

**1. Communications Bill 2018 –
Second Reading approved**

HM Attorney General to move:

That the Communications Bill 2018 be read a second time.

The President: We turn to our Order Paper. Item 1, Communications Bill 2018, for Second
10 Reading. I call on the learned Attorney General.

The Attorney General: Thank you, Mr President.

If I could please start by stating for the record that in moving this Bill be read a second time and,
perhaps by way of reminder to Hon. Members of Council, that I do so on behalf of the Council of
15 Ministers. I am acting on instructions and have no view on any policies underlying or relating to the
Bill and its provisions. I can, however, indicate to Hon. Members that in my opinion the Bill is
compatible with the Convention of Rights within the meaning of the Human Rights Act 2001.

As I stated in my First Reading speech, the purpose of this Bill is to provide the legislative basis
which will enable the telecommunications and broadcasting industries to move forward with
20 changing technologies and new investment, which will benefit consumers and businesses.

The Bill's provisions are accordingly mainly technical in nature and provide a framework for
economic regulation which will underpin these industries, providing certainty and stability in the
regulatory environment. These businesses are ones in which certainty, order and long-term
investment are key. The organisations the Commission deal with are accustomed to consultation,
25 engagement and having a clear path of action laid out for them by their regulator in a fair,
reasonable and non-discriminatory way.

Two weeks ago, at the First Reading of the Bill Members expressed strong views which were also
voiced in the Keys when the Bill was considered by them on the issue of the political chairmanship of
the Commission. The Commission recognises that this is an important matter and one that is worthy
30 of further discussion and debate.

In October 2018, Tynwald unanimously accepted the National Telecommunications Strategy and
all of its recommendations. One of those recommendations was:

To help develop regulatory certainty within the Isle of Man telecoms market the Communications Commission should
seek to review its process, procedures and structure on enactment of the Communications Bill.

The Commission has therefore publicly undertaken to review its structure following the
implementation of this Bill in line with the National Telecommunications Strategy.

35 The Commission's view on the issue of whether there ought to be a political chair has remained
the same: they respectfully ask that you be patient and allow the various models that are used
elsewhere and any potential impact for industry and consumers, to be discussed and evaluated.
While there are some fears expressed in relation to the potential for political interference in the
Commission, Hon. Members should bear in mind that the Chair of the Commission is only one
40 member with one vote.

It is made clear in clause 8 of the Bill that the Commission must exercise its functions under the
resulting Act independently of any other body. The Bill specifically states in clause 9 that the Council
of Ministers must not direct the Commission in relation the performance of the Commission's
functions with respect to licence holders or applicants for licences.

45 It is evident from Members' comments at the First Reading of the Bill that there are also strong
feelings in Council about the Commission's political chairmanship, and Members are no doubt
concerned about the perception to which that gives rise.

Mrs Lord-Brennan made a valid point at First Reading that, in her view, the Chair should not be
an industry chair, but rather should have skills in managing a board. Mrs Sharpe also made the point
50 that broadcasting, in particular, is likely to change. The Commission says that these issues should be

further explored in the context of considering its processes, procedures and structures which it is required to do under the National Telecommunications Strategy.

Mr Cretney and Mrs Maska asked for more information on how other jurisdictions manage the structure of their comparative communications regulatory authorities. In order to assist Council in its deliberations, the Commission has asked me to address this issue and has provided me with some data for the record.

There is no universally accepted best practice. There is, however, some insight into how other jurisdictions have established their national regulatory authorities. The Commission found in reviewing the analysis it was possible to establish that there exist three broad categories of governance structures: firstly, political, with a politician or senior civil servant as the chair of the board; second, organisations with an independent chair; and finally, organisations solely under executive management that do not have a board in a traditional sense.

Nineteen different jurisdictions were analysed across Western Europe, which include some other jurisdictions with small markets similar to our own. Of these 19, two have a political chair, seven have an independent chair and 10 are under executive management. It may be useful to provide some specific information in relation to some of the jurisdictions that Hon. Members may be most familiar with, or which are of similar size and scope to the Isle of Man.

In the UK, Ofcom is chaired by a crossbench peer with a distinguished background in economics; in Ireland, the Commission for Communications Regulation is under executive management. Looking at comparable jurisdictions to the Island, the Channel Islands and Malta have an independent chair at the head of their national regulatory authorities; Luxembourg retains a senior civil servant in their chair; and Iceland is under executive management. So there are, Hon. Members, as you will note, different governance models.

