



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 10th June 2014

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J L M Quinn),
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,
Mr E A Crowe, Mr A F Downie and Mr J R Turner
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Leave of absence granted

The President: Hon. Members, the Hon. Member Mr Wild continues to make progress in hospital and we continue to extend our good wishes to him.

10 **Several Members:** Hear, hear.

The Lord Bishop: He might be home now.

Order of the Day

1. Cabinet Office (Legislative Amendments) Bill 2014 – Second Reading approved

The Acting Attorney General to move:

That the Cabinet Office (Legislative Amendments) Bill 2014 be read a second time.

The President: The first business on our Order Paper this morning is the Second Reading and the clauses of the Cabinet Office (Legislative Amendments) Bill 2014.

I call on the Acting Attorney General.

15

The Acting Attorney General: Thank you, Madam President.

The Cabinet Office (Legislative Amendments) Bill 2014 is a short technical Bill resulting from the Modernising Ministerial Government proposals approved at the January sitting of Tynwald. The Bill is the result of one of the Report's recommendations relating to the recently created Cabinet Office

20 consisting of the current Chief Secretary's Office, the Economic Affairs Division of Treasury, the Information Systems Division of the Department of Economic Development and the Office of Human Resources.

The Bill is only concerned with references to the Chief Secretary's Office in Manx enactments which require primary legislation to amend. The Bill therefore amends other enactments that substitute references to 'the Chief Secretary's Office' for references to 'the Cabinet Office'.

The Bill also deals with references where applicable to the Chief Secretary's Office in other legislation, for example, secondary legislation and UK legislation applied to the Island. Any such references are to be read as a reference to the Cabinet Office.

Should the branches of Tynwald support this Bill, it will come into operation on the day that Royal Assent is announced to Tynwald.

Madam President, I beg to move the Second Reading of the Cabinet Office (Legislative Amendments) Bill 2014.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I wonder if it is possible at this juncture for the Attorney to explain to us what is going to happen with the Representation of the People Act? Under the old system the Chief Secretary's Office dealt with elections. One of the concerns I have is that under the new system, it is envisaged that there will be a fixed ceiling on the amount that candidates are allowed to expend during elections, and there is a system to be put in place to audit that, but I understand that is possibly being looked at to go to the courts.

The courts cannot deal with that matter and be arbiters in cases and disputes as well and it seems to me to be strange that where, in the past, the Chief Secretary's Office were the ones who actually called the elections and dealt with that – outsourced it to the legal profession, the returning officers, and so on. There has been no reference in this Bill as to what is going to happen at election time for the House of Keys.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.
Just with reference to clause 6, it says:

'Without limiting section 2 to 5, a reference in any enactment to the Chief Secretary's Office is to be taken as a reference to the Cabinet Office.'

I am just wondering: would there not normally be a list of those enactments because presumably somebody has to then go through the official books, find every reference and amend them, and put the cross-reference that that particular enactment was amended by this one.

I just find it... I have not seen one before where it is just a blanket statement that says, 'If there is any other reference anywhere else, somewhere, then it means this.'

I wondered whether that is a new thing, or whether it is something we have just not seen in recent times before in Council. I wonder if there was a list of Acts that contain the reference 'Chief Secretary's Office' and, if not, why has it not been included as a schedule or something with this amendment?

The President: The Acting Attorney General to reply.

70 **The Acting Attorney General:** Yes, thank you, Madam President, and I am grateful for the Hon. Members for the queries which they have kindly raised.

With reference to the Hon. Mr Downie's concerns: I cannot answer why that has not been addressed or why perhaps it is something that he is not aware, of how the Cabinet Office intends to deal with elections going forward. I have carefully noted his concerns, however, and I will take those to the Chief Secretary and hopefully come back to the next sitting with some comments on that, if I may.

