CLIMATE CHANGE BILL 2020
EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Geoffrey Boot MHK.

INTRODUCTION

1. These explanatory notes relate to the Climate Change Bill 2020. They have been prepared by the Department of Environment, Food and Agriculture (DEFA) in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

2. The notes need to be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill.

3. The Bill has been subject to a public consultation that ran from 21st July 2020 to 1st September 2020. During this consultation period the Department also undertook four climate change drop-in sessions to discuss the Bill and its implications with the public. The Bill and has been revised to take account of the feedback submitted as a consequence of this public consultation and associated climate change drop-in sessions.

4. An Impact Assessment of the Bill has been prepared.

SUMMARY AND BACKGROUND

5. Climate change is arguably the greatest threat of our time. Around the world we are already seeing the effects of a changing climate: temperatures are rising, drought and wild fires are starting to occur more frequently, rainfall patterns are shifting, glaciers and snow are melting and the global mean sea level is rising. To mitigate climate change, we must reduce or prevent the greenhouse gas (GHG) emissions linked to human activities. The United Nations (UN) has estimated that to keep the global temperature within 1.5° C or less, a global cut of 7.6% in emissions is required every year from 2020 to 2030.

6. The Climate Change Bill (the Bill) provides a legislative framework for the Isle of Man, to ensure emission reductions are a long-term feature in economy-wide decision making, enabling us to achieve net zero emissions by 2050.

7. The Bill has been informed by existing climate change legislation from other jurisdictions; Professor Curran's independent 'Isle of Man Programme for Achievement of Climate Targets' report; the 'Isle of Man Government Action Plan for Achieving Net

Zero Emissions by 2050 - Phase One', the 2019 Isle of Man Government Climate Change Consultation and the recent public consultation on the Bill.

8. The Bill, which will align the Island's legislative position on climate change with that of the UK (notably Scotland). This Bill accordingly makes provision for –

- A credible domestic framework that aligns the Isle of Man internationally as a responsible nation with respect to climate change.
- A clear target for greenhouse gas reduction with provision to set interim targets in the future.
- Requirements for reporting on greenhouse gas emissions.
- Obligations to produce sequential plans for how Government intends to achieve the 2050 target.
- Statutory powers to enable key actions to achieve delivery of net zero greenhouse gas emissions.
- Powers to amend existing legislation to facilitate provision of climate change actions.
- A statutory duty for public bodies to act to reduce greenhouse gas emissions and participate in the actions agreed in Climate Action Plans.

STRUCTURE OF THE BILL

9. The Bill is divided into 9 separate Parts and a Schedule as follows:

Part	**Summary**
Part 1: Introductory	Introductory provisions relating to the short title and commencement of the Bill.
Part 2: Definitions	This Part defines the terms used in the Bill, particularly those relating to greenhouse gases; the baseline; international carbon reporting practice; measurement of emission; just transition principles and climate justice principles.
Part 3: Carbon targets and interim targets	This Part sets out the target for the Island to meet the net-zero emissions target by 2050; the requirement for setting an interim target by 2022; and the power to prescribe further interim targets. It also sets out the criteria to be used when setting targets as well as the means of attributing emissions to the Island and how such emissions may be offset.
Part 4: Planning and reporting duties of	This Part requires Council to have a 5-year climate change in place by 2022 further to the requirements of the Bill.

Council of Ministers	Furthermore, Council are required to give annual reports on progress towards implementing such plans as well as 5-yearly reports on the latest emissions data.
Part 5: Planning and reporting duties of public bodies	This Part imposes a duty on all public bodies, when performing their functions to have consideration of actions they may take to best contribute to combatting climate change. Consideration must be given to a variety of factors, such as targets and protecting biodiversity, as well as any other duties prescribed by the Council of Ministers. The Council of Ministers may issue guidance to public bodies on how to comply with their duties as well requiring public bodies to report on how these duties are being met. This Part also empowers Council of Ministers to appoint and empower a monitor to investigate whether or not public bodies are fulfilling their climate change duties. The work of such a monitor would be subject to directions and guidance issued by Council of Ministers.
Part 6: Fossil fuel	These provisions ban the installation of new fossil fuel heating systems in buildings after 1st January 2025. Installation of a new fossil fuel heating system after that date is punishable with a fine. Council of Ministers may, by regulations, grant exemptions; amend the above date; regulate the installation of new fossil fuel heating systems or the sale and supply of fossil fuel generally.
Part 7: Regulation of single use plastics	This aspect of the Bill provides DEFA with the vires to make regulations to control the sale and distribution of single use plastics and enable the enforcement of such controls. Such regulations may also provide for persons or plastics exempt from such regulatory controls.
Part 8: Regulations	These clauses set out the supplementary regulation making powers of the Council of Ministers along with vires to apply UK climate change legislation, grant powers of entry to support the enforcement of climate change legislation; and provide for the imposition of fixed penalties via such regulations subject to an appeals mechanism.
Part 9: Miscellaneous	The Part of the Bill requires the Council of Ministers to consider sustainable development; just transition; climate justice; and the protection of biodiversity and ecosystems when exercising the functions conferred on it by the Act.

