



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 5th March 2019

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

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. 11

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 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.

Business transacted

Public beneficial ownership registers – Urgent Statement by the Chief Minister	171
Order of the Day	175
1. Dormant Assets Bill 2018 – Second Reading approved	175
Dormant Assets Bill 2018 – Clauses considered	180
Highways (Amendment) Bill 2019 – Point of order under Standing Order 4.2	199
<i>The Council adjourned at 12.06 p.m.</i>	200

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Mr President.

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

PRAYERS

The Lord Bishop

Public beneficial ownership registers – Urgent Statement by the Chief Minister

The President: Hon. Members, before we commence our Order Paper this morning I am most grateful to the Chief Minister for accepting my invitation to come to the Legislative Council and to leave the other place, with the leave of Mr Speaker, in order to deliver the Urgent Statement that he made earlier to the House of Keys.

10 Chief Minister, you are most welcome. Thank you, sir.

The Chief Minister (Mr Quayle): Thank you, Mr President and Hon. Members, and thank you for allowing me the opportunity to address the Council at such short notice today.

15 On Sunday night I left for London so that I could speak to contacts in Westminster regarding proposed amendments to the United Kingdom's Financial Services (Implementation of Legislation) Bill, which were, in the opinion of our Government, wholly unconstitutional.

20 The Bill was ultimately deferred by the UK government late yesterday morning, thereby avoiding the risk of the UK's democratically elected Parliament legislating for the Isle of Man without our consent. As I said in the joint statement with Jersey and Guernsey yesterday, this deferral provides us with the opportunity to undertake real and meaningful engagement with the UK government regarding public registers.

25 As a Crown Dependency along with Jersey and Guernsey, we are not represented in the United Kingdom Parliament. It is therefore a long-standing convention that the UK does not legislate on domestic matters for Crown Dependencies. The amendments proposed without consultation with us and specifically without our consent were unconstitutional, unworkable and, in the opinion of our Government, unenforceable. If passed, we may have been left with no alternative but to challenge the legislative provisions before the courts.

30 Hon. Members, as a Government we do wholeheartedly endorse the aims of the MPs who proposed and supported the amendments to the Bill in the House of Commons yesterday. These were designed to tackle money laundering and financial crime on a global scale. Every day law enforcement authorities in the Island work with international partners with the aim of robustly

tackling money laundering and related financial crime. Over the past few years this Government has invested millions of pounds in developing and improving our ability to join the fight in this arena. Indeed, just a few weeks ago further money was pledged in the Budget for asset recovery, financial intelligence and economic crime investigation. Our commitment is clear and continuing.

On Sunday, I forwarded you a copy of the letter I had sent to a number of MPs. The letter showed that the issues around the introduction of public beneficial ownership registers are complex and that currently there is an absence of global standards in this area.

We recognise that the UK has taken its decision to adopt and implement a form of public register. However, currently within EU member states the adoption of legislation to introduce and commit to public registers, in line with the Fifth Money Laundering Directive, has been markedly slow. The majority of EU countries are a long way from having working public registers of beneficial ownership. Therefore, there is no EU member state or internationally recognised model of public register which provides the required standard of accuracy in addition to balancing concerns regarding privacy and the safety of individuals' data.

However, there must be no doubt that we are fully committed to working globally in helping to define what those standards could look like in the future. We have always met our international commitments. On beneficial ownership we meet the standards of both the FATF and the OECD. The Isle of Man works internationally to combat financial crime, contributing to improvements in global standards for anti-money laundering and countering terrorist financing. Our law enforcement agencies and Financial Intelligence Unit regularly work with and assist other countries with their investigations, providing information which includes beneficial ownership. However, it must be for the Isle of Man to decide if and when we will introduce public beneficial ownership registers.

We are fully supportive of measures aimed at combatting money laundering and other financial crimes. We have made our commitment clear with our Exchange of Notes with the United Kingdom in 2016 that we will exchange adequate, accurate and current information on beneficial ownership to combat tax evasion. And I have said before we are committed to working with the UK government, the OECD and the FATF in order to develop an effective global standard.

I would like to thank Ministers and officers who have worked across the weekend preparing briefing material and statements and co-ordinating our work effectively with that of Jersey and Guernsey. While we welcome the swift action of the UK government yesterday, we will continue to strongly resist any attempt to undermine our longstanding democracy.

Thank you, Mr President.

The President: Thank you, Chief Minister, for your Statement.

I would like to offer Hon. Members an opportunity to pose questions on the Statement, but before doing so may I ask one from the Chair? Is the Chief Minister able to indicate whether, in the event that the amendments had passed in the legislation, this would have been deemed *ultra vires* and Royal Assent may not have been given because of the breach of constitutional convention on legislating for the Isle of Man? Was that aspect taken into consideration?

The Chief Minister: Thank you. I presume I have to stand, Mr President – it is a first for all of us, I think, on this issue.

That exact position had not been decided. What would have happened is that the UK Parliament would have instructed the government to effect an Order in Council to get the Isle of Man Government to comply. That would then have been contested in court. Whether that Order in Council would have happened ... It might not have happened until 2020 because, the way the amendments were proposed, it would have to have a register in place by 2020.

