



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 22nd January 2019

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Volume 136, No. 8

ISSN 1742-2272

Present:

The President of Tynwald (Hon. S C Rodan)

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 Maska, Mrs K A Lord-Brennan, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mr J D C King, Clerk of the Council.

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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 Chaplain of the House of Keys will lead us in prayers.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: Welcome, Hon. Members, to the first sitting of the Legislative Council of the New Year.

I have given leave of absence to the Lord Bishop.

Order of the Day

1. Charities Registration and Regulation Bill 2018 – Second Reading approved

The Attorney General to move:

That the Charities Registration and Regulation Bill 2018 be read a second time.

10 **The President:** Item 1 on our Order Paper is the Charities Registration and Regulation Bill, and I call on Her Majesty's Attorney General to move the Second Reading.

The Attorney General: Thank you, Mr President.

15 Charity is a legal concept with a very long history going back in the adjacent jurisdiction before 1601. It may surprise Hon. Members to know that the preamble to the Statute of Charitable Uses of 1601 still guides the jurisprudence which is applied by the Manx courts.

The registration and regulation of charities in the Isle of Man is currently provided by the Charities Registration Act 1989. Over time, the provisions of that Act have become outdated and additional requirements are necessary so that there is a modern system in place which will enable

the public to retain confidence in the Manx charitable sector. It is also necessary to take account of recent changes to the meaning of ‘charity’ in England and Wales, so that bona fide charities which are established in that jurisdiction are not prevented from carrying on activities here.

Accordingly, the Bill has six main purposes: firstly, to update the meaning of ‘charity’ in the Island so that it remains at least as broad as in England and Wales; secondly, to provide for a modern register of charities which are carrying out activities within the Island; thirdly, to assist charity trustees, however described – whether as trustees, directors or committee members – in the proper delivery of their charities’ objectives by ensuring that charities have constitutional documents which are fit for purpose and the process of responding to a changing environment is straightforward and inexpensive; fourthly, to ensure more effective regulation of charities by increasing reporting requirements and ensuring accountability within the Island on the part of all charities carrying on activities here, in addition to providing for the automatic disqualification of individuals from acting as trustees on the happening of certain events, and for consideration of the risk of a charity seeking registration to use money laundering activities for the financing of terrorism; fifthly, to improve public service and administrative efficiency by combining functions of registrar and regulator in Her Majesty’s Attorney General, thus mirroring the Charity Commission in England and Wales; and finally, to provide a simplified mechanism for appealing decisions of the registrar/regulator by establishing a charities tribunal.

As I went through these purposes in detail during the First Reading of the Bill, I am sure that Hon. Members will be pleased to hear I do not intend to do so again. However, I feel that I should clarify that although one of the purposes is to provide for a modern register of Manx charities, it is not the intention of the Bill to change the landscape concerning registration – that is, to make any alteration to the nature of institutions which are able to register here. For this reason, existing exemptions from registration have been included in the Bill, as well as the requirement that an institution seeking registration should have a substantial and genuine connection with the Island.

Since the First Reading, a presentation to all Members has been held and I thank those Hon. Members of Council who were available for their attendance and hope that the explanations and discussions that day were of assistance. Subsequently, my Chambers were contacted by the Hon. Member Miss August-Hanson, who raised queries which she circulated to Members last evening. I believe I should mention these queries briefly to assist Hon. Members today.