	This Part also requires the Council of Ministers and Government Department to undertake consultations with appropriate persons before making regulations under this Act. Finally, this Part also sets out the requirement to undertake and publish climate impact assessments.
Schedule: Amendments to Enactments	The Schedule sets out amendments to – • the Forestry Act 1984, to make provision for protecting peatland; • the Licensing and Registration of Vehicles Act 1985, to insert vires to allow for the prohibition of registration of prescribed vehicles, and differing levels of registration and change of ownership charges; • Electricity Act 1996, to require the Authority to have regard to climate change and enabling the undertaking of small-scale electricity generation; • the Building Control Act 1991, to allow for regulatory controls to be put in place to support the prohibition on installing new fossil fuel heating systems; • the Customs and Excise Act 1993, to enable the Treasury to apply UK legislation relating to taxes (and the like) that are intended to have an environmentally beneficial effect to the Island; • the Town and Country Planning Act 1999 to require the creation of climate change related planning policies by 2025; • the Town and Country Planning (Development Procedure) Order 2019 to ensure such policies are considered in relation to applications for planning approval.

EUROPEAN CONVENTION ON HUMAN RIGHTS

10. In the opinion of the member moving the Bill, the provisions of the Climate Change Bill 2020 are compatible with Convention rights.

FINANCIAL EFFECTS OF THE BILL

11. In the view of the member moving the Bill, it is not expected to have any direct human or financial resource implications, although there may be revenue generated for the Isle of Man Government following imposition of any financial penalties imposed as a consequence of enforcing the provisions set out in the Bill, or the secondary legislation made as a consequence of the Bill.

NOTES ON CLAUSES

PART 1 – INTRODUCTORY

12. Further to the long title set out in the preamble to the Bill, which describe the Bill's contents, **clause 1 (short title)** gives the Bill its short title.

13. **Clause 2 (commencement)** provides that Parts 1 to 4, sections 21 to 23 and clauses 34 to 36 of, and paragraph 3 of the Schedule to, the Bill will commence upon the day on which the Act is passed. Section 37 will also come into operation at that time to extent necessary for the commencement of paragraph 3 of the Schedule. The remaining provisions will commence upon the making of an appointed day order (or orders) by the Council of Ministers subject to such consequential, incidental, supplemental or transitional provisions as appear necessary or expedient.

PART 2 – DEFINITIONS

14. **Clause 3 (interpretation)** provides the definition of key phrases contained within the Bill. The majority of terms listed in this clause are common to climate change legislation internationally; such terms have widely recognised meanings and are defined in the Bill accordingly. Terms specific to this Bill, such as "Isle of Man Government Action Plan", are defined as appropriate. The terms "public body" and "United Nations sustainable development goals" may be amended by regulations made by the Council of Ministers, such regulations being made subject to consultation and approval by Tynwald. The circumstances under which other terms listed in this clause may be amended are addressed in the subsequent clauses relevant to that term.

15. **Clause 4 (greenhouse gases)** specifies the list of gases that are to be considered "greenhouse gases" for the purposes of the Bill. This clause also provides that additional gases may be added to the list by regulations, made by the Council of Ministers, but only in such case as the gas has been internationally recognised as contributing to climate change.

    Regulations may also be made by the Council of Ministers amending the description of gases on the list; this provision is intended to permit addition of alternative, abbreviated or common names of gases. Gases may not be removed from the list.

    Regulations made under this clause would be subject to approval by Tynwald.

16. **Clause 5 (meaning of baseline)** defines the meaning of the term "baseline" as the total Isle of Man emissions of all greenhouse gases for the year 2018. The year 2018 has been chosen because it provides the highest quality emissions data available for the Island.

    The primary function of a baseline is to provide a frame of reference for communicating targets and progress, for example the Climate Change (Scotland) Act 2009, as originally enacted set a target of 80% lower than the 1990 baseline by 2050.

It is important to note that the net-zero target is not affected by the choice of baseline year because net-zero is 100% lower than the baseline no matter the year or level at which the baseline is set. Furthermore the baseline does not have any effect on the ambitiousness of any interim targets which may be set.

For the purpose of setting targets and communicating progress to the public, comparison with 2018 provides an easily understood point for comparison. Using the 2018 baseline means that progress begins with our highest emissions and progresses downward to net-zero. By comparison, use of the 1990 baseline, means expressing progress as a percentage above the baseline until we reach 1990 levels and then continuing down to net-zero. The 2018 baseline provides a more accurate and understandable way to express our progress.

The 1990 baseline originates from the 1997 Kyoto Protocol and is used by many countries to express their emissions reduction goals. It provided continuity of target expression across the many countries that ratified the Protocol. However, it has never been universally adopted as developing nations were permitted to use different years. Since the 1990s many jurisdictions have changed their targets from a percentage of the 1990 baseline to net-zero. It is likely this global shift toward net-zero target setting which caused the 1990 baseline to be absent from the 2015 Paris Agreement.