If I can cast ... I do not think any of you would have been here 50 years ago. When this situation occurred the last time it took, I think, 1967 to 1969 for this to go through the courts and a decision to be made, but that was in an entirely different situation when technically the Island was in breach of international maritime law, and with changes regarding telecommunications and the fact we wanted part of that, we acquiesced to the UK position.

The President: Thank you, Chief Minister.

85 Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President, and thank you, Chief Minister, for making your Statement today.

90 I suppose it is on a similar line to the President's question. I noticed in your Statement you said that you acknowledge the well-intentioned sentiments of the MPs who brought forward these amendments. I suppose the question is whether anybody in Westminster, whether those MPs or any of the people responsible for acknowledging and upholding our constitution and our constitutional arrangements with London, actually did take legal advice on the legality of trying to operate in this way and impose legislation on the Isle of Man without our consent, particularly, as you say, when we
95 are not in breach of any international laws.

The President: Chief Minister.

100 **The Chief Minister:** I thank the Hon. Member for her question. There is a right and a wrong here, Hon. Members. We have the moral ground in that we are right. I did have a meeting yesterday with the Rt Hon. Andrew Mitchell and Dame Margaret Hodge to discuss the situation, because obviously that is the logical thing to do: you go and see the key people – and we have a good working relationship, I am delighted to say. They felt that they would win in this situation and I begged to differ and left it at that.

105 But I think, Hon. Members, I will have to say that this will be back. We have won a suspension whilst we get our position clearly to Members of Westminster. Obviously this was only taken forward on Friday, when all Members are visiting their constituencies. They do not come back until Monday afternoon and it was proposed to vote on it later on in the afternoon. Therefore, that gave no real time. Whilst, obviously, I sent out a large number of personal letters and set up a number of
110 meetings, which I did have on Monday getting support etc., it did not give the vast majority of Members time to consider the implications. Obviously we will be working on this, but this situation will be back and we will need to come up with a way forward.

The President: Thank you, Chief Minister.

115 Mrs Maska.

Mrs Maska: Thank you, Mr President.

120 We have all heard the Speaker of the United Kingdom Parliament, Mr Bercow, stating categorically he would have allowed this matter to be debated, and I feel sure again that we all disagree with that approach. Do we have an opportunity to challenge the legality of that stance at all?

Thank you.

The President: Chief Minister.

125

The Chief Minister: Thank you.

Sadly not, Mr President. The Speaker is the Speaker of their House and he has the right to make that decision. I was expecting his comments given previous events, shall we say.

130 We felt that the amendments were not relevant to this Bill. This is a Brexit Bill and there is a Bill coming two to three months down the road where it would have been pertinent to make these amendments if you were going to make them. I would have thought etiquette would have said it would have been shared, but obviously, reading into the situation, I think Hon. Members have to take into account that the UK government is in a very difficult position at the moment with a vote coming on 12th March and this was designed to take account of that event.

135 **Mrs Maska:** Thank you very much.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

140 Can I just ask – and thank you, by the way, Chief Minister, for your Statement; I appreciate that. If we are predicting, I suppose, an outcome for something that is likely to come back, what sort of scenario are we actually looking at in the UK, in terms of those in support of those amendments passing and those against?

145 **The President:** Chief Minister.

The Chief Minister: Thank you, Mr President.

150 That is obviously something I am working on at this moment in time. The Hon. Members Mitchell and Hodge are adamant they have the votes and will win the amendments. We have to go away and have a number of discussions now – and I give notice that I may be cancelling meetings I have agreed to attend, to ensure that this is my number-one priority, to come up with a successful way forward that protects the constitution of the Isle of Man but ensures that we comply with our relationship with the international community on standards.

155 I will, when I have further information, and understanding I obviously have to speak to Her Majesty's Government ... If you will bear with me – I only came off a plane late last night and I have been up since four giving various interviews etc. When I have something I will be giving a private briefing to all Hon. Members.

160 **The President:** Thank you, sir.
Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

165 There is obviously a huge amount that Government has been doing and working on, particularly in the past few days. It was really just to offer support and to say Government is doing a huge amount and if there is anything that Tynwald Members can do, will you be letting Members know?

The Chief Minister: I thank the Hon. Member for her kind gesture and I think I am grateful, I feel, for the support of all Hon. Members of this Council and elsewhere.

170 We are obviously in a very difficult situation and I will do my utmost to give you a private briefing as soon as possible, but I need to have some more information before I can do that.

The President: If there are no other questions, Chief Minister, on behalf of Council I would like to express our great appreciation for you taking the opportunity to brief us on this situation. **(Members: Hear, hear.)** Thank you very much.

Order of the Day

1. Dormant Assets Bill 2018 – Second Reading approved

Mr Henderson to move:

That the Dormant Assets Bill 2018 be read a second time.

175 **The President:** Now, Hon. Members, we revert to our Order Paper and the consideration of the Dormant Assets Bill. We are at the Second Reading and clauses stage.

I call on the mover, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

180 As outlined at First Reading, the main aim of the Dormant Assets Bill 2018 is to enable dormant assets held by local banks to be transferred to a central fund and, subject to there being sufficient funds retained to meet any repayment claims, to allow a proportion of the amounts transferred to be distributed to good causes in the Island.