The Gambling Supervision Commission and separately the Financial Services Authority on the Island are often cited as examples of regulators here on the Island who have a non-political chair. The Communications Commission's view is that there is a significant difference between the roles of those two bodies on the one hand and the Commission on the other. The Gambling Supervision Commission and the Financial Services Authority are bodies that set and enforce much-needed technical and conduct standards in their respective industries with extensive investigatory powers supporting civil and criminal sanctions.

The Commission's role, however, is essentially as an economic regulator perhaps more akin to the role played by the Office of Fair Trading, which has a political chair. With that said, I take you back to the main focus of the Bill, which is to provide the Commission with the necessary tools to be an effective economic regulator. This is a comparatively complex and technical Bill that is much needed and anticipated by the communications sector, which is an essential part of the Island's economy.

I beg to move that the Communications Bill be read a second time.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President. I would like to second.

I would like to give some further information that I hope will prove useful for the Legislative Council while they consider this issue. The Commission says that it is looking for the appropriate time to consider any changes to its structure in an evidence-led manner. The issue of the political chair of the Commission has been raised in many fora and the debate is always vital. However, we cannot ignore the importance of other issues within the Bill so I would not want this to take prime position in looking at a rather extensive piece of legislation.

Alongside broadcasting, telecommunications is a key economic input that underpins strategically important sectors of the Island's economy. Without a properly functioning telecommunications market in the Isle of Man it would not be as attractive a prospect to sectors such as e-gaming and finance. So the Bill lays groundwork that underpins that sector.

105 The consultation responses in 2015 from the telecommunications sector, specifically Sure and Manx Telecom, state that they would prefer a non-political chair. Manx Telecom's views are based on their perception that the Government's involvement in e-Ilan Communications gave it a direct financial interest in telecommunications regulation.

Sure, however, was reassured by the Bill's requirement that the Commission must act independently of the Council of Ministers. Douglas Borough Council recommended that the chair should be appointed by the Appointment Commission with Tynwald approval, and MICTA suggested that the chair should represent an independent and informed view.

110 In the broadcasting space the responses were from 3FM and Manx Radio, and 3FM 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).

Manx Radio's opinion was that:

... regulation independent of the State is vital to preserve the right to freedom of speech

– and that if the chair was to be retained it should clearly be stated that the chair only has equal voting rights, which is the case, and should be silent on all broadcasting matters.

Isle of Media's response to the January 2018 technical consultation argued that:

It is highly unusual in a European market to have direct political oversight of a Communications Regulator ...

115 It says:

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

However, it can be said that there is no universally accepted governance model for regulatory authorities across Europe, as the Attorney-General has stated.

120 The Commission says that it is not resisting change but it does not agree that now is the right time to address its structure in this Bill. It has acknowledged that one of the arguments proponents of change put forward is that there is a risk of political influence on decisions made by the Commission. It says that is not the case.

125 Investment in telecommunications infrastructure is currently a live issue for the Island and not only are licence operators contemplating investment in 5G technologies and next generation networks, but Government intends to invest substantial public funds in the sector as outlined in the National Telecommunications Strategy. This brings the issue of regulatory certainty into sharp relief and it is one of the factors that typically are considered when investments are scrutinised.

So focused scrutiny is welcome in ensuring the Bill is fit for purpose and enabling in that regard and I would add that the Communications Commission is highly supportive of my colleague, Mrs Sharpe's proposal to widen the scope of the definition of public service broadcasting.

130 Thank you, Mr President.

The President: Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you, Mr President.

135 Last week I raised a concern that I had contacted the Communications Commission and asked them, in a public forum, to provide the information which Her Majesty's Attorney General has provided for us this morning. I do not think that we have had it separately – I might be wrong, I might have missed an email. I do not think we have had it separately, but if we have ... Again, for me it is more than a little unfortunate that we have not had the courtesy of us being sent this in advance rather than being told by the Attorney General in this morning's discussion.

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145 But what I have picked up is that 19 jurisdictions were looked at and two had political chairs. In the UK model, which has been spoken about, it is a UK crossbench peer. The Attorney General then went on to talk about comparisons on Island and talked about the OFT and that having a political chair. Again, yes it has a political chair but it is not a Minister; and in the UK the person is not a Minister, he is a UK crossbench peer.

I just think that is the point that is of concern to me and remains a concern.

The President: Miss August-Hanson.

150 **Miss August-Hanson:** Can I just state for the record that was amended to reflect that point. We are aware that he is apolitical, and so it is two. That is the correct amount; he has been discounted from that.

The President: Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

160 I just want some points of clarification from the learned Attorney. I am at somewhat of a crossroads with the particular cause in question in relation to a political chair. In 2014 I voted with many colleagues in Tynwald at that point with a Select Committee report, and in one of the recommendations within it we voted to remove the political chair at that point. It was not successful but I just put my notice of intent on the record and a pre-declared position to a point, which would give me quite legitimate rights if I so wish to support the Hon. Member of Council, Mrs Lord-Brennan's aspirations.