75 With reference to Mr Turner's comments: I think in the world that we now live in of everything being dealt with on the computer system and technology as it is developed, what you will find, Mr Turner and Hon. Members, in future legislation will not – and if I use the expression glibly, 'bother' – to list the full list of statutes that are affected by a provision. It will be dealt with in the electronic version of the Acts as they are printed.

80 What I can advise, Hon. Members, is that I will be bringing forward in the very near future a Legislations Bill and an Interpretation Bill which will be designed to tidy up the way in which we present the legislation in the Isle of Man, and certainly a lot more will be taken as read on the basis that technology and e-mail systems, and everything else, will enable people to access the legislation online, and they will be able to track all of the amendments which have been made and track therefore any cross-referencing, as in this case, to existing legislation. So that will be the way that Bills in future will be presented.

I hope that is helpful for Mr Turner and Hon. Members.

90 **The President:** The Lord Bishop, just by way of comment.

The Lord Bishop: Just by way of comment, Madam President: Mr Turner's question.

Some years ago we changed by the same method the word 'clergyman' in all legislation – because it was a male title – to 'cleric', and we did it by the same method.

95 **The President:** The motion is, Hon. Members, that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Cabinet Office (Legislative Amendments) Bill 2014 – Clauses considered

The President: We now move to clauses.

Clause 1.

100

The Acting Attorney General: Yes, thank you, Madam President.

Turning to this seven-clause Bill, clause 1 gives the Act resulting from the Bill its short title.

I beg to move that clause 1 do stand part of the Bill.

105 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

110

The Acting Attorney General: Thank you, Madam President.

Clause 2 amends part I of schedule 1 to the Jury Act 1980 which deals with persons ineligible for jury service, in Group C, others concerned with the administration of justice.

I beg to move that clause 2 do stand part of the Bill.

115 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

120 **The Acting Attorney General:** Thank you, Madam President.

Clause 3 amends paragraph 8 in the schedule to the Regulation of Surveillance etc Act 2006.

I beg to move that clause 3 do stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

125

The President: The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

130 **The Acting Attorney General:** Clause 4 amends section 3(2)(g) of the Personal Liability (Ministers, Members and Officers) Act 2007.

I beg to move that clause 4 do stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

135

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

140 **The Acting Attorney General:** Yes, thank you, Madam President.

Clause 5 amends paragraph 1(j) of schedule 2 to the Tynwald Commissioner for Administration Act 2011.

I beg to move that clause 5 do stand part of the Bill.

145 **Mr Braidwood:** I beg to second, Madam President.

The President: The motion is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Consequential amendments, clause 6.

150

The Acting Attorney General: Yes, thank you, Madam President.

Clause 6 deals with references, where applicable, to the Chief Secretary's Office in other legislation, for example secondary legislation and UK legislation applied to the Island. Any such references are to be read as reference to the Cabinet Office.

155 I beg to move that clause 6 do stand part of the Bill.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 6 –

160

Mr Crowe: Madam President, can I –

The President: The Hon Member, Mr Crowe.

165 **Mr Crowe:** – just ask a question.

Is there any effect on European Union legislation in this Bill, or is it covered through the UK amendments?

The President: Mr Acting Attorney.

170 **The Acting Attorney General:** I thank the Hon. Member for his question. I would have to check.
I believe that the definition of 'public document' will actually include that because it refers certainly... because I was looking at it yesterday actually to regulations that are issued. So I would imagine, and I am quite sure, that that will encapsulate any orders or regulations that are applied to us out of the European Union.

175 I will certainly check on that and if there is anything different to that I will advise at the next sitting.
Thank you.

The President: The motion is that clause 6 do stand part of the Bill. Those in favour, please say
180 aye; against, no. The ayes have it. The ayes have it.
And finally, clause 7.

The Acting Attorney General: Thank you, Madam President.
Clause 7 provides for the automatic repeal of sections 2 to 5 of the Act following the
185 promulgation of the Act. This will not affect the amendments made by those sections.
I beg to move that clause 7 do stand part of the Bill.