Firstly, a query was raised concerning the continuation of the exemption for ecclesiastical charities, which has its origins in the Public Charities Act 1922. As I have said, it is not the purpose of the Bill to change the landscape concerning registration. The public consultation did not result in any proposal to interfere with the exemption for ecclesiastical charities and accordingly I did not consider it necessary to have regard to this, and this approach was accepted by the Council of Ministers in approving the Bill for presentation in its current format. Ecclesiastical charities, as far as the Island is concerned, are only those as set out in Schedule 3 of the Church Act 1992, namely trusts of property established for charitable purposes which are or include any ecclesiastical purpose, and in particular: (a) for the benefit of any clerk in Holy Orders or ecclesiastical officer as such or the dependents of any such clerk or officer; (b) the augmentation of the stipend of any benefice or ecclesiastical office; (c) the use of a building for any ecclesiastical purpose; (d) the provision, maintenance, repair or improvement of any land or building held for any ecclesiastical purpose or the maintenance of divine service therein; and (e) any other purpose for the benefit of the Church of England in the Island. Any religious charity not falling within that list would be required to register unless exempted under regulations, which is the case for the religious charities included on the list in the Schedule to the Religious Charities Regulations 1999, namely, in respect of the Church of England, the Sodor and Man Diocesan Board of Finance, any parochial church council and an incumbent or church warden; in respect of the Roman Catholic Church, the Liverpool Roman Catholic Archdiocesan Trustees Incorporated; in respect of the Methodist Church, the Trustees for Manx Methodist Church Purposes and the trustees of any property held for or for the purpose of any circuit, district or local church of the Methodist Church; in respect of the United Reformed Church, the trustees of any property held for or for the purposes of any local church of the United

Reformed Church; and in respect of the Society of Friends, the trustees of any property held for or for purposes of any weekly or monthly meeting or preparative meeting of the Religious Society of Friends.

75 Secondly, a query was raised as to whether, under clause 10(4) of the Bill, the reference to a substantial genuine connection ought to be defined in the Bill. I did not consider and advise on this but concluded that it would be not appropriate to seek to restrict how this might be interpreted, other than to provide guidance which as a public officer the Attorney General would be bound by, and any decision made would naturally then be potentially challengeable.

80 Thirdly, it was suggested that the Bill should perhaps contain provision for a light-touch regulation in respect of a reputable foreign charity, including a fast-track registration process. The registration process itself only requires completion of an application form which is submitted with the charity's governing instrument, both of which have to be checked to ensure that they comply with Manx law. When steps are taken to prescribe what the actual application form must contain, consideration can then be given to prescribing different information for different categories of
85 charity. There is no reason why there should be any delay in processing such applications, provided the documentation submitted is in an acceptable form. By way of example, only yesterday my Chambers assisted a UK charity in its registration application, including considering all of the matters which the Registrar needed to have regard to. This matter was dealt with in under two hours. In addition, as the Bill provides, there is ability for certain categories of charities to be exempted by
90 regulations. This would enable an exemption for registration to be made in the case, for example, of an English charity which was registered with the Charity Commission in England and Wales which has contracted to deliver specific services on the Island for a fixed period and which will not be raising funds here.

95 Finally, a question was raised as to whether small charities should be exempt from registration. This could be possible by making regulations under the Bill. However, there was no call for this during the consultation, so it has not been considered necessary. Indeed, at the recent presentation Mr David Gawne MBE addressed the audience expressing full support for the Bill as drafted, and he represented the Isle of Man Council of Voluntary Organisations and previously has long involvement with the Manx charitable sector in respect of both small and larger charities. There is therefore no
100 *de minimis* provision on the face of the Bill, as regulations can be made to address this if necessary, and of course any such regulations would have to be approved by Tynwald.

Another issue raised was to question why this Bill was being introduced by me, as Attorney General, here in the Council. I explained the rationale for this at the First Reading.

105 Mr President, I beg to move that the Charities Registration and Regulation Bill be read for a second time.

Mrs Lord-Brennan: I beg to second and reserve my remarks.

110 **The President:** Before I call Miss August-Hanson, does anyone wish to speak?

Miss August-Hanson: Thank you, Mr President.

Other than having already sent the email across and the AG having explained what the email contains, I think it is quite important that some of these points are discussed and debated within this Chamber.