165 However, the reason to be at a crossroads is the point that the Attorney General raised earlier with regard to the 2018 Telecommunications Strategy. I would just like him to reconfirm that within that approved Tynwald strategy – the approved Tynwald resolution – it was confirmed there that a political chair should remain for the foreseeable future with an appendix to that open for review or words to that effect. But, nonetheless, if he can confirm there is a Tynwald resolution live and active currently as a result of that, that says the political chair should stay *pro tem*.

170 I would further like him to confirm that as a result of the Tynwald debate in 2014 – a Select Committee into Manx Radio debate – that at recommendation 3 or 4 there was a debate with regard to Manx Radio and the retention of it as the Public Service Sector Broadcaster, which was carried. So if I have this right, Eaghtyrane, there are two pre-existing live Tynwald resolutions that make those facts very plain – and plenty of the voting on the recommendation was unanimous.

175 Then we have the House of Keys very recently passing this Bill and on the Third Reading I think the Bill passed unanimously. So we have a policy direction from the House of Keys live on the table as well.

180 So I just want the Attorney General to clarify that I have the facts of the matter correct as far as the two live motions are current and live – and maybe we might need our learned Clerk just to give a little background to that – and also the fact that currently the political will of the House of Keys and the Department of Home Affairs is that they are supporting the Bill in its current format.

185 We just need to have that clear on the ground first so we know what environment we are operating in going forward with this Bill, Eaghtyrane. I think you can see exactly where I am going with this because it *could* be – I am not saying it will be – but it could be that we end up in a bit of a pickle with this, and Legislative Council are out on a limb with regard to direct confrontation with two Tynwald resolutions and direct confrontation with the House of Keys – or conflict, anyway. I will leave it there, Eaghtyrane, in making those points.

190 **The President:** Mr Attorney, would it be helpful if you were to deal with Mr Henderson's points now?

The Attorney General: Yes, thank you, Mr President. I thank Mr Henderson for the queries he has raised and if I could just work backwards on those for the moment?

I think, as I said in my First Reading speech, the issue of a political chair was considered in the Keys when it considered the Bill and an amendment was tabled and debated upon which would have addressed the issue of a political chair, and that was defeated. So the Bill in its present format is as approved by the Keys and you can take from that the will of the Keys is that for the time being the issue of political chair should not be addressed in this Bill.

Moving then back to the Tynwald debate in 2014 with reference to the Public Broadcaster, Manx Radio, and the decision which the Keys reached at that stage: this Bill does not impact on that in any shape or form whatsoever and is not intended to, and I understand that an amendment will be brought forward to actually clarify that by a Member, which will be supported by the Commission which will make specific reference to Manx Radio within the Bill itself.

Then turning to the issue of the National Telecommunications Strategy which I have referred to, Mr President: it would be wrong of me to second guess what might have been in the mind of Tynwald at the time it made its decision to support unanimously that strategy. I cannot say with any certainty whether or not it was actually debated and decided upon that the issue of the political chair shall remain as it is for the time being. All I can take from the resolution was, as I said in my Second Reading speech this morning that the conclusion, again accepted unanimously ... And I repeat what I said, the decision was:

To help develop regulatory certainty within the Isle of Man telecoms market the Communications Commission should seek to review its process, procedures and structure on enactment of the Communications Bill.

So Tynwald was clearly of a mind at that stage that this Bill was to come forward and, following the enactment of that Bill, the question of the structure and processes would then be determined. And, as I think I have already mentioned at my First Reading speech, the Commission has already gone out and started the consultation process in that regard. So at that point in time the issue of the political chair will certainly be addressed.

Thank you, Mr President.

The President: Thank you, Mr Attorney.
Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I would like to thank the learned Attorney for bringing such comprehensive information based on the things that Council certainly felt were needed at the past sitting; and it was particularly interesting to hear the information about the set-up regarding the regulatory authority, particularly to do with what sort of chair they have in other countries as well. Also, I would like to thank the Hon. Member, Miss August-Hanson for the summary again of actually the relevant consultation responses that really do seem to be along the same theme.

Perhaps the phrase, or the two words, that we have heard most in this entire sitting have been about what the Commission thinks and I think it is quite fine. The Commission may decide to consult and consider and review its procedures and they have given their insights as to what they, the Commission, would like to have. But it is down to the Legislative Branches to set the parameters here and it is perhaps not for us to say, 'Right, this is exactly how we want you to do something', but it is appropriate I feel that we set the boundaries and then the Commission, as the regulator, would respond to that.