185 The Bill is underpinned by three core principles. The first of these is that the transfer of a dormant asset to the central fund should be a last resort for assets whose owners cannot be traced. I would stress to Hon. Members that there are specific provisions within the Bill requiring banks to take what are considered adequate and proportionate steps to trace customers prior to any funds being treated as dormant and then becoming eligible for transfer into the Fund. These requirements are built on those already in place in other jurisdictions where they have proved to work well
190 without any known issues. This consistency of approach is important for the banks which will have to comply with the new legislation, and especially for those who have branches across the Crown Dependencies.

The second core principle is that customers' rights should always be protected. I would like to again assure Hon. Members that this legislation does not seek to interfere with any customers' rights to money held with a bank. Regardless of any transfer to the Dormant Assets Fund, a customer approaching their bank at any time with a legitimate claim to an account will always retain the right to that money.
195

The third core principle is that dormant asset funds should be applied for public benefit. This means that the Fund will be ring-fenced and that there is clear and open governance on how it will be spent.
200

Eaghtyrane, as I outlined briefly during the First Reading, the Bill was subject to a number of amendments in the Keys, some of which cross over with matters that arose during the First Reading of this Bill here. I will talk through these Keys amendments first, if I might, before I move on to address any remaining matters that arose at the First Reading that I have not already touched upon.
205

The Hon. Member for Ramsey, Mr Hooper, moved a number of amendments which clarified how the legislation will operate and tidied up the drafting in places. The Treasury is grateful to the Hon. Member for his detailed scrutiny of the Bill and for making the amendments, which have served to improve it in a number of areas.

The Hon. Member for Douglas Central, Mrs Corlett, also moved some helpful amendments that have strengthened arrangements within the Bill around the asset holder notifications. The Hon. Member's amendments provide that each asset holder notification a licence holder sends prior to an asset being transferred to the Fund must advise the asset holder of the effect of them not coming forward to claim their account at that stage, i.e. that their asset will transfer to the central fund.
210

I would just add here, as the question was asked during the First Reading, that where an account has a power of attorney registered against it, or an enduring power of attorney, the asset holder
215

notification will be addressed to the person with the power, if it is legally provided for and the bank has been formally contacted and instructed.

To finalise the amendments in the House of Keys, the Treasury Minister also moved three amendments. Firstly, an amendment to clause 18 was made. The amendment has provided powers to the Treasury to compensate any asset holder who has been financially disadvantaged by the treatment of their asset under the legislation. The compensation powers are only expected to be used in exceptional circumstances when significant financial disadvantage has arisen. Such compensation will, of course, be paid from the balance of the Fund.

Clause 23 was also amended. This clause provides that a licence holder may deduct dormant account fees and charges from the balance of an account before it is transferred to the Fund, but only if the terms and conditions of the account allow. This point was raised during the First Reading by Mr Crookall and I am pleased to confirm arrangements in that regard now.

The amendments that were moved by the Treasury Minister provide that in the event that an asset holder comes forward to make a successful claim, any amounts that the licence holder had previously deducted in dormant account fees and charges must be repaid by the licence holder to the asset holder. The amendment serves to protect asset holders from any financial penalties incurred if it later transpires that the account is not in fact ownerless.

And finally, clause 37 was amended to rectify a minor drafting error in relation to penalties for offences in connection with information.

As I outlined during the First Reading, I am grateful to my colleague Mrs Poole-Wilson, who has agreed to move one further amendment to the Bill during the clauses reading of this Bill. This amendment will honour the commitment made by the Treasury in the House of Keys to align the list of charitable purposes in the Bill with those that will be applicable in the Island when the Charities Registration and Regulation Bill 2018 is introduced by its Appointed Day Order. I thank Mrs Poole-Wilson for her assistance in this matter and hope that Council Members will support the amendment.

Eaghtyrane, I would now like to talk a little more about a number of points that were raised by a number of Hon. Members at the First Reading of this Bill.

The Hon. Member Mrs Maska raised a query about whether banks should advertise the accounts that are due to be transferred into the Fund in the local paper before they transfer, in order to encourage reclaims. As I have already mentioned, the steps taken to try and contact customers is something the Treasury has explored in detail during the development of this Bill and this was also subject to discussion and amendment in the House of Keys. To address the Hon. Member's specific query, in the case of dormant bank accounts we are dealing with a living person's details as opposed to a deceased person's estate, as was the example mentioned. There are many data protection issues around the information that could actually be published, plus considerations regarding the risk of fraud. Our research indicated that we would only be able to publish names of banks holding accounts and the dates these were originally opened. No names or values could be published because of the issues I have just mentioned. For these reasons, the inclusion of an obligation to advertise accounts to be transferred was not progressed further.

Moving to the Hon. Member Mr Crookall, who asked a question about whether someone seeking a lost account would come to the Treasury in that respect, the short answer to that is no, the Treasury will not obtain any personal information about asset holders as part of its management of the central fund. All customer records will remain with the bank; and so, in the case of someone looking for a lost account, they would need to approach the bank themselves in the first instance; in other words, providing enough information to the bank of association to that account and thus the bank then would make the repayment to that customer directly.

The Hon. Member Mrs Lord-Brennan also helpfully contacted Treasury's policy officers after the First Reading with a number of queries. These centred on the circumstances in which the Treasury may consider the transfer of assets to the Fund where specific dormancy ages may not be available, details regarding investment and reporting, and also the topic noted earlier regarding asset holder notifications. I hope the assurances we have been able to provide allay the Hon. Member's concerns.

