



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 27th November 2018**

*All published Official Reports can be found on the Tynwald website:*

[www.tynwald.org.im/business/hansard](http://www.tynwald.org.im/business/hansard)

*Supplementary material provided subsequent to a sitting is also published to the website as a Hansard Appendix. Reports, maps and other documents referred to in the course of debates may be consulted on application to the Tynwald Library or the Clerk of Tynwald's Office.*

**Volume 136, No. 5**

**ISSN 1742-2272**

**Present:**

**The President of Tynwald (Hon. S C Rodan)**

The Lord Bishop of Sodor and Man (The Rt Rev. P A Eagles),  
The Attorney General (Mr J L M Quinn QC),  
Miss T M August-Hanson, Mr D C Cretney, Mr T M Crookall, Mr R W Henderson,  
Mrs M M Hendy, Mrs J P Poole-Wilson and Mrs K Sharpe  
with Mr J D C King, Clerk of the Council.

**Business transacted**

<b>Order of the Day .....</b>	<b>49</b>
1. Payment of Members' Expenses (Amendment) Bill 2018 – Clauses considered .....	49
Payment of Members' Expenses (Amendment) Bill 2018 – Standing Order 4.3(2) suspended to take Third Reading .....	51
Payment of Members' Expenses (Amendment) Bill 2018 – Third Reading approved .....	51
2. European Union and Trade Bill 2018 – First Reading approved.....	51
Leave of absence granted .....	59
<i>The Council adjourned at 11.18 a.m. ....</i>	<i>59</i>

## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

**The President:** Moghrey mie, good morning, Hon. Members.

**Members:** Moghrey mie, Mr President.

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

### PRAYERS

*The Lord Bishop*

## Order of the Day

### 1. Payment of Members' Expenses (Amendment) Bill 2018 – Clauses considered

Mr Cretney to move.

**The President:** Hon. Members, the business before us this morning, Item 1 clauses stage of the Payment of Members' Expenses (Amendment) Bill 2018, and I call on the mover, Mr Cretney, please.

10 **Mr Cretney:** Thank you, Mr President; and can I apologise for getting things slightly out of sync last Tuesday – I had reverted to House of Keys mode, I think.

So clause 1 of this Bill provides the short title of the resulting Act. It will come into operation on the day on which Royal Assent is announced.

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

15 **The President:** Secunder, Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

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

Clause 2.

**Mr Cretney:** Yes, thank you, Mr President.

25 Clause 2 amends the Payment of Members' Expenses Act 1989. The newly inserted section 7A will prevent a Member who has been suspended from Tynwald or either Branch from receiving any

payment under section 2, 3 or 4 of that Act and from receiving any additional payment under section 1(2) of that Act in respect of the period of suspension.

I beg to move.

30 **The President:** Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

**The President:** Yes, Mr Crookall.

35

**Mr Crookall:** Thank you, Mr President; and I thank you for the last time we sat on this.

If I can just ask the mover of this: can I take it, just for clarification, what is meant by this then is that if a Member is suspended from Tynwald, or either of the Houses, that they also are suspended from their departmental duties and there is no payment at all – even though the Departments would not have had any input into the suspension from Tynwald if an occurrence was to take place in Tynwald, for instance, and the President suspends them from Tynwald? They are then automatically suspended from a Department, for which they will get no remuneration at all until an apology, or whatever, is given to sort this issue out?

45 **The President:** Mr Cretney.

**Mr Cretney:** My understanding is that that would be a matter for the Chief Minister in terms of the Department. I do not think there is an automatic suspension from Department activity, but it would be a matter that the Chief Minister would consider, and the Council of Ministers.

50 I would have thought, though, that given such circumstances it would be normal practice for such action to follow on from what had happened in Tynwald.

**The President:** Any other comment?

55 **Mr Cretney:** And even if they were still in the Department, Mr President, they would not get paid for that work.

**Mr Crookall:** Right, that was my clarification. If they were suspended from Tynwald or Legislative Council or the House of Keys could they still do departmental work? And it sounds like, from what you were saying, there would be no remuneration at all.