I think in some ways it is helpful to have the information from the Commission. In other ways I feel slightly conscious that perhaps we are being steered towards a certain direction which I think, to be honest, the Commission should await the outcome of what is decided by the Legislative Branches. So I just think we need to be mindful that we are hearing a lot about what the Commission wants and that we should just consider about what is appropriate in terms of how we deal with this Bill before us. It is for us to settle.

240 The comments about the Gambling Supervision Commission and the Financial Services
 Authority – is it Authority or Commission now? I forget. **(The Attorney General: Authority.)**
 Authority. I shall change that C to an A. I mean, those are really good examples of how governance is
 approached positively and proactively and I do not really feel that I am convinced by the Commission
 245 making a statement that they should somehow be an exception or require a different approach. So I
 will be looking at that further and indeed I have already started looking at what the set-up is around
 the FSA and the Gambling Supervision Commission.

I think rather than take assurance from the Commission that they will decide to go off and sort
 out these problems and then therefore based on that assurance we should not have to effectively
 draw a line. I think it needs to be something more than assurance. I do not think we would accept
 250 assurance from the other statutory boards or the other regulatory bodies that are very well
 respected, and I do not accept that it is just to say, ‘Oh well, economic regulation, that’s all it is,
 don’t worry about it’. Actually, broadcasting is involved here and so we need to be looking at the
 relationship between connections both ways – both between there being a political chair of the
 Communications Commission but also the other way coming back into the set-up that we have here.
 255 But I am encouraged to hear that there is intention to change and if there was to be a change within
 the framework of the legislation then, to me, I would take that as readiness and openness on the
 part of the Commission to put something in place to address concerns.

The concerns were well-voiced in the House of Keys and in fact I have been talking to Members in
 the other place, based along the timeline as to really how long a political chair of the
 260 Communications Commission is required and I am receiving quite varied responses. There are quite
 strong responses to say, ‘Actually it is not needed at all now’; and others that are being a bit more
 pragmatic to say, ‘Okay, we recognise that timing is the issue and secondary legislation is something
 we would feel that we can understand the arguments of it being brought through’. That is the
 argument that is coming from the Commission, which is that it would aid the passage of secondary
 265 legislation that will need to be progressed really before the end of the next administration.

So I am trying to find what might be the sweet spot for acceptability to say, ‘Actually, we
 recognise that it is not correct and it is not where we should be, to have a political chair, but in terms
 of being pragmatic we recognise the case put forward about timing’. But we should not be
 pragmatic to the detriment of being robust in terms of what we are setting out here, and it is the
 270 time to deal with it. And if we have got industry representatives – those that are involved in the
 international scene and the likes of SES – strongly urging us to review, then that is something that
 we should be thinking about ourselves rather than taking a lead from the Commission.

So I would absolutely dismiss the idea that the Commission says it does not agree that it needs to
 be dealt with now. I would absolutely dismiss that and I think we need to look at it.

275 As has probably already been indicated – and as I have expressed to Members of the Council and
 also put forward to Keys Members, and also I have written to the Minister for Home Affairs who is
 the Chair of the Communications Commission – I have, based on conversations I had at this last
 sitting, and through talking to other Members, prepared an amendment that would seek to put a
 bar on a Member of Tynwald being Chair of the Commission. It is something that I will be putting
 280 forward and seeking to have conversations with other Members over.

There would be scope within that to recognise that for a period of time it might be helpful and
 beneficial to have the political chair in place, so that would therefore be recognising what the
 present Chair has said about actually this is helpful and this is needed for now. So it would recognise
 the short-term, put-forward need, with the long-term recognition that a political chair should not be
 285 something that is required indefinitely. The amendment will be very much in that sense and I do
 intend to keep having conversations about that and to find the level of acceptability within that.

I think just to pick up the point from Mr Henderson – and I thank him for his potential support of
 the idea of this amendment – I do not think we need to be worried about being out on a limb in
 terms of the House of Keys. There were 10 Members in the House of Keys that voted in support of
 290 the previous amendment. What we need to have at the forefront of our minds is actually what we

are doing is best for the Island and best for the structures that we have around the regulation and the governance of this. So it can really work both ways on that, I think.

I do not want to be out on a limb in terms of what we are doing with governance and making the correct provision in law because we are taking too much heed from perhaps what the regulator itself says.

Thank you, Mr President.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

I would like to thank the learned Attorney for the additional information he has provided to us today which is helpful and very interesting. And as my hon. colleague, Mr Cretney, has pointed out only two out of 19 have political chairs.