Mr Braidwood: I beg to second, Madam President.

190 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say
aye; against, no. The ayes have it. The ayes have it.

2. Trusts (Amendment) Bill 2014 – Second Reading approved

Mr Braidwood to move:

That the Trusts (Amendment) Bill 2014 be read a second time.

The President: We turn now to Item 2 on our Order Paper, the Trusts (Amendment) Bill 2014, the
Second Reading and clauses stage.

I call on the Hon. Member, Mr Braidwood.

195 **Mr Braidwood:** Thank you, Madam President.
Madam President, Hon. Members will remember from the First Reading that the purpose of this
Bill is to address three small areas of trust law.

Trusts originated in the Middle Ages, dating to the time of the Crusades. Relatively recently, in
200 this context at least, some matters have been addressed by legislation. This Bill seeks to make
amendments to three small areas of the Island's trust law. These three small areas will have a big
impact as they will bring the Island's legislation in line to that of its near neighbours and
competitors. The Bill will ensure that the Isle of Man remains competitive.

205 It should be noted that great care has been taken to ensure that this is not at the expense of
good practice or the Island's reputation.

The three areas that are considered by this Bill are: the abolition of the 'two trustee rule'; the abolition of the perpetuity period in respect of future dispositions of trusts; and the matters determined by governing law where a trust is settled subject to the law of the Isle of Man.

210 Madam President, to refresh the memories of Hon. Members I will provide a brief explanation as to what each of these is intended to achieve.

215 The first amendment is to the two trustee rule, which requires that there must be either two individual trustees or a trust corporation – *not* a trust service provider – in place to give valid receipt for capital money. The current law already makes provisions for one individual trustee to act where the trust instrument permits this; therefore, there appears to be no reason not to change this in all cases.

The current law sits across several Acts. In order to abolish the two trustee rule, the two Acts need to be amended – these are the Settled Land Act 1891 and the Trustee Act 1961.

220 The second area to be amended considers the abolition of the perpetuity period in respect of future dispositions of trusts. The courts developed what is known as 'the rule against perpetuities' during the 17th century. This common law rule restricts a person's power to control the ownership and possession of his or her property in perpetuity.

When trusts are created, it is likely that the settlor wishes the trust to last indefinitely. The reality is that the trust will survive into a second and possibly third generation, but often not past then. Beneficiaries have their own reasons for ensuring a trust vests.

225 Madam President, the Bill contains seven clauses, and I wish to move the Second Reading of the Trusts (Amendment) Bill 2014.

The President: The Hon. Member, Mr Downie.

230 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Trusts (Amendment) Bill 2014 – Clauses considered

235 **The President:** We turn to clauses. Perhaps we could take clauses 1 and 2 together?

Mr Braidwood: Certainly, Madam President.

Madam President, clause 1 provides the short title of the Bill.

240 Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. Provision is made to allow the Treasury to make saving and transitional provisions by order.

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

Mr Downie: I beg to second, Madam President, and reserve my remarks.

245 **The President:** The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Braidwood: Thank you, Madam President.

250 Clause 3 amends the Settled Land Act 1891. In this clause, new sections 34 and 34A replace existing section 34 of the Settled Land Act 1891.

New section 34 expressly considers that any reference to the trustees of a settlement will include the remaining trustee or trustees. The effect of this is that any references to trustees in the plural can be read as applying equally to a sole trustee.

255 New section 34A considers the subject of the payment of capital money to trustees. The law currently requires that there are two trustees in place to give valid receipt for capital moneys on the sale of settled land. The exception to this rule is where the trustee is a trust corporation, *or* the trust instrument expressly authorises a sole trustee to act. The effect of this new section will be to widen the scope of application of the definition of trustees of the settlement to include sole trustees.

260 Madam President, I remind Hon. Members that the provision of services of trustee by way of business is an activity that is licensable by the Financial Supervision Commission. Individuals who are licensed by the Financial Supervision Commission to act as trustees may, in most instances, and despite being licensed, not act as sole trustees.