115 In terms of interpretations, and having gone through the Bill quite extensively with some Members of another place as well, in terms of substantial and genuine connection to the Isle of Man it feels something is missing in terms of actually explaining what it is. You go through the Bill and yes, okay, fair enough, you could discount things as you go along, but that would require you having to read the entire Bill from start to finish. I feel that in interpretations we might be able to make it a
120 little bit more readable and a little bit more concise by simply making some form of provision to explain what the spirit of it actually is, which is precisely that. It is something that we do in interpretations in pretty much every piece of legislation that we come across. There are, obviously,

infinite numbers of ways of arguing what a substantial and genuine connection might be, and I understand that entirely. There is an argument against doing it as well, and I understand that as well. I would like to be able to hear a debate in this Chamber with the expertise that currently sits in here. I do not see much wrong with doing that.

In terms of fast tracking long-established UK charities, having been to the AG's Chambers and talked to an individual over in the AG's Chambers myself, I feel that some of these applications are taking months. So you have charities, for example, without naming names, that have links to Government, that might want to come over here, do a short project and then leave, having to go through a similar process to those that are establishing for the first time on the Isle of Man. If it is going to be taking months ... The learned Attorney General says that there have been some cases whereby two hours would suffice in having one registered, if I am right there, but there are cases where this has taken months and some of these charities are perhaps used to having a far quicker process applied. They lose interest, essentially. There was one case in particular at the moment, linked to Government, where they are losing interest in the Isle of Man and in supplying the Isle of Man residents with their services, simply because the registration process is taking far too long. They are being put off by it. So why not have a debate on that? I do not see a reason as to why not. Also, with them having already had a level of regulation in the UK, I do not see why there perhaps would not be some level of communication between the UK Charity Commission and the Registries here on the Isle of Man either. I really do not see why there would not be a stronger connection there in terms of trying to fast track them.

I appreciate the learned Attorney General's explanation of how *de minimis* is covered within clause 27. I do appreciate that and I understand that entirely, and that is something that perhaps I might be able to discuss with the drafter at a later stage, if I am given the opportunity.

In terms of charity and charitable purpose in removing 4(2), if there is no will to do that then there is no will to do that, but I would again like to be able to debate why it is there in the first place and have a discussion on that, because it is something that those in another place do have concerns about as well; it is not just myself.

In terms of crowdfunding, something that we have not really spent much time on, it is quite a new phenomenon. There are some concerns that have been raised across the Isle of Man regarding crowdfunding and I would like to explore those with Council, if I can.

In terms of the clauses stage, what I would like to be able to do – and I am unaware as to whether or not I can actually do that just at this present moment, Mr President, but I would like to move Standing Order 4.3(5), that the clauses stage be delayed so that my amendments can be discussed with the legislative drafter, with the potential for some of these matters to be debated in here, in this place.

The President: It has been pointed out to me by the Clerk that the Bill makes no reference to crowdfunding.

Miss August-Hanson: Yes, it does not make any reference to crowdfunding at present.

The President: Thank you.
Does anyone else wish to speak? Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, Mr President, just a couple of questions – I do not know whether they might help the Council at the moment think about some of the issues raised by Miss August-Hanson.

I know the learned Attorney has just explained to us the operation of ecclesiastical charities and that there are exemptions for registration for those charities that are listed in I think you said the Religious Charities Regulations 1999. One question I had is presumably there is scope for religious charities to be added or removed from that schedule, and I just wondered if the learned Attorney could tell us what some of the rationale is for making decisions about which religious charities can become exempted and which might not be exempted from registration.

175 The other question, on the definition, or the meaning in practice, of substantial and genuine connection to the Isle of Man: I do not know if this has been tested at all in case law in the Isle of Man, but if it has been tested in case law I do not know if that gives us any insight into how the test has been established in practice. Those are my questions.

180 **The President:** Mrs Maska.

Mrs Maska: Thank you, Mr President.

I would like to thank the Attorney General for the presentation that he afforded Members, which helped my understanding and also gave an opportunity to ask questions. Some of my concerns were with regard to many small charities on the Island which may not even be registered. I know there will be concerns out there as to whether this process is going to be difficult and possibly costly, but I think my mind was put somewhat at ease that there will be workshops and the process will be made as easy as possible.