270 The other remaining issue that arose during First Reading was that of accounts with enduring power of attorney and power of attorney. I made a commitment during that reading to come back today to confirm existing arrangements where such powers are in place. To that end, we have done some background research and indeed the Attorney General's officers have been involved in the same, and at this point of my Second Reading, Eaghtyrane, if I may be bold enough to ask if the Attorney General might be able to make a little more detailed comment on the issue of enduring power of attorney etc., and then I can finish the moving of the Second Reading.

275

The President: Would you wish to make that comment at this stage?

Mr Henderson: Yes, please.

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

Very briefly, Hon. Members, if a donor of an enduring power of attorney becomes mentally incapacitated, then under the Powers of Attorney Act 1987 there is a requirement for that enduring power of attorney to be registered with the court and pending registration the powers of the attorney or attorneys is suspended. The registration takes the form of stamping the actual deed, the actual enduring power of attorney document itself, and entering the details on a register.

285

The register is not a public register which is available to the general public. However, under the Mental Health (Powers of Attorney) Rules 1987 a person is able to do a search of the register on payment of the appropriate fee and to apply for a copy of the enduring power of attorney. That request is considered by the Chief Registrar, who, if he or she is satisfied that a person has good reason for requesting a copy, can provide one, and clearly one of the matters which the Chief Registrar will have to take into account is whether it has been reasonably practical to acquire a copy from the attorney himself.

290

So there is a process there requiring registration and there is, under the Mental Health (Powers of Attorney) Rules 1987, the ability to make a search.

295

Thank you, Mr President.

The President: Thank you, Mr Attorney.
Mr Henderson.

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

I thank the Attorney General for assisting me in the background of that.

In summary, the Treasury does not believe that it is appropriate or proportionate to amend current provisions within this Bill. However, it does raise questions that may be asked outside of the passage of this Bill and issues that may well be raised with the AG at a different time in conjunction with the Chief Registrar on some of the power of attorney issues that Hon. Members are concerned with here. But for the purposes of this Bill we feel that it is outwith the spirit of what is trying to be achieved here, and certainly I would stress again that that this Bill does not seek to interfere with any property rights. Regardless of whether an account is transferred into the Dormant Assets Fund or not, a customer or anyone legally acting on their behalf will always retain the right to that money if they contact the bank at any time.

310

Eaghtyrane, with that, I beg to move that the Dormant Assets Bill 2018 be read a second time.

The President: Thank you very much.
Miss August-Hanson.

315

Miss August-Hanson: I would like to second and reserve my remarks.

The President: Mrs Poole-Wilson.

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

Can I thank the hon. mover Mr Henderson and also the learned Attorney for their response on the question I asked at First Reading.

I would like to thank Mr Henderson as well for the reassuring point he made several times at the First Reading, and he has just reiterated, that there is protection in this Bill that the asset holder can
325 always apply to have any money that is transferred returned to them if it becomes apparent that the money has been transferred under this Bill.

I think it goes outside this Bill but I think there is an interesting point about whether there is scope to improve our current system to help anyone who is looking to understand whether there may be a power of attorney in place for someone else, so perhaps that is something that could be
330 looked into outside this Hon. Council.

Thank you, Mr President.

The President: Mrs Maska.

335 **Mrs Maska:** Thank you, Mr President.

I would also like to thank the hon. mover for the work that has gone on behind the scenes to address matters that we raised at First Reading, particularly on matters of notice and capacity, and I would thank the team in Treasury as well for having gone into this very thoroughly.

I feel reassured now that this Bill, at this time, is appropriate and the measures to do with enduring power of attorney may be looked at, at a future time; this Bill is not the appropriate vehicle
340 to do that. I do thank the hon. mover for the diligence that this has been treated with.

Thank you very much.

The President: Mr Crookall.

345

Mr Crookall: Thank you, Mr President, and I thank the hon. mover for answering, or trying to answer, my query from the First Reading.

Can I just ask: if a long-lost family member comes forward after the demise of somebody and they come forward some years later, he said that they cannot go to Treasury to look at a list of
350 dormant asset holders and he said they would need to go back to the bank – is he saying then that that relative has to go round all the banks, because they obviously might not know where those accounts might have been held? We have got maybe 20-odd banks on the Island. Have they got to trawl round all of those? A central list held here at Treasury and available to the public would be an easier place to go; that was my point.

355 Thank you.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

360 Taking the Hon. Member Mr Crookall's points first, if I may, Treasury, under data protection regulations amongst other things, is not allowed to have a private list of details or personal details. It will only be supplied with a spreadsheet with an amount, date and identifying number from that bank to cover the data protection issues.

If a person discovers, for whatever reason, decades into the future, once this has become
365 legislation, that there is some sort of account somewhere, obviously there will be details with that and that person's first port of call will always be to go to that bank and say, 'Look, here we are, here's my interest in it,' and so on, and if they are trying to make a claim on the account, as they would do now if there was no Dormant Assets Bill in place, they would be asked to provide their identifying details and so on to prove the point that that account is legally associated with them. The
370 bank, in either event, would then obviously pay out to that person making the request on that account. They might not even know if it had transferred to the Dormant Assets Fund, because of the

fact that you would always go to your bank first because you would have the papers or some sort of evidence associated with the account, which would have a name on, presumably, some identifying material which would show the person concerned where to follow up, and that is where you would go. They would not know to apply to Treasury because the way it works – normally, anyway, if such a thing is discovered – is you would go straight to the bank concerned. The same with the Dormant Assets Bill, if so enacted. The bank may or may not advise that person that a fund has been transferred to the Treasury central fund, but what they would do certainly is check out the details – proof of connection, proof of claim and suitable identification and all the rest of it, obviously – so they could check out that person making a bona fide claim on that account.