60 So whether they were suspended from the Department or not, would be for the Minister or the Chief Minister?

**Mr Cretney:** Yes.

65

**Mr Crookall:** Right, okay.  
Thank you, Mr President.

**The President:** Mr Cretney, do you wish to make any concluding remarks?

70

**Mr Cretney:** Well, only to thank Hon. Members for their interest in the legislation; and I hope that clarifies matters for the Hon. Member.

75 **The President:** I put clause 2. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Payment of Members' Expenses (Amendment) Bill 2018 –  
Standing Order 4.3(2) suspended to take Third Reading**

**Mr Cretney:** Mr President, may I be bold again, and given that the Bill only has one operative clause, I seek the leave of Council to move that Standing Orders be suspended to allow the Bill to be read a third time at this sitting?

80 **Mr Henderson:** I second.

**The President:** And seconded.  
I put it to Council: is that agreed?

85 **Members:** Agreed.

**Payment of Members' Expenses (Amendment) Bill 2018 –  
Third Reading approved**

**The President:** Mr Cretney.

**Mr Cretney:** Thank you very much, Hon. Members.

90 I beg to move that the Payment of Members' Expenses (Amendment) Bill 2018 be read a third time, and I thank Hon. Members for their support.

**The President:** Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

95

**The President:** I put the motion that the Payment of Members' Expenses (Amendment) Bill be read for the third time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Thank you, Hon. Members.

**2. European Union and Trade Bill 2018 –  
First Reading approved**

The Attorney General to move:

*That the European Union and Trade Bill 2018 be read a first time.*

100 **The President:** We move now to the European Union and Trade Bill 2018, as amended in the Keys. First Reading, HM Attorney General to move.

**The Attorney General:** Thank you, Mr President.

105 I feel that I hardly need to introduce the European Union and Trade Bill, as so much has already been said about the United Kingdom's withdrawal from the European Union; and much has also been said about the Bill before its arrival in this place. Nevertheless, it falls to me to move this Bill on behalf of the Council of Ministers and in so doing I need to set out some of the background and explain the scope of the Bill.

As Hon. Members will know, a Withdrawal Agreement has been agreed between the UK and the EU, and on Sunday it was formally signed by the UK and EU leaders at a special European Council summit. A brief outline of the aspirations for the future relationship between the UK and the EU was also agreed in the form of a Political Declaration. But that is certainly not the end of the story. The Withdrawal Agreement cannot come into force until it is approved by the UK and European Parliaments. But, at present, it is not clear whether there is sufficient support in the UK Parliament for the Agreement to be approved. We therefore continue to need to plan for all eventualities, and the only outcome under which this Bill would not be needed is an outcome that nobody seriously expects to happen – that is, for Brexit to be cancelled.

If we rule out that possibility, at 11 p.m. UK time on 29th March 2019, the UK will cease to be a Member State of the European Union and at that same time the Island's formal relationship with the EU through Protocol 3 to the UK's Treaty of Accession will come to an end. If the Withdrawal Agreement is approved and comes into force there will be a *status quo* 'implementation period'. During this period, EU legislation, rights and obligations will be applicable to the Island under the Withdrawal Agreement to the same extent as is currently the case under Protocol 3.

Our European Communities (Isle of Man) Act 1973 currently gives legal effect to the Island's rights, obligations and applicable EU legislation under Protocol 3. But that Act will not give effect to those same rights, obligations and applicable EU legislation that flow from the Withdrawal Agreement during the implementation period, if there is one.

Mr President, a large number of EU Regulations and Decisions that are within the scope of Protocol 3 currently apply, directly and automatically, as part of the law of the Island due to the operation of the 1973 Act. On exit day, when Protocol 3 is no longer in force, section 2(1) of the 1973 Act no longer works and, if we do nothing, all of that EU legislation will cease to be part of the law of the Island. This is the position whether or not the Withdrawal Agreement is ratified by both parties.

