

5. CONSIDERATION OF CLAUSES

**5.1. Human Tissue and Organ Donation Bill 2020 –
Clauses considered**

Mr Perkins to move.

3140 **The Speaker:** We turn to Item 5, Consideration of Clauses, Human Tissue and Organ Donation Bill 2020 and I call on Mr Perkins to move.

Mr Perkins: Thank you, Mr Speaker.

Hon. Members, you do not get rid of me that easily! *(Laughter)*

3145 Mr Speaker, following our discussions regarding the clauses grouping, I confirm I have circulated the proposed groups to all Members and I ask for the permission of the House to group the clauses accordingly.

The Speaker: Is that agreed, Hon. Members?

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Members: Agreed.

Mr Perkins: Thank you, Hon. Members.

3155 Part 1 contains introductory material. Clause 1 provides for the short title of the resulting Act. Clause 2 is for its commencement by order.

3160 Clause 3 contains interpretation provisions for the whole Act. In the Bill ‘the Department’ means the Cabinet Office and many of the functions under the Bill are conferred on the Cabinet Office in order to secure independence of regulation, although the services associated with the recovery of transplant material will obviously be the responsibility of the Department of Health and Social Care.

Clause 4 explains the meaning of ‘tissue’ and ‘tissue sample’.

Clause 5 explains the meaning of ‘qualifying relationship’, which is relevant when determining whether consent is available for a particular activity in a case where the deceased has left no clear instructions.

3165 Hon. Members, I beg to move that clauses 1 to 5 and Schedule 1, Part 1 stand part of the Bill.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

3170 I beg to second and reserve my remarks.

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

3175 I applaud the use of the Cabinet Office as the independent regulator, and I am sure that has got much wider use across Government.

The Speaker: Mover to reply.

3180 **Mr Perkins:** I thank the Hon. Member for his observation, and would wholeheartedly concur with that.

The Speaker: I put the question that clauses 1, 2, 3, 4 and 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3185 Clause 6, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Part 2 deals with the removal, storage and use of human organs and other tissue for the purposes of transplantation and other 'scheduled purposes' which are defined in Schedule 1.

3190 Hon. Members, I propose to take clauses 6 to 8 together.

Clause 6 defines some terms used in Part 2.

Clauses 7 and 8 deal with the authorisation of activities for scheduled purposes and introduces the concept of 'appropriate consent'.

Hon. Members, I beg to move that clauses 6 to 8 and Schedule 1 stand part of the Bill.

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The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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The Speaker: I put the question that clauses 6, 7, 8 and Schedule 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Perkins.

3205 **Mr Perkins:** Thank you, Mr Speaker.

Hon. Members, I propose to take clauses 9 to 14 together.

Clause 9 deals with appropriate consent for children.

Clause 10 deals with appropriate consent for adults.

3210 Clause 11 makes further provision about the authorisation of activities for scheduled purposes. The concept of 'appropriate consent' is further elaborated and permits a competent adult to appoint a nominated person as his or her representative to deal with issues of consent, perhaps because the person's next of kin would find the issue too distressing to consider.

3215 Clause 12 makes it an offence to perform a scheduled activity in most circumstances without appropriate consent; or to make false representations as to the existence of such consent in connection with a scheduled activity.

Clause 13 specifies the circumstances in which consent may be given to a scheduled activity in relation to an adult who lacks the capacity to give that consent himself or herself.

Clause 14 confers power to dispense with consent if it cannot reasonably be obtained.

Hon. Members, I beg to move that clauses 9 to 14 stand part of the Bill.

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The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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The Speaker: I put the question that clauses 9, 10, 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 and 16, Mr Perkins.

3230 **Mr Perkins:** Thank you, Mr Speaker.

Clauses 15 to 17 are being taken together.

Clause 15 imposes restrictions on the use of donated material other than for qualifying purposes. After the person has died, an organ used for medical research will be covered by regulation.

3235 Clause 16 excludes post-mortem examinations and anything done for the purposes of a Coroner. It disapplies the requirement for consent in relation to anything done on the authority

of a Coroner, that is the High Bailiff acting in his or her capacity as the Coroner of Inquests, or any other person acting as such. It also disapplies the purposes of anything done in connection with a post mortem.

3240 Clause 17 deals with existing holdings of bodily material at the time the Act comes into operation and with anatomical specimens held at that time.

Hon. Members, I beg to move that clauses 15 to 17 and Part 2 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clauses 15, 16 and 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3250 Clauses 18 to 24 and Schedule 2, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Clause 18, Part 3 and Schedule 2 deal with the regulation of activities involving human tissue, and related matters.

3255 Division 1 clauses: clause 19 deals with the remit and general functions of the DHSC and the Department under the Act. Division 2 deals with the licensing of scheduled activities.

Clause 20 imposes the requirement for a licence.

Clause 21 specifies to whom a licence applies, including a person who is to be the designated individual for that licence.