185 I also welcome Miss August-Hanson's email and her scrutiny. I think some of the ideas that she has put forward to this Hon. Council do have some merit in that they would benefit from further consideration, and I would actually support the clauses stage being deferred from today to a future date, possibly when we sit next week. I would be supportive of that, Mr President. Thank you.

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

Just also to say, really, that I am happy for a debate to continue at the next sitting and I think that in particular the element over the ecclesiastical charities is worthy of further consideration. There is no urgency over this, so I am just supportive – if the Council is minded to defer, I am happy to support that as well.

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

The Attorney General: Thank you, Mr President.

205 If I could just deal firstly with the suggestion that the clauses stage be held over – we are firstly dealing with the Second Reading and clauses would normally follow. I am happy to leave that in the hands of Council; I do not think it would be appropriate for me to argue against that, but I would just like to make some general points, if I may.

210 When we come to deal with clauses, of course it is open to Council to fully debate the provisions of the Bill, which of course would enable you to debate today, if you so wished, the issue concerning the genuine and substantial connection with the Island. That could be debated today, as could many of the other points that my hon. colleague Miss August-Hanson has raised.

215 But if I could, for the record, put some matters on the record, there is a level of communication with the UK Charity Commission. We contact them as and when necessary. There is a very good working relationship with all charities and we are available to counsel people, and people do come to us and seek guidance with reference to what is the substantial and general connection with the Island. And if I can just jump to the point raised by Mrs Poole-Wilson, I am not aware of that issue having been raised in any case law on the Island.

220 It might be helpful to Hon. Members if I tell you our approach. There must be circumstances which would lead and provide evidence of the genuine connection. We would be looking to see whether funds are being raised here; whether the objectives of the charity are being delivered in the Island; whether a trustee body is established here; whether a settlor, if there is a settlor, is resident here. And then, with reference to a substantial connection, as I have said, whether the trustee body is established here; whether decisions concerning the operation of the charity are made here and the charity is administered here; the extent of the funds being raised here – you would not be looking for just simply token amounts, you would want to be seeing that there is a substantial

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connection here; and, most importantly, that the objectives are actually being delivered here. That is not cast in stone. We will be issuing guidance, if the Bill passes through the legislature, which would set these out, but I thought it might be helpful that you understood, Hon. Members, what we are considering. We talk to the charities who are seeking to register and we work through these.

There will be cases where fast-tracking is not appropriate, and I do accept what Miss August-Hanson says, that she can cite examples of it taking, occasionally, some time to process an application. That is often, without talking with any specific case in mind, because they have not been able to address those issues which I have just outlined to you. It is often because they have not submitted in a satisfactory format the constitutional documents. This is what regulation and checking is all about. You cannot just simply do things on the nod; you have got to make proper and prudent inquiry and that is why sometimes things do not happen as quickly as you or the charity concerned might wish. In one case that I do have in mind, which Miss August-Hanson does allude to, there were difficulties which did take time to address. Simply because a charity in the UK comes here, waves the flag and says, 'We are registered in the UK: please register us here,' it would be imprudent for any regulator just simply to rubberstamp that, and so the process at times takes a little time. But yesterday, as I have said, we were able to turn something around in a couple of hours because it was in the proper format, and that couple of hours included that charity actually completing its registration forms after we had given the guidance which they required.

So I am somewhat at a loss, Mr President. We have the forum here to debate these issues. We do not have before us any amendments tabled by Miss August-Hanson or anybody else. I am not going to argue against it, but there has been sufficient time in which those amendments could have been shaped and brought forward and we could move on. But as I said, I am entirely in your hands. As my seconder has kindly indicated, there is no great rush with this and it is proper that we do give the matter consideration, but I do feel I ought to put on the record that there is a need for the change of legislation to update it, as I have outlined in my First Reading speech. We should move on.