I keep an open mind in terms of what might result from further investigation that the Commission might carry out as to the appropriate structure of the Communications Commission ultimately. But it is important, if we are to retain the confidence of the sector in the Commission and our operations, that it can be demonstrated that the Commission's operation is at arm's length and has the confidence of this sector of our business that exists out there.

It just occurred to me that the Planning Committee also has a political chair, but not a Minister, and so we do have evidence there are other structures that operate successfully. So I do keep an open mind and I would be interested to see on the enactment of this Bill, what goes forward in a meaningful way with regard to looking at the structure of the Communications Commission and particularly its Chair.

Thank you.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would just like to underscore some of the comments I made previously and to ask the Attorney General, when we get to clauses stages, if he can provide some procedural information for Council with regard to the Telecommunications 2018 Strategy that was approved by Tynwald and is now a resolution of Tynwald; and in the matter and way in which that strategy proposed to address the issue of the political chair. And in particular, the strategy – as the learned Attorney has laid out, Eaghtyrane – laid forth a route to be followed inasmuch as the Communications Bill/primary legislation should come in first, and then a review of the structure of the Communications Commission should be undertaken immediately afterwards.

That is a resolution of Tynwald and I think we need some clarification at Second Reading because my understanding is, Eaghtyrane, that resolution is live and active at the minute; and that Legislative Council is not supreme to Tynwald. Tynwald is the highest Court in the land – they have passed that resolution and what I do not want is for us to be in open conflict with Tynwald Court.

I also replace my concerns with regard to what the House of Keys has passed. I do that in all earnestness because the policy has been clearly articulated albeit, yes, there was debate at the clauses stage with regard to the chair, but ultimately the Third Reading was passed unanimously – or virtually unanimously. There is a clear signal from the Keys, and I think we do have to take cognisance of the Department *and* the Communications Commission.

With any legislation or policy or strategy that comes through, of course the sponsoring person, agency or Department will be desirous of having that implemented and give us all the reasons why, and so on. And usually we have to take that as a matter of trust on them behaving professionally and operating within the law of the land, as it were. I have always been of the opinion that as a first point of principle if somebody says they are going to do something you give them the chance to do it and you place a degree of trust in that person, agency or Department, or whatever.

Now, if it becomes apparent months down the line of a verbal agreement given in, say, Tynwald Court, for example, that nothing has happened, then it is open to every Hon. Member of Council or Tynwald to pose questions to that Department, or otherwise, as to the progress of the verbal commitment they made, and to put them in the public spotlight and make them accountable and transparent in what it is they are doing; and, if necessary, to elicit a further agreement.

If it becomes apparent at that stage that there is some particular problem, then obviously we all have the options to go and see that Department or agency to discuss what the issues are. If there is a complete deadlock, as it were, and no desire to move any further then of course we can all come back and place a motion to Tynwald if we like or a motion in Council to make the point, or cause meetings to occur, and so on.

So I do not think it is absolutely necessary to put a legislative lasso round somebody at this particular point when they have made a promise that that is what they are going to do. We have heard from the Attorney General that things are being progressed so I am a little more minded to give some flexibility here currently to give the Department that chance, because they have made a verbal commitment. What we are saying has the potential of giving the view that, 'We do not trust you, Department of Home Affairs'.

So I think we need to be careful how we balance arguments and how it is we progress what we are doing. But nonetheless I would like to know the procedural position with the 2018 Tynwald resolution, Eaghtyrane, and what bearing that has here; and if we decide to go in an opposite direction then where does that leave Legislative Council in relation to the Tynwald resolution?

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would just like to state for the record that this is at arm's length from the Department of Home Affairs – the Communications Commission is not within the Department of Home Affairs. So to say that it would be a Department of Home Affairs Bill would be incorrect.

The President: Yes, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I would like to thank the learned Attorney for his comprehensive statement; and also Miss August-Hanson for her summary of relevant facts.

During our last sitting I did state that I felt it prudent not to tinker too much with this Bill but I have had further time to consider and I have come to the conclusion that there are perhaps some amendments which may be prudent to make. This Bill after all is a piece of primary legislation and as such it will be with us for a long time and, where we can, I would suggest that we need to consider future-proofing the Bill.

My intention is to bring an amendment before Hon. Members of Council during the clauses stage and if I may, Mr President, I would like to outline to Hon. Members a short overview of the amendment which will be in my name. Currently the Bill states in Part 1 that:

'public service broadcaster' means Manx Radio Limited ...

My point is that in real terms 'public service broadcaster' means any company which has an appropriate licence to provide a public broadcasting service. The broadcaster is the mechanism through which the service flows – it is the vessel or the conduit, it is not one company *per se*.