The effect of all this EU legislation ceasing to be part of the law of the Island would be large gaps in the Island's legal framework, particularly in relation to agriculture and fisheries and customs matters. One of the principal purposes of this Bill is to avoid such a legal 'cliff edge' and ensure as smooth a transition as possible from immediately before exit day to immediately after exit day.

As the Hon. Members will be aware, a number of amendments have been made to the Bill in the House of Keys. These amendments addressed concerns that Hon. Members had raised particularly in relation to: firstly, the volume of directly applicable EU legislation which will need to be retained as Manx legislation under clause 7 of the Bill; secondly, the volume of secondary legislation which will need to be made by the Council of Ministers and approved by Tynwald under clause 12 of the Bill in a relatively short time period. These are the regulations required to correct failings and deficiencies in Manx legislation and retained EU law to ensure that it will function properly outside of the EU; and thirdly, the scope of some of the enabling powers in the Bill.

A new clause 11 has been inserted into the Bill to ensure that any directly applicable EU legislation retained as Manx legislation on exit day will be reviewed within five years. The conclusions of that review will be reported to, and debated by, Tynwald.

Similarly, a review requirement has been inserted into clause 12 of the Bill which will ensure that any regulations to correct failings and deficiencies made under clause 12 will be re-reviewed in slower time within five years of exit day.

In addition, time limits have been imposed on the exercise of certain enabling powers in the Bill where it was considered appropriate to do so. This means that these enabling powers will only be available to use for a limited period of time, after which the power itself will expire. However, it was not appropriate to include such time limits on the forward-looking powers contained within the Bill – for example, the power which will enable DEFA to apply 'EU' [UK] legislation to the Island within certain defined subject areas. [See page 57 C136 lines 400-407]

The scope of the enabling power in clause 19 of the Bill, which will allow for the application of 'EU' [UK] legislation to the Island, was amended so it was limited to the categories of UK legislation specified in clause 19(3) – that is, UK legislation relating to the withdrawal of the UK from the EU,

160 the approval and implementation of the withdrawal agreement and the future relationship between  
the UK and the EU.

165 Clause 25 of the Bill was amended to include, for the avoidance of doubt, an express statement  
to the effect that any regulations made by Treasury in relation to the disclosure of information for  
the purpose of facilitating trade functions, cannot allow a disclosure of information in contravention  
of the Island’s data protection legislation. In addition, the power of the Council of Ministers to make  
regulations under paragraph 2 of Schedule 3, in relation to judicial notice of certain matters and the  
admissibility of evidence of certain matters, was made subject to prior consultation with the  
Deemsters.

170 As Hon. Members will be aware, a few proposed amendments to the Bill were debated in the  
House of Keys but not accepted, one of which was the inclusion of ‘sunset clauses’. A sunset clause  
is a clause which provides for legislation to expire on a specified future date. We need, Hon.  
Members to be very careful with sunset clauses as they are not appropriate in all situations,  
especially where we are dealing with large volumes of legislation. If large volumes of legislation  
expire at the same time, this in itself could cause large gaps in our statute book if there is no other  
175 legislation in place to replace it, and making sure that there is appropriate legislation in place to  
replace such a large volume of expired legislation would be a challenging, possibly insurmountable,  
task.

180 In addition, when you are providing for a piece of legislation to expire at a future date, you would  
need to have considered what the legal consequence of that expiry will be and, where appropriate,  
provides for those consequences. Again, this is not an easy task if you are dealing with, for example:  
large volumes of legislation; the uncertainty of what the legal landscape will look like in seven years’  
time; and legislation that is not necessarily stand alone and self-contained and which may impact  
upon and consequentially amend other Manx legislation. Sunset clauses also have the potential to  
cause uncertainty for individuals and businesses if they are subject to or rely upon legislation which  
185 has a limited duration.

