cover those activities which may technically fall under the definition of a public electronic communication network or service, but are of little or no economic or social value to the Island, would be disproportionate to license or would impose too great a burden on operators of those systems.

2315 Clause 18 deals with the form and effect of a licence.

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

2320 Clause 20 sets out what is to happen when a person to whom a licence has been granted fails to commence the regulated activity for which it was granted.

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

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

2325 Clause 23 deals with public consultation about proposals in relation to the procedural fairness requirements laid out in Division 3 of clauses 25 to 29.

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

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

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

2335 **The Speaker:** I put the motion that clauses 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 25 to 29, Mr Malarkey.

**Mr Malarkey:** Thank you.

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

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

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

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

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

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

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

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**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

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**The Speaker:** I put the motion that clauses 25, 26, 27, 28 and 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 30 to 32, Mr Malarkey.

2365 **Mr Malarkey:** Mr Speaker, clauses 30 to 32 give the Commission the powers to impose obligations through the licence conditions requiring the licenceholders to furnish to the Commission such information as may reasonably be required for the purposes of exercising its functions under the Act. This is not a new power. What is new is that if a licenceholder knowingly provides false or misleading material, acts recklessly or withholds any material  
2370 information with the intention of causing the Commission to be misled then the enforcement procedures in the Bill will be engaged.

Mr Speaker, I beg to move that clauses 30 to 32 stand part of the Bill.

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**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

2380 **The Speaker:** I put the motion that clauses 30, 31 and 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 33 and 34, Mr Malarkey.

2385 **Mr Malarkey:** Mr Speaker, clauses 33 to 34 deal with the Commission's powers to publish guidance and issue directions. Directions are used by the Commission to require a licenceholder to perform certain actions. Before issuing a direction the Commission must comply with the procedural fairness requirements.

Mr Speaker, I beg to move that clauses 33 and 34 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

**The Speaker:** I put the motion that clauses 33 and 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clauses 35 and 36 and Schedule 2, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 35 and 36 and Schedule 2 deal with the licensing requirements for broadcasting licences. I intend to take these provisions together.

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Clause 35 contains provisions in relation to the suitability of licenceholders to hold a licence, including whether an applicant is a fit and proper person.

Clause 36 gives effect to Schedule 2. The latter contains disqualifications which prevent certain people from holding a licence. These restrictions are in place in order to preserve media plurality or prevent undue influence on a broadcaster. These provisions are largely the same as in the previous legislation. These provisions apply to all forms of broadcasting other than on-demand programme services.

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Mr Speaker, I beg to move that clauses 35 and 36 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

**The Speaker:** I am going to put the motion that clauses 35 and 36 *and Schedule 2* stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clauses 37 to 39, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 37, 38 and 39, which I intend to take together, contain further provisions in relation to broadcast licensing.

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Clause 37 is based upon provisions inserted into the Island's Broadcasting Act 1993 when it was amended in 2007, to ensure that the Commission considers the effect on existing broadcasters if another broadcasting service is licensed. Following consultation responses, this clause makes it explicit that the effect should be considered where programmes are to be provided for reception mainly on the Island.

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Clause 38 deals with the transferability of a broadcasting licence, making it clear that the Commission's consent is required in relation to a transfer. This is to ensure that the conditions as to media plurality and ownership are met.

Clause 39 is declaratory and provides that the only person to be regarded as providing a broadcasting service is the person with general control over the service.

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Mr Speaker, I beg to move that clauses 37, 38 and 39 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

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**The Speaker:** I put the question that clauses 37, 38 and 39 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 40 to 43, Mr Malarkey.

2440 **Mr Malarkey:** Mr Speaker, clauses 40 to 43, which I would like to take together, make provision for the term of a licence, power of entry, and that the Council of Ministers may require the Commission to direct a licenceholder to publish an announcement or not to include an announcement of a specified matter in the service.

2445 Clause 40 specifies that a broadcasting licence, other than a licence for sound broadcasting or the licence for the public service broadcaster, will continue in force until it is surrendered or revoked.

Clause 41 deals with the Commission's powers of entry to premises under a licenceholder's control.

2450 Clause 42 gives the Council of Ministers the power to direct a licenceholder to publish certain information in a broadcasting service and also to refrain from doing so. A broadcaster is permitted to announce, as part of the service, that it has been given a direction under this provision. This replicates current powers in the Broadcasting Act 1993, which are also contained in equivalent UK legislation, for the Council of Ministers to direct the Commission to direct licenceholders to include certain announcements in their broadcasts at specified times or to refrain from including any particular matter in their services.

2455 Where a licenceholder is obliged to make a particular announcement, they may make clear in their service that this is being carried out further to a direction given by the Commission. Similarly, where a licenceholder has been obliged to refrain from including a particular matter in their service, the licenceholder may announce in the service that this is the case, and may also announce when that obligation has come to an end. The purpose of these provisions is principally to allow Council of Ministers to address matters of national security or major public interest, and to do so in such a way that the affected broadcasters are not required to take editorial responsibility for the content of the announcements.

2460 Clause 43 makes it clear that a licence holder may also require a licence under the UK's broadcasting and wireless telegraphy legislation as extended to the Isle of Man.

2465 Mr Speaker, I beg to move that clauses 40 to 43 stand part of the Bill.

**The Speaker:** Dr Allinson.

2470 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 40, 41, 42 and 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2475 Clauses 44 to 47 and Schedule 3, Mr Malarkey.

2480 **Mr Malarkey:** Mr Speaker, clauses 44 to 47 and Schedule 3, which I propose to take together, set the framework for one or more codes of standards to be drawn up by the Commission for broadcasters. This is built as a framework to allow the Commission to take note of changes in societal attitudes and context when the Commission is producing or revising codes and also in applying codes. Tynwald sets the broad framework and the Commission can apply that framework to specifics.

Clause 44 gives effect to Schedule 3, which sets out the standards.

2485 Paragraph 1 sets out the standards that are to be expected for broadcasters to protect minors, ensures political advertising complies with the code and that material likely to encourage crime or lead to disorder is not included in broadcasting services.

2490 Paragraph 2 specifies particular requirements. The matters to which the requirements apply are matters of political or industrial controversy, and matters relating to current public policy. The requirements are: (1) the service provider must not air its own views on such matters, unless they concern the provision of television or radio programme services; (2) the service provider must preserve due impartiality about such matters. The relevant rules in the

Commission's standards code must particularly take account of the need to preserve impartiality for major matters of political or industrial controversy or relating to current public policy. Fulfilment of this requirement need not necessarily be measured programme by programme, but on balance over all programmes included in the relevant service.

Paragraph 3 provides for the Commission to make standards codes in respect of advertising, sponsorship and product placement and on advertising of a political nature.

Clause 45 requires holders of broadcasting licences to observe standards set under Schedule 3 and establish and maintain procedures for the handling of those complaints. It also requires the licenceholders to comply with any direction issued by the Commission on advertising, for example, smoking, alcohol, product placement or sponsorship of programmes. The Commission already issues a code on advertising and sponsorship detailing the requirements which will require some updating.

Clause 46 contains some additional powers in relation to advertising.

Clause 47 requires the Commission to establish and maintain such procedures as it considers appropriate for the handling and resolution of complaints or for the conduct of investigations about the observance of these standards.

Mr Speaker, I beg to move that clauses 44 to 47 and Schedule 3 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 44, 45, 46, 47 and Schedule 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 48 and 49. Mr Malarkey.

**Mr Malarkey:** Clauses 48 and 49, which I intend to take together, make provision for the local radio stations on Island, not including the public service broadcaster.

Clause 48 ensures that the licence holder is incorporated under the laws of the Island and contains a new provision that the station must have a director who is ordinarily resident on the Island.

Clause 49 provides for the term of a sound broadcasting service to not exceed 10 years and to be renewable for a period not exceeding an additional 10 years. The renewing provision is new. At the end of the licence period, whether it has been renewed or not, the licence would be advertised.

Mr Speaker, I beg to move that clauses 48 and 49 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

**The Speaker:** I put the question that clauses 48 and 49 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 50 to 52. Mr Malarkey.

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

Clauses 50 to 52 define what is and is not a radio content licensable service and give the Council of Ministers a power to amend clauses 50 and 51 by order if it thinks it is necessary or expedient to do so. There are currently no providers of such services on the Island. A radio licensable content service is a service provided in digital or analogue form, broadcast from a

satellite or distributed using an electronic communications network that is to be made available for reception by members of the public and consists of sound programmes.

2545 The Hon Member for Glenfaba and Peel, Mr Harmer's amendment adds 'In this Act' in this part of the clauses, and I hand over ...

Mr Speaker, I beg to move that clauses 50 to 52 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

**The Speaker:** Mr Harmer.

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**Mr Harmer:** Thank you. I beg to move my small amendment on clause 50:

*Amendment to clause 50*

*3. Page 52, line 15 at the beginning insert 'In this Act'.*

**The Speaker:** Mr Thomas.

**Mr Thomas:** I beg to second and reserve my remarks.

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**The Speaker:** I put first the amendment number 3 in the name of Mr Harmer. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 50, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2565 And that clauses 51 and 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 53 to 55, Mr Malarkey.

**Mr Malarkey:** Clauses 53 to 55 define what is and is not a television licensable content service and make provision for the Council of Ministers to amend these clauses by order if it appears necessary or expedient to do so. 'Television licensable content service' is usually teleshopping channels or a self-promotional service and consist of a particular kind of advertising whereby the broadcaster promotes its own products, services or channels. There are currently no providers of such services on the Island.

2575 Mr Speaker, I beg to move that clauses 53 to 55 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

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**The Speaker:** I put the question that clauses 53, 54 and 55 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 56, Mr Malarkey.

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

Clause 56 specifies the terms and content of the public service broadcasting licence. The first licence must be granted for a period not exceeding 10 years. The licence may be renewed on one or more occasions. Before renewing the licence the Commission must consult with such

2590 persons as the Commission considers appropriate as to the duration of and the conditions attached to the renewed licence.

Mr Speaker, I beg to move clause 56 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

2600 **The Speaker:** I put the question that clause 56 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 57 and 58.

2605 **Mr Malarkey:** Clauses 57 and 58 state that in making editorial decisions the public service broadcaster must act independently of Government and the public service broadcaster must comply with the public service broadcasting obligations as defined in clause 3.

Mr Speaker, I beg to move that clauses 57 and 58 stand part of the Bill.

**The Speaker:** Dr Allinson.

2610 **Dr Allinson:** Thank you, Mr Speaker.

I beg to second.

2615 **The Speaker:** I put the question that clauses 57 and 58 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Mr Thomas:** Hear, hear.

**The Speaker:** Clause 59.

2620 **Mr Malarkey:** Mr Speaker, clause 59 states that the licence of the public service broadcaster must include a condition requiring that broadcaster to include in the service a specified proportion of programming in Manx Gaelic.

I beg to move that clause 59 stand part of the Bill.

2625 **The Speaker:** Dr Allinson.

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

2630 **The Speaker:** I put the question that clause 59 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. (**Mr Thomas:** *Yindissagh!*)

Clauses 60 to 64. Mr Malarkey.

2635 **Mr Malarkey:** Clauses 60 to 64 were drafted to implement the will of Tynwald as of 2014 following the debate on the Tynwald Select Committee on Public Service Broadcasting.

Clause 60 states that the public service broadcaster must comply with a written statement of station requirements prepared by the Commission. These requirements specify the level of performance and programme quotas the broadcaster must meet in order to fulfil its public service broadcasting obligations. This written statement must be published and is subject to review.

2640 Clause 61 requires the public service broadcaster to prepare an annual statement of programme policy and monitor its performance in carrying out the proposals contained in that statement.

2645 Clause 62 requires the public service broadcaster to submit financial statements to the Commission and Treasury which show how the money provided to it in order to fulfil the public service obligation has been spent.

Clause 63 makes provision that the statements produced under clauses 61 and 62 must be laid before Tynwald annually. It also provides that Treasury may make payment to the public service broadcaster by way of grants, loans or otherwise. The amount of such funding must be approved by Tynwald annually.

2650 Clause 64 provides that the Commission may review the performance of the Public Service Broadcaster and the adequacy of funding.

Mr Speaker, I beg to move that clauses 60 to 64 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

**The Speaker:** I put the question that clauses 60, 61, 62, 63 and 64 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2660 We turn now to clauses to 65 to 67 and Schedule 4. I call on Mr Malarkey to move.

**Mr Malarkey:** Thank you, Mr Speaker. The answer is yes. (**The Speaker:** Right.)

2665 Clauses 65 to 67 and Schedule 4 provide for on-demand programme services to be regulated by the Commission. On-demand programme services are TV-like services provided on demand; for example, Netflix or Amazon Video.

Clause 65 gives effect to Schedule 4 and requires that in order to be regulated by the Commission a provider must either have a head office on the Island, make editorial decisions on the Island, or use a satellite uplink on the Island or use satellite capacity appertaining to the Island.

2670 Schedule 4 defines On-Demand Programme Services and lays out that a provider must give advance notice of providing a service and also the standards that such a service is expected to meet. This is not a licensing regime but a notification scheme similar to the UK.

Under clause 66 the Commission may make regulations to exempt any person or class of person from any of the provisions of Schedule 4.

2675 Clause 67 states that if a person is under the jurisdiction of an EU member state then Schedule 4 will not apply. This is to prevent the possibility of requiring double regulation when the Commission knows that the provider is already subject to a well-structured regulatory regime. This clause will also require amendment once the effect of Brexit has become clear.

Mr Speaker, I beg to move that clauses 65 to 67 and Schedule 4 stand part of the Bill.

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**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

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**The Speaker:** Mr Hooper.

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

2690 I just wonder if the Minister could please provide some clarity on what is meant by 'satellite capacity appertaining to the Island'?

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

**Mr Malarkey:** Right. I missed that, Mr Speaker. Could the –

2695 **Mr Hooper:** I am happy to repeat the question, Minister. *(Interjection by Mr Malarkey)*

In clause 65 there is a reference to requiring an on-demand programme service to be licensed on the Island if they utilise ‘satellite capacity appertaining to the Island’. I just wonder what that means.