The bank could do that relatively easily and quickly. There would be no penalty time clause in the background just because it was a dormant asset. They would pay it out and then, at the appropriate quarter in the Dormant Assets Bill year – if I can put it like that – the bank then would make their reclaim in the background to Treasury. It would work loosely like that, the same as ... I can see the Hon. Member is still looking perplexed, but the same as now, if I discovered some sort of dormant bank account somewhere attributed to my family from years ago, there must be some sort of evidence of that. You cannot just walk into a bank and say, 'My Auntie Smith from 15 years ago had this and I want to know more about it.' You would have to have more evidence of proof to do that, but your first port of call would always be to the bank you suspected would have such an account anyway, or institution where you expected or supposed that that kind of account would be; it would not be ... As now, if you discovered something in a will you would not go to Treasury, you would go to the bank concerned, or from the information that you had gleaned you would go to the source of that information to start your line of inquiry from there. That is as best I can answer that for Mr Crookall.

I am grateful for Mrs Maska's support, and her officers indeed; and indeed to Mrs Poole-Wilson for her support, and also for the point that she raised regarding enduring power of attorney especially. I think it is not within this Bill because we are trying to set something up, but it has kicked out an issue that maybe the Attorney General's officers can pick up at some point going forward with the Registry and in reference to the points Mrs Maska made last week that our elderly population is expanding and this may become more of an issue in time.

I will leave those points there, Eaghtyrane, and I wish to move the Second Reading.

The President: Before I put the question, Miss August-Hanson, you have a further point?

Miss August-Hanson: Yes, just in terms of any form of evidence, I suppose with my background as a journalist you would need to have some form of details, facts, statistics, in order to start a search into anything. I think that, in my own understanding of this, identifying any form of evidence would start with some level of detail that you would then perhaps ... And perhaps it should lay, the responsibility, with the person who is searching as to where that lies with banks if there is no particular bank name or detail on there.

You say that we have 20-odd banks on the Island – we do not have that many. It is not like being over in the UK or being over in Europe. It is not that arduous a task. Indeed, if it did lie with Treasury I would think that might actually confuse the situation alongside the GDPR problems that might rise off the back of it. It may confuse the situation because details would then be in far too many places and it would be far more confusing for that individual to actually find the information they need and indeed the bank that it lies with.

That is all I wanted to add. Thank you, Mr President.

The President: Mr Henderson, do you wish to reply?

Mr Henderson: No. The Hon. Member has laid the facts out quite clearly. That is the situation indeed. It is not incumbent on Treasury to be holding personal details. The facts are as laid out by Miss August-Hanson.

The President: Thank you, Hon. Members.

425 I put the question that the Dormant Assets Bill be read a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Dormant Assets Bill 2018 –
Clauses considered**

The President: We move on now to the clauses stage. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane. I will pull out the relevant sheaf of documents to
430 progress the clauses stage.

Eaghtyrane, if I might, with your approval and Council's approval, move clauses 1 and 2 together, please?

The President: Are we content? *(It was agreed.)* Thank you.
435 Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 1 provides for the short title of the Bill.

440 Clause 2 provides for the Bill's commencement. Clause 2 enables the making of one or more Appointed Day Orders to bring the resulting Act into operation and the making of transitional provisions in connection with the Act's commencement.

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

Miss August-Hanson: I would like to second and reserve my remarks.
445 Thank you, Mr President.

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

450 Clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 3 provides definitions for the key terms used in the Bill and indicates where the meaning of others may be found.

455 These definitions include that of an 'asset holder', which with particular reference to an account is anybody who under existing arrangements can seek payment of the account.

Again, and further to the Second Reading of this Bill, I can confirm that in the case of a power of attorney, if it is registered on an account the person appointed would be considered as the asset holder.

460 Eaghtyrane, I beg to move that clause 3 stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
465 I would like to second and reserve my remarks.

The President: I put clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4, sir.

Mr Henderson: Gura mie eu, Eaghtyrane.

470 Clause 4 provides the definition of an asset to which the legislation will be applied. An asset is limited to any account held by a licence holder in the Island, but this may be extended to other assets by way of an order under clause 10(1).

475 Subsection (2) prescribes what may not be considered as an asset for the purpose of the legislation. Essentially, any assets that are subject to ongoing proceedings relating to money laundering, terrorist financing or sanctions or any other civil or criminal matters will not be included within the scope of the legislation.

Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

480

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

485 **The President:** I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Henderson: Gura mie eu, Eaghtyrane.

490 Clause 5 sets out the meaning of 'balance'. A balance, for the purpose of this Bill, is the value of an asset owing to an asset holder at any time, once all adjustments have been made for interest due and charges and fees payable in accordance with the terms and conditions under which that asset is held by a licence holder. A balance does not, however, include any amount subject to a security interest.

Eaghtyrane, I beg to move.