Another proposed amendment to the Bill, which was debated but not accepted in the House of  
Keys, was the substitution of ‘necessary’ for ‘appropriate’ in a number of the enabling powers in the  
Bill. A test of ‘appropriate’ would require the Council of Ministers to be satisfied that the exercise of  
the relevant power to make regulations falls within the scope of the enabling power. Whilst this  
190 does allow for an element of subjectivity it is not unchecked: firstly, any exercise of the power by the  
Council of Ministers *must* be reasonable – if it is not, the resulting regulations can be challenged  
before the Manx courts; secondly, any regulations made under such powers – bar one – cannot  
come into operation until they have been approved by Tynwald. Regulations made under  
clause 28(4) will be subject to the subsequent approval of Tynwald; therefore Tynwald itself will  
195 have the opportunity to debate the ‘appropriateness’ of the exercise of the enabling power.

A test of ‘necessity’ would impose a higher legal bar before the power could be exercised by the  
Council of Ministers. This could have the effect of removing the flexibility that the Government  
needs to be able to deal with the consequences of Brexit. For example, in the context of the power  
in clause 12 of the Bill to address failings and deficiencies, whilst it may not be legally necessary for  
200 the Island to stop upholding an existing reciprocal arrangement with the EU that the EU ceases to  
recognise on exit day, it is likely to be appropriate to do so.

Mr President, I would now like to give an overview of the main provisions of the Bill. The  
intention is that regulations will be made under clause 7 of the Bill to list exactly which pieces of  
directly applicable Protocol 3 legislation are to be retained as part of Manx law after exit day. The  
205 aim is to provide as much legal certainty as possible after Brexit – although, as I know Hon. Members  
understand, this is not particularly easy with the continuing uncertainty about whether the  
Withdrawal Agreement will be acceptable to a majority of Members of Parliament. And if the  
Agreement is not approved by Parliament, there is uncertainty about what will happen next.

Mr President, it is largely the Department of Environment, Food and Agriculture that has been  
210 working to identify the directly applicable EU legislation that needs to be retained so as to, in effect,  
maintain the *status quo* immediately following Brexit. This is simply because that Department, along

with the Customs and Excise Division of Treasury, has responsibility for most of the areas that are within the scope of Protocol 3. And only EU legislation that is considered to be currently wholly or partly directly applicable to the Island under Protocol 3 can be 'retained' after exit day with regulations under clause 7. DEFA is looking at several hundred pieces of EU legislation that need to be retained as part of the law of the Island. The regulations under clause 7 will require the approval of Tynwald.

If an important piece of EU legislation is inadvertently not saved by the regulations under clause 7, for a limited time after exit day this can be addressed by regulations under clause 18. Any such regulations also require the approval of Tynwald.

As I have already mentioned, clause 11, which was inserted into the Bill by the House of Keys, provides for a full review of the retained direct EU legislation within five years after exit day. The outcome of that review will be set out in a report which must include conclusions and recommendations and be laid before Tynwald for debate.

In addition to retaining certain directly applicable EU legislation, the statutory documents which have been made under sections 2A and 2B under our 1973 Act will be saved when that Act is repealed by this Bill. These statutory documents are existing Manx legislation that has been made and approved by Tynwald in slower time, and it is beneficial for them to continue to be in operation after Brexit. But these saved statutory documents can be amended or revoked, with the approval of Tynwald, using the powers under clause 17 at a later date if, or when, that becomes necessary or desirable.

Mr President, the direct EU legislation that is retained under clause 7 and other Manx legislation that has a connection to the EU needs to be reviewed to ensure that it still works, so far as possible, after the UK has left the EU and Protocol 3 is no longer in force. For example, there are references in Manx legislation to 'EU Member States', which of course currently includes the United Kingdom. After exit day those references will no longer include the UK, but it may well be important for the scope of such references to be maintained.

Another example is where retained direct EU legislation includes functions that are currently carried out for the Isle of Man and the UK by an EU body. That EU body will no longer carry out those functions for the Island after exit day if there is no deal and they must be given to a body in the Island or one in the UK.

Clause 12 of the Bill can make these amendments. Regulations under this clause require the approval of Tynwald. Regulations under this clause cannot be made after the end of the period of two years beginning with exit day. And the deficiency amendments to Manx legislation will be subject to a review within five years from exit day.