In seeking to move this amendment at a future sitting, Mr President, I would like to put on record that I am not seeking to unsettle or to undermine Manx Radio which, after all, does hold the public service broadcasting licence. Rather, I am recognising that this Act will be a piece of primary legislation, it will be with us for a long time and certainly it will be with us longer than either AM or FM radio. So I am merely seeking to future-proof this Bill.

On the subject of the political Member as Chair of the Commission, I think that where you have a Commission which has the power to regulate media output, it is inappropriate in any jurisdiction to have a political chair; but on a small Island where everyone lives cheek by jowl it is just plain wrong. We need to get this right because, as I said, this piece of legislation is going to be with us for a long time.

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I hear what the Hon. Member, Mr Henderson, is saying in terms of the fact that this subject has already been discussed in another place, but I would argue that here in this Chamber of course we have the right to debate and discuss that so we can come to our own conclusions. Otherwise why are we here?

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Thank you, Mr President.

Mr Henderson: Mr President?

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

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I think it is just worthwhile being really, really clear on this. It does not matter and it is perfectly fine if the Commission are themselves deciding to go and review their structure, and there is a Tynwald resolution saying that this will be looked at. They can do *all* of that whilst we still decide that actually in principle it is wrong to have a political chair of the Communications Commission in the long term – there is nothing stopping that. It is not for the Commission to say what type of Chair they would have; that is, quite correctly – as I think Mr Henderson has alluded to – for Tynwald. So I think we need to be comfortable here with what our role is in respect of the primary legislation. We will set the parameters and then the Commission can go off and take whatever approach it needs to fulfil that.

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So I really hope that we are not going to get almost bogged down in the other distractions of, ‘Well, what would the structure look like? How would they do it? Who will they talk to?’ And I hope we are not going to get bogged down by what the other debates have been elsewhere. We just need to focus in on this issue and think, ‘What is the right thing?’ The right thing is not having a political chair in the long term.

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Thank you.

The President: Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

I again wish to underscore, with a little more clarity, the commentary I have put on public record a little while ago in relation to the standing Tynwald resolutions.

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Now, the Hon. Member, Mrs Sharpe is quite correct, we can debate what we like in this Chamber and come to whatever conclusions we like – but there are protocols, procedures, Standing Orders and conventions that we normally follow. It is highly irregular for the Legislative Council, I would hazard a guess, to actually overturn or to vote against – or what would ostensibly amount to voting against – a standing resolution of Tynwald. There are other avenues to express your concerns and in better ways, I would say, than trying to do it through the Legislative Council whereby if successful then there is the potential for an open conflict with a standing resolution of Tynwald. Now, that is a matter of fact; that is what would happen.

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It would also obviously lead us to some sort of conflict situation, or the potential – unless in the interim to the clauses stages we learn otherwise – with regard to what the wishes of the Keys are. There is no overriding evidence that has been presented thus far to illustrate a national interest of urgency *now* to make the changes that have been suggested. We know from the record – and the Attorney General has placed it on the public record several times now – that the Department is fully intent on making changes following the legislation with regard to the structure of the Communications Commission. Now, to me, that is a fairly solid statement to make and is something

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that they are going to have to abide by, otherwise then they will face public scrutiny from Hon. Members; there is no question of that.

445 Then we have the issue of the 2014 resolution which I spoke of, Eaghtyrane, where Tynwald unanimously passed one of the recommendations in that report that Manx Radio be enshrined as the public broadcaster. That is a standing resolution of Tynwald. In this Communications Bill on its passage through the Keys, the particular clause that enshrines the will of Tynwald, as directed by Tynwald – we must remember this Hon. Members – the 2014 report was approved and the direction
450 given was approved, so this Department ... Not only is there some commentary about why Mr Gumbley drew up the clause in a message that went round, but one of the main reasons for drawing the clause up is to honour the word of Tynwald, or that resolution from 2014, to enshrine Manx Radio into primary legislation. That is a standing resolution, that is not just a Henderson viewpoint, that is what actually happened when I took part in that debate.

455 We then have the Communications Bill 2018 debated in the Keys and on the points of Manx Radio being enshrined in primary legislation, that clause and two or three others were held over to the end of the clauses stage to allow for amendments; but on debating the clauses stage the Minister for Home Affairs made it very clear and blatant that the effect of clause 3 was to enshrine Manx Radio in primary legislation. Every Keys Member knew exactly what that clause was and its
460 intention. The clause was voted through unanimously. So not only do we have a Tynwald resolution of 2014, a standing active resolution, saying that for the time being the issue of Manx Radio being enshrined in primary legislation, and directing it to be, we now have a unanimous Keys resolution on clause 3 supporting that Manx Radio be in primary legislation.