495

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

500

The President: I put the question that clause 5 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

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

Clause 6 defines the licence holders to which the legislation will apply. A licence holder is the holder of a class 1 deposit-taking licence in accordance with paragraphs 1(1) and 1(2) of Schedule 1 of the Regulated Activities Order 2011, which will essentially be any bank or building society that accepts deposits on the Island.

510 Eaghtyrane, I beg to move clause 6.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you.

515 I would like to second and reserve my remarks.

The President: I put clause 6. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

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

Clause 7 provides the definition of a 'dormant' account. In general, an account will be classed as dormant if it has been open for a period of 15 years during which there has been no customer activity. This will, of course, include any transfers in or withdrawals from the account.

525 A number of safeguards are built into this clause to mitigate the risk of accounts being misclassified as dormant. For example, if an account holder has additional accounts with the same licence holder, any activity or contact in respect of the other accounts will preclude the inactive account as being transferred as dormant. Furthermore, an account is not to be treated as dormant if the nature of the account is such that withdrawals are not permitted, or if such withdrawals would incur some form of penalty.

530 Eaghtyrane, I beg to move clause 7.

The President: Miss August-Hanson.

535 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 7. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

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

Clause 8 deals with circumstances where a licence holder is unable to identify the exact dormancy age of an account, or is unable to confirm whether the account is in fact dormant.

545 The clause gives licence holders the opportunity to apply to the Treasury for these accounts to be considered as dormant despite their dormancy classification having not been confirmed.

Eaghtyrane, I beg to move clause 8 of this Bill.

The President: Miss August-Hanson.

550 **Miss August-Hanson:** I would like to second and reserve my remarks.
Thank you, Mr President.

The President: I put clause 8. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

555 Clause 9.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 9 provides for the amendment of the definitions given in clauses 3 to 7.

Eaghtyrane, I beg to move that clause 9 stand part of the Bill.

560 **The President:** Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

565 **The President:** I put clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

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

Clause 10 permits the Treasury by order to apply the Act to other assets and in consequence to make other categories of persons holding such assets licence holders for the purposes of the Act.

At this time the Treasury has not explored any further options for the application of the dormant assets legislation in the Island. Any steps the Treasury does take will of course be subject to full consultation with the relevant licence holders and to there being sufficient evidence that benefit will be borne through the additional asset classes.

Any further application of the Act and consequential modification will require Tynwald approval. Eaghtyrane, I beg to move that clause 10 stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks.

The President: I put clause 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 11 deals with the establishment and structure of the Dormant Assets Fund.

It provides that the Fund shall be under the care and management of the Treasury and that it will be made up of a reserves account and a distribution account.

The reserves account will receive all amounts transferred to the Fund and will pay out amounts as required in respect of any repayment claims and any other liabilities.

Funds identified for distribution must be transferred from the reserves account into the distribution account before any distribution can be made in accordance with Part 5 of the Bill.

Subsections (7) to (9) make provision for ensuring the Fund can meet repayment claims, as any deficiency in the reserves account will be made good by a transfer from the distribution account in the first instance, and, if necessary, by a transfer into the reserves account from General Revenue.

Subsection (8) enables the Treasury to transfer to the Fund from General Revenue an amount in the case that the Fund is unable to meet a repayment claim. This enabling power is intended to be a backstop to ensure repayment claims can always be met, and it is not intended that it will ever be required. It is, however, important that there is some mechanism in the legislation to ensure that if, for whatever reason, the Fund is unable to repay an asset holder, there is an ability to make that payment from elsewhere. If any such loan was provided from General Revenue to the Fund, it would be repaid once the Fund had rebuilt enough reserves to meet any further potential repayment claims, and so to this end the taxpayer would not ultimately be disadvantaged by the process.

Eaghtyrane, I beg to move that clause 11 stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

The President: If I could just ask the mover: obviously this is a belt-and-braces approach to the liabilities falling on the Fund unexpectedly and it is a very low risk, but is the mover aware of other jurisdictions that operate such a fund where this has had to be used, this Treasury backstop?

Mr Henderson: Eaghtyrane, if I can answer that in a sort of roundabout way, first we have to think that the funds we are talking about are at least 15 years old in the first instance in a dormant situation, so the likely call for reclaim would be very low to start with. Also, from our research, many of the funds held elsewhere in other jurisdictions are usually small amounts.

We need to look at how we set up the Fund up to start with, in any case, and run it for a period of time to get some sort of experience of what goes into it and certainly what sort of reclaims are coming out. From the initial outset we would want to keep the liquidity there and certainly would

625 not be looking at paying out to good causes straight off, as we would want to see what sort of
experience build-up we would have in the first place to ensure there is enough liquidity there to
cover any reclaims and to see the build-up of reclaim history.

Moving down the line, which is more directly to your point, should multiple reclaims be made –
which would be highly irregular, I would have thought – we would be looking to keep sufficient
liquidity within the Fund to cover any reclaims to start with. Then you would be looking at a most
630 unlikely event where the Dormant Assets Fund would have to be extinguished for Treasury to step in
as the last backstop.

I think we have managed to demonstrate it is probably more than a belt-and-braces approach. It
has got sufficient safeguards built in to try and cover any eventuality in the first instance. The idea of
Treasury being the final backstop I think was to put an absolute assurance to any account holder and
635 to the public that what we are attempting to do is an honest approach to try and sort out the mess –
if I can call it that – of the dormant assets in a good way that will benefit the community of the
Island.