Under clause 8 of the Bill, the rights, powers, obligations, etc. that relate to the statutory documents saved by clause 6, the direct EU legislation that is retained by clause 7 and other Manx legislation that implements EU obligations are also retained.

Mr President, clauses 9 and 10 of the Bill deal respectively with exceptions to the saving and retention of legislation by clauses 6, 7 and 8 and the interpretation of retained EU law.

Clause 15 provides that retained direct EU legislation and any associated rights that are saved by clause 8 can be amended in certain clearly defined ways following Brexit. Basically, this clause allows the law as it applies in the Island to be kept in line with the law as it applies in the EU or UK, if that is considered to be desirable. It also provides that this retained EU law can be repealed when it is no longer needed. Regulations under this clause require the approval of Tynwald.

Where there are existing, non-EU, international obligations that apply to the Island before exit day, if a breach of these obligations arises from the UK leaving the EU and the loss of Protocol 3, clause 13 allows the breach to be remedied or prevented. So if EU legislation or rights that are not retained after Brexit contributed to the Island's compliance with another international obligation, clause 13 could be used to address that situation. This is purely a contingency power that would only be used if the breach could not be addressed in an effective and timely manner in another way. No such breaches have yet been identified but we cannot guarantee that this will not change either in the run-up to Brexit or following Brexit. Any regulations made under this clause would require the



265 approval of Tynwald, and no regulations can be made under this clause after five years from exit day.

Clause 16 allows certain EU treaty provisions to be implemented in the Island. This clause applies to the EU Treaties as defined in section 1(1) of the 1973 Act immediately before exit day. Regulations under this clause require the approval of Tynwald. This clause may also be applied, with further Tynwald approval, to other agreements, including future agreements between the UK and EU, after exit day.

270 And speaking of agreements, clause 14 of the Bill deals with implementing the Withdrawal Agreement to the extent that the Agreement will apply to the Isle of Man. This clause is subject to a number of restrictions, but it is necessarily broad. Regulations under this clause cannot be made any more than two years after exit day and they require the approval of Tynwald. Under the draft  
275 Withdrawal Agreement the implementation period is due to run until the end of 2020 but the Agreement provides for the possibility of this period being extended.

Mr President, clause 17 of the Bill replicates with modifications the existing powers in sections 2A and 2B of 1973 Act. The ability to apply and adapt EU legislation dealing with matters that are perhaps not within the scope of Protocol 3 has been useful to the Island over the years, particularly  
280 in relation to international sanctions and intellectual property rights.

Mr President, there is a long track record of the powers under the 1973 Act being used. With the exception of orders and regulations made to ensure that the Island complies with its obligations in respect of international sanctions measures, I would suggest that these powers have been used very sparingly. There is no reason to believe that the situation would be any different going forward. It  
285 has been asked why this power should be retained after our Protocol 3 relationship with the EU has come to an end. What makes EU legislation any different to Australian legislation, for example?

The difference is that, whatever happens, the EU is going to continue to be the Island's near neighbour and a significant trading partner. Even if there is no deal in place between the UK and the EU on exit day, at some point there will be a new formal relationship between the UK and the EU, and that relationship may well apply to the Island partly or wholly.

290 As part of any future relationship the Island will almost certainly need to continue to follow certain EU standards and practices. Indeed, even in the absence of a formal relationship between the Island and the EU, manufacturers and producers in the Island will still need to comply with EU standards if they wish to export into that market. And if there is an implementation period, the  
295 Island will need the same legislative tools at its disposal during that period as it has before exit day. It is therefore considered that the powers in clause 17 continue to be appropriate.

As is currently the case by virtue of section 2C of our 1973 Act, by virtue of clause 21, regulations under this clause and certain other clauses in the Bill can make use of ambulatory references to EU legislation, and also where relevant to UK legislation. And, of course, regulations under clause 17  
300 require the approval of Tynwald.

Mr President, clause 19 is another contingency power that would allow UK legislation relating to Brexit and any future UK-EU relationship to be applied to the Island with any necessary adaptations. I know I am repeating myself, Mr President, but again any regulations that were made under this  
305 provision would require the approval of Tynwald.