There is no legal requirement or international agreement which necessitates the use of the 1990 baseline in the Bill. Setting the baseline as 2018 does not preclude the Island, should it become necessary or desirable, from reporting to the UK using a 1990 base line.

Sub clause (3) enables the baseline year for a gas in sub clause (2) to be changed. This may be desirable if we wish to maintain a common baseline for all of the listed gases but data is not available from 2018 in relation to a gas added in the future.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

17. **Clause 6 (international carbon reporting practice)** prescribes what is meant by 'international carbon reporting practice' and 'current international carbon reporting practice'. These definitions may be amended via regulations made by the Council of Ministers, but only in such case as the amendments ensure that the Island continues to fulfil its reporting obligations to the UK for onward reporting under the United Nations Framework Convention on Climate Change (UNFCCC) and remain equivalent to the internationally accepted standards set by the Inter-Governmental Panel on Climate Change (IPCC).

Regulations made under this clause would be subject to consultation and approval by Tynwald.

18. **Clause 7 (measurement of emissions)** prescribes that the measurement of greenhouse gases for the purposes of this Bill must be in tonnes of carbon dioxide equivalent. This is in line with international best practice and current Isle of Man reporting methods.

19. **Clause 8 (just transition principles and climate justice principles)** defines what is meant by the 'just transition principles' and the 'climate justice principle'.

The 'just transition principles' are intended to ensure that action taken in the Island to combat climate change and reduce emissions is undertaken in such a way as to create benefit for the population of the Island and protect those most vulnerable from being unfairly disadvantaged.

The 'climate justice principle' is intended to ensure that climate change-related actions are taken in a way which positively impacts people outside of the Island – particularly by supporting those most vulnerable and helping to address inequality.

These principles are internationally recognised. The Paris Agreement includes the following:

"*Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities.*

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity".

These principles run throughout the Bill and are intended to guide action taken under the Bill to ensure that reducing emissions is done in a way that protects and seeks to improve quality of life.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

PART 3 – CARBON TARGETS AND INTERIM TARGETS

20. **Clause 9 (the net zero Isle of Man emissions target)** sets the Isle of Man's emissions reduction target as net-zero by 2050. The target may be moved to an earlier year, in accordance with the criteria set out in clause 11, but may not be reduced or moved to a later year. This restriction on amendment of the target acknowledges the global climate emergency and protects the Island's emissions reduction ambitions. Net-zero emissions by 2050 is a target common to many nations around the globe and has been chosen to ensure that global warming remains below 1.5°C by 2050, as laid out in the 2015 Paris Agreement.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

21. **Clause 10 (setting of interim targets)** enables the Council of Ministers to set one or more interim targets, having regard to clause 11, by way of regulations. Once set the interim targets may not be reduced or moved to a later date.

In addition, this clause creates an obligation for the Council of Ministers to set at least one interim target by 2022

22. **Clause 11 (target-setting criteria)** sets out what must be considered in the event that the Council of Ministers wish to amend the net-zero target year, modify a baseline year or set or modify an interim target. Such amendments cannot substitute an interim target date for a later date, or substitute a percentage target with a lower percentage target.

The target setting criteria are designed to support the just transition and climate justice principles and ensure that targets are set with due regard to international best practice and the latest scientific knowledge and developments in technology related to climate change.

The effect on the Island's economy and public must also be considered.

The Island's status as a UNESCO Biosphere is supported by the inclusion of target-setting criteria relating to environmental considerations and the impact of the targets upon biodiversity, ecosystems and ecosystem services.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

23. **Clause 12 (the domestic effort target)** states that all targets set under the Bill must be achieved through 100% domestic effort.

This means that the Island will not engage in any international carbon offsetting or trading and so all reductions in emissions will be the result of actions taken in the Island.

In May 2019 the UK Climate Change Committee advised the UK government that net-zero emissions across the whole economy should be reached "not relying on international offsetting". The UK Government accepted this advice and Scotland have amended the relevant provisions in their Act.

24. **Clause 13 (attribution of emissions to Isle of Man)** describes the circumstances under which emissions of greenhouse gases are attributed to the Island. All greenhouse gases produced by sources in the Island (which includes our territorial waters) are attributed for the purposes of the Bill.

Emissions from additional sources may be attributed to the Island by regulations made by the Council of Ministers. This could mean, for example, that in the future emissions (or an appropriate share of such emissions) resulting from the manufacture of goods imported into the Island could be attributed.

Regulations attributing new emissions to the Island would be subject to consultation and approval by Tynwald.

25. **Clause 14 (Isle of Man share of emissions from international aviation and international shipping)** prescribes that emissions from international aviation and shipping are not attributed to the Island at present. Such emissions may be attributed to the Island in the future subject to regulations made by the Council of Ministers. There is currently no global agreement on how international shipping and

aviation emissions should be allocated. The Island has large ship and aircraft registries and so these types of emissions could have a significant impact on the overall effort needed to achieve net-zero. It is therefore considered appropriate, in line with other jurisdictions, not to attribute these emissions to the Island until a fair allocation method is agreed upon internationally.