I hope that gives you the reassurances you are after, Eaghtyrane. If not, I can certainly ask one of
our officers here to speak in a little more detail.

640 I think it is fair to say that in other jurisdictions the situation has been running quite smoothly,
but I could confer with my colleague in the Gallery just to put a little more on that, if you so wish.

The President: Yes, if the officer concerned is able to just indicate, in other jurisdictions, whether
this provision has ever been required *in extremis*, shall we say?

645 **Mr Cowley:** Thank you, Mr President and Hon. Members, yes.

These backstop provisions do not exist in other legislation. We have introduced them in our
legislation as a final position whereby we could provide assurances in a case where something did
happen. It is highly unlikely, as Mr Henderson has already said, that that would be the case, but it is
650 there as a final backstop.

The President: Thank you. I should have asked you to identify yourself for the record.

655 **Mr Cowley:** Sorry, yes. Colin Cowley, Senior Policy Officer at the Treasury.

The President: Thank you, Mr Cowley, and thank you, Mr Henderson.

I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no.
The ayes have it. The ayes have it.

Clause 12.

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

Clause 12 sets out the responsibilities and duties of the Treasury under the legislation.

Under this clause the Treasury will be responsible for the day-to-day administration of the Fund,
including dealing with transfer and repayment arrangements.

665 Under paragraphs (c) and (d) of subsection (1) the Treasury must always ensure enough money is
retained in the reserve account of the Fund to meet any repayment claims and any other liabilities
arising.

The Treasury will also be responsible for the preparation of distribution policies, which we will
come to later under clause 24; transferring any amounts identified for distribution to the Fund's
670 distribution account; and making amounts held in that account available for onward distribution.

The Treasury will also be responsible for the relationship with licence holders and any
distribution organisation that is appointed.

Eaghtyrane, I beg to move that clause 12 stand part of the Bill.

675 **The President:** Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

Thank you.

680 **The President:** Clause 12: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 13 allows moneys held in the Fund to be invested and ensures that any interest accrued on any such investment remains within the Fund.

685 Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

690

The President: Clause 13: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 14.

Mr Henderson: Gura mie eu, Eaghtyrane.

695 Clause 14 provides that the Treasury must lay a detailed annual report on the operation of the Fund before Tynwald each year.

I beg to move.

The President: Miss August-Hanson.

700

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

The President: I put clause 14. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

705 Clause 15.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 15 provides arrangements for the initial part of the annual transfer cycle, which will take place between 1st July and 31st December each year.

710 This notice stage consists of two key parts, which are set out in subsections (1) and (2): at any time between 1st July and 30th September each year, a licence holder must notify the Treasury of the assets they hold that became dormant during the previous July to June period, otherwise known as the previous 'relevant year'; and in respect of those assets a licence holder must send out a notification to the last known contact details of each asset holder to try to reunite them with their
715 account before it is transferred to the Fund. An asset holder notification must advise the asset holder of the balance of their account and it must also advise them of the effect of them not coming forward to claim their asset.

The Treasury may ask for more information about any dormant asset notified to it, and a licence holder must respond to any such request within one month. In these circumstances the timescales for complying with the remaining sections of the annual transfer sequence may be varied.

720 The Treasury may decline the transfer of any dormant asset included in a notice.

Eaghtyrane, I beg to move clause 15.

The President: Miss August-Hanson.

725

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

The President: Mrs Poole-Wilson.

730 **Mrs Poole-Wilson:** Yes, thank you, Mr President.

I just wondered whether the hon. mover, for the sake of the record, could clarify that the notice that must be sent out by the licence holder actually is not to the asset holder as defined. The asset holder is defined more broadly and includes someone who may hold a power of attorney.

735 I think what clause 15(2) says is that the licence holder must give notice of the balance of every dormant asset to the person in whose name the asset is held, at that person's last address known to the licence holder. So it is a slightly narrower category than the definition of 'asset holder' in the Bill and I think for the record it would be important just to clarify that.

The President: Mr Henderson.

740

Mr Henderson: Gura mie eu, Eaghtyrane.

Yes, I can clarify that and that is the correct determination of the legislation. However, if there is a power of attorney certificate placed on that account, of course, then the power of attorney would be contacted under those circumstances. But the Hon. Member is quite correct in what she says, Eaghtyrane, and I can offer that assurance.

745

The President: I put clause 15. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

750

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 16 provides arrangements for the second part of the annual transfer cycle.

Changes to the status of any assets listed on the notice under clause 15(1) that arise before 30th November must be applied by a licence holder for the purposes of the transfer to the Fund.

755 Within the month of December a licence holder must submit a further notification to the Treasury under subsection (1), which must confirm the dormant assets they hold that will transfer to the Fund.

It follows that by the end of December the transfer of the funds must take place.

Eaghtyrane, I beg to move that clause 16 stand part of the Bill.

760

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

765 **The President:** I put clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Henderson: Gura mie eu, Eaghtyrane.

770 Clause 17 provides the arrangements for the treatment of dormant assets that are held in a currency other than that of the Fund currency of the Manx pound or sterling.

Under subsection (2), the balance of such assets will be converted to the Fund currency by a licence holder within two working days of a transfer taking place. The rate of conversion applied will be determined by the prevailing exchange rate that applies to the asset on the day of conversion in accordance with the terms and conditions under which it is held by a licence holder.