Clause 20 was inserted into the Bill following the public consultation. It will allow DEFA to apply to the Island certain UK legislation relating to agriculture and fisheries and food – that is, largely in areas where EU legislation within the scope of Protocol 3 presently applies to the Island. This clause will allow DEFA to ensure that our legislation keeps sufficiently in line with that of the UK so that there are no barriers to free trade in agricultural and fisheries products between the Island and the  
310 United Kingdom. DEFA will also be able to apply and implement EU legislation in relevant areas under this clause.

Some of what this clause can do could be done by the Council of Ministers under other powers in the Bill, but it is considered to be appropriate for the Department that has responsibility for these areas to have the powers to legislate itself. The intention is that in due course when time and

315 resources allow, the powers will be incorporated into one or more DEFA-specific Acts. As with other powers in the Bill, regulations under this clause require the approval of Tynwald.

I would now like to briefly touch on the provisions in the Bill specifically relating to trade.

320 Mr President, the UK's membership of the World Trade Organisation has included the Isle of Man since 1997. As Hon. Members may know, when a country joins the WTO it does not only have to comply with the overarching Marrakesh Agreement itself but also with a range of multilateral agreements on trade which are attached as annexes to that Agreement. At the time that the UK's membership of the WTO was extended to the Isle of Man, the UK did not require a line-by-line analysis from the Island of how we comply with all of these agreements. But now that the UK is leaving the EU it has to establish itself as an independent member of the WTO. As a result, the UK's compliance with WTO rules, and also the Island's compliance, is under greater scrutiny. If any deficiencies in the Island's compliance come to light, clause 22 will allow them to be addressed in a timely manner.

330 Clause 23 similarly provides for the implementation of other free-trade agreements that may be entered into by the Island or extended to the Island in the future. Regulations under both of these provisions require the approval of Tynwald.

Mr President, clause 24 allows the Treasury to obtain information in relation to the export of goods and services from the Island in the course of a trade, business or profession.

335 Clause 25 provides for regulations to set out the detail of how Treasury may disclose information for the purpose of facilitating its functions relating to trade, or facilitating the exercise by an international organisation or other body of its public functions relating to trade. This may involve disclosure of information to, for example, the WTO or the UK's new trade body, the Trade Remedies Authority. Regulations under clause 25 cannot authorise any disclosure that would contravene the Island's data protection legislation. As with other powers in the Bill, regulations under clauses 24 and 25 require the approval of Tynwald.

340 The final three clauses of the Bill then give effect to a number of Schedules which deal with consequential and transitional provisions. I will of course explain these in detail at the clauses stage if the Bill passes its First Reading today.

Mr President, I apologise for the length of my remarks but I believe it is important for this information to be put on record again.

345 To sum up the immediate need for this Bill: if there is a ratified Withdrawal Agreement and implementation period, to avoid large gaps in the Island's legislative framework, this Bill is needed to give effect to the Agreement so far as it applies to the Island; if there is no agreed deal between the UK and EU before exit day, to avoid large gaps in the Island's legislative framework this Bill is needed to retain a substantial amount of EU legislation as part of the law of the Island. But the Bill is also designed to ensure that the Island can deal with whatever may follow Brexit in relation to the EU and trade matters in an effective and timely manner. And to repeat it one last time, these powers in the Bill are subject to the approval of Tynwald.

355 In order to ensure that Hon. Members have the usual time to consider the provisions of the Bill, I am not seeking, Mr President, to suspend Standing Orders to take the Second Reading or the clauses today. However, as Hon. Members will appreciate, it is important for this Bill to have been passed by the Branches, and for certain secondary legislation made under it to have been brought to Tynwald for approval before the UK leaves the EU on 29th March 2019. In order to achieve this, we would ideally like to pass the Bill before the Christmas break so that there is a chance of obtaining Royal Assent in time for it to be announced at the January 2019 sitting of Tynwald.

360 With that, Mr President, I would like to thank Hon. Members for their patience and move that the European Union and Trade Bill be read for the first time.