3260 Clause 22 imposes duties on the designated individual to ensure the persons participating in the licensed activities are suitable and that the activities are carried out in the proper manner that the Department is empowered by.

Clause 23 gives directions in relation to scheduled activities following a variation or cessation of a licence, including directions to transfer information and other material to another licence holder in that event.

3265 Clause 24 makes it an offence to breach a licence requirement.

Hon. Members, I beg to move that clauses 18 to 24 and Schedule 2 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clauses 18, 19, 20, 21, 22, 23, 24 and Schedule 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3275 Mr Perkins, clauses 25 to 28.

Mr Perkins: Thank you, Mr Speaker.

Division 3 imposes the preparation, publication and approval of codes of practice and consent issued by the Department. Such codes come into operation only if approved by Tynwald on a day specified in an order made by the Department.

3280 Clause 25 deals with the provision of codes of practice.

Clause 26 imposes additional requirements in respect of laying down the standards in relation to the obtaining of consent.

3285 Clause 27 deals with effect of the code and the effect of the failure of complying with that code.

Clause 28 requires the code to be approved.

Hon. Members, I beg to move that clauses 25 to 28 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clauses 25 to 28 inclusive 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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Mr Perkins, clauses 29 and 30.

Mr Perkins: Thank you, Mr Speaker.

Clause 29 deals with the possession of anatomical specimens

Clause 30 deals with former anatomical specimens held away from licensed premises.

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Hon. Members, I beg to move that clauses 29 and 30 stand part of the Bill.

The Speaker: Mr Hooper.

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

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The Speaker: I put the question that clauses 29 and 30 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 31, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

I propose to take clauses 31 to 33 as one.

The Speaker: Okay.

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Mr Perkins: Clause 31 creates an offence in respect of trafficking and commercial dealings with human tissue.

Clause 32 deals with transplants and restricts this practice in respect of material taken from an individual who is alive at the point of separation.

Clause 33 makes provision for the supply of information in connection with transplant operations.

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Hon. Members, I beg to move that clauses 31 to 33 stand part of the Bill.

The Speaker: Mr Hooper.

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

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The Speaker: I put the question that clauses 31, 32 and 33 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 34 to 37, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

Clause 34 deals with various aspects of the functions of the Department and the DHSC and empowers them to enter into arrangements with other bodies and their staff to perform their functions and provide services. However, the arrangements do not affect the responsibility of carrying out the functions, nor do they empower any body other than the Department or the DHSC to make the statutory documents.

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Clause 35 provides for the making of an annual report.

Clause 36 deals with the giving of directions under the Act.

Clause 37 requires the Department and the DHSC to perform their functions economically, effectively and efficiently.

3340 Hon. Members, I beg to move that clauses 34 to 47 stand part of the Bill.

The Speaker: Mr Hooper.

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

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The Speaker: I put the question that clauses 34 to 37 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 38, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker. Thank you for pointing out the error of my ways. Clause 38 provides exemptions respectively from the Part for material held for criminal justice purposes.

Clause 39 provides exemption for religious relics.

Hon. Members, I beg to move that clauses 38 and 39 and Part 3 stand part of the Bill.

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The Speaker: Mr Hooper.

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

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

Clause 40, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

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Part 4 of the Bill deals with the rules governing post-mortem examinations. These provisions, which relate to such examinations taking place in the Island, have been drafted using the Human Tissue (Scotland) Act 2006 as their model, because in the view of the Department and DHSC it offers a more proportionate way of dealing with issues of consent around the retention of tissue samples and dissection slides created during a post-mortem.

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Clause 40 provides a definition of 'post-mortem examination'.

Hon. Members, I beg to move that clause 40 stands part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clause 40 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 41 and 42, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

Clause 41 disapplies clauses in the case of a post-mortem conducted for the purposes of the Coroner of Inquests.

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Clause 42 disapplies clauses in the case of bodies of persons who have been dead for at least 100 years at the time when the resultant Act comes into operation.

Hon. Members, I beg to move that clauses 41 and 42 stand part of the Bill.

The Speaker: Mr Hooper.

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

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

Clause 43.

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Mr Perkins: Thank you, Mr Speaker.

Clause 43 makes it clear that, if a body is likely to be required for the purposes of a Coroner because there may be an inquest, a post-mortem may not be conducted without the Coroner's consent. It also makes conducting a post-mortem in those circumstances without such consent, knowing it to be required, an offence.

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Hon. Members, I beg that clause 43 stands part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clause 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 44, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

Clauses 44 & 45 taken together.

Clause 44 provides that for a lawful post-mortem to take place, other than in a case involving a Coroner, whichever of clauses 46 to 50 is appropriate to the case must be satisfied. Clause 44 deals with the removal of organs and other parts of a body during a post-mortem. It draws a distinction between organs, the removal and retention of which must be authorised under whichever of clauses 57 to 64 apply.

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Clause 45 deals with the removal of organs and other parts of the body during examination and their retention.