2700 I mean, we are aware that the Isle of Man has a number of satellite companies that contract their services worldwide, internationally, and I would hate to find someone inadvertently being required to register simply because they are utilising the services of an Isle of Man-based satellite company.

I would just like some clarity on what that phrase actually means.

2705 **Mr Malarkey:** Mr Speaker, if you could just bear with me, if I can get an answer – rather than going into Committee – from my officer.

Just a short one will do! *(Laughter)*

**The Speaker:** Mr Malarkey.

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**Mr Malarkey:** Apparently it is only to the EU and it is highly unlikely to apply to us ...

If the hon. questioner is not happy with that, I am quite happy to go into Committee and allow the officer to explain in more depth. It is not something I have personally got the answer to but I am quite happy to move into Committee if the hon. questioner would like.

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**The Speaker:** Mr Callister.

**Mr Callister:** Yes, thank you, Mr Speaker.

Can I propose that we put the House into Committee for a few minutes?

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**The Speaker:** Seconder? Mr Robertshaw.

Those in favour that the House resolves into Committee, please say aye; those against, no. The ayes have it. The ayes have it.

*In Committee of the Whole House*

2725 **The Speaker:** Mr Hooper, would you care to put your question again whilst the officers work out who is going to answer it. *(Laughter and interjection)*

Mr Hooper.

2730 **Mr Hooper:** Okay, so again, just for clarity, the question is what that reference to the provider of a service not using satellite uplinks or satellite capacity that appertains to the Island – just what that actually means, because we know that we have a number of on-Island satellite leasing companies that provide satellite filing and satellite spectrum services, and I just want to make sure that, say if I am on Netflix and I decide to use one of those satellites, for example, they are not inadvertently then being told you have now got to register on the Isle of Man.

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**The Speaker:** Now in responding, if you could just state your name and your position, please?

**Ms Strang:** Sue Strang and I am Chief Operating Officer at the Communications Commission.

2740 With the satellite capacity appertaining to the Island, there are only two countries in Europe that actually have satellite capacity that appertains to their country, so it is kind of a failsafe *in case* we have such a thing that could happen in the Island, but it is unlikely.

The satellite uplink will be the one that will be more relevant to the Island where somebody would be and could potentially now uplink from the Island using satellite capacity. I hope that makes sense.

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**Mr Hooper:** Yes, thank you.

**Mr Robertshaw:** Can I propose, Mr Speaker, that we return to normal business?

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**The Speaker:** Seconder?

**Mr Hooper:** I will second that.

**The Speaker:** Mr Hooper.

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The proposal is that business be resumed. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

*The House moved out of Committee and business was resumed.*

**The Speaker:** Mr Malarkey, would you care to respond to the debates on clauses 65 to 67 and Schedule 4?

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**Mr Malarkey:** I beg to move that clauses 65 to 67 and Schedule 4 stand part of the Bill.

**The Speaker:** The question is that clauses 65, 66 and 67 and Schedule 4 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it. (**Mr Thomas:** Hear, hear.)

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Clauses 68 to 72, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 68 to 72 deal with the issues of transferability and the terms of electronic communications licences for telecommunications providers.

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Clause 68 requires, as does the current Telecommunications Act, that an applicant must be able to finance and sustain a service.

Clause 69 provides that a licence may not be transferred or assigned to another party.

Clause 70 is concerned with the connection of systems and apparatus.

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Clause 71 states that the electronic communications licence will continue in force for such a period as may be specified in, or determined by, the licence; and clause 72 states that a provider may be required to hold further licences.

Mr Speaker, I beg to move that clauses 68 to 72 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

**The Speaker:** I put the question that clauses 68, 69, 70, 71 and 72 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

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Clause 73, Mr Malarkey.

**Mr Malarkey:** Clause 73 allows the Commission to designate Ofcom to perform such functions in relation to telephone numbers as are set out in the designation.

I beg to move that clause 73 stand part of the Bill.

2790 **The Speaker:** Dr Allinson.

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

I beg to second.

2795 **The Speaker:** I put the question that clause 73 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 74 to 77, Mr Malarkey.

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

2800 Clauses 74 to 77 deal with the universal service obligations (USO) which must be provided, made available or supplied throughout the Island. The objective behind 'universal service' obligations is to ensure that the basic communications services which are used by the majority, and which are essential to full social and economic inclusion, are made available to everyone who reasonably requests them at an affordable price.

2805 Clause 74 requires the Council of Ministers to make an order providing for these obligations to be imposed upon holders of telecommunications licences who are universal service providers, who are designated under clause 75. This order may be amended by Council of Ministers after consultation with the Commission and such persons as the Council of Ministers feel appropriate.

2810 Clause 75 allows for the Commission to designate a person as a universal service provider and provides a process for doing so. Manx Telecom is the universal service provider and this clause is designed to replicate the provisions in their current licence.

Clause 76 permits the Commission to impose conditions on the licence of the universal service provider to secure compliance with the universal service obligations and provides a mechanism for the Commission to review the conditions.

2815 Clause 77 empowers the Council of Ministers to establish funding schemes for universal service obligations if the burden of cost of providing them proves to be unfair.

2820 The burden of cost of providing the universal service obligation falls on the operators and ultimately on consumers. The provision of USO is not cost free. If services are to be made available to those who might not otherwise be able to afford them, or consumers who live in rural areas the market might not serve, this requires a subsidy from other users of the telephone network.

Mr Speaker, I beg to move that clauses 74 to 77 stand part of the Bill.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** Mr Speaker, I beg to second these very important clauses and reserve my remarks.

**The Speaker:** You just reserved your remarks. *(Laughter)*

2830 I put the question that clauses 74, 75, 76 and 77 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 78, Mr Malarkey.

2835 **Mr Malarkey:** Clause 78 sets out when a person shall be taken to have significant market power in relation to a particular market. A person will only be taken to have significant market power where he is, alone or with others, in a position of dominance in a market. A position of dominance is defined as:

... a position of economic strength affording the person the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

2840 The Commission determines whether a market is 'effectively competitive'. If it is not, the Commission identifies which undertakings in that market have significant market power and impose regulation of that undertaking.

Mr Speaker, I beg to move that clause 78 stand part of the Bill.

**The Speaker:** Dr Allinson.

2845 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

2850 **The Speaker:** I put the question that clause 78 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 79, Mr Malarkey.

2855 **Mr Malarkey:** Clause 79 sets out the methodology to be applied in identifying a particular market. The Commission has to take into account in identifying or analysing the relevant markets such principles as are applied from time to time in European jurisdictions and also the circumstances of the Island. There are further factors which the Commission must have regard to in subsection 3. That is whether the market is subject to high barriers to entry; whether the market has characteristics such that it will tend over time towards effective competition; and the sufficiency of measures under the Fair Trading Act 1996 or the competition provisions in this Bill to reduce or to remove such barriers or to restore effective competition.

2860 I beg to move that clause 79 stand part of the Bill.

**The Speaker:** Dr Allinson.

2865 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 79 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 80, Mr Malarkey.

2870 **Mr Malarkey:** Clause 80 states the matters that the Commission must have regard to in making a significant market power determination and matters that the Commission may have regard to, for example the distribution of market share among the licence holders and the stability of their market share, the overall size of the licenceholder's undertaking and the degree to which a licenceholder and any competitors can expand their business in the identified market.

2875 I beg to move that clause 80 stand part of the Bill.

**The Speaker:** Dr Allinson.

2880 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 80 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2885 Clauses 81 to 83, Mr Malarkey.

2890 **Mr Malarkey:** Mr Speaker, clauses 81 to 83 set out the procedures for the Commission for the identification of markets and issuing determinations, the procedure for a review of markets and market definitions and the procedure for the imposition and revocation of significant market power conditions.

Clause 81 gives the Commission a procedure for issuing determinations to allow stakeholders to comment on the Commission's procedures.

2895 Clause 82 states that where the Commission has identified and analysed a market for the purposes of making a market power determination to further review and analyse the identified market. This allows changes in the market to be taken into account.

Clause 83 gives the Commission the power to impose significant market power conditions on a licenceholder. These conditions must be proportionate and objectively justified, taking into account a number of objectives in relation to the market as appropriate. There must be an opportunity for stakeholders to comment on the significant market power conditions.

2900 Any significant market power condition imposed on a licenceholder is a condition of the licence and accordingly a failure to comply with a significant market power condition constitutes a breach of a licence condition.

I beg to move that clauses 81 to 83 stand part of the Bill.

2905 **The Speaker:** Dr Allinson.

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

I beg to second.

2910 **The Speaker:** I put the question that clauses 81 to 83 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 84 to 88, Mr Malarkey.

2915 **Mr Malarkey:** Clauses 84 to 88 are concerned with network access. I intend to take these clauses together.

Clause 84 provides the type of licence conditions that may be imposed on a licenceholder.

Clause 85 makes provision for the Commission to impose conditions in respect of network access pricing in certain circumstances.

2920 Clause 86 provides for the Commission to impose conditions about network access in exceptional cases.

Clause 87 applies where the Commission has made a determination that a licenceholder has significant market power in a market for a relevant retail service.

Clause 88 empowers the Council of Ministers to amend clauses 84 to 87 if it appears necessary or expedient to do so.

2925 Mr Speaker, I beg to move that clauses 84 to 88 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

2930 I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 84 to 88 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 89 to 96 and Schedule 5, Mr Malarkey.

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**Mr Malarkey:** Mr Speaker, clauses 89 to 96 and Schedule 5, which I intend to take together, are essentially the Telecommunications Code from the Telecommunications Act 1984 with some

updates of terminology. This code governs the installation of telecommunications infrastructure. There are currently only two code operators on Island, Manx Telecom and Sure (Isle of Man) Ltd.

2940 Clause 89 lays out that the Commission may designate that the code applies to a person.

Clause 90 sets out how a person seeking designation must apply to the Commission and also which matters the Commission must have regard to in making a decision and the procedures to follow such conditions.

2945 Clause 91 sets out that the designation can be made subject to certain restrictions as the Commission feel are appropriate.

Clause 92 lays out that the Commission may suspend a designation and the procedures for doing so.

Clause 93 lays out the interpretation provisions for clauses 94 to 96.

Clause 94 sets out the procedures for compulsory purchase of land by petition of Tynwald.

2950 Clause 95 makes provision for code operators to enter upon and survey land and lays out the procedures and requirements.

Clause 96 states that certain provisions of Acquisition of Land Act 1984 apply for the acquisition of land by agreement by a code operator.

2955 Schedule 5 contains further details relevant to the operation of the Electronic Communications Code.

Mr Speaker, I beg to move that clauses 89 to 96 and Schedule 5 stand part of the Bill.

**The Speaker:** Dr Allinson.

2960 **Dr Allinson:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 89 to 96 and Schedule 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2965 Clauses 97 and 98 and Schedule 6, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, Clause 97 and 98 and Schedule 6, which I intend to take together, introduce new stand-alone competition provisions for the Commission.

2970 These powers complete a suite of remedies for the Commission and strengthen its regulatory position and replace and update the fair trading conditions in the licences. The Commission, in common with most regulators, would always use *ex ante* regulation, that is imposing conditions on an operator who has been found to have dominance in the market and to have significant market power. This is a first preference as competition investigations tend to be costly, complex and litigious. However, having competition powers is a useful tool for any regulator.

2975 Clause 97 imposes a duty on the Commission to regulate competition in electronic communications matters.

Clause 98 states the matters the Commission must have regard to, amongst other things, in determining whether or not to conduct a competition investigation. These are the impact, strategic significance, risk, and resource implications of undertaking the investigation.

2980 Schedule 6 details the powers and responsibilities of the Commission in carrying out a competition investigation and draws on similar provisions in the UK's Competition Act 1998.

Mr Speaker, I beg to move that clauses 97 and 98 and Schedule 6 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

2990 **The Speaker:** I put the question that clauses 97 and 98 and Schedule 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 99 to 102, Mr Malarkey.

2995 **Mr Malarkey:** Clauses 99 to 102, which I intend to take together, deal with anti-competitive behaviour and impose a prohibition on collusive behaviour between persons which has an adverse effect on competition.

Clause 99 imposes a prohibition on collusive behaviour between persons which has an adverse effect on competition.

3000 Clause 100 provides that agreements which are the subject of an order under section 8(2) of the Fair Trading Act 1996 are excluded from the application of clause 99. Section 8(2) of the Fair Trading Act provides that a course of conduct does not constitute an anti-competitive practice if it is excluded from those purposes by an order made by the Council of Ministers.

3005 Clause 101 provides an exemption from the application of clause 99 of agreements which comply with certain conditions on the promotion of trade or are the subject of a declaration by the Commission. Before making or revoking a declaration under this section the Commission must consult with the Office of Fair Trading.

Clause 102 provides that the Commission may make a direction if a person's conduct contravenes these provisions.

3010 The Fair Trading Act 1996 is due to be replaced with a comprehensive Competition Bill by the Office of Fair Trading. These provisions in respect of section 8(2) will be updated then.  
(**Mr Thomas:** Hear, hear.)

Mr Speaker, I beg to move that clauses 99 to 102 stand part of the Bill.

**The Speaker:** Dr Allinson.

3015 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

3020 **The Speaker:** I put the question that clauses 99, 100, 101 and 102 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that seems like an appropriate point to adjourn for lunch. We will recommence our considerations at clause 103 and we will do that at half past two.

The House stands adjourned.

*The House adjourned at 1.01 p.m.  
and resumed at 2.30 p.m.*

**Communications Bill 2018 –  
Consideration of clauses concluded**

**The Speaker:** Fastyr mie, Hon. Members.

3025 **Members:** Fastyr mie, Mr Speaker.

**The Speaker:** We resume deliberation of the Communications Bill at clause 103 and I call on Mr Malarkey to move clauses 103 and 104.

3030 **Mr Malarkey:** Thank you, Mr Speaker.

Clause 103 defines abuse of a person's dominant position in relation to the electronic communications market on the Island and outlines conduct which may in particular constitute such an abuse.

3035 Clause 104 empowers the Commission to give directions in respect of an abuse of dominant position and applies the procedural fairness requirements.