265 The effect of this clause will be to address an existing anomaly. This anomaly sees trust corporations and trust service providers, both being holders of class 5 licences, not being afforded equal treatment under the law.

Clause 3(3) repeals section 40(2) of the Settled Land Act 1891. The effect of this is to remove a further reference to a requirement that there are either two trustees in place or a trust corporation, unless, Madam President, the trust instrument expressly provides for a sole trustee.

270 Madam President, I beg to move that clause 3 stands part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Butt.

275

Mr Butt: Thank you, Madam President.

Can I just ask for a clarification from the mover? Presumably in the past when there was more than one trustee, the idea was that the trustees could keep an eye on each other and actually hold each other to account. Now we have sole trustee.

280 Is the only way they can be held to account now through the licensing system through the Financial Supervision Commission?

Is that the change that is being made?

The President: The mover to reply.

285

Mr Braidwood: Thank you, Madam President.

The change basically is to bring us in line, as I have already said, with our competitors because if there had been two trustees in the trust instrument and one trustee had died, we then had to appoint another trustee. However, what we have to do even if they are licensed by the Financial Supervision Commission, now a trust corporation can act as individually, but a person who is licensed by the Financial Supervision Commission *cannot* unless it is specifically expressed in the trust instrument. So therefore, yes, they would be governed by the Financial Supervision Commission.

290

295 **Mr Butt:** Thank you.

Mr Braidwood: And I am getting some more clarification here, Madam President. *(Laughter)*

The President: Maybe this is it.

300

Mr Braidwood: Yes, sorry.

A sole trustee at the moment unlicensed can already act; but a sole trustee who is licensed by the Financial Supervision Commission cannot.

305 **Mr Butt:** Yes, that is right. Thank you.

Mr Braidwood: I hope that clarifies what I have already said as well?

310 **Mr Butt:** It does, yes. The question is: where is the supervision going to fall?
Thank you.

The President: Mr Acting Attorney General, do you want to add to that?

315 **The Acting Attorney General:** Madam President, just a very brief note for the guidance of
Members, that it is not just the Financial Supervision Commission who will control the trustees
under a licence, there is the control of the court. So any beneficiary, or anybody interested in the
trust, could take an issue to the courts for directions and, in essence, to control a trustee who
perhaps is not complying with what he ought to be doing.
So there is the ultimate control of the courts as well.

320 **The President:** Thank you.

325 **Mr Braidwood:** If I could just come in there and say to the learned Acting Attorney General: if the
courts, with the trustee – and I am just trying to get this in my own mind now – would it be the
beneficiaries who would have to go to the court, then, and say that the trustee is not acting in their
benefit?

330 **The Acting Attorney General:** Madam President, certainly beneficiaries can do that, they can
take a trustee to the court if they are not acting in accordance with the terms of the trust. It may not
necessarily be a question of acting in their *interest*, but certainly the terms of the trust deed itself.

The President: Sorry, Hon. Member, the Member has replied so if you want to speak about a
clause do it early before we come to the reply.

335 **Mr Coleman:** It was just the Attorney General's comments, Madam President.
I would imagine that protectors also have the ability to take things to courts as well?

The Acting Attorney General: That is correct, Madam President.

The President: Thank you.

340 I think we are now ready to look at the clause. The motion is that clause 3 do stand part of the
Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

345 **Mr Braidwood:** Thank you, Madam President.

Clause 4 amends the Trustee Act 1961.

Clause 4(2) repeals existing section 12(2) of the Trustee Act 1961. This removes an additional
reference to a sole trustee other than a trust corporation being unable to give valid receipt for
capital money under the Settled Land Act. Members will remember that the previous clause dealt
with two trustees under the Settled Land Act.