The Third Reading of the Bill in the Keys was unanimously accepted. Nobody mentioned – or
465 there might have been one or two dissenters – but in the main the Third Reading went through quite well and was well supported, and there was no mention at the Third Reading of clause 3 or the enshrinement of Manx Radio in primary legislation. So obviously no Hon. Member in the House of Keys had a concern with regard to what that was trying to achieve. Nobody placed an objection. So to me that is a fairly clear and decisive message that this is what we see our policy as and this is how
470 we see it going forward with regard to Manx Radio in primary legislation.

Now, I say all that, Eaghtyrane, just to highlight to Members the possible effect of what it is that you are trying to do, because to me – unless I stand corrected by the learned Attorney General – we are flying in the face of two Tynwald active resolutions. They are not dead, they are not usurped and they are not overtaken by anything, as we have heard; and also, a monumental affirmation from the
475 House of Keys with regard to Manx Radio being placed in primary legislation. So we need to be wary of what we are attempting to do here.

Now, I take on board again, Eaghtyrane, the Hon. Member, Mrs Sharpe's comments that we are here to do a job and we have to get on and we can debate what we would like. Well, yes, we can. But given what I have just said I think we need to do it in a different way if that is what you want to
480 achieve, because if we are going to end up in direct conflict with Tynwald and potentially with Keys, then that does not lead us anywhere in particular, other than we are out on a limb as far as Legislative Council goes.

We have not got supremacy over Tynwald – Tynwald is the highest Court in the land. I do not think it is within our gift to overturn a Tynwald resolution here in this place. However, we can if we
485 so wish, bring a motion to Tynwald and debate the points there, and Tynwald can relook at it and then retake a vote in Tynwald. And I see headshaking going on, Eaghtyrane, but I think I am right in what I am saying. Then, if that was successful there, Tynwald would be reversing its own decision from a previous time and then that would be acceptable. And unless I stand corrected by the Hon. Clerk or yourself, Eaghtyrane, I think that is the usual route of doing things.

490 I just caution Hon. Members to be careful in what you do with regard to heading towards a potential conflict here.

The President: Now, before I call on the learned Attorney to reply, I will give other Members a final opportunity to speak in the debate.

495 Mrs Maska.

Mrs Maska: No, thank you, I will rest with my comments.
Thank you.

500 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Yes please, Mr President, thank you.

Two short points: firstly, I have not had a sense that there is any direct conflict on this coming either between this place and Keys, or specifically to do with Tynwald. I think it is our job to take a
505 second look at the legislation before us to see about the long-term impact, take a long-term view and perhaps see if an aspect of it needs to be reconsidered. That is absolutely our job.

In fact at the previous sitting the Charities Bill did not go back in the form that it came to us, there was a need for it to go back to Keys and not everything was accepted. So there is the point that from time to time this does happen for various reasons and I think that needs to be taken into
510 account.

Also I would be interested to know, because I have certainly not seen a Tynwald resolution saying that there must or should be a political chair for the Communications Commission. That is a very specific point but it seems to be the one that is being laboured. So just to mention that.

Thank you very much. (*Interjection by Mr Henderson*)

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

520 **The President:** Lord Bishop, do you wish to speak?

The Lord Bishop: Thank you, Mr President. No.

The President: Mr Cretney?

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Mr Cretney: I think the only point I would make is that I think in her submission, Mrs Lord-Brennan made it clear that she was talking about there would be a period of time before her amendment, which would change the status to a non-political chair, would come into effect. And I think that is what she is having a discussion about with others. I think the opportunity does exist in
530 this legislation for such a formula to be accepted.

The President: Thank you.
Miss August-Hanson?

535 **Miss August-Hanson:** Thank you, Mr President.

I would just like to reiterate to Members of this Council that regarding the Department of Home Affairs – it is not the Minister for Home Affairs that brought through the legislation in Keys, it is the Chairman of the Communications Commission. DHA is the sponsoring Department for the Communications Commission. It does have a formal role but it is the sponsoring Department.

540 In relation to Manx Radio, as far as I am aware – and I am sure that my colleague on Legislative Council, Mrs Sharpe might be able to elaborate – Manx Radio is not being removed from the primary legislation via the amendment that could be suggested down the line. So I hope that she will build on that.

545 I think that we have strayed into a debate on whether or not amendments that come through from the House of Keys should or should not be debated in Legislative Council, which I think is potentially a debate for another day. And considering that we have had the Charities Bill go back to

another place for a very similar reason, for different purposes, I am really failing to understand the point.

550 But what I will say is that the Communications Commission is intent on revisiting this one way or the other, and I will leave it at that.

Thank you.