Regulations attributing emissions from international aviation and shipping would be subject to consultation and approval by Tynwald.

26. **Clause 15 (determining Isle of Man emissions and removals)** prescribes that Isle of Man emissions and removals must, in so far as reasonably practicable, be calculated in accordance with international carbon reporting practice (as is defined in Clause 6).

The wording 'in so far as reasonably practicable' is included to acknowledge that the Island, as a relatively small jurisdiction, may not need to report on some details relevant to larger jurisdictions. For example, no extraction or processing of raw fossil fuels currently takes place on the Island, nor do we have many of the high emitting heavy industries present in other jurisdictions.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

27. **Clause 16 (Isle of Man carbon offsetting schemes)** enables the Council of Ministers, by regulations, to create schemes whereby action taken in the Island (including in its territorial waters) to remove carbon from the atmosphere (sequestration) may be used to offset emissions created by businesses and individuals in the Island.

At present many individuals and businesses offset their emissions through established offsetting schemes, such as carbonfootprint.com and goldstandard.org. Those schemes use the money paid for offset units to run carbon sequestration projects around the world. This clause seeks to enable alternatives to those schemes with opportunities for investment in local carbon sequestration.

Schemes enabled by this clause would be limited to funding carbon sequestration projects in the Island. The resulting removals can therefore be counted toward the Island's overall emissions reduction targets. Encouraging local carbon sequestration projects could also provide employment opportunities and benefit the economy.

It is important to note that the schemes enabled by this clause do not enable any form of international carbon trading.

Clause 16 sets out what regulations made under it may contain for the purposes establishing and administering a fair and effective scheme. In order to ensure a scheme which is attractive to both project developers and offset purchasers, and to ensure that removals generated by the scheme can feed into the Island's national emissions data, the scheme must be administered to a high standard. For example, measures to avoid double counting of units and to ensure the longevity of sequestration projects are essential for a high quality scheme.

In addition, Clause 16 excludes projects included in Isle of Man Government Action Plans from being included in an offsetting scheme. This provision is designed to ensure that schemes stimulate additional sequestration projects rather than acting to fund any project to which government has already committed.

Regulations under this clause would be made subject to consultation and approval by Tynwald.

PART 4 – PLANNING AND REPORTING DUTIES OF COUNCIL OF MINISTERS

28. **Clause 17 (climate change plan)** creates a duty for the Council of Ministers to create and lay before Tynwald, at intervals of 5 years, plans that set out the actions that will be taken, during the period to which the plan relates, to reduce emissions.

The existing action plan, and any further action plans that are brought into effect before commencement of the Bill, are to be treated a plans made under the Bill until 1 April 2022 when a new 5 year plan must be laid.

Each climate change plan must be subject to consultation and subsequently moved to be received by Tynwald, providing an opportunity for debate on the content of such plans.

The rate of development of new technologies and global scientific research, in relation to climate change, means that much can change within a 5 year period. It is important the Island retains the ability to adapt to change and take advantage of the most up-to-date approaches. For these reasons the Bill allows for a plan to be superseded during the 5 year period for which it is in effect.

29. **Clause 18 (content of climate change plan)** sets out the content of the climate change plan. Sub clause (1) requires that the plan includes the proposals and policies which will take effect over the plan's 5 year period to reduce emissions and increase removals (sequestration) and the timescales involved in delivering those actions.

Sub clause (2) provides a list of important considerations which may be included in the plans, covering a wide range of key sectors such as business and industry; land use and agriculture; and energy generation and use.

Sub clause (3) links the plan to the just transition principles by creating a duty to explain how the planned actions will affect different sectors of society. This link is further clarified by sub clause (5) which states explicitly that the plan must have regard to, and explain the extent to which it takes account of, the just transition and climate justice principles.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

30. **Clause 19 (annual progress report)** creates a duty for the Council of Ministers to lay a report before Tynwald each year, no later than July. Sub clause (2) details what the report must contain and sub clause (3) provides a list of additional considerations which may be included.

The annual report is to be action- rather than emission-based. Emissions data is not complied quickly enough for a concurrent annual report to be produced. The annual report is therefore intended to ensure that Tynwald are kept up-to-date with progress on the actions contained in the climate change plan without being unduly onerous. Additionally, the report will allow the Council of Ministers to include further information relevant to the plan.

The categorisation of the content of the report into what 'must' and what 'may' be included seeks to provide a suitable balance between what is needed for the report to be effective and the time and resources required to prepare it.

Regulations under this clause would be made subject to consultation and approval by Tynwald.

31. **Clause 20 (5-yearly emissions report)** creates a duty for the Council of Ministers to lay a report on the Island's emissions before Tynwald for approval every 5 years. 5 yearly emissions reporting is preferable to annual emissions reporting as it shows trends much more clearly. Annual reports are subject to fluctuations which can be misleading in terms of actual progress, for example a particularly cold winter may account for higher emissions in one year while the trend over 5 years indicates an overall reduction. It is for this reason that Scotland, for example, has moved away from annual reporting.