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Hon. Members, I beg to move that clauses 44 and 45 stand part of the Bill.

The Speaker: Mr Hooper.

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

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

Clauses 46 to 51, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

Clause 46 deals with the authorisation of a post-mortem of an adult.

Clause 47 deals with the authorisation of a post-mortem of a nominee or a person who is in a qualifying relationship with the deceased.

Clause 48 deals with the authorisation of a post-mortem of a child aged at least 12.

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Clause 49 deals with the authorisation of a post-mortem of a child who is 12 or over by a nominee or a person with parental responsibility.

Clause 50 deals with the authorisation of a post-mortem of a child who dies under the age of 12.

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Clause 51 makes further provision about the procedure of nomination of a person for the purposes of clause 47(1) and 49(1).

Hon. Members, I beg to move that clauses 46 to 51 stand part of the Bill

The Speaker: Mr Hooper.

3445 **Mr Hooper:** Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clauses 46 to 51 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 52, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.
Clause 52 imposes further requirements in relation to the removal and retention of organs.
I beg to move that clause 52 stands part of the Bill.

3455 **The Speaker:** Mr Hooper.

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

3460 **The Speaker:** I put the question that clause 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 53 and 54, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.
Clause 53 makes transitional provision in relation to organs removed before the Act comes into operation.
3465 Clause 54 creates offences in relation to the conduct of post-mortem examinations.
Hon. Members, I beg to move that clauses 53 and 54 stand part of the Bill.

The Speaker: Mr Hooper.

3470 **Mr Hooper:** Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clauses 53 and 54 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 55 to 57, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.
Clause 55 provides that a tissue sample taken as part of a post-mortem forms part of the medical records of the individual from whom it is taken.
Clause 56 specifies the uses to which such a sample may be put.
3480 Clause 57 specifies what may and may not be done with an organ which has ceased to be required for the purposes of the Coroner.
Hon. Members, I beg to move that clauses 55, 56 and 57 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clauses 55, 56 and 57 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
3490 Clauses 58, 59, 60, 61 and 62, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.
Clauses 58 to 62 deal with the authorisation of use of organs and tissue samples after they have been used for the purposes of examination.

3495 I beg to move that clauses 58 to 62 stand part of the Bill.

The Speaker: Mr Hooper.

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

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The Speaker: I put the question that clauses 58 to 62 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 63 and 64, Mr Perkins.

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Mr Perkins: Thank you, Mr Speaker.

Clauses 63 and 64 make for transitional provision in relation to tissue samples and organs which have been removed before the date on which section 55 or 57 come into operation.

I beg to move that clauses 63 and 64 stand part of the Bill.

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The Speaker: Mr Hooper.

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

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The Speaker: I put the question that clauses 63 and 64 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 65, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

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Clause 65 deals with conditions attached to authorisation whichever of clauses 58 to 62 is applicable. This clause also permits the attaching of conditions for the purposes of clause 8 to 11.

Hon. Members, I beg to move that clause 65 and Part 4 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clause 65 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 66 to 68 and Schedule 3, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

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Clause 66, Part 5 deals with miscellaneous and general matters and deals with the preservation of the body of a person who has died and which is in a hospital, nursing home or other similar place, or any part of such a body so situated, which may be suitable for transplantation.

Clause 67 deals with the decent disposal of surplus tissue which has been taken from a human body.

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Clause 68 creates an offence of having bodily material with a view to its DNA being analysed without qualifying consent, and together with Schedule 3 it sets out circumstances in which it is permissible to analyse DNA samples without such consent.

Hon. Members, I beg that clauses 65 to 68 and Schedule 3 stand part of the Bill.

The Speaker: Mr Hooper.

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

The Speaker: I put the question that clauses 66, 67, 68 and Schedule 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3550 Clauses 69 to 75, Schedules 4 and 5, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Division 2, Schedules 4 and 5 deal with general matters.

Clause 69 deals with powers of inspection, entry, search and seizure.

3555 Clause 70 imposes restrictions on prosecutions under the Act, which may be instituted only by or with the consent of the Attorney General.

Clause 71 confers a power on the Department to amend the resulting Act to reflect changes to the provisions of, or having effect under, Parts 2 and 3 of the Human Tissue Act 2004 (of Parliament). This is intended to permit the law in this area to remain in step with the English provisions.

3560 Clause 72 deals with Tynwald control of subordinate legislation made under the resulting Act.

Clause 73 deals with the financial consequences of the resulting Act.

Clause 74 Schedule 5 makes consequential amendments to enactments.

Clause 75 repeals the existing Acts of Tynwald covering the same ground as the current Bill.

3565 Hon. Members, I beg to move that clauses 69 to 75 and Schedules 4 and 5 stand part of the Bill.

The Speaker: Mr Hooper.

3570 **Mr Hooper:** Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clauses 69 to 75 inclusive, including Schedules 4 and 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3575 That concludes consideration of the clauses stage of the Human Tissue and Organ Donation Bill.