The President: Mrs Sharpe.

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

Yes, just referring back to my colleague, Miss August-Hanson's comment, the draft amendment which I have previously circulated to Members does set out that 'public service broadcaster' would mean Manx Radio, or Manx Radio and another licence holder, or other licence holders. So Manx Radio would still be named in that primary piece of legislation.

560 Thank you.

The President: I call on the learned Attorney to reply.

The Attorney General: Yes, thank you, Mr President.

565 I would firstly like to thank all Hon. Members for their careful consideration of this matter and, if you will agree with me, I am not going to deal with you individually and the points you raised, because I think I ought first to go to Mr Henderson which I think may well solve quite a few of the problems which have been voiced.

570 As we sit here today, Mr Henderson is correct there are two live Tynwald resolutions which you may have regard to. But the fact of the matter is that a resolution of Tynwald *cannot* override primary legislation and nor can it preclude the possibility of subsequent primary legislation amending it – otherwise we would be in a bit of a cleft stick. If we go back in history and look at Tynwald resolutions that have been passed, subsequent developments of the law through primary legislation would have been thwarted. That is not the intention and that is not the process which applies to us.

575 Mr Henderson is correct, you ought to have regard to what the House of Keys have concluded, but that is – and I emphasise – to 'have regard' to what they say. As we have already seen, as Mrs Lord-Brennan has pointed out, we beg to differ as a Council with reference to the Charities Regulation Bill. And certainly in this Bill, if it is the will and the intention of Council to move an amendment to deal with and address the issue of the political chair it is a matter that is entirely in your hands – having regard, as I have said, as Mr Henderson has quite appropriately pointed out, to what the other House has done. But it does not stop you addressing the issue. So I think that takes a lot of the sting out of it in many ways, you have the power to look at this Bill.

580 What I would like to go on and say, however, is really to clarify a point which Mrs Lord-Brennan has made with reference to the Commission's role in relation to the promotion of this Bill, and that is as I spelt out at the start of my Second Reading speech. I am here at the behest of the Council of Ministers on instruction to move this Bill which, as I have said the First Reading and again today, is a technical Bill. It is not designed to address the policy issue relating to a political chair; that is not the intention of the Bill.

590 The Commission has not formed any view as to what the model ought to be and I think that needs to be emphasised. (**Miss August-Hanson:** Hear, hear.) What the Commission is doing, and I made it clear at the First Reading and again today, is to comply with the resolution of Tynwald which is still live which is when it unanimously agreed the National Telecommunications Strategy, and that is after the enactment of this Bill – and I am summarising now – it had to then go on to consider and review its processes, procedures and structures. That is what the Commission is committed to do.

595 It is not a question of choice: as we stand here and sit here today they are obliged by virtue of that resolution to proceed to do so. And as I have already pointed out, when I did at the First Reading, they have commenced that process. (**Miss August-Hanson:** Hear, hear.) But they

600 commenced that process with an open mind. They have looked at and analysed the 19 examples
which I have referred to. There is no best model out there which they are promoting. They are
leaving it to the consultation to decide what they as a Commission would recommend. But at the
end of the day it will be a matter for Tynwald to decide because it will require a change in primary
legislation.

605 That said, I think the message which I gave to you in the Second Reading from the Commission is
really to invite Council to be patient – let them do what they are required to do. All Hon. Members
will have an opportunity to contribute to the consultation which will be carried out and then you can
express whatever views you might have with reference to what the structure might be going
forward, address the issue of a political chair, and then that will inform the Council of Ministers no
doubt in due course to bring forward a Bill to address the results of that consultation.

610 I hope, Mr President, that addresses the general issues. I can, however, and wish to apologise to
Mr Cretney as, despite my request, you were not provided with the detailed information which you
have on two occasions asked me for in here. I have addressed the details today. I have noted
carefully your concerns with reference to the model and of course they will be on the record and no
doubt they will be considered in the context of the ongoing consultation.

615 And if that is content to Hon. Members I will close with that and thank Miss Tanya August-
Hanson for seconding the movement of the Bill. Thank you.

The President: Hon. Members, I put the question that the Communications Bill be read for the
second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Communications Bill 2018 –
Clauses stage deferred**

HM Attorney General to move:

That under Standing Order 4.3(5) the Clauses stage be deferred to a future sitting

620 **The President:** We turn to the second motion under Item 1. Mr learned Attorney.

The Attorney General: Mr President, if I could please move that under Standing Order 4.3(5) that
the clauses stage be deferred to a future sitting.

625 **The President:** Miss August-Hanson.

Miss August-Hanson: I second.

The President: Is that agreed, Hon. Members?

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Members: Agreed.