350 Clause 4(3) amends section 36 of the Trustee Act 1961. A new subsection (1)(c) makes express
provision for a sole trustee to act. It also removes the requirement to replace trustees that are no
longer in office for any reason. That is, as I have explained before, the requirement to fill up the
original number of trustees. Finally, it expressly permits a sole trustee to act alone in circumstances
which would previously not have been permitted.

355 New subsection (2) proposes that new subsection (1) will not apply if the terms of the trust instrument require two trustees to be in place. This means that there is still the option for the trust instrument to stipulate that there must be two trustees in place, essentially there is a choice to maintain the status quo if desired.

360 Clause 4(4) amends subsection (1) of section 38. The references to two trustees or a trust corporation are removed. The amendments reflect the changes to consider that there may indeed be a sole trustee in place.

Madam President, I beg to move that clause 4 stands part of the Bill.

365 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon Member, Mr Crowe.

370 **Mr Crowe:** So whilst this allows existing trusts who have two trustees and one dies, or ceases to operate, they can continue with the one trustee, but it does not prevent a new trust deed being prepared to allow two trustees to act for the trust?

A new trust would allow two trustees to act; it is not compulsory to have just one trustee, is it?

Mr Braidwood: No.

375 **Mr Crowe:** And in the death of a sole trustee do the executors of his estate become an automatic trustee of the settlement?

The President: I think we need the advice of the learned Acting Attorney here. *(Laughter)*

380 **Mr Braidwood:** I will let the learned Acting Attorney go first, Madam President.

The Acting Attorney General: Madam President, the position is simply, as you have quite rightly concluded, that there is no requirement to actually have *one* trustee, so you can have more than one. So that is the first point.

385 The second point is not quite easy to answer, because it all depends what the trust deed says. Quite often any properly drafted trust deed will make provision for there being a vacancy in the trust deed, and it will then usually provide a mechanism for someone to appoint a trustee to fill that vacancy. So it is not the estate of the deceased trustee that necessarily has that power, it is usually in the trust deed itself.

390 **Mr Crowe:** Thank you.

The President: Any other Member wish to speak before a reply?
The Hon. Member.

395 **Mr Braidwood:** Thank you, Madam President.

400 Again, if the trust instrument specifically expresses that there has to be two trustees and one dies, then there has to be another trustee appointed. One of the reasons we have amended this legislation is because it could be under the Settled Land Act where they wanted to sell land and one trustee had died. The other trustee had had to go round – he might have been given a very beneficial price for the land and he was not able to sell it because there has to be two trustees in place.

405 It is just the same clarification: it is only in reality an issue where there is a property – real estate – in the trust, so that would be the settled land – which was the previous clause.

Mr Crowe: Right, thank you.

Mr Braidwood: I hope that gives clarification to the Hon. Member.

The President: The motion is, then, that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

410 Now, we come to clause 5 and Mr Downie will be moving an amendment, so I presume someone else will be seconding?

Mr Braidwood: Yes, we have arranged them, Madam President. *(Laughter)*

415 **The President:** Right, clause 5, Hon. Member.

Mr Braidwood: Thank you.

Clause 5 amends the Perpetuities and Accumulations Act 1968.

420 Subsection (2) of clause 5 makes consequential amendments that will be needed after the insertion of new section 1A.

New section 1A is inserted by subsection (3) of clause 5. This abolishes the rule against perpetuities for future dispositions. Madam President, may I remind Hon. Members that at the previous reading of this Bill I gave an explanation of what the perpetuity period is. You will be happy to know, Madam President, that I will recap only briefly.

425 The perpetuity period is the maximum amount of time for which assets can be owned by a trust. On expiry of this period, the trust ends and the trust property must be distributed. The rule was put in place to prevent property, particularly settled land, being held in trust in perpetuity. This rule is the common law rule against perpetuities.