If I could then just turn briefly to the issue raised by Miss Poole-Wilson, it is possible to add and remove from the schedule with reference to the ecclesiastical charities issue, which I have outlined under the existing regulations. Forgive me if I am not sure of the actual process, but I can look at that and come back on that.

With reference to Mrs Maska's point, the small charities have raised no issue with reference to this matter in its consultation, and you will have heard, if you were at the presentation, from the representation which was made then by representation from those small charities, that they are quite comfortable because they know that they work closely with my office and with the regulator and their queries, when raised, are dealt with. So there has been no feedback which is negative to the provisions of the Bill and we believe that the charities have bought into this and that they know that with our help, with the period that we are giving them to update their constitutional documents, over a two-year period we can actually put in place proper procedures.

I have got nothing further to add, Mr President. Thank you.

The President: Hon. Members, I put before the Council the motion that the Charities Registration and Regulation Bill be read a second time.

Mrs Sharpe: Excuse me, Mr President, can I ask the Attorney General a question, please?

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I would just like to ask the Attorney General, in cases where a charity might involve children, do his Chambers keep records longer than they would if a charity did not concern children? For example, in clause 54(3) we read:

The Attorney General may destroy information and documents maintained by the Attorney General if —

and there are three examples given. I am just wondering if charities which concern children are treated in a different way, or should they be treated in a different way, in terms of that documentation being kept for a longer period in case the documents are needed in the future as evidence, for example?

The President: Mr Attorney.

The Attorney General: Mr President, all I can say is that certainly in considering how long documentation is preserved and kept, matters such as that would be taken fully into account. It is very difficult to say as a matter of course, a matter of rule, that if any children were involved they would be retained for any particularly lengthy period of time. We would take an informed view at that stage.

The President: Before I put the question, does any other Member wish to contribute to the debate?

I put the question to Council that the Charities Registration and Regulation Bill be read a second time. Those in favour say aye; against, no. The ayes have it. The ayes have it.

**Charities Registration and Regulation Bill 2018 –
Standing Order 4.3(5) suspended
to defer clauses stage to next sitting**

The President: Miss August-Hanson has indicated she wishes to move the suspension of Standing Orders. Miss August-Hanson.

Miss August-Hanson: Thank you.

On the basis that there are amendments ... Granted, I would have been happier with myself perhaps if I had put those amendments forward earlier, so I do apologise to the Attorney General and to the Attorney General's Chambers for having done so, so late on in the day, and to my colleagues on the Legislative Council as well. But I would like to be able to put those amendments forward and also to have them debated amongst us. If you would be willing, I would be very grateful for that. So yes, I would like to move Standing Order 4.3(5), that the clauses stage be delayed until the next setting.

The President: Mrs Maska.

Mrs Maska: I would second that motion and would be supportive of that, Mr President. Thank you.

The President: The motion has been moved and seconded. Does anybody wish to speak to the motion before I put it to the vote? Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I thank Miss August-Hanson for acknowledging that this has come rather late, and for that reason I personally think it would be helpful just to look at what Miss August-Hanson is proposing, and to allow us time to do that I would be supportive of suspending Standing Orders and moving to the clauses stage once her proposed amendments have come forward.

The President: Does any other Member wish to speak? Mrs Sharpe.

Mrs Sharpe: Only that I would like to agree with Mrs Poole-Wilson.

The President: Miss August-Hanson, you have the right of reply.

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Miss August-Hanson: I would like to thank my colleagues for their support. I appreciate that a great deal, particularly under the circumstances.

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The President: Hon. Members, the motion is that, under Standing Order 4.3(5), the clauses stage be deferred until next week. A quorum of Council is required in support, which is five Members. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that brings us to the end of our Order Paper for this morning and the Council will now stand adjourned to the next sitting, on Tuesday, 29th January.

The Council adjourned at 11.05 a.m.