**The President:** Mrs Poole-Wilson.

365 **Mrs Poole-Wilson:** Thank you, Mr President.

I am seconding the First Reading of this Bill today having given much thought to its provisions, and having taken into account the debate and amendments made in another place. Hon. Members of this Council are well aware that this Bill is needed to deal with the unprecedented situation that has arisen as a result of Brexit and the learned Attorney has just outlined for us the potential different scenarios that still could arise and for which we must be prepared.

He has also highlighted amendments to the Bill which acknowledge a number of the concerns raised by Members of both this Council and the House of Keys, amendments which I believe are important and improve the Bill by limiting some of the Bill's powers in time; and by providing for future review and debate in Tynwald about the considerable amount of direct EU legislation that in the short term may have to be transposed into Manx law.

It is acknowledged that there is a need to do this to preserve the *status quo* and provide legal certainty at the point when Protocol 3 falls away. However, I believe it is important to provide for a review of retained EU legislation in due course.

In essence, this Bill should strive to strike an appropriate balance between the executive's powers to make legislative changes to deal with the impact of the UK leaving the European Union, and the ability of Tynwald to provide effective scrutiny of that legislation. And the important role of Tynwald has been emphasised, not only several times this morning by the learned Attorney but also by the Chief Minister and other Ministers in another place. The Bill provides enabling powers but the regulations brought forward under those powers generally require Tynwald's approval.

Whilst it is not of direct relevance today to discuss the current process in Tynwald for debate and approval of secondary legislation, a Bill such as this underlines the critical importance of ensuring that our processes enable effective scrutiny. A number of Hon. Members have raised questions about its current effectiveness and consideration of improvements is ongoing, and I hope to see sensible improvements that where possible allow for increased time for consideration of secondary legislation, and that strike a better balance between expediency and scrutiny, and that move away from the current 'yes' or 'no' options that do not allow for amendment and improvement to the piece of legislation being considered.

Whatever the outcome, Tynwald is the ultimate backstop to scrutinise the legislation that will be brought forward under this Bill. And the universal acknowledgement of the importance of that role to provide a check and balance is very much welcome.

Thank you, Mr President.

**The President:** Mr Crookall.

**Mr Crookall:** Thank you, Mr President.

Just purely on a point of clarity, and I thank the hon. learned Attorney yesterday for forwarding his speech to us so we could have a quick look at it before. And in doing so and following through this speech at one point on page 8 it does refer to, for example, the power which will enable DEFA to apply UK legislation. Just for clarity, during his speech, the learned Attorney actually said 'EU'. So just to point out that is 'UK', I believe, and not EU.

**The Attorney General:** Yes, I am so sorry, Mr Crookall. [See page 52 C136 lines 155-158]

**Mr Crookall:** No, it is okay, just so it is on *Hansard*, sir.  
Thank you.

**The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I thank the learned Attorney for his opening commentary on the First Reading of this Bill; and a very important matter it is.

I just want a couple of points of clarification, and the first being: the amendments moved in the House of Keys that have successfully been incorporated in our version of the Bill that has come from the Keys Chamber, that met with full Council of Ministers' support in regard to those?

420 The second query, perhaps naively, I just want to double-check myself. Should the British Parliament vote against the Brexit deal, as announced by the British Prime Minister on Sunday, and they vote against that: what is the consequence of that when we hit the 29th March 2019 date, inasmuch as the notification has already been delivered to the EU following the British referendum on the subject? I take it there will be a Brexit, but a no-deal Brexit, if I have got that right.

425 Thank you, Eaghtyrane.

**The President:** Mr Attorney.

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

430 If I could firstly thank Mrs Poole-Wilson for kindly seconding the First Reading of the Bill and for her detailed consideration of its provisions. As I believe I have said before, I entirely agree with her that there is a need to have a better arrangement for the ability of Members to consider secondary legislation, and perhaps the model which is being created by this Bill may be of some assistance going forward; but certainly it is something which needs to be addressed.