Mr Speaker, I beg to move that clauses 103 and 104 stand part of the Bill.

**The Speaker:** Dr Allinson.

3040 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the motion that clauses 103 and 104 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3045 Clauses 105 to 107, Mr Malarkey.

**Mr Malarkey:** Mr Speaker, clauses 105 to 107 contain supplemental provisions in relation to this division.

3050 Clause 105 empowers the Commission to take interim measures where it has begun, but not completed, a competition investigation and has reasonable grounds for suspecting a breach of the prohibition on collusion, or the prohibition of abuse of dominant position or breach of a condition. The Commission may give such directions to prevent serious damage to an undertaking, to protect the public interest or for the protection or enhancement of the economic development and well-being of the Island.

3055 Clause 106 provides for sanctions to be imposed for breach of the competition provisions in the form of a financial penalty. The Commission must take various factors into account in determining whether or not to impose a penalty. The amount of the penalty must not exceed 10% of the licenceholder's turnover for the period of the contravention of the period in question, subject to a maximum of three years.

3060 Clause 107 deals with co-ordination between the Commission and the Isle of Man Office of Fair Trading in competition investigations. If the Commission and the Isle of Man Office of Fair Trading cannot agree which of them is to investigate conduct falling under the relevant provisions they must seek a direction from the Council of Ministers under paragraph 12(1) of Schedule 2 to the Statutory Boards Act 1987.

3065 Mr Speaker, I beg to move that clauses 105, 106 and 107 stand part of the Bill.

**The Speaker:** Dr Allinson.

3070 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the motion that clauses 105, 106 and 107 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3075 Clauses 108, Mr Malarkey.

3080 **Mr Malarkey:** Clause 108 provides for various offences in respect of the improper use of electronic communications systems. A person is guilty of an offence if he or she sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or causes any such message or matter to be so sent.

Nothing in this clause limits the scope of section 2 of the Protection from Harassment Act 2000 offence of harassment. Subsection (2) of the clause creates an offence where a person

causes annoyance, inconvenience or needless anxiety by means of a public electronic communications network. It is drawn from the UK Communications Act 2003. The clause  
3085 authorises penalties up to six months' custody or a level 5 fine, or both.

Mr Speaker, I beg to move that clause 108 stand part of the Bill.

**The Speaker:** Dr Allinson.

3090 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second and reserve my remarks.

**The Speaker:** I call on Mr Hooper to move amendments 4 and 5.

3095 **Mr Hooper:** Thank you very much, Mr Speaker.

Two proposed amendments to this clause.

The first amendment, number 4, is simply introducing a defence to the offence of sending a threatening message. Currently, if you are trying to, for example, enforce a debt on the Isle of Man, sending a message to someone saying, 'I am going to enforce my debt and I am going to  
3100 take possession of your property unless you start paying,' it could be constituted as threats and could be considered an offence under this clause. It seems appropriate to have a reasonable means of defending yourself to say, 'Actually, if what I have done is a reasonable means of enforcing a lawful demand then that should be acceptable.' This provision already exists in the UK equivalent of this clause. This is simply aligning us with across the water.

3105 The second amendment, number 5, adds the words 'believes to be false' into the clause here, so it would read: 'Sends, by means of a public electronic communications network a message that he or she knows or believes to be false.' That is because currently it is an offence to send a message that you know to be false for the purposes of causing annoyance, inconvenience or needless anxiety, but not one that you simply believe to be false. So spreading rumours would  
3110 apparently seem to be perfectly acceptable, provided I cannot prove that you knew what you were sending around was a lie. The fact that you believe it to be untrue and said it anyway seems to slip through the net entirely. So, again, Hon. Members, the UK has this particular wording in their equivalent of the law and this is simply bringing our clause into line.

Mr Speaker, I beg to move amendments number 4 and 5:

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*Amendments to clause 108*

*4. Page 89, after line 20 insert—*

*«(2) In proceedings for an offence under subsection (1), in respect of a message or other matter which is menacing in character, it is a defence for the accused to show that the menaces were a lawful means of reinforcing a legitimate demand and proportionate in all the circumstances.».*

*Renumber the subsequent subsections of the Clause, and adjust cross-references accordingly.*

*5. Page 89, for lines 23 and 24 substitute —*

*«(a) sends, by means of a public electronic communications system a message which is false and which he or she knows or believes to be false;».*

**The Speaker:** Mrs Caine.

3120 **Mrs Caine:** Thank you, Mr Speaker.  
I beg to second the amendments.

**The Speaker:** Both amendments?

**Mrs Caine:** Amendments 4 and 5.

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**The Speaker:** Thank you very much.  
Mr Quayle.

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

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Just a quick question for the Hon. Member. 'Cause harm' – could the Hon. Member confirm –?

**A Member:** That is the next –

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**Mr Quayle:** Oh, sorry, that is the next one, is it?

**The Speaker:** I call on Mr Hooper to add anything?  
I call on Mr Malarkey to reply to the clause.

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

Neither I nor the Commission have any objection of this amendment being put in. My Department has looked at it in depth with the Police and we feel that it might need to be expanded upon slightly with regard to page 89, to add in that he has reasonable grounds for making the demand. This expands the defence somewhat in line with blackmail. I have spoken to the legislators about this and in supporting the amendment today I would probably ask a

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Member of LegCo to amend this as it goes through just to make it a little bit clearer.

Other than that, we have no objections, Mr Speaker.

**The Speaker:** So it is not your intention, Hon. Member, to invoke the procedure for an amendment to an amendment; you are looking to correct it in another place?

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**Mr Malarkey:** I was not aware I was capable of doing that, but we have not got one. Sorry, I will have to take advice from the legislator here, Mr Speaker.

**The Speaker:** In which case, you will need to move into Committee in order to take advice.

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**Mr Robertshaw:** I propose we go to Committee.

**The Speaker:** You will do that. And seconded by Mr Cregeen. Is that agreed, Hon. Members?  
(**Members:** Agreed.) Mr Connell.

3160

*In Committee of the Whole House*

**Mr Connell:** If I may, sir, I will stay sitting because then you might actually hear me.

It would be sensible to amend the provision to include the standard defence in the blackmail context. I have not actually drafted it, but if I had the message I could probably put something together and we could table it then.

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**The Speaker:** It is then up to the Members to whether you wish to now push this to a vote on this question or whether you intend to deal with it in another place. It is up to you.

**Mr Malarkey:** I think it might be easier to deal with in another place, Mr Speaker. It is a very simple amendment to the amendment. It can be done, realistically. It will have to come back to this Hon. House just to be ratified, but again rather than try asking the Attorney General's office

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to start rushing off and doing amendments now ... This is only something that has recently come to my attention from my Department.

3175 **The Speaker:** In which case then, I will put the amendments in the name of Mr Hooper.

**Mr Robertshaw:** Mr Speaker, we need to return to –

**The Speaker:** Sorry, my apologies. Yes, we do need to come out of Committee.

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**Mr Robertshaw:** Mr Speaker, I propose we return to normal business.

**The Speaker:** Thank you, Mr Robertshaw and Mr Cregeen. Thank you very much.

*The House moved out of Committee and business was resumed.*

3185 **The Speaker:** In which case, now we will move to the vote and put the question – firstly, I will put them together on the basis that no one has raised any specific concerns about them – amendments 4 and 5 in the name of Mr Hooper. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 108 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3190 We now turn to amendment number 6 on the Order Paper, and that is a New Clause 1 in the name of Mr Hooper. I call on Mr Hooper to move.

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

3195 I am rising now here to move New Clause 1 that is tabled as amendment number 6 in principle.

Hon. Members, I would like to give you just some brief background as to why I think this clause is necessary. When it comes to digital communications, to social media, to email, we are living in a very fast-moving world and I think it is quite evident that legislation is struggling to keep up with the way that the world is moving on.

3200 As the Minister has already outlined, section 108 of this Bill makes very specific provision as to what may be considered a communications offence: false messages with the intention of causing annoyance or distress, repeatedly making use of a public communications network or sending messages that may be considered to be grossly offensive, indecent or threatening. But in this day and age those are not the only ways you can cause somebody harm by sending messages using a public communications network.

3205 I am going to try and outline what I mean here. Imagine that you are involved with a charity and that charity provides some funding to a company that perhaps is engaged in research and some of those research activities might involve animal testing. This is, quite rightly, a sensitive and emotive issue. So what happens if your address were to be posted on a forum for people who take this issue very seriously? Is the posting of your address a crime? Is that an incitement? It is very difficult to answer that question.

3210 What happens if someone is to post it purely with the intention of getting other people to take action; maybe there is no direct incitement with that post, but the reason for posting it is to cause somebody else to take action as a result? The potential harm that could be done to you as a result of somebody sharing your personal address could be quite significant. But depending on exactly what was posted and where it was posted and how it was posted, it might not be considered a criminal act in and of itself.

3215 So what about personal imagery? Somebody might get hold of a photo of you in swimwear – not offensive, not indecent –

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**Mr Robertshaw:** It would be in my case! *(Laughter)*

**Mr Hooper:** I tried to avoid any personal references there! *(Laughter)*

3225 So imagine then they decide to share this image with others on a public forum, or perhaps they decide to email that picture of you to all of your work colleagues in order to cause you some embarrassment perhaps. Is that currently an offence? Again, it is not clear.

3230 Taking this a step further, what happens if someone were to take that image of you and superimpose it onto a pornographic video – something known as ‘deep fake’? In the UK it is now illegal to share private sexual imagery with the intent to cause distress. That is referred to generally as ‘revenge porn’. But this sort of image might not fall under that definition; it is not a private sexual image; it is fake, it is not real. It might be caught under section 108 of our Act here because it is sending a false message, but this is the same offence as in the UK, and the UK Law Commission is recommending that this law needs updating and revising. So that makes me think actually it is not going to be covered here.

3235 So then if someone were to take this faked video with your face on and send it to your employer or perhaps to your school year group, would that be an offence? Imagine you are that school child, imagine the harm now that has been caused to you as a result of this image circulating, and imagine the place that you are in, emotionally, psychologically, after that video has been circulated; and then you get an email from someone just entitled, ‘Maybe you should kill yourself’. Is encouragement to self-harm an offence? It is certainly misuse of a public communications network, whatever else it might be.

3240 One of those messages might not impact you too much. What if you get 20 or 30 or 50, or this video or this image gets posted to a website along with your email address? You might get 60, 100 of these emails. This could have potentially devastating consequences.

3245 The offender only has to post the image or the video once, because the way that social media works you get a lot of interaction and these videos and images have the potential to go worldwide in a moment. Yet the image itself was only shared by the originator once. **(A Member:** Hear, hear.)

3250 This sort of pile-on or pile-in bullying we can see is getting more and more common in the digital world. It is made much easier by the de-individual nature of anonymised interaction. **(Mr Robertshaw:** Totally agree.) And yet it might not necessarily constitute harassment – harassment being defined as a person pursuing a course of conduct. So this kind of collective pile-on group harassment may not necessarily be covered, and even within that, individual messages or posts might not meet the threshold by themselves for criminal prosecution; but the collective impact of this could be very significant on the individual. The law seems quite lacking in this regard.

3260 So I have touched very briefly – very briefly – on the potential harm that can be caused by the public sharing of private information, but this goes much deeper than I have outlined. Public and private spaces are online, and especially are overlapping even more and more, so what someone might have considered a private post or a private interaction online for themselves and maybe their close family might suddenly become very public without their consent, perhaps an admission of mental health issues or an open admission of sexual orientation.

3265 The criminal law around these sort of issues is very complex and it is always changing, and the best perspective I have outlined is perhaps overly simplified. I think the phrase they use now is that sequences have been shortened. I am just trying to show why a communications offence makes a very good backstop. The UK updated their laws to deal with revenge porn and then this fake porn came along, so they will have to update their law again. They have updated their harassment law to take account of collective harassment, but it does not quite cover some types of this pile-on abuse that we are seeing. Every time we fix the law, technology overtakes it.

3270 So with this ever-evolving nature of digital technology and communication, I think the core principle that when we communicate with each other online we should intend to do no harm needs to be enshrined somewhere in our law. So using a communications offence seems a

3275 sensible backstop for this. There will obviously need to be very specific criminal offences for a number of the things I have already outlined, especially the sexual offences and especially the encouragement to self-harm. I am sure these will be coming forward in the very near future. But this clause that I am proposing today will provide a backstop protection for when the specifics of a particular case do not quite fall neatly within any one category of existing or proposed criminal law.

3280 I am aware of two areas of concern that Members have raised with me so far and I would like to thank the Hon. Member for Garff, Mr Perkins, for having a chat with me about one of them.

3285 The first of these areas is the definition of ‘harm’ and whether or not it needs to be defined. Hopefully, I will pre-empt the Chief Minister’s question here. My understanding of the term ‘harm’ – and I am very happy to be corrected if I am wrong here – is that it is quite a well understood judicial term. The Criminal Code of 1872 has sections relating to harm that refers to harm being caused to an individual. If Members would prefer more recent references, the Criminal Justice and Police Courts Act 2007 has, again, very numerous references to harm and the offences of causing harm to an individual.

3290 This Bill in front of us has several references to causing harm and Schedule 4 has specific references to the degree of harm being caused by broadcast material to be a required consideration when setting standards. So the term harm is already referenced in this Bill elsewhere; it is not a new phrase that I am trying to create here in Manx law, it is already littered throughout our criminal legislation. So I am quite comfortable that we do not need a further detailed definition of that term here in this Bill, partly because the intention of this clause is to be quite broad to encompass a wide range of different types of harm and offence; and I think 3295 defining too narrowly might restrict the application unduly. I mean this is definitely up for consideration and if it is felt by Members that a definition is needed I am happy to go with that. I just think as a baseline principle we do not really need it here. I am quite happy to leave it up to the court to interpret whether or not harm has been felt or has been incurred in any particular way.

3300 The second issue that has been raised with me in relation to this clause is whether or not this will curtail people’s freedom of speech, their ability to post and communicate and engage online. In response to that, I would say just a few things.