430 Perpetuity periods used to be set for the period of a life in being. This is roughly 80 years. More recently, perpetuity periods have been enshrined in statute and have been lengthened. This is currently set at 150 years in the Isle of Man. The abolition of this rule does create the potential for land to be held in trust indefinitely. However, there is good evidence to suggest that trusts which are settled with the intention of funding a dynasty are usually broken up by the second or third generations of beneficiaries. The realities of life today are different to those in the 17th century
435 when this rule was created.

This clause makes it clear that the abolition of the rule against perpetuities does not affect the quality of provenance of property. Property that is not unencumbered, and that was previously unavailable for the settlor to settle into the trust, will remain so. No change is being made to anything other than the potential maximum time for which property can be held in trust.

440 Members should also note that perpetuity periods in respect of existing trusts will not be affected by this amendment. It is only new dispositions of property that can be put in trust for an indefinite period. This may well result in some property in a trust being subject to a perpetuity period and other property not.

445 Hon. Members may have noted that I said 'can' and not 'must' be put in trust for an indefinite period. This is because subsection (7) of new section 1A considers that a trust may still be settled subject to a defined perpetuity period if desired. It is also worth noting that the perpetuity period applying to trusts settled under the Purpose Trusts Act 1996 is unaltered by this amendment. A perpetuity period of 80 years applies in respect of purpose trusts and will remain in place in respect of existing and future dispositions of property.

450 Madam President, I beg to move that clause 5 stands part of the Bill.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President, I beg to second and reserve my remarks.

455

The President: Mr Downie.

Mr Downie: Yes, thank you, Madam President, Hon. Members.

460 This Bill was the subject of much consultation and scrutiny before it was introduced into the branches. As is often the case, representation was made after the official consultation period had ended. In this case it was at the eleventh hour.

465 The Bill seeks to amend a highly complex and technical area of the law. It is critical that there is complete certainty of the intention of the effect of the amendments. It has become apparent that the Bill would benefit from three small further amendments. This should achieve the outcome of certainty which is so fundamental to this area of the law. I will provide a brief explanation of what the amendments that we are proposing to clause 5 will achieve.

470 Paragraphs 1 and 3 must be moved together or not at all. They relate to the perpetuity period which is being abolished under the Bill. They deal with one small area that remained in respect of easements and options over land which in certain circumstances remain subject to a period of 21 years, unless registered as a deed. The reasons for the 21-year period have been lost in time. The rule of 21 years now appears to be entirely arbitrary, as it was intended that the Bill would abolish the perpetuity period for all future Manx trusts in all circumstances.

The amendment to clause 5 appears to be necessary.

475 The second amendment to clause 5 is set out in paragraph 2. This clarifies the definition of 'disposition' by making sure that it is absolutely clear that there was no intention to alter the meaning of the existing definition. The Bill sought only to provide additional certainty to what is within the scope of the definition, since it appears that this might be interpreted one of two ways paragraph 2 seeks to bring certainty.

Madam President, I beg to move the amendments standing in my name.

480

Amendments to clause 5

1. Page 7, line 8, for "section 10(2)" substitute "section 10(2) and (3)".

2. Page 7, line 32, for "In subsection (1) "**disposition**" includes —" substitute "Without limiting the application of section 13(2), in subsection (1) "**disposition**" further includes —"

3. Page 8, line 5 —

(a) re-number paragraph (4) as paragraph (5); and

(b) immediately before paragraph (5) insert —

"(4) In section 10 (options relating to land) —

(a) at the beginning of subsection (2), for "In" substitute "Subject to subsection (3), in"; and

(b) after subsection (2) insert —

"(3) In relation to a disposition referred to in subsection (2) which is made after section 1A comes into operation —

(a) subsection (2) does not apply; and

(b) the rule against perpetuities is abolished".

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: If no Hon. Member wishes... Lord Bishop?

485

The Lord Bishop: Thank you, Madam President.

I had always understood that in cases of trust law 21 years was there to cover a trust held in the interests of a minor, when the age of majority was 21.

490 **The President:** Is there a question or just a statement?