435 I thank Mr Crookall for pointing out my error in my speech and I am very grateful for that.

Mr Henderson, I thank him for his comments. I can confirm that the amendments moved and passed by the House of Keys received the unanimous approval of all Members of the Council of Ministers, and so that is the basis upon which I present them today.

440 With reference to the interesting question as to what will happen if the UK Parliament does not approve the Withdrawal Agreement: frankly, Hon. Members, we do not know. Under the terms of the UK's European Union Withdrawal Act, the UK government will have up to 21 days to bring forward a new plan. However, possible outcomes are: firstly, the UK leaves the EU without a deal – and it is almost certain that a majority of the UK Parliament also do not support that option. Secondly, the UK could seek to renegotiate the deal, but both the UK government and the EU have  
445 said that the Withdrawal Agreement and the political declaration are the best available.

In addition, if the EU were to agree this, it is likely that it would require more time than is available before exit day on 29th March 2019. The period under Article 50 could be extended, but only with the unanimous agreement of the UK and the 27 other members of the EU. However, the Prime Minister has stated to Parliament that the Article 50 period will *not* be extended.

450 Then there could be a UK general election, but the UK government is unlikely to agree this and it would not stop the clock running on Brexit. And also there could, as another option, be a second referendum which would undoubtedly be very divisive; and again, unless the Article 50 period was extended, would not have the effect of stopping the Brexit clock.

455 So, as we consider this matter today in answer to the other question Mr Henderson put, the Brexit clock is running and will be until 29th March of next year.

Thank you, Mr President.

**The President:** Mr Henderson.

460 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I thank the Attorney General for the clarification. So in other words, deal or no deal, basically, for the British government.

465 And in relation to our association with the UK no matter what the outcome, as you say, the Brexit clock is ticking down to 29th March 2019, so that we need to have something in place no matter which way it goes, is my understanding of it, Eaghtyrane, which places quite a degree of emphasis and importance on what we are considering this morning in that case.

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President; and thank you, Mr Henderson.

470 As we sit here today that is the position. As of 30th March, the day following the exit day, Protocol 3 will no longer be enforced and so we certainly have to prepare on that basis.

Thank you, Mr President.

**The President:** Yes, Mrs Hendy.

475

**Mrs Hendy:** Thank you, Mr President.

I thank the learned Attorney for his very clear and helpful explanation and presentation to us today, and Mrs Poole-Wilson for her seconding of the First Reading in such a clear manner and that, I am sure, has assisted us all.

480 I feel that this is such an important piece of legislation potentially, we must probably be in potentially an unprecedented position to ensure the future of the Island remains flexible and nimble. But as a safeguard as well for the future of the Island's trade negotiations and political position into the future, I was heartened to hear the learned Attorney emphasise that many of the measures – specifically secondary legislation – will always be subject to Tynwald approval. And I am sure that is going to assist in the way we go forward.

485

Just finally, I am happy to support the First Reading of this Bill. I think it has been a very difficult process to bring it to the current situation and state today, and I look forward to the clauses part of this Bill, should we go forward and approve the First Reading today, which I will be supporting.

Thank you, Mr President.

490

**The President:** Does any other Member wish to speak before I call the learned Attorney to reply to the debate?

Mr Attorney.

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

If I could, firstly, thank Mrs Hendy for her speech in support of the Bill – quite rightly. And, as she has pointed out, we are in a situation which is unprecedented. It has been given thorough and proper consideration by the other place and clearly we will do likewise when we come to deal with the clauses stage of the Bill.

500

I am very grateful to her and other Members for their support, and I so move the First Reading.

Thank you.

**The President:** Hon. Members, I put the motion that the European Union and Trade Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

505

Hon. Members, that brings us to the end of our Order Paper.

#### **Leave of absence granted**

**The President:** I just wish to advise Council that Mrs Lord-Brennan has been given leave of absence to attend Commonwealth Parliamentary Association business off Island, which is why she is not with us this morning.

Council will now stand adjourned until the next sitting at 10.30 a.m. on Tuesday, 4th December.

*The Council adjourned at 11.18 a.m.*