3305 Firstly, we have Article 10 of the European Convention on Human Rights. That protects your right to free speech. Irrespective of what we try and do here on the Isle of Man, that is a convention that we are part of. We have those rights.

Secondly, this clause is very specific. The first part of this clause only makes it an offence if when posting or sending a message it is your intention to cause somebody harm. Without intent there is no criminal act and if anyone is able to argue that intentionally causing harm to another should be protected speech they are much better at this than I am.

3310 Thirdly, this is a criminal offence. The burden of proof is quite high. The requirement is to prove beyond a reasonable doubt not only that you have suffered harm but also that a reasonable average person will also have suffered harm in the same circumstances and that there was originally an intent to cause harm. It is quite a high bar and to top all that off there is still a public interest test when it comes to prosecutions. I am comfortable, therefore, that this 3315 clause will not, perhaps unfortunately, clamp down on anonymous internet trolls posting as they will; nor will it stop the healthy online political discourse that we seem to have in abundance on the Island.

3320 I do not intend to go into much more depth in this when moving the clause in detail, but I am happy to try and address any concerns that Hon. Members have. Although, please bear in mind that I do not have an army of departmental helpers behind me.

Mr Speaker, with that, I beg to move this clause in principle:

*New Clause 1*

*6. Page 90, after the end of line 5 insert the following New Clause as clause 109—*

«109 Causing harm by sending message by means of electronic communications system

(1) A person commits an offence if—

(a) the person sends by means of an electronic communications network a message or other matter with the intention that it should cause harm to another;

(b) sending the message or other matter would cause harm to an ordinary reasonable person in the position of the intended recipient; and

(c) sending the message or other matter causes harm to the intended recipient.

(2) In determining whether a message or other would cause harm, the court may take into account any factors it considers relevant, including—

(a) the extremity of the language used;

(b) the age and characteristics of the recipient;

(c) whether the message or other matter was sent anonymously;

(d) whether the message or other matter was sent more than once;

(e) the extent of circulation of the message or other matter;

(f) whether the message or other matter is true or false;

(g) the context in which the message or other matter was sent.

Maximum penalty for an offence under this section—

(on information)— 2 years' custody or a fine;

(summary) — 12 months' custody or a level 5 fine.».

Remember the subsequent clauses of the Bill and adjust cross-references accordingly.

**The Speaker:** Mrs Caine.

**Mrs Caine:** I beg to second the new clause.

3325

**The Speaker:** Thank you.

Dr Allinson.

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

3330

I would like to ask for the leave of the House to invoke Standing Order 4.7(4A) to bring a minor amendment to this amendment.

**The Speaker:** Well, I will need to deal with the amendment once we have moved it in detail. So if the clause is approved in principle then the amendment will come to it in detail, but I appreciate Dr Allinson for telling us that this is coming and if you want to explain a little bit about why, then that is not a problem. But it is just a case of the formal moving and seconding of it will need to happen after the clause has been moved in detail, if we get that far.

3335

So if there is anything you want to add at this stage?

3340

**Dr Allinson:** Can I talk?

**The Speaker:** Yes, you may.

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

3345

I would like to thank my fellow Member for Ramsey for bringing this important new clause in. This dovetails in with some of the work the Department of Home Affairs is doing through the Sexual Offences and Obscene Publications Bill that will be coming to this House, but goes a little bit further in terms of dealing with those grey areas, as he says.

3350

With electronic communication comes electronic harm and the potential for abuse. And so I would like to bring a slight amendment to his wording in (2)(a) to slightly change rather than just 'the language used' to add 'or imagery', so that the entire line would be: 'the language or imagery used'.

3355 The reason for this is that we are aware that people and abusers are circumventing laws at the moment by using emojis or images to also abuse people; and so just this extra word will hopefully give the courts more powers to actually deal with abuse as and when it may happen.  
Thank you.

**The Speaker:** Chief Minister.

3360 **The Chief Minister:** Thank you, Mr Speaker; and can I say I think the Members for Ramsey have done us royally proud on this one. (**A Member:** Hear, hear.)

3365 I am happy to support both: the amendment from Dr Allinson to the new clause put forward by Mr Hooper. But whilst I am delighted with the new clause and I really want to support it, I am a little bit concerned ... I am going to support this, I hasten to add, but I would just like to see what more can be done. Does he really feel this goes far enough? Does it cover, for example, 'harm to another' – *mental* harm? A definition of 'harm' is normally physical harm and it is just clarifying: does it *catch* mental harm is all I am looking for? It is one of my interests. And if it does not, then I would support an amendment in the future on that.

3370 I would like to ask him: does he feel it goes far enough? And I understand anything that we post should be legal and decent, but you see so much nowadays of bullying; and young people, especially when they go home, their home is no longer their haven because they are getting bullied at home by postings.

3375 As I say, all credit to the Hon. Member for Ramsey, Mr Hooper, for bringing this in. But maybe now that he has raised this and it is in our minds, we should look maybe to an amendment in the future. But I would be interested in his feedback on whether, (b) it goes far enough; (a) – back to face – does it cover mental? Would he think it would cover mental damage?

3380 And how can you prove intent, is my third point? Does that mean all I have to say is, 'Well, I didn't intend to cause him ... The fact that I have sent him 50 emails, it was a bit of a laugh. I didn't think it was going to ... I didn't intend to cause it'. It seems a very *easy* defence to throw up and if you have got to prove that ...

3385 I mean, I think all of us, surely, would want to protect – especially the younger generation – from bullying at home. (**A Member:** Hear, hear.) And if I can just stand up and say, 'Well, it wasn't my intention to cause harm'. If that is the 'Get out of Jail card' then, whilst I am here to support what his obvious intentions are, I just worry that word 'intent' – if that is a 'Get out of Jail card', then it does not achieve what we would all want to see.

So I just look forward to his answer.

**The Speaker:** Mr Thomas.

3390 **Mr Thomas:** Thank you very much, Mr Speaker.

I am a man of high standards and I like to keep things simple; (*Laughter*) and there are just a couple of questions I have got at this stage.

3395 The first question is for the mover of this amendment, because obviously it was first mentioned on 6th November at the Second Reading and the Hon. Member, to his credit, talked about harmful or malicious communication. Obviously that is 12 weeks ago and I just wanted to see if the mover had actually consulted with anybody in those 12 weeks and actually taken legal advice on all of these things in those 12 weeks? Because I want to be reassured that we are not just making policy and law on the hoof here, we have actually engaged in a proper process.

3400 The other question I have is either for the officers – so for the members of the Department or the officers involved – because at the Second Reading stage there was a clear answer given which was that there are sanctions for malicious communication in the Bill and yet there are quite clear and updated parts of the Bill that *look* at the use of telecommunications or broadcasting which may be seen as being either obscene or actually may upset people. So what I

3405 heard three months ago, and what I remember hearing three months ago, was that everything was fine with the Bill as it was proposed at that time. So I just want an exposition of what has changed in those three months whereby we now need new clauses whereas we were assured at the Second Reading that everything was fine with the Bill as first drafted.

3410 The main point I am trying to make is that it is bad practice not to have settled the policy; and the second bad point is to be making up law on the hoof in a complex part of criminal law, as was actually explained by the hon. mover of this amendment.

**The Speaker:** I call on Mr Hooper to respond to the debate on the New Clause 1 in –  
(*Interjection by Mr Malarkey*)

3415 Sorry, Mr Malarkey, do you wish to contribute to the debate?

**Mr Malarkey:** Mr Speaker, certainly I or the Commission have no objections to this new clause being fitted. But what I will say at this stage is that some of the issues that are being covered by the new clause are also going to be covered by the Sexual Offences Bill which, when  
3420 the mover mentioned revenge porn, some of the new issues that ... Why the Commission did not bring this particular part forward, to answer the Minister's question, is because we knew it would be covered later on through things like the Criminal Justice Bill.

Now, having reflected on this and seen what Mr Hooper's motion was, I am quite happy at this stage for us to have it in this particular Bill, (**A Member:** Hear, hear.) so when we are going  
3425 forward with the Criminal Justice Bill and with the Sexual Offences Bill we do not double up on it. As long as it is in statute, as long as it is law I am not really too worried about where it actually sits. This will be a darn sight quicker than it will be going through Sexual Offences Bill or Criminal Justice Bill.

I am happy to support the motion of the Hon. Member for Ramsey.

3430

**A Member:** Hear, hear.

**The Speaker:** Mr Hooper to reply to the debate in principle.

3435 **Mr Hooper:** Thank you very much, Mr Speaker. I will take these in reverse, actually.

So, Mr Thomas: have I consulted with anyone on this change to the Bill? Well, it is not normal practice to consult on amendments. You have had 12 weeks, I think, to raise these queries with me, Hon. Member, and as yet I have not had anything ... I do appreciate that some Hon. Members have had a conversation with me about these proposals, which I welcome.

3440 I am going to be honest, my original proposals that I put to the drafters did go much further than this. I think Mr Connell will agree with that statement and he managed to kind of pull me back a little bit, I think, and on reflection quite sensibly so. So I would like to thank Mr Connell for his help and advice in putting this together.

I would like to reassure the Hon. Member for Douglas Central that this wording did not come  
3445 out of the back of my mind. This is a clause that is in place in New Zealand, which is another Commonwealth jurisdiction now obviously very similar to the UK and the Isle of Man in that respect, and so it is law that should dovetail very nicely and work quite well on the Isle of Man with law that we already have.

I think the standards that the Hon. Member referred to were broadcasting standards, actually, about obscene material. One is not broadcasting if one is posting on Facebook or  
3450 sending emails and that is the difference I think – here, the Bill deals with the telecommunications offences as well as broadcasting offences, and this falls into the former rather than the latter, I think.

As to the Chief Minister: does it go far enough? I do not think I can answer that question. I  
3455 think it is one of those things that we will have to see how things pan out and whether or not there are failures in the courts – prosecutions that cannot go ahead. I would like to think that as

3460 a backstop offence this is broad enough to capture the kind of offences that the Sexual Offences Bill ... or maybe it will not capture, simply because that by its very nature has to be quite a specific Bill dealing with specific circumstances. So I would like to think that this amendment will go far enough. I do not know. I think the Chief Minister is right, we will have to wait and see whether further changes are needed a little bit further down the road.

3465 As for proving intent, that is fortunately already existent in the Bill in the previous clause that we have just approved. So in order for an offence in respect of sending a message 'for the purpose of causing ... inconvenience or needless anxiety', actually, the purpose behind sending the message has to be the causing of offence, the causing of needless anxiety – the intent is still there. Proving intent is quite difficult. It is why, I think, when it comes to freedom of speech issues, this clause should work quite well because it is a very high bar that you have to meet in order to demonstrate someone has done something intentionally. And again it is only intended as a backstop offence; I am sure the Sexual Offences Bill that is coming forward will have much more stringent provisions in respect of some of the very specific offences that I am hoping to cover with this. And I think that is an issue we will have to deal with further down the line. But I do take this point on board that it is not an easy solve, unfortunately.

3470 I suppose the last comment is about harm: do I think it covers other types of harm, other than physical? I would say I think it does, from looking at other references to the term 'harm' across our legislation, there are other references to financial harm, emotional harm in other Bills that we have, and so I think the term 'harm' is broad enough to cover all those various types of harm. Again, whether or not we do need to define it at some point is probably a conversation to have further down the line if it turns out that this clause, for whatever reason, is not workable when it goes to the court system. But I think I am quite comfortable that the term 'harm' does cover those different types of harm that I am intending to cover with the clause.

3480 With that, Mr Speaker, I just want to move the amendment to the new clause in principle.

**The Speaker:** The question is that New Clause 1 be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3485 I call on Mr Hooper to move the New Clause 1 in detail.

**Mr Hooper:** Thank you very much, Mr Speaker. I do not have very much to add to what I have just said.

3490 The first part of this new clause, section (1) specifically states that an offence is committed if somebody 'sends by means of an electronic communications network a message or other matter with the intention that it should cause harm'. And then the two safeguards underneath that are: have got to intend that it causes harm, it must actually cause harm and it must have caused harm to a reasonable person in the same circumstances.

3495 The second part of the clause gives some guidance to the courts in whether or not a message would constitute harm; gives some factors the courts may consider relevant – it is not a complete or comprehensive list, it is simply a list of areas of guidance.

And, with that, I do not think I have anything else to say other than I am very supportive of the amendment that has been tabled by my hon. colleague, Dr Allinson.

3500 Mr Speaker, I beg to move New Clause 1.

**The Speaker:** Move New Clause 1 *in detail*.

Mrs Caine.

**Mrs Caine:** I beg to second.

3505 **The Speaker:** Thank you very much.  
Dr Allinson.

3510 **Dr Allinson:** Thank you very much, Mr Speaker; and I think we have had a decent conversation about this.

One of the problems with legislation is it is very rare that you get it completely right, particularly with communications because we are dealing with multimedia; and so what was originally a Broadcasting Act and then was added to that and added to that, has to constantly evolve. So I am hoping that some of the regulations in this will allow us to do that – to deal with  
3515 the Ministers that we sometimes deal with in our society, but without restricting the ability of the Communications Commission to actually do their job.

So with that, Mr Speaker, I just want to move my amendment to the amendment.

*Amendment to Mr Hooper's New Clause [to be New Clause 109]:*

*6A. In subsection (2)(a) for "the language used" substitute «the language or imagery used».*

3520 **The Speaker:** Thank you.  
Miss Bettison.

**Miss Bettison:** Thank you.  
I would like to second the amendment. Can I say something?

3525 **The Speaker:** Yes, please.

**Miss Bettison:** I was thinking I had missed my chance!

I just wanted to add that I am very supportive of both Mr Hooper's amendment and this amendment to it in terms of considering imagery. I am personally aware of a girl aged 12 where  
3530 a photo was taken from a school photo, that was then cropped on to an alternate body and imagery and language used to write on that things that she liked, which did not include going to the swimming or going to the park or any other such things that a 12-year-old girl might like – and caused *incredible* distress, mental upset and long-term mental health issues to that girl.

I think this is absolutely a very real risk to children and to adults in our society and I think we  
3535 absolutely have a duty to do everything within our power to ensure that this law works as best as it can. And by adding in imagery, we just ensure we tighten that up.