5 yearly reporting to Tynwald provides sufficient data to track trends, inform the 5 yearly climate change plans and seeks to avoid the potential for making changes too quickly on the basis of potentially anomalous annual data points. It is important to note that the Island will still obtain and publish annual emissions reports for information and on-going research.

Regulations under this clause would be made subject to consultation and approval by Tynwald.

PART 5 – PLANNING AND REPORTING DUTIES OF PUBLIC BODIES

32. **Clause 21 (climate change duties of public bodies)** creates duties that apply to all public bodies as defined in clause 3 in relation to climate change.

Such public bodies must undertake their usual functions in a way which contributes to achieving the Island's emission reduction targets as well as supporting the just transition and climate justice principles. The Island's Biosphere status is also protected by compelling public bodies to act in such a way as to contribute to the UN Sustainable Development Goals and to protect and enhance biodiversity and ecosystems and the services they provide.

This clause has been included to ensure that the actions of public bodies are not contradictory to the aims of the Bill but contribute to the reduction of emissions or the increase of removals. With regard to Government departments, this clause is intended to provide commonality of intent across Government and thereby support co-ordinated efforts toward the Islands emissions reduction targets.

As research progresses it may become apparent that further or different action is needed to reduce emissions and increase removals and, as such, this clause enables the Council of Ministers, by regulations subject to consultation and Tynwald approval, to impose additional climate change related duties on public bodies.

33. **Clause 22 (guidance to public bodies)** enables the public bodies that are subject to the duties set out in clause 21 to request guidance from the Council of Ministers relating to how they should best fulfil those duties.

Sub clause (2) enables the Council of Ministers to provide that guidance but does not create a duty to do so as this could create a requirement to provide official guidance where is it not necessary and thereby divert resources from more essential work.

Sub clause (3) enables the Council of Ministers to provide general guidance to public bodies to assist them in fulfilling their climate change duties.

Sub clause (4) creates a duty for public bodies to have regard to any advice provided by the Council of Ministers.

Sub clause (5) and (6) require the Council of Minister to consult with the public body that has requested the advice before issuing the advice and to publish the advice once issued.

34. **Clause 23 (reporting by public bodies on climate change duties)** enables the Council of Ministers, by regulations subject to consultation and Tynwald approval, to impose reporting requirements on public bodies in relation to their climate change duties.

This provision is intended to avoid overly onerous reporting by public bodies by allowing the Council of Minister to impose reporting duties if they deem them necessary rather than creating a blanket requirement. Where it is clear that public bodies are fulfilling their climate change duties it is likely that reporting requirements would not be imposed.

35. **Clause 24 (designation of monitor)** enables the Council of Ministers to appoint a monitor to investigate whether public bodies are complying with their climate change duties or whether a public body is having regard to advice issued to it by the Council of Ministers.

The monitor is not intended to be an independent scrutiny mechanism but as a way for the Council of Ministers to have investigations undertaken without diverting undue time and resources.

This clause permits the monitor to undertake investigations without being specifically directed to do so by the Council of Ministers. However, it also enables the Council of Ministers to direct the monitor to undertake an investigation and to issue guidance to the monitor.

36. **Clause 25 (reporting by monitor)** enables to Council of Ministers to direct the monitor to produce a report in relation to the monitor's activities and use of resources. Any report produced under this clause must be laid before Tynwald.

37. **Clause 26 (guidance to monitor)** provides more detail in relation to the guidance which may be issued by the Council of Ministers to the monitor. The Council of Ministers must consult with the monitor before issuing any guidance and, once issued, must publish the guidance. The Council of Minister may change or revoke the guidance. The monitor must have regard to the guidance.

38. **Clause 27 (power to direct monitor)** enables the Council of Minister to give directions to the monitor in relation to its functions and creates a duty for the monitor to comply with such a direction.

PART 6 – FOSSIL FUELS

39. **Clause 28 (fossil fuel and fossil fuel heating systems)** facilitates a three stage approach to reducing the Islands emissions caused by heating buildings.

Sub clause (1) makes it unlawful, from 1 January 2025, to install a fossil fuel heating system in a new property and provides for the associated penalties. Sub clause (2) enables the date of the ban in sub clause (1) to be changed and buildings to be exempted from the ban by regulations made by the Council of Ministers. This provision halts the installation of fossil fuels systems in new buildings which can be designed to accommodate low emission alternative.

Sub clause (3) enables the Council of Ministers, by regulations, to create further bans on fossil fuel heating systems in existing buildings and replacement fossil fuel heating systems. These provisions have been designed to facilitate the move away from fossil fuel heating in existing buildings in a phased and fair way. Sub clause (4) enables regulations to provide for specific details, such as specifying what types of work would constitute the replacement of a fossil fuel heating system. Such specificity is necessary to protect against whole systems being replaced by parts, which would not contribute to the desired reduction in use of fossil fuels for heating.