The Lord Bishop: That was just a statement, (*Laughter*) merely opening my mouth for the benefit of the wider world really... (*Laughter*)

495 **The President:** Perhaps it is 18 now. Perhaps the learned Acting Attorney can tell us? Or 16 even... 18, presumably?

The Acting Attorney General: It is 18, Madam President.

Mr Braidwood: 16 to vote.

500

Mr Crowe: Can I just ask Madam President, this 'options relating to land'. Will that mean that options relating to land will continue as at present, there will be rights for the person either selling the option or buying the option will remain as is?

505 As I am saying, if you buy an option to buy land or sell an option to sell land we are not changing the law in any way, this amendment leaves the status quo?

The Acting Attorney General: Yes, I can confirm that is the position, Madam President.

Mr Downie: The status quo.

510

Mr Crowe: Thank you.

The President: The mover to reply.

515 **Mr Braidwood:** Is there anything to reply on, Madam President? I do not think so... apart from the Lord Bishop.

The President: The motion is that clause 5 do stand part of the Bill. To that we have an amendment in the name of the Hon. Member, Mr Downie. I will put to you the amendment first.

520 Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I will now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

525 **Mr Braidwood:** Thank you, Madam President.

Madam President, the Trusts Act 1995 contains what are known as the firewall provisions. These provisions shield trusts that are settled under Isle of Man trust law from attack or the impact of foreign laws and judgments. The changes proposed are relatively modest and have been undertaken to ensure that the Island's law contains provisions equivalent to those in competitive jurisdictions. In keeping with our inherently conservative approach to matters that engage with the laws of other jurisdictions, it is not proposed that the law goes as far as it does in some jurisdictions.

530 Clause 6(2) amends section 5 of the 1995 Act. It does this by making a logical extension to the protections under Manx law. Section 5 provides that a validly constituted trust must be recognised, even if the law of another jurisdiction does not recognise trusts.

535 Section 5 currently only expressly protects the settlor from attack on grounds that a settled trust is not recognised by the law of his jurisdiction. This overlooks the other parties to trusts. These are the trustees, beneficiaries and protectors of trusts. The amendment in new subsection (1) of section 5 extends the protections to these parties.

540 New subsection (2) of section 5 deals with the perceived problem of the automatic application of foreign court orders to trusts that are governed by Manx law. The amendment expressly requires that, in order for a foreign court judgment to be recognised in the Isle of Man, application must be made to the High Court of the Isle of Man. This does not enable parties to shirk their responsibilities by hiding behind the trust. It does, however, mean that parties to a validly constituted trust will have the certainty that the trust is recognised and protected by Manx law.

545 Hon. Members will be aware that the issue of the Judgments (Reciprocal Enforcement) (Isle of Man) Act of 1968 was raised at consultation. This Act requires the High Court to recognise the judgments of certain courts, subject to certain conditions being met. It is not anticipated that the amendment will engage the Act. It should also be noted that the Island's courts are well regarded:

550 they have a reputation for acting fairly and conservatively. There is no reason to suspect that the courts will not continue to act as they have always done.

Madam President, I beg to move that clause 6 stands part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

555 **The President:** The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 7.

Mr Braidwood: Thank you, Madam President.

560 Clause 7 makes provision for the automatic expiry of the resultant Act on either the day following its day of promulgation or the day after the last of the amendments have taken effect. This will not affect any amendments that have been made by the Bill. This is simply a matter of housekeeping.

Madam President, Hon. Members, this Bill will ensure that the Island's trust practitioners are given the tools that they require to permit them to compete on a level playing field.

565 Madam President, I beg to move that clause 7 stands part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks

570 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes our business for this morning. Council will now adjourn to Tynwald on 17th June and thereafter to this Chamber on 24th June.

Can I say, it is very nice to have visitors from America with us in the gallery this morning.

575 **Two Members:** Hear, hear.

The Council adjourned at 11.13 a.m.