So I am very supportive of this.

Thank you.

3540 **The Speaker:** Dr Allinson, do you have anything to say in summing up?

**Dr Allinson:** No, thank you, Mr Speaker.

3545 **The Speaker:** Mr Hooper?

**Mr Hooper:** Nothing further to add, Mr Speaker.

**The Speaker:** In which case, I will put first the amendment to the amendment in the name of  
3550 Dr Allinson. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

And putting New Clause 1 in detail, that it stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

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

**FOR**

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

**AGAINST**

Mr Thomas

**The Speaker:** With 21 for, and 1 against. The ayes have it. The ayes have it.  
We turn then to clauses 109 to 112 and I call on Mr Malarkey to move.

3555 **Mr Malarkey:** Thank you, Mr Speaker. Thank you for the break! *(Laughter)*

I intend to take clauses 109 to 112 together. Clause 109 creates an offence in relation to the fraudulent use of an electronic communications network or service with intent to avoid payment.

3560 Clause 110 creates an offence for possession or supply of anything enabling such fraudulent use, which could be electronic or otherwise.

3565 Clause 111 makes it an offence for a person who is engaged in the provision of a public electronic communications network or service to intentionally modify, or interfere with, the contents of a message sent by means of that network or service. It is not an offence if the modification or interference occurs in the course of a person's duty; for example, because he or she is required to do so by virtue of a court order or a warrant.

Clause 112 makes the unauthorised disclosure of messages and information about public electronic communications systems or networks an offence by a person who is engaged in the provision of an electronic communications network or service, otherwise in the course of that person's duty. Penalties are provided for in all these cases.

3570 Mr Speaker, I beg to move that clauses 109 to 112 stand part of the Bill.

**The Speaker:** Dr Allinson.

3575 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clauses 109 to 112 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3580 Clause 113 to 117. Mr Malarkey.

**Mr Malarkey:** Subdivision 1 of Division 8 comprises clauses 113 to 117, which I intend to take together. The Subdivision deals with disputes that may occur between communications providers regarding network access and terms of access.

3585 Clause 113 applies to disputes between a licence holder and a person in relation to the provision of network access and allows for a dispute to be referred to the Commission.

Clause 114 provides for the Commission to decide that an alternative means of dispute resolution may be used.

3590 Clause 115 provides for the making of a procedure for the consideration and determination of a dispute and timescales. The clause also sets timescales for the Commission to consider a procedure. These clauses are similar to those in the Communications Act 2003 (of Parliament).

Clause 116 provides for how the Commission is to determine a dispute that has been referred and gives the options for the Commission in determining a dispute.

3595 Clause 117 gives the Commission powers to require parties to disputes and other persons to provide them with information that enables the Commission to decide whether they should handle a dispute, and consider and determine a dispute.

Mr Speaker, I beg to move that clauses 113 to 117 stand part of the Bill.

**The Speaker:** Dr Allinson.

3600 **Dr Allinson:** Thank you, Mr Speaker. I beg to second.

These give the Communications Commission quite important powers particularly with increased competition on the Isle of Man to determine disputes relatively quickly and so get the best service for the public.

3605 **The Speaker:** I put the question that clauses 113 to 117 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 118 to 123. Mr Malarkey.

3610 **Mr Malarkey:** Clauses 118 to 123 form Subdivision 2 and deal with a number of general issues and are in large part replicas from the Telecommunications Act 1984. I intend to take these clauses together.

3615 Clauses 118, 119 and 120 concern the approval of apparatus and, in essence, state that if equipment is certified for use in the EU then it will be compliant for the purposes of the Isle of Man. It also states that the Commission may make an order in respect of information that may be marked on apparatus and that the Commission may make an order in respect of the marking of charges for apparatus.

Clause 121 enables the Commission to prescribe information which must be published in advertisements for apparatus which is intended to be connected to an electronic communications network or system.

3620 Clause 122 provides a mechanism, which is commonly found in environmental and regulatory legislation, under which a person charged with an offence under clauses 119 to 121 can plead the conduct of a third party as a defence to the charge and require the third party to be charged instead. Any person charged under those sections has a defence if he or she can show that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

3625 Finally, clause 123 empowers the Council of Ministers to give directions to the holder of a public telecommunications licence in the interests of national security or international relations.

Mr Speaker, I beg to move that clauses 118 to 123 stand part of the Bill.

3630 **The Speaker:** Dr Allinson.

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

I beg to second and reserve my remarks.

3635 **The Speaker:** I put the question that clauses 118 to 223 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 124 to 127. Mr Malarkey

**Mr Malarkey:** Thank you, Mr Speaker.  
3640 Part 6 is Enforcement.

Part 6 of the Bill deals with Enforcement and Division 1, clauses 124 to 127 deal specifically with Broadcasting. I intend to move these together. These provisions give the Commission new powers of enforcement and are based on the similar provisions in respect of licence holders in the UK and make a broad range of penalties available to the Commission than currently are available.

3645 Clause 124 deals with interpretation for the Division, and that 'licence holder' means the holder of a broadcasting licence.

Clause 125 is a new power for the Commission in that if it is satisfied that the licence holder has failed to comply with a statutory provision under this Act, any condition of the licence or a direction given by the Commission under the Act, it may direct the licence holder to broadcast a correction or an apology. It may also direct a licence holder not to repeat a programme or advertisement if the licence holder has failed to comply with a licence condition, a statutory provision under the Act or a direction of the Commission.

3650 Clause 126 gives the Commission the power to impose a financial penalty or shorten a licence period in the case of a failure to comply with a licence condition, a statutory provision under the Act or a direction of the Commission.

The amount of a penalty imposed on a licence holder must not: (a) in the case of a licence holder providing only local broadcasting services, exceed £5,000; and (b) in any other case 5% of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which the licence has been in force.

3660 Clause 127 gives the Commission a new power to suspend or revoke a licence in specified circumstances, for example if a licence holder has deliberately misled the Commission in a licence application or failed to comply with a licence condition.

Mr Speaker, I beg to move that clauses 124 to 127 stand part of the Bill.

3665 **The Speaker:** Dr Allinson.

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

3670 **The Speaker:** I put the question that clauses 124 to 127 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 128 to 130. Mr Malarkey.

3675 **Mr Malarkey:** Division 2 of Part 6 deals with Enforcement with Electronic Communications licence holders. These provide a new suite of enforcement provisions for the Commission. I intend to take the clauses together.

Clause 128 provides for the interpretation of defined terms used in the Division in that 'licence holder' means the holder of an electronic communications licence, including a person operating under a class licence.

3680 Clause 129 empowers the Commission to serve notice on a licence holder if it is satisfied that there has been a contravention of the licence, and specifying the steps which the licence holder must take to remedy, and specifying any penalty which it is minded to impose under clause 130. The penalties, except for a continued contravention, are to be determined with regard to clause 3685 133, that it must not exceed 10% of a licence holder's turnover.

Clause 130 provides penalties for a continued contravention which may not exceed £20,000 per day as the Commission may determine. The Council of Ministers may by order amend subsection (5) by substituting a different sum.

3690 There are more clearly defined enforcement measures which will help the Commission to ensure that the market is a level playing pitch for all operators to compete in. Such measures will provide certainty to would-be new entrants as well as bolstering consumer protection.

Mr Speaker, I beg to move that clauses 128 to 130 stand part of the Bill.

**The Speaker:** Dr Allinson.

3695

**Dr Allinson:** Thank you very much, Mr Speaker; I beg to second.

**The Speaker:** I put the question that clauses 128, 129 and 130 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3700

Clauses 131 and 132. Mr Malarkey.

**Mr Malarkey:** Clause 131 applies if a licence holder has been given a notice under clause 129 and that the licence holder has had opportunity to make a representation. The Commission may, (a) give a confirmation decision imposing the requirements; or (b) inform the licence holder. This is enforceable through civil proceedings brought by the Commission or by any other appropriate remedy or relief

3705

Clause 132 allows for a confirmation decision to be given to the licence holder and may either require immediate action on behalf of the licence holder or specify a period in which the licence holder must comply with those requirements. It also allows the Commission to specify a penalty which may be reduced from the penalty previously specified to take into account representation from the licence holder or steps taken to comply with the Commission's requirements.

3710

Mr Speaker, I beg to move clauses 131 and 132.

3715

**The Speaker:** Dr Allinson.

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

3720

**The Speaker:** I put the question that clauses 131 and 132 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 133 to 136. Mr Malarkey.

**Mr Malarkey:** Clause 133 provides the maximum for a penalty under clause 129 that the penalty must not exceed 10% of turnover except as provided for in clause 130 for continued contravention.

3725

Clause 134 provides for the suspension and revocation of an electronic communications licence. Clause 134 also makes provision for a shortened process if the matter is an urgent matter. 'Urgent matter' is defined in subsection (a) as a threat to public safety, public health or national security; and subsection (b) as serious economic or operational problems for people who are communications providers or for users of telecommunications networks or services.

3730

Clause 135 gives the Commission the power to revoke a class licence after following a process which is set out in the clause.

Clause 136 deals with a licence holder's liability in tort for a breach of a licence condition.

3735

Mr Speaker, I beg to move that clauses 133 to 136 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker. I would like to second.

3740 **The Speaker:** I put the question that clauses 133 to 136 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 137, Mr Malarkey.

3745 **Mr Malarkey:** Clause 137 empowers the Commission to issue a public statement where the Commission has investigated that a person has failed to comply with a statutory provision, a condition of a licence, or a direction from the Commission. The Commission may also publish information about persons carrying on a regulated activity on the Island or elsewhere if it appears to the Commission to be desirable to publish such information for the protection of persons, or desirable to do so in the best interests of the public. There are notification requirements in the clause that the Commission must follow.  
3750 I beg to move that clause 137 stand part of the Bill.

**The Speaker:** Dr Allinson.

3755 **Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I put the question that clause 137 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
3760 Clauses 138 and 139. Mr Malarkey.

**Mr Malarkey:** Clause 138 specifies the decisions of the Commission which are appealable and states in subsection (6) that the High Court must decide the appeal, by reference to the grounds of appeal set out in the appeal notice, by the same principles as would be applied by a court in a dolance claim.  
3765

Clause 139 provides that in the absence of rules of court under the High Court Act 1991 for the purposes appeals under that Part, the court may adopt such procedure as it considers appropriate.

3770 I beg to move that clauses 138 and 139 stand part of the Bill.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.  
I beg to second.  
3775

**The Speaker:** Mr Hooper.

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

3780 I wonder if the Minister could just clarify: so far there are two sections which we have approved and do not appear to be subject to the rights to appeal, and they are the imposition of licence conditions to a class licence and the revocation of a class licence. I would just like to be clear on why there has not been a right to appeal included in respect of those two powers?

I think the relevant sections are section 24 and section 135, if that helps.

3785 **Mr Malarkey:** Will you bear with me, Mr Speaker?

**The Speaker:** Mover to reply.  
Mr Malarkey?

3790 **Mr Malarkey:** Mr Speaker, could you just give me a moment for my officers to ...

**The Speaker:** Would you like to move to Committee?

3795 **Mr Malarkey:** I do not think it is necessary to move to Committee? Move to Committee, go on.

**Mr Robertshaw:** Mr Speaker, I move that we go to a Committee of the House.

3800 **The Speaker:** Thank you.  
I take that as seconded. Is that agreed, Hon. Members? (**Members:** Agreed.) Thank you.

*In Committee of the Whole House*

**The Speaker:** So the two parts that are not eligible to be appealed and why.

3805 **Mr Connell:** The answer, Mr Speaker, is that the very nature of a classed licence is that nobody has an individual interest in it. It is a classed licence, it authorises the world; it would therefore be inappropriate to actually grant an appeal to an individual.

**The Speaker:** There was another one.

3810 **Mr Hooper:** They are both in respect of a classed licence –

**Mr Connell:** They are both in respect of a classed licence and that is the point.

3815 **Mr Hooper:** But it may be the situation that imposing a licence condition on a classed licence has a detrimental effect on the majority of holders of that licence, for example.

**Mr Connell:** That would be a matter for politicians, not for an appeal.  
It is a finely balanced point but the answer is that is much more of a political issue than it is of an individual right of appeal.

3820 **Mr Hooper:** My understanding then is if the Communications Commission were to grant a classed licence that says, I don't know, everyone on the Isle of Man has the right to a certain type of broadcasting equipment and then were to decide to impose conditions on that licence that unfairly impacted the majority of the Isle of Man people using said classed licence, they would not be able to band together or chip in for a High Court appeal; it would have to be a political decision to overturn the regulators.  
3825

3830 **Mr Connell:** Obviously, doleance would be a totally separate matter. You can raise doleance issues without the need for a specific appeal right. These are appeals which are specifically conferred by the Act. But it is, with respect, much more of a political decision than a case which would apply in relation to an individual licenceholder, where there clearly should be a right of appeal.

**Mr Malarkey:** Okay?

3835 **Mr Hooper:** Yes.

**Mr Robertshaw:** Mr Speaker, I move that we return to normal business.

**The Speaker:** Thank you very much.

3840

**Mr Cregeen:** I second.

**The Speaker:** Thank you very much.

The motion is that business be resumed. Is that agreed, Hon. Members? (**Members:** Agreed.)  
Thank you very much.

3845

*The House moved out of Committee and business was resumed.*

**The Speaker:** I will revert to the question. Minister, do you have anything to add before we start summing up?

**Mr Malarkey:** Nothing to add, Mr Speaker.

3850

**The Speaker:** In which case, we will go straight to the question that clauses 138 and 139 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 140 to 143, Mr Malarkey.

3855

**Mr Malarkey:** Mr Speaker, clause 140 provides that criminal proceedings for an offence under the Act may be instituted only by the Attorney General, and extends the time limit for the institution of proceedings for a summary offence to 12 months from the date of its commission. It was six months.

3860

Clause 141 deals with the liability of a director or other officer of a body corporate for an offence committed by such a body.

Clause 142 deals with the relationship between civil and criminal penalties.

Clause 143 deals with injunctions.