Sub clauses (5) an (7) enable the Council of Ministers, by regulations, to regulate to or prohibit the production, supply, acquisition, use and price of fossil fuels. It is not possible or desirable to forcibly remove existing fossil fuel heating systems from people's homes; however, in order to achieve net zero those systems will eventually need to be replaced. Regulating the fuel rather than the systems in this final stage is intended to facilitate a gradual phasing out of its use for heating with due regard to the just transition principles.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

PART 7 – REGULATION OF SINGLE USE PLASTICS

40. **Clause 29 (regulation of single use plastics)** provides DEFA with the power to make regulations concerning single use plastics.

The manufacture of plastic gives rise to significant amounts of greenhouse gas emissions which contribute to climate change. Furthermore, if not dealt with properly, plastic waste can enter the environment, endangering wildlife and

potentially human health. Regulations under this clause will therefore be able to restrict the supply, use etc. of specified plastics, such as through prohibitions on their sale or through the introduction of levies.

Regulations made under this clause would be subject to consultation and approval by Tynwald.

PART 8 – REGULATIONS

41. **Clause 30 (regulations and orders: general)** provides the Council of Ministers with the powers to make regulations and orders under the Bill and specifies limitations to that power.

Unless otherwise specified, regulations made under the Bill will require approval by Tynwald.

42. **Clause 31 (application of legislation of the United Kingdom to the Isle of Man)** enables certain United Kingdom legislation relating to climate change to be applied to the Isle of Man. It does not create any obligation for such legislation to be applied.

The power to apply UK legislation to the Isle of Man (subject to such modifications as are necessary) is present in several Acts of Tynwald, including the Customs and Excise Act 1993 and the Health and Safety At Work Etc. Act 1977. This may be beneficial in certain circumstances, for example, for the purposes of encouraging trade or maintaining a level playing field in employment.

The United Kingdom's action to reduce emissions and tackle climate change continues at pace. Legislation which contributes to emissions reduction may be enacted in the UK using legislative powers which have no direct equivalent in the Isle of Man. While every care has been taken to ensure that this Bill is as comprehensive as possible it cannot and should not replicate UK legislation. However, inclusion of these enabling provisions provides a tool which can be used to align with the UK where it is deemed necessary or desirable. It provides the ability to quickly close potential loop holes. For example, if the UK were to ban a product responsible for high emission the Isle of Man may need to quickly legislate to enforce a similar ban to avoid stocks of that product, unsaleable in the UK, from flooding the Isle of Man market.

Any application of UK legislation under this Bill may only be for purposes that contribute to emissions reduction and would be subject to consultation and approval by Tynwald.

43. **Clause 32 (regulations: powers of entry)** provides for regulations or orders made under the Bill to confer powers of entry on authorised officers. These standard enforcement provisions include the power to enter premises and seize and detain records.

44. **Clause 33 (regulations and orders: fixed penalties)** provides for regulations or orders made under the Bill to confer on an administrator the power to issue fixed penalty notices for breaches of the legislation. The clause also places limits on this

power, including restrictions on when a notice can be issued and the size of the penalty.

Additionally, clause 33 provides for a person issued with a penalty notice to make written representations and objections to the administrator and the procedure following any objection.

PART 9 – MISCELLANEOUS

45. **Clause 34 (exercise of duties by Council of Ministers)** extends climate change-related duties similar to those that apply to public bodies (by virtue of clause 21) to the Council of Ministers.

46. **Clause 35 (consultation)** provides that, unless expressly exempted, all regulations made under the Bill must be subject to consultation of all persons to whom the regulations relate (or their representatives) and any other person that the Council of Ministers considers appropriate.

47. **Clause 36 (climate impact assessments)** permits the Council of Ministers to require that climate impact assessments are prepared by public bodies. Council may make regulations that specify the details of the assessments, such as when assessments are required (such as when procuring goods or services) and what form they will take. In addition, the regulations may require a public body to take an assessment into account, such as during procurement.

    Regulations made under this clause would be subject to consultation and approval by Tynwald.

48. **Clause 37 (amendments to enactments)** provides that the Schedule has effect.

SCHEDULE – AMENDMENTS TO ENACTMENTS

49. **Paragraph 1 (Forestry Act 1984 amended)** amends the Forestry Act 1984 by replacing references to absolute amounts for fines with references to standard scale fines in accordance with the Interpretation Act 2015. This paragraph also inserts sections into the Forestry Act 1998 concerning the protection of peatland.

    Peatlands are of great importance in providing a sink for carbon and, in order for them to contribute to meeting the net zero target they require protection from damage that could reduce their carbon sequestration capacity or even cause them to emit greenhouse gases.

    The inserted section 8 (registration of peatland) requires DEFA to establish and maintain a publicly accessible register of peatland areas. The inserted section 8A (registration considerations and reviews) permits DEFA to add any peatland area to the register. However, DEFA must first consult the Wildlife Committee regarding the registration.

    The vast majority of currently identified peatlands are located on the uplands and form part of the Government land estate. However, additional peat reserves are also

present in areas such as the Ballaugh Curraghs and the Central Valley and are not on Government land.

Therefore, the inserted section 8A also requires that DEFA informs the owner and occupiers of registered peatland that the land has been registered and allows them to challenge this decision.