I beg to move that clauses 140 to 143 stand part of the Bill.

3865

**The Speaker:** Dr Allinson.

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

I beg to second.

3870

**The Speaker:** I put the question that clauses 140 to 143 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 144 and 145, Mr Malarkey.

3875

**Mr Malarkey:** Clause 144 empowers the Commission, with the consent of the Treasury, to determine the amounts of fees and duties payable under the Bill. These may be specified in a notice or in the conditions of the licence. The Commission may vary fees and duties with the consent of Treasury.

Clause 145 deals with registers to be maintained under the Act by the Commission and the contents of such registers, which must be available for public inspection.

3880

I beg to move that clauses 144 and 145 stand part of the Bill.

**The Speaker:** Dr Allinson.

3885

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

I beg to second.

**The Speaker:** I put the question that clauses 144 to 145 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3890 Clause 146 and Schedule 7, Mr Malarkey.

**Mr Malarkey:** Clause 146 imposes restrictions on the disclosure of information, unless (a) the person to whom it relates has consented to the disclosure, or (b) the disclosure falls within one of the exceptions in Schedule 7.

3895 Paragraph 1 of Schedule 7 gives specific instances where the disclosure of information is not precluded under clause 146.

Paragraph 2 provides for disclosure to designated authorities.

3900 Paragraph 3 provides that the clause does not preclude the disclosure of any information for the purpose of enabling or assisting an authority, whether a governmental or private body, in a country or territory outside the Island to exercise functions similar to any of those of the Commission under this Act or any other enactment. In practice, this would primarily be used to authorise disclosures to Ofcom.

Paragraph 4 gives further exclusions in relation to notices and registers and public statements.

3905 Mr Speaker, I beg to move that clause 146 and Schedule 7 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

3910 I beg to second.

**The Speaker:** I put the question that clause 146 and Schedule 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 147, Mr Malarkey.

3915

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

Clause 147 empowers the Commission, if satisfied that a foreign satellite has been repeatedly engaged in broadcasting material either offending against good taste and decency or inciting crime, to proscribe it.

3920 I must read the footnotes for this one, Mr Speaker.

Only one Foreign Satellite Service has been proscribed in the Isle of Man. Proscribing means that organisations must not support or contract with the service in question. The last one was Red Hot Dutch. *(Laughter)*

Mr Speaker, I beg to move that clause 147 stand part of the Bill.

3925

**The Speaker:** Dr Allinson.

**Dr Allinson:** I beg to second and reserve my remarks.

3930 **The Speaker:** I put the question that clause 147 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 148 and Schedule 8, Mr Malarkey.

3935 **Mr Malarkey:** Clause 148 and Schedule 8 deal with the requirement to publish advance programme information.

Paragraph 1 of Schedule 8 provides for the Schedule to be treated as if it formed part of Part III of the Copyright Act 1991.

3940 Paragraph 2 defines the scope of the Schedule, so that it relates to information which the provider of a programme service is required to make available under section 176 of the Broadcasting Act 1990 of Parliament as applied in the Isle of Man.

Paragraph 3 applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies: despite the assignment, the duty to make the information about programming available remains with the programme service provider, and not the assignee.

3945 Paragraph 4 details the circumstances in which the right conferred by paragraph 6 on a publisher of advance programme information is available.

Paragraph 5 states that a person wishing to avail himself or herself of the right conferred by paragraph 6 must give notice to the copyright holder.

Paragraph 6 deals with exercising the right.

3950 Paragraph 7 deals with the application to settle the terms of any payment to be made to the holder of the copyright.

Paragraph 8 deals with the right of a person to make an application to the Copyright Tribunal to review any order made under paragraph 7.

Mr Speaker, I beg to move that clause 148 and Schedule 8 stand part of the Bill.

3955

**The Speaker:** Dr Allinson.

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

I beg to second.

3960

**The Speaker:** I put the question that clause 148 and Schedule 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 149 to 151, Mr Malarkey.

3965

**Mr Malarkey:** Clause 149 deals with the application of the Bill to the Crown.

Clause 150 empowers the Commission to apply UK and EU legislation by order and despite anything to the contrary in an Act of Tynwald. This was inserted in anticipation of Brexit.

Clause 151 deals with statutory documents, and states that the Commission must consult before making any regulations or orders under the legislation.

3970

I beg to move that clauses 149 to 151 stand part of the Bill.

**The Speaker:** Dr Allinson.

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

3975

I beg to second.

**The Speaker:** I put the question that clauses 149 to 151 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 152 and Schedule 9, Mr Malarkey.

3980

**Mr Malarkey:** Mr Speaker, clause 152 gives effect to Schedule 9 which deals with consequential amendments and repeals. The substituted Schedule to be moved by the Hon. Member for Glenfaba, Mr Harmer, contains the same material as the original Schedule, but is correctly numbered and the enactments being amended are set out in strict alphabetical order. This was purely and simply a bit of a mix up within the Schedule.

3985

I beg to move that clause 152 and Schedule 9 stand part of the Bill.

**The Speaker:** Dr Allinson.

3990 **Dr Allinson:** Thank you, Mr Speaker. I beg to second.

**The Speaker:** Mr Harmer to move the amendment.

**Mr Harmer:** I beg to move formally the amendment to Schedule 9:

3995

*Substitution of Schedule 9*

*9. For pages 202-218 substitute the following—*

*«SCHEDULE 9*

*[Section 152]*

*CONSEQUENTIAL AMENDMENTS AND REPEALS ...*

*[See [Order Paper](#) pp. iv-xix for full text of amendment]*

**The Speaker:** Mr Thomas.

**Mr Thomas:** I beg to second, Mr Speaker.

4000 **The Speaker:** I put the question first that amendment 9 in the name of Mr Harmer be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 152 and Schedule 9 as amended stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Malarkey, clause 8.

4005

**Mr Malarkey:** Clause 8.

Clause 8 and Schedule 1 deal with the status, functions and independence of the Communications Commission. Subject to the Act and in particular clause 9 which follows, the Commission is required to exercise its powers independently. Schedule 1 specifies the functions of the Commission and may be amended by the Council of Ministers by order after consultation with the Commission and any other persons that Council of Ministers considers appropriate.

4010

Paragraph 1 of Schedule 1 sets out the functions of the Commission in respect of broadcasting and electronic communications networks and services.

4015

Paragraph 2 states the general duties of the Commission in relation to telecommunications and broadcasting and states that in carrying out its functions, the Commission must, so far as is practicable, seek: (a) to further the interests of all members of the public in the Island in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

4020

Paragraph 3 gives the Commission's functions specifically in relation to electronic communications and how it must exercise the functions in a manner best calculated to secure a wide range of electronic communications, networks and services. It must also secure that any provider of a network or service is able to finance the provision of that network or service.

4025

Paragraph 4 states the Commission's functions in relation to broadcasting. The Commission is to: (a) regulate, in accordance with this Act, broadcasting services; (b) keep under review the reception in the Isle of Man of programme services provided from the Island or elsewhere, and the quality and content of those services; and (c) further the interests of the Island in the whole field of programme services.

Mr Speaker, I beg to move that clause 8 and Schedule 1 stand part of the Bill.

4030

**The Speaker:** Dr Allinson.

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

**The Speaker:** I call on Mrs Caine to move amendments 1, 2, 7 and 8.

4035

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

I rise to move the amendments in my name, with the support and in fact at the insistence, of the Digital Agency Board of the Department for Enterprise.

4040

The changes all aim to achieve one thing in the legislation and that is simply to remove the political Chair of the Communications Commission.

4045

The business community has been absolutely unanimous for a number of years in its request for the Chair of the Island's communications regulator not to be a political appointment. It is an aim that I fully support, believing that regulators operate best separate from any perceived or actual political influence. These amendments will bring the Isle of Man into line with modern commissions in other jurisdictions.

Another good reason to remove the political head is continuity. Communications regulation is a complex subject and it can take a new Minister a fairly significant time to get up to speed and add value to the process. If there is a Cabinet reshuffle or an election then the whole education and learning process needs to start over.

4050

I believe that the Island will be better served by ensuring the regulator is independent of any political control, ensuring impartiality and independence from Government, resulting in a modern Commission that can provide confidence to all telecoms companies and media organisations that it regulates as to its operational independence.

4055

I should emphasise this does not imply any criticism of current or past political Chairs, but simply reflects the modern global movement for independence of regulation which we already have in our other regulatory bodies.

Mr Speaker, I beg to move:

*Amendments to clause 8*

1. Page 31, line 15 for "Statutory Board" substitute «body corporate».
2. Page 31, line 25 after "about the" insert «constitution and».

*Amendments to schedule 1*

7. Page 125, for the heading to the Schedule substitute "Constitution and Functions of the Communications Commission"

8. Page 125, before paragraph 1 insert—

«1 Constitution of the Commission

[GC 74/89 as amended and drafting]

- (1) The Commission shall comprise not less than 4 and not more than 6 members, appointed by the Council of Ministers.
- (2) The Council of Ministers shall appoint one of the members appointed under subparagraph (1) to be the Chair of the Commission.
- (3) The appointments under subparagraphs (1) and (2) shall be subject to the approval of Tynwald.
- (4) None of the members appointed under subparagraph (1) may be a member of Tynwald.
- (5) In appointing members, the Council of Ministers must have regard to the need for the Commission to include members who are appropriately qualified, by experience or otherwise, to participate in the exercise of the Commission's functions.
- (6) The Statutory Boards Act 1987 applies to the Commission, with the exception of paragraph 7 of Schedule 2 to that Act, but the Commission is not a Statutory Board for the purposes of the Payment of Members' Expenses Act 1989.
- (7) The Council of Ministers may by order amend—
  - (a) the minimum and maximum number of members specified in subparagraph (1); and

*(b) subparagraphs (5) and (6).*

*(8) An order under subparagraph (7) may include such consequential, incidental, supplemental, transitional and transitory provisions as appear to the Council of Ministers to be necessary or expedient, including, for the sake of clarity, consequential amendments to this Act and the Statutory Boards Act 1987.*

*Tynwald procedure for an order under subparagraph (7) or subparagraphs (7) and (8) — approval required.*

*(9) On the coming into operation of this paragraph for all purposes—*

*(a) the entry relating to the Commission in Schedule 1 to the Statutory Boards Act 1987 is repealed; and*

*(b) the following cease to have effect, namely—*

*(i) the Telecommunications Commission Order 1989;*

*(ii) the Communications Commission (Amendment) Order 1999; and*

*(iii) the Communications Commission (Amendment) Order 2012.».*

*In consequence of this amendment, renumber the subsequent paragraphs of the Schedule as paragraphs 2 to 5 respectively. Adjust cross-references accordingly.*

**The Speaker:** Mr Hooper.

4060 **Mr Hooper:** Thank you very much, Mr Speaker.  
I beg to second the amendments and reserve my remarks.

**The Speaker:** Mr Shimmins.

4065 **Mr Shimmins:** Thank you, Mr Speaker.  
I rise to support Mrs Caine's amendments.

Hon. Members, the FSA does not have a political Chair, the Gambling Supervision Commission (GSC) does not have a political Chair. It is not modern practice. Really I am struggling to see what the advantages are of having a political Chair in those circumstances.

4070 In terms of freedom of speech, again I would not question that freedom of speech has been impaired, but really do we want a politician in charge of our broadcasting regulator? I am not sure that is a very healthy state of affairs and that is why I unreservedly support the amendments.

Thank you.

4075 **The Speaker:** Dr Allinson.

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

4080 Although I completely understand the mover of this amendment, I do think it would be worthwhile if we went into Committee of the Whole House so we could actually ask the Communications Commission themselves whether they think having a political Chair is worthwhile.

4085 The reason being that although we have heard from the mover that the industry is overwhelmingly supportive of this move, I would like to make sure from the Communications Commission that that is actually the whole point of this move; because this Bill is not just for media, it is also for broadcasting and it has other ramifications beyond our Isle.

So if somebody would like to second me I would like to pose that question to the Commission themselves in terms of what would help them achieve their aims.

4090 **The Speaker:** Before taking any persons to that effect, I would say that while we have the Chief Executive of the Communications Commission; I would not expect either him or Ms Strang

to answer any questions that are political in nature and this does seem to me to be a political question, rather than a matter for officers or technical experts in the field.

4095 However, I do not want to put words into the hands of those who can speak for themselves.  
If you wish to go to Committee, the House –

**Mr Robertshaw:** Mr Speaker, does the mover still wish to move?  
I will second.

4100 **The Speaker:** Certainly.  
In which case then, Dr Allinson, would you care to put your question –?

**Dr Allinson:** Well, is the House agreed?

4105 **The Speaker:** Is the House agreed?

**Members:** Agreed.

*In Committee of the Whole House*

**Dr Allinson:** Okay. Thank you very much.

4110 So without meaning to put you in a political situation at all, could I ask whether you have had approaches from industry that were very keen, either industry on the Island or industry off the Island, who found the idea of having a political Chair odd in an international context, or questioned it?

4115 **The Speaker:** Mr Kiely.

**Mr Kiely:** Thank you for the opportunity. I appreciate you do not want to put us in a political situation.

4120 **The Speaker:** Sorry, can I just remind you that the microphone in here does not amplify; it is only for the purposes of *Hansard* and I am further away from you than you think! (*Laughter*)

**Mr Robertshaw:** Don't be like that!

4125 **Mr Kiely:** Apologies for that!  
As I say, I fully appreciate that you do not want to put us in a political ... or answering political questions. Quite frankly, I do think it is a question that should be answered in this forum, rather than by me right now.

I do not necessarily think that this is the time or the place, maybe, to do it in this Bill. I think there is a lot of work that needs to be done to enact this Bill.

4130 Also in terms of removing the political Chair, I suppose the question that comes out of that is what do you replace it with and how do we know that that is the most appropriate structure for the industry as a whole?

4135 I think the best way of doing that is to actually put that question to the industry in the form of a consultation and find out what all of the stakeholders' views are to get everything in the round rather than taking particular views from particular interest groups right now.

**The Speaker:** Mr Malarkey.

4140 **Mr Malarkey:** Mr Speaker, I do apologise to the officer having to be put into that delicate situation, really.

My view, and as the officer has just said, is this might be the place but it is certainly not the time to be moving this amendment today. The view of the Commission – and I can speak on behalf of the Commission, as a politician – is that at the moment they also do not think that this is the time. Nobody is actually saying that maybe in the future this may not be considered, but  
4145 this Bill has taken five years to get here today, and we will hopefully finish the clauses today and get the Bill moving on its way. This is only the start for this Bill, there is secondary legislation due to come off the back of this Bill – quite a considerable amount of secondary legislation, which will need a lot of political guidance and help to get through the other place.

Without a political Chair or a political person sitting in on these meetings this Bill, as you have  
4150 found today, is highly technical in places. Some of the stuff that we deal with within the Commission is highly technical. I believe that a political Chair plays a very important point, personally, in the Commission. I believe that it communicates very important information back to the Council of Ministers. Very often this information comes through from Oftel and in the Commission we have to decide whether it is right or wrong. But then it has to be ratified by the  
4155 Council of Ministers. You need somebody sitting in there that is listening to that information and that can actually take it to the Council of Ministers and take the legislation forward with it.

This is one of many things that a political Chair does. He does not sit in there as an expert on what is right in the regulations. The Commission has, at the moment, five independent people sitting on the board. They are all, I would say, experts in their own way. The Commission covers  
4160 many things from broadcasting to satellites, to a variety of different things that we do – obviously the telecommunications – and we have people sit on the board who relay that and make decisions on that, and make the board's decision on that. And sometimes political questions come up – which is probably the only input, Mr Speaker, that I put in – which is to help them with political decisions going forward or how I see the political reaction will be, and also to  
4165 find out how the Council of Ministers will feel.

There is not much point in the board turning round after Oftel comes to the Island and saying, 'We have got to change the frequencies of this, that and the other'; and the Commission turns around saying, 'Yes, we're going to do it', and then not knowing what the plans are within the Council of Ministers that maybe we want to do something else with those frequencies.

To me, Communications in the Isle of Man is very important, and I know they are a regulator and I do not think the political Member interferes to the regulator – certainly I never have and I do not think past Chairs have ever interfered, with the greatest respect, Mr Speaker. But I think it is an important role.

But getting back to the main part of today, this is not the time. It might be the place but it is  
4175 not the time for us to be moving this clause today. I would like to see this Bill finished with. I would like to see the secondary legislation coming through. And then if you want to go out for consultation in a few years' time, I am certainly not of the belief of the claim that the hon. mover has made that the whole industry wants this.

We know of two sections of the industry – I could name them here, but I am not going to –  
4180 who are pushing and we know *why* they are pushing to take tighter control of the regulator. And I will fight that because they are independent and as far as when I have sat on their board, they are still independent. I fear in the future if we do not have somebody strong on the board looking out for this, that we are in danger of having our board influenced quite drastically from the outside. It is obvious today that I know, as I said, who these people are, and they have  
4185 already lobbied an awful lot of people today to try and get them to move this motion. They have lobbied me continuously for the last two years to try and get me to support this amendment today.

So all I can say to you is, I know we are in Committee at the moment and I am not really summing up, but I would ask you today not to support this clause. If you feel so strongly about it  
4190 in the future, after the Bill has gone through, after we have finished with the secondary legislation – you could still have time to do it before the end of this parliamentary session.

Hopefully, it is not going to take another two-and-a-half years to get this Bill finished and moved on. But if any of you want to bring something back and do it, then will be the time.

4195 This is not the time; the Commission does not believe it is the time; I do not believe it is the time.

Thank you Mr Speaker.

**The Speaker:** Mr Shimmins.

4200 **Mr Shimmins:** Thank you, Mr Speaker.

I was very surprised by that in terms of 'this is not the time, wait a couple of years' – surely the clauses section of the Bill *is* the time to discuss these things. (*Interjection by Mr Malarkey*)

4205 I would just like to ask the Chief Executive of the Communications Commission, in terms of his experience with the Broadcasting Authority of Ireland, is there a political chair on that board? Is there a political chair on the Ofcom board, to the best of his knowledge?

**The Speaker:** Mr Kiely.

4210 **Mr Kiely:** The Broadcasting Authority in Ireland, I do not believe there is. But I do not have a whole lot of experience with them; my experience is more with the Communications regulator there.

In terms of Ofcom, I believe the Chair is a member of the House of Lords. I cannot think of his name off the top of my head, unfortunately ...

4215 **The Speaker:** Mrs Caine.

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

I welcome the debate today and the chance to go into Committee, but a couple of points and questions for Mr Kiely.

4220 This Bill was extensively consulted on and I believe you had numerous submissions. Could you confirm that some of those submissions included the opinion and the viewpoint put forward that the political Chair should be stopped?

4225 **Mr Kiely:** Yes, they did; and some did not.

**Mrs Caine:** Do you know how many submissions, or is it extensive?

**Mr Kiely:** I cannot remember exact numbers now, off the top of my head.

4230 **Mr Malarkey:** It certainly was not everybody.

**Mr Kiely:** I would be hazarding a guess. I can look and find out some other time.

4235 **The Speaker:** And along with answering political questions, guessing is also up there on the list! (*Laughter*) I would really rather –

**Mr Kiely:** That is why I was avoiding it.

4240 **The Speaker:** Okay.

Mr Robertshaw.

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

4245 I just want to respond to a couple of points made by the Minister there, which leave me a little bit uneasy. The idea that a regulator can only function well with a political head is a contradiction in terms. It is like suggesting the FSA or the Gambling Supervision Commission would work a lot better if they had a political head, which of course is nonsense.

The fact of the matter is that regulators in the new world that I would see under the terms of the Minister of Policy and Reform's 'one public service' concept; (**A Member:** Ooh!) regulators as a whole would sit outside that body and as such would not have political involvement.

4250 The FSA and the Gambling Supervision Commission function perfectly well when it comes to legislation in their relationship to this House – as I am sure we would find an appropriate route for the Communications Commission to do the same thing.

Thank you.

4255 **The Speaker:** Mr Callister.

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

4260 I am struggling with this one, actually, if I am being honest. I actually disagree with my colleague from Douglas East, because I sometimes wish that we did have a political Member on the FSA at times, to report back and to have oversight to us about actually what is going on there. But realistically I am not sure if this question is for the witnesses or for the Minister.

4265 But I was wondering if it is possible they could just give a little bit more explanation with regard to why they feel the timing is not right? I am really struggling with why you feel the timing is not right, because if a decision is to be made let's make it today, or whenever. I am just trying to understand why you feel the time is not right to make the decision today.

**The Speaker:** Mr Malarkey.

4270 **Mr Malarkey:** Yes. Within the industry there is an awful lot of change going on at the moment. As I explained to you, this Bill has been five years in the making. A lot of what is in this Bill gives far more power, for a start, to the Commission and it does actually extract the Council of Ministers from decisions in several places.

4275 We believe at the moment, because of the additional legislation that requires to come through, you really do need a political Member sitting on the board to find out what the legislation is all about. I mean, I will be honest, I have struggled today in places and I have sat on every board and I have listened to every discussion, and I have been through this Bill several times *with* the board, and with the amendments after the consultations and everything else. This is not simple legislation and I do not think it would be right ...

4280 What would be the alternative? Well, you would have to have *some* political connection somewhere. You would have to have a sponsor Department. So who is the sponsor Department going to be? Is it going to be my Department? Because that is probably who I will end up with.

Am I supposed to take legislation through on stuff that is handed in front of me when I am not sitting on complicated legislation (**A Member:** Yes, yes.) to find out what it is all about within the board? Yes, that is fine. I do not believe so.

4285 So if it was given to my Department as a sponsor, today I am in here moving these clauses as the Chair of the Commission. I am one vote. I am 'Billy No-Mates'. I have got no political backing whatsoever on this occasion. Yes, I probably have the Council of Ministers. (**A Member:** Yes!) I hope so! (*Laughter and interjections*)

4290 But what I am saying is, if ours was the sponsoring Department and there was something coming through, I would have collective responsibility; I would expect to have three votes in here – I would have had my two Department Members and myself. Right? I would actually have more power than I do at the moment as a single Chair to the Commission. So you are actually giving more political power if you are going to take the Chair away and then make a Department a sponsor. (*Interjection by Mr Robertshaw*)

4295 So just going back to the argument, this is not the time because of the amount of legislation  
that is going through and because of the amount of things that are going through the  
Communication Commission at the moment – there are lots of licences going on. We have the  
Programme for Government with regard to broadband going on. It fits very much with the  
4300 Communications Commission as it does with the Cabinet Office, and as it does with all of us with  
what is going on. It is important to have your finger on the pulse, in my opinion.

I am not stuck in the ground with this one. If it wants to come back in two years' time, or  
18 months' time when we have the legislation through, and you want to have a full debate  
about this – and it is extremely easy to bring a motion forward to change that bit of legislation –  
it can be done then.

4305 I am asking Members today to reject this and let us get on with the Bill.

**The Speaker:** Mr Baker.

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

4310 I would just like to ask some questions of Mrs Caine, who has brought this amendment,  
which I understand is on behalf of the Digital Agency – so I presume that is distinct from the  
Department for Enterprise, you are bringing it purely for the agency?

4315 Could you clarify for those of us who are not as close to the fine workings of the agency  
model, the links between the Digital Agency and the Communications Commission? It is  
obviously a key relationship. But it would just be useful to understand a bit more about that.

And could you articulate why you think that this change is necessary? What the issues are  
with what we have currently got? And how replacing a political Chair with a non-political Chair  
will actually help? Just so we can understand a little bit more about the real benefits of what you  
are proposing.

4320

**The Speaker:** Just while Mrs Caine is putting her thoughts together on that one, I know your  
wish to pick some other comments as well. I will just bring in Mr Hooper at this point.

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

4325 This is quite interesting really from my perspective. The Minister has said it is essential that  
we have a political Chair in order that he can take the Bill through this House and yet every  
single technical query that has been referred to the Minister he has thrown straight to the  
officers. (*Interjection by Mr Malarkey*) A responsible Department Member could do that just as  
well as a Minister being a political Chair. It does not seem to make a lot of sense to me.

4330 The officers were asked earlier whether or not the Minister reckons we should consult on  
this. Well, he did consult on this in 2015, and correct me if I am wrong here: you consulted on  
this and this was one of the questions in the 2015-16 consultation. It was also done as part of  
the update in 2017. It has been consulted on twice and you were not able to provide the detail  
of how many respondents were in favour of, or against. But I can go through that just to help a  
4335 little bit.

The respondents to the consultation who were in favour of a political Chair included Douglas  
Borough Council, the Department of Infrastructure, Mr Henderson and e-Ilan Communications –  
all Government bodies. The respondents who were either against a political Chair or who viewed  
it as out of step with common regulatory practice and had the potential to cause a lack of  
4340 confidence were Sure, Manx Telecom, 3FM, Manx Radio, Vodafone, Domicilium, MICTA – the list  
goes on.

4345 So on the one side we have Government bodies telling us it is essential we have a political  
Chair and on the other side we have a broad range of industry telling us we should not have a  
political Chair – and that is not just one tiny sector of industry that has been referenced, that is  
*everyone*. So on the one side, I will admit some of those people did say ... like Vodafone's  
response was: 'Actually, we think it should be independent, but on balance we don't really

care' – because I think they are not an Isle of Man operator so it does not affect them quite as much as it affects some of the others.

4350 But in reality we have industry on the one side saying: 'International norms are you do not have a politician involved in regulation'; and on the other side we have Government saying: 'Yes we do and yes we should, because it is the right thing.' But actually we have not heard a properly articulated reason as to why that is the case.

4355 I think the sponsoring Department model seems to work quite well for the FSA and the GSC and for other regulators that we have. I do not really see the problem with that. I really just thought I would try and clarify some of this because we have consulted on this; we have asked the question; we have had a response – and in their very detailed response document the Communications Commission sets out a lot of this along with their rationale for keeping the *status quo*. And really it does not amount to much more than the Communications Commission seems to feel more comfortable with a political Chair. They have not made a rational argument  
4360 as to why it is necessary, other than 'It's always been done this way and we would like that to continue'.

**The Speaker:** Mrs Caine.

4365 **Mrs Caine:** Thank you. Are we still in Committee? (**A Member:** Yes, we are.) Just to come back on a few of those points; and then I have also got a question of my own if it is all right to ask?

So I am well aware that Mr Malarkey is an enthusiastic member of the Communications Commission and has spent years bringing forward the legislation, and I am grateful to  
4370 Mr Hooper for highlighting that a lot of the industry feedback to the consultation was very much in favour of removing the political Chair.

Now, I met with the officers at the Communications Commission with the media panel, and if you think of the Digital Agency Board as the industry body established under the Department for Enterprise but given the freedom to go ahead and grow the industry, the digital economy of the  
4375 Isle of Man ... And there are representatives on there from a whole host across the spectrum of digital businesses and that includes a small number of people with a media interest. It was a small sub-committee including Deb Byron from the Chamber of Commerce, including Richard Arning from SES and including Kurt Roosen from MICTA who attended the office and had the discussion. And the feedback that we were left with was that it was very much a political  
4380 decision and that, although it was consulted on, the feeling that we were left with when we expressed again the feeling – for all the reasons articulated so well by Mr Shimmins – that other regulators are separate and the perception of that separation is not seen as interference, but there could be the perception of influence or a closeness that actually is not healthy in the terms of a modern regulator.

4385 The impression that we were left with was that, despite all the feedback from the industry that was very firmly against retaining the political Chair, the Communications Commission, in particular the Minister, were in favour of it because that was how it was and they liked it that way and there was this huge amount of legislation coming forward.

But that takes me to saying why would we have – when media, along with many other  
4390 industries, is very fast-moving and changing and there are always new technologies and new regulation – primary and secondary legislation will be coming. It is my understanding that this legislation will go forward and when it comes into force that will be on a day that is appointed. So when it comes into force could that be the time that the political Chair is removed? And until that time of bringing forward all the regulations wouldn't it be that you could go ahead and you  
4395 could bring all your regulations, and at that point the political Chair would no longer be there? And, as with all the other regulators, a suitable person appointed by the Council of Ministers and brought before Tynwald for approval would be approved in the same way that other regulators are?