The inserted section 8B (disturbance of registered peatland areas prohibited) creates an offence of disturbing registered peatland unless authorisation has been granted by DEFA. The inserted section 8C (application for authorisation to disturb peatland in registered peatland area) allows DEFA to grant authorisations subject to any conditions that it requires for the good management of the peatland. However, before refusing an application or imposing conditions DEFA must consult those with special knowledge of peatlands and must consider any written representations made by the applicant.

If DEFA anticipates that disturbance of registered peatland is going to occur, the inserted section 8D (action to prevent disturbance of peatland in registered peatland Area) permits it to issue stop notices or apply to the High Court for an injunction.

Should registered peatland be disturbed without authorisation, the inserted section 8E (restoration of disturbed peatland) permits DEFA to issue a rehabilitation notice requiring the person who damaged the peatland to carry out work to repair the damage.

The inserted section 8F (appeals) provides for owners or occupiers of registered peatland to appeal to a High Bailiff against a decision of DEFA or against a rehabilitation notice.

The inserted section 8G (rights of entry upon land) conveys the right of entry onto registered peatland to persons authorised by DEFA for the purposes of maintaining peatland.

The inserted section 8H (offences) deals with offences under the inserted provisions. Offences may be tried in a Court of Summary Jurisdiction and proceedings must not be brought after two years since an offence was committed.

The inserted section 8I (compensation) permits DEFA to pay compensation to an owner if their land is registered as peatland and they can demonstrate that this has resulted in the land losing value.

The inserted section 8J (interpretation) provides definitions for terms used in the inserted sections.

The inserted section 8K (regulations and codes) permits DEFA to make secondary legislation that is required for the operation of the peatland provisions. This may consist of the details of the peatland register and how it will operate or the procedure for reviews. All secondary legislation under the inserted sections will require Tynwald approval before it comes into effect.

In addition, a definition of "disturbance" (when referring to peatland) is added to section 12 of the Forestry Act 1984.

Finally, paragraph 1(1)(i) of Schedule 1 to the Forestry Act 1984 is omitted which has the effect of removing DEFA's power to cut and remove turf on its land.

50. **Paragraph 2 (Licensing and Registration of Vehicles Act 1985 amended)** amends section 13 of the Licensing and Registration of Vehicles Act 1985. These amendments add a power for DoI to make regulations prohibiting the registration of specified classes of vehicles (such as fossil fuel-powered vehicles) or imposing charges on those classes (such as for registering a vehicle or changing its ownership). It is noted that, for Isle of Man residents, if they are unable to register the car on the Island, a prohibition on registering such a polluting vehicle will make unfeasible to own and operate such a vehicle on the Island. The vires for regulations to vary fee types for regulating licensing of would serve to discourage the ownership of vehicles with a high level of CO_2.

51. **Paragraph 3 (Electricity Act 1996 amended)** amends sections 2 and 12 of the Electricity Act 1996 (the Act).

The functions of the MUA are legislated for by section 2 (functions of the authority in relation to the supply of electricity) of the Act. Section 2(1) prescribes a duty to "develop and maintain an efficient and economical electricity supply". Furthermore, section 2(2) requires the MUA to promote the use of "economical methods of generating" electricity.

Section 2(7)(c) of the Act mandates that the MUA have regard to the need "to use, so far as practicable, renewable sources of energy". However, despite this requirement, the overarching duty of the MUA is to maintain an economical system of electricity supply. This may have the effect of reducing the MUA's ability to adopt domestic renewable energy unless it was more economical than fossil fuel-generated power.

Clause 21 of the Bill (climate change duties of public bodies) imposes general climate change-related duties (particularly contributing to meeting the net zero emissions target) on public bodies such as the MUA. In order to reconcile this duty with the MUA's existing duties, Section 2 of the Act is amended such that the MUA must also have regard to its duties under clause 21 of the Bill as well as continuing to have a duty to develop and maintain an efficient and economical electricity supply.

In addition, paragraph 3 inserts a requirement for the MUA to report to the Council of Ministers on its proposals for complying with its duties under clause 21 and how this may affect the electricity supply for the Island.

Under section 2(8) of the Act, DoI can issue directions to the MUA regarding the exercise of its functions. Paragraph 3 also inserts a new section 2(8A) into the Act so that, should such a direction concern climate change-related electricity supply targets, DoI must consult the MUA regarding the cost and energy supply stability implications of any increase in the amount of renewable energy that is supplied.

Local community electricity generation from renewable sources of energy could make a valuable contribution to reaching the net zero emissions target. However, section 12 (restriction on supply by other persons) of the Act prevents the commercial supply

of any electricity other than by the MUA. In order to remove any legislative barriers to community renewable energy generation paragraph 3 amends this section to allow for small-scale low-carbon generation.

The inserted provisions clarify that section 12(1) does not prevent a person other than the MUA from operating as a small-scale renewable energy generator. The amendment currently restricts the maximum capacity of the community renewable energy generation to 20 megawatts. However, inserted provisions empower the DoI to amend this value by regulations (subject to public and MUA consultation and Tynwald approval).