I have got one final question, so I do not know if you wanted to answer that?

4400

**Mr Malarkey and another Member:** What was the question?

**Mrs Caine:** So that political Chair could be retained until the regulations are brought in; and when this Bill is enacted that is the point where the political Chair would fall.

4405

**The Speaker:** Mr Connell.

**Mr Connell:** For the benefit of *Hansard*, Howard Connell, Chief Legislative Drafter in the AG's Chambers.

4410

The answer is that the power to appoint a day includes a power to appoint as many days as you like and it would be possible, assuming that Mrs Caine's amendment went through, not to commence that until such time as it appeared to be convenient to do so. (**A Member:** Hear, hear.) And one can include all sorts of transitional provisions about how they consult on who the next Chair should be, (**A Member:** Absolutely.) as part of the appointed day process.

4415

So the answer is it does not all have to happen at once and obviously, even if the amendment were to be accepted today, it could not come into operation until such time as it had received Royal Assent. That would be the earliest date, which would probably be some time next year.

**The Speaker:** One more, Mrs Caine?

4420

**Mrs Caine:** Thank you very much.

My final question was a point raised by the Hon. Minister and mover of this Bill, which was that he was just a single, 'Billy No-Mates' Chair of the Communications Commission: and therefore could I ask the Chief Minister and the other Ministers here, is this a free vote? This is a parliamentary matter, it is a political principle of whether we think the head of a regulator, the Chair should *not* be a political appointment; and do we assume then that the Council of Ministers is not supporting a Minister, but having a free vote on the matter?

4425

**The Speaker:** Mr Shimmins.

4430

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

I am listening to this debate intensely but what I am not hearing is any *real* justification for a political Chair. I am hearing a reluctance to change; I am hearing, 'We are very busy' – but no *real* justification about why we have wished to retain a political Chair. I would put to Hon. Members that we need to take a bit of a step back and understand *why* it is not sensible to have political chairs of regulators. We do not have that for the Financial Services Authority or the Gambling Supervision Commission and the reason for that is to create public confidence that there is no political interference, that there is nobody who could be perceived as just steering things either in a helpful way for them personally politically, or for their political grouping whatever that may be.

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4440

Now, I am not in any way suggesting – let me make it absolutely clear – that is or has been the case. But there is a real risk with a political Chair that that could happen and that is what we need to be aware of. I would suggest to you, Hon. Members, that there is much more of a need for independence with the broadcasting regulator than with the Financial Services regulator or the Gambling Supervision Commission, because in reality it is much less likely that there will be a conflict, or a perception of bias, for those regulators than for broadcasting – which is inherently political.

4445

So I really want to hear *why* we need a political Chair. I am not hearing that justification. Now, I put to Hon. Members we need to hear that and if we do not hear that then we should not support it. Thank you.

4450

**The Speaker:** Mr Baker.

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

4455 I actually think the case is for the mover of the amendment to make the case for the change. It is not for everybody else to sit back and defend the *status quo*; it is for somebody who has put in an amendment to convince this Hon. House that we should support it.

4460 I asked Mrs Caine four questions, and she beautifully asked about four questions for everybody else and did not answer one of mine. So could she please try and answer the questions that I asked her a couple of minutes ago if she wants my support for her amendment?

**The Speaker:** Mr Robertshaw.

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

4465 Can I partly reply on Mrs Caine's behalf here, because it is not for her to prove an anomaly. Currently the situation we have got with the Communications Commission *is* an anomaly because the appropriate place for regulators is to be outwith political influence. We all agree that. We have all done that elsewhere. We know it is correct. It is for those standing against the mover's proposal here to argue the case as to why there should be a special anomaly. It is the *reverse* of the situation.

4470 So I do not think there is anything for Mrs Caine to answer. I think it is for those who want to support the *status quo*, who want to argue their case. And so far I have not heard a thing. In fact, actually the Minister did a great job of arguing against himself when he was trying to put his case forward.

4475 So, it is for that side of the argument to tell us clearly why it is a special case and it should be an anomaly – because it is not, it is a regulator and it should sit outwith direct political influence. It is simple.

**The Speaker:** Mr Hooper.

4480 **Mr Hooper:** I just thought it might help, Hon. Members, if I briefly read one or two of the consultation responses specifically in relation to this, just to try and make the case for Mr Baker.

[So one of the consultation responses stated:](#)

A report by ICC in early 2000 also recommended the Chair of the Communication Commission should not be a political appointee for the exact reasons that were detailed in the Consultation document.

4485 So the consultation document itself laid out a number of reasons why we have a political Chair and then the independent report said: 'All of those are very good reasons *not* to have a political Chair'.

There is another response from Manx Radio, which talks very briefly about why there should not be. This is from the Communications Commission response document.

One of the responses stated:

"The Commission should have no political members as this is incompatible where one of the licence holders is enshrined as a PSB" (Public Service Broadcaster).

... "regulation independent of the State is vital to preserve the right to freedom of speech" and that a political chairperson would not give telecoms operators the comfort that the Commission "is an impartial, independent body, free from political pressure" ...

4490 One respondent commented that an independent Chair would be preferred, especially as the state Government on the Isle of Man, through e-llan Communications, 'the Government has a direct financial interest in telecoms regulation'. And so having a member of the Government on the board as Chairman may not be seen to be entirely impartial.

One of the comments stated:

... "the chair should represent an independent and informed view".

4495 And probably, quite easily, SES's response in January 2018 to the technical consultation argued:

"It is highly unusual in a European market to have direct political oversight of a Communications Regulator. We very strongly urge a review of this relationship. It is against recommended good practice and could be seen by inward investors as a serious risk of political intervention in their business, and thus a disincentive to invest on the Isle of Man."

4500 These are all publicly available statements in the consultation document and the consultation response that are available online. These are all *very* good reasons why we should not have a political Chair of the board. In response, all we have heard is we need to keep one because we like it; and we have not had any more detailed reason other than, 'It's the way it is'. And yet all the technical detailed responses that were provided made very strong and quite well-made cases about the impact having a political Chair at a regulator could have.

4505 I think Mr Shimmins has summarised it quite nicely. Part of it is about confidence; part of it is about being seen to be impartial as well as actually being impartial. It is the perceived risk as well as the actual risk that we are trying to deal with here.

**The Speaker:** Mr Quayle.

4510 **Mr Quayle:** I would just like to comment on the names that Mr Hooper has read out, Mr Speaker; and I think, if anything, he has just given an argument why you *should* have an independent Chair of a political Member, because those are businesses looking after their sector. *(Interjections)*

4515 We have seen some 'interesting profits', shall we say, from some of these companies and I think having a political Member on board who has not got a majority – he is just one vote in five, so he can be regularly outvoted – but just keeping an eye ... I have got no problem with that.

**The Speaker:** Dr Allinson.

4520 **Dr Allinson:** Mr Speaker, I apologise if I have put the Commission in a difficult position, but I think the debate has shown that it is a political matter and there are differences of opinion. Can I suggest that we come out of Committee of the House and actually vote on this motion?

**Several Members:** Hear, hear.

4525 **A Member:** Yes. I second that.

**The Speaker:** Overwhelmed with seconders for that motion. Is that agreed, Hon. Members?  
**(Members:** Agreed.) Thank you.

*The House moved out of Committee and business was resumed.*

4530 **The Speaker:** In which case business being resumed, we have the right for Mrs Caine to sum up if she so wishes?

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

I think it is entirely a political decision. I think it is on Members' perception, where they stand, whether they think it is more important to have a political Chair or an industry Chair who is

4535 tasked to carry out the regulation of a media regulator with the impartiality that we put on all  
our regulators; and in a modern democratic system, especially as Hon. Members have  
highlighted, where this involves a regulator of the public service broadcaster, the perception of  
separation of Government from that is very important.

I would like to thank particularly Mr Shimmins and Mr Hooper for their input. I apologise if I  
did not respond to Mr Baker's questions, but I think they have been answered and it is very  
4540 much a political decision whether you feel that this is the time, when we are processing and  
approving the most comprehensive substantial amount of legislation governing the sector of  
communications on the Island, to decide whether we think the political Chair of the regulator is  
out of step.

I thank the legislative drafter, Mr Connell, for pointing out that it does not all need to happen  
4545 in one fell swoop and that actually the Appointed Day Orders could be staggered to reflect the  
fact at the point where all of the legislation and the regulations have been drafted and therefore  
the need for that political input would fall.

But I think that substantially Members will probably have made up their mind already. I think  
it is indefensible in a modern, democratic, well-regulated jurisdiction that we should even  
4550 contemplate having that direct link between the Council of Ministers and a regulator, where it  
would be better to be open, transparent and have the separation with experts in their field. Why  
would an expert from a company be any more likely to be influenced or have a vested interest  
than a Minister with one foot in Government and one in the regulator?

I must emphasise there is no reflection on how it has been. I am informed that the history  
4555 was that the Home Affairs Minister, who is now in law the person who is put in as the political  
Chair of the Communications Commission, that was done because at the time TETRA, the  
emergency communication system, was going in and it was just a logical fit at that time. But I  
think we are seeing that with all the legislation coming before us the new world of  
communications regulation on the Isle of Man deserves an independent Chair.

4560 I beg to move.

Would you like me to do the detail of the clauses or later?

**The Speaker:** I beg your pardon, Mrs Caine.

4565 **Mrs Caine:** Would you like me to specify what the detail of the amendments are?

**The Speaker:** You are summing up (**Mrs Caine:** Yes.) so the detail of your clauses, if you wish  
to revisit them – (**Mrs Caine:** Okay.) How you sum up is entirely in your hands.

4570 **Mrs Caine:** It is just to say that amendment 1 – the reason there are so many stages of this –  
removes the status of the Commission as a statutory board in order to entrench the constitution  
as set out in the amendment to Schedule 1 of the Bill.

Amendment 2 amends the provision paving the introduction of the Schedule to reflect the  
inclusion of the constitutional material in relation to the Commission and the Schedule itself.  
4575 Amendment 7 amends the heading to the Schedule to reflect its expanded content; and  
amendment 8 re-enacts in the form of primary legislation the essential provisions of the  
constitution of the Commission apart from the political Chair.

Thank you, Mr Speaker.

4580 **The Speaker:** Mr Malarkey to sum up on the clause.

**Mr Malarkey:** I think enough has been said.

I do not really think, Mr Speaker, there is an awful lot more I can say. I think the debate has  
been had. I think everybody was right; it is a political decision. I think it is something that, if it is  
4585 not resolved today it will be resolved at another time. There will be time for another debate.

I have made my views quite clear, Mr Speaker; I have made that of the Communications Commission quite clear. Certainly, it is not really going to affect me personally, Mr Speaker – I make that quite clear, because by the time this comes into action or whatever, we will almost be at the end of this sitting of this parliament. So I personally think that we should reject the amendment today and stick with the clause.

Thank you.

**The Speaker:** Hon. Members, because of the interconnection between amendments 1, 2, 7 and 8 that Mrs Caine has put down, I am going to put them together because they stand all four together. So I therefore put the question whether amendments 1, 2, 7 and 8 be approved. Those in favour, please say aye; against, no. The noes have it.

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

**FOR**

Miss Bettison  
Mrs Caine  
Mr Callister  
Ms Edge  
Mr Hooper  
Mr Moorhouse  
Mr Peake  
Mr Perkins  
Mr Robertshaw  
Mr Shimmins

**AGAINST**

Dr Allinson  
Mr Ashford  
Mr Baker  
Mr Boot  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Mr Harmer  
Mr Malarkey  
Mr Quayle  
Mr Skelly  
Mr Speaker  
Mr Thomas

**The Speaker:** There were 10 for, 13 against. The noes have it. The noes have it.

Putting clause 8 and Schedule 1 without the amendment: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Malarkey to move clauses 3 to 7.

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

Hon. Members, I now finally return to clauses 3 to 7 which define general and specific terms used in the Bill which reflect industry and regulatory standard terms. I took these clauses out of order to assist if any amendments were required to the definitions in the Bill.

Clause 3 defines general terms used in the Bill and also defines ‘public service broadcaster’ as Radio Manx Ltd and the public sector broadcasting obligations.

Clause 4 defines ‘electronic communications network’ and ‘electronic communications service’. This updates the narrower definitions in the Telecommunications Act 1984 of telecommunication systems and apparatus to reflect the UK definition from the Communications Act 2003 and the EU definition.

Clause 5 defines ‘available for reception by members of the public’ and excludes on-demand programme services from this definition.

Clause 6 defines ‘programme service’ and provides certain exceptions. In broad terms this does not include internet services or two-way services.

Clause 7 allows for Council of Ministers to amend the preceding provisions of the division by order if it appears necessary or expedient to do so. There are other similar change provisions in the Bill. During the lifetime of this new legislation, technology will evolve and the nature of the business models that support the innovation and investment will change in tandem. In order to provide the regulatory and legislative certainty needed to help foster investment, the Bill has adopted a technology and service neutral approach. By not themselves prescribing or defining

services and markets, the Bill's provisions do not inadvertently prevent innovative services from being rolled out in future. The flexibility inherent in the legislation provides the opportunity to cater for such developments and quickly respond to societal and industry needs.

4625 Mr Speaker, in moving clauses 3 to 7, I would like to thank the Hon. Members of this House for their patience today, especially when I have stuttered in a few places, and the speed at which we have managed to do this in one flow of moving.

At that, I wish to move clauses 3 to 7 stand part of the Bill.

4630 **The Speaker:** Dr Allinson.

**Dr Allinson:** Mr Speaker, I beg to second these and say it has been six years, a long time coming, but I would like to congratulate the Minister for bringing this through in one sitting.

Thank you.

4635

**Several Members:** Hear, hear.

**The Speaker:** I put the question that clauses 3, 4, 5, 6 and 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4640 Hon. Members, that completes the business on our Order Paper today. The House will now stand adjourned until 5th March, 10 o'clock, in our own Chamber.

Thank you.

*The House adjourned at 4.15 p.m.*