52. **Paragraph 4 (Building Control Act 1991 amended)** amends to Building Control Act 1991 (the Act) to address a potential contradiction created by clause 28 (fossil fuel and fossil fuel heating systems) of the Bill. Clause 28 makes it unlawful from 1 January 2025 to install a fossil fuel heating system in a new property. However, a plan that has been approved by a building control authority and that contains a fossil fuel heating system remains valid as long as construction has begun within 3 years of the plan's approval.

In order to help avoid the administrative burden of processing lapsed plans, the inserted section 11(1)(c) enables a building control authority to reject plans in certain circumstances. Plans submitted from October 2024 may be rejected if they include a fossil fuel heating system where the applicant is unable to reasonably demonstrate that the installation of the heating system will be completed before the ban comes into effect or that include an alternative heating system that complies with ban. In addition, plans may be rejected from 1 January 2025 if they do not comply with the ban.

The inserted section 15(3) amends the Act so that any plan that includes a fossil fuel heating system will cease to be valid from 1 January 2025 when the ban comes into effect.

In cases where construction has begun the plan will lapse if the heating system is not installed and operational before 1 January 2025.

Where a development comprises more than one building the plan will lapse only in relation to those buildings for which the heating system is not installed and operational before 1 January 2025. Buildings on the same plan but which have had their fossil fuel heating system installed before the ban comes into effect will not be affected.

53. **Paragraph 5 (Customs and Excise Act 1993 amended)** amends section 1 (application to the Island of certain enactments relating to customs and excise etc.) of the Customs and Excise Act 1993 (the Act).

A lack of alignment between the Island and the UK where a tax is aimed at environmental benefit could reduce the effectiveness of that tax. For instance, the UK is currently considering the introduction of a plastic packaging tax in order to reduce the contribution of plastics to greenhouse gas emissions. Whilst the exact provisions of this tax are not known at present, its introduction may create loopholes

whereby otherwise-liable plastic packaging is moved through the Island (originating either from the UK, or from outside the UK or the Island) to the UK, thus avoiding the tax.

Alignment may be achieved through the UK legislation having provision for the UK Act to be applied to the Island by an Order in Council. However, as this is outside of the Island's direct control, it would be preferable for Treasury to have clear vires to apply UK environmental taxation legislation to the Island that is aimed at environmental benefit.

Ideally, the Treasury could apply the UK legislation to the Island via section 1(3) of the Act. However, it is sometimes ambiguous as to when the UK legislation meets the criteria for application set out in the Act. Paragraph 5 therefore inserts a provision into section 1(3) that clarifies the Treasury's power to apply UK legislation to the Island where the Treasury is satisfied that the tax, levy or charge has benefit to the environment and is concerned with the import or export of goods.

54. **Paragraph 6 (Town and Country Planning Act 1999 amended)** amends sections 2 (development plan), section 2A (national policy directives) and section 6 (meaning of "development") of the Town and Country Planning Act 1999 (the Act).

Under section 2 (development plan) of the Act, Cabinet Office must prepare the Island Development Plan. Section 2(2A) mandates that, in preparing this plan, Cabined Office must take account of any designation of the land and any national policy directive. However, no mention is made of environmentally beneficial actions. The amendment to this section therefore seeks to add a requirement that the development plan must also take into account climate change-related aspects of planning, including the minimising of greenhouse gas emissions and biodiversity net gain.

In addition, section 2A (national policy directives) allows the Council of Ministers to set out its planning policy for the Island in a national policy directive (NPD) but, again, there is no requirement for environmentally beneficial policies to be included. The inserted section 2A(1A) therefore requires that an NPD covering climate change-related planning aspects must be issued before 1 January 2025 unless a strategic plan covering these aspects has been issued.

Finally, paragraph 6 also amends section 6 (meaning of "development") in order to facilitate the protection and restoration of peatlands, an important provider of carbon sequestration.

Peatland restoration will primarily be carried out by Government and largely on Government land, and will partly involve the removal / blocking of existing drainage. Under section 6(1) such drainage work would likely constitute "development". If it is established that peatland restoration is development for the purposes of the Act then section 7 (planning approval required for development) mandates that the work would require planning approval. Such a requirement would likely increase the time required to achieve this important aspect of carbon sequestration. By excluding removal or blocking of drainage in peatland and the restoration of peatland by DEFA

from the definition of "development", the Department will be able more quickly to ensure carbon sequestration occurs in peatlands.

55. **Paragraph 7 (Town and Country Planning (Development Procedure) Order 2019[1] amended)** is intended to ensure that the aims of the Climate Change Bill (particularly regarding carbon sequestration, emissions and ecosystems) are required to be considered in most planning applications once a development plan or national policy directive setting out such climate change policies has been brought into effect.

Applications for change of use only, for approval of reserved matters, to replace windows or doors in a conservation area, and minor changes) will be exempted. Where these considerations in an application are deemed not practicable, the applicant must justify why this is the case.

[1] SD 2019/0423.