775

Eaghtyrane, I beg to move clause 17.

The President: Miss August-Hanson.

780 **Miss August-Hanson:** I would like to second and reserve my remarks.
Thank you, Mr President.

The President: I put clause 17. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

785 Clause 18.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 18 sets out the rights of a holder of a dormant asset that has been transferred to the Fund.

790 With respect to the transferred asset, the asset holder no longer has a right to payment of the transferred asset against the licence holder. This right to payment does, however, still exist, but will be held against the Treasury as manager of the Fund.

The right to repayment under subsection 1(b) is qualified by subsections (5) and (6).

795 Subsection (5) provides that interest will not accrue on transferred assets while they are held in the Fund, except to the extent that may be prescribed separately by the Treasury.

Subsection (6) provides that there is no right to reclaim the transferred asset other than in the Fund currency at the value calculated at the time it was converted into the Fund currency for transfer.

800 The powers given to the Treasury in subsection (2) will provide a means of remedying any situation that arises whereby an asset holder suffers a significant financial disadvantage because of the treatment of their asset under the legislation.

805 It is intended that the ability to provide compensation under subsection (2) will only be considered in exceptional circumstances, and in any case any such decisions must bear in mind the balance of the Fund at the time and the effect of any overpayment on the ability of the Fund to pay out any other repayment claims that may arise.

Eaghtyrane, I beg to move clause 18.

The President: Miss August-Hanson.

810 **Miss August-Hanson:** I would like to second and reserve my remarks, Mr President.

The President: I put clause 18. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19, sir.

815

Mr Henderson: Yes. Gura mie eu, Eaghtyrane.

Clause 19 sets out the duties of licence holders in relation to the dormant assets they have transferred to the Fund.

820 In respect of these assets, licence holders will be responsible for holding relevant asset holder records and for receiving, assessing and paying out any repayment claims. They must also assist any inquiry being undertaken by a law enforcement agency for a permitted purpose.

Because licence holders will take on these duties and obligations, a customer's experience in reclaiming their money will be no different to the experience they would have had, had their asset remained with the original bank.

825 Eaghtyrane, I beg to move that clause 19 stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

830

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

Just for the record, I would like to ask Mr Colin Cowley, if he has this information: (a) how many other comparable jurisdictions –

835

The President: Hon. Member, you must address the mover, with respect, who may then invite further comment.

Mrs Sharpe: Sorry, Mr President.

840

The President: So, make your point to Mr Henderson.

Mrs Sharpe: Thank you.

845

I would like to ask Mr Henderson: how many other jurisdictions of comparable size to the Isle of Man operate a dormant assets fund; and also, approximately how long have they been in operation? This is just for the record.

Mr Henderson: Gura mie eu, Eaghtyrane.

850

There are many jurisdictions, is the answer to that, that operate dormant asset funds. The ones that surround us in the adjacent isles have been in operation for a short period of time, maybe two to three or five years, but I will confer with Mr Cowley for that time period just to get it absolutely clear.

855

We also have jurisdictions further afield – the United States, New Zealand, Australia – and we also have the likes of the Bahamas and the Turks and Caicos Islands who, interestingly, have a very definite time limit set on what a dormant asset in a dormant asset fund is, and after that period of time there is no reclaim either.

860

So the policies that we are putting in place here today are up to quite a high international standard, in union with the surrounding jurisdictions where our banks here also have branches, so it works. What we are hoping is that we have a consistent approach, better for business; but I am sure, Eaghtyrane, if Mr Cowley is able to tell us the length of time these assets are, that would be useful.

The President: Mr Cowley, again, start with your name and title for the record.

Mr Cowley: Colin Cowley, Senior Policy Officer within the Treasury.

865

Yes, just to answer the Hon. Member, the UK scheme has been in since 2008, so that has been operating for quite some time. Our scheme is modelled largely on the Jersey scheme. It has only been in operation for about two to two and a half years, since July 2017, so that is a fairly new scheme. That is what we have modelled ours on.

870

Guernsey are also promoting some legislation at the moment as well, which will be along similar lines. So our schemes are fairly new in their inception around that, but they are modelled again on the UK scheme in general as well.

Mrs Sharpe: Thank you.

875

The President: Mr Henderson, anything to add?

Mr Henderson: No, I think we have made the clarification to the Member's satisfaction.

The President: Thank you.

880

In that case I put clause 19. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Henderson: Gura mie eu, Eaghtyrane.

885 Clause 20 deals with the responsibilities of a licence holder to report to Treasury annually on their repayment claim experience. The details provided in these annual returns may be subject to publication through the annual report of the Fund.

Eaghtyrane, I beg to move clause 20.

890 **The President:** Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

The President: I put clause 20. Those in favour, say aye; against, no. The ayes have it. The ayes
895 have it.

Clause 21.

Mr Henderson: Gura mie eu, Eaghtyrane.

900 Clause 21 deals with the reimbursement process for licence holders in relation to amounts they have paid out in repayment claims.

A licence holder is entitled to seek recovery of amounts paid out in repayment claims by making a quarterly application to the Treasury via a reclaim certificate.

A reclaim certificate cannot be made for amounts paid out on repayment claims more than three years before the date of the reclaim certificate, or for amounts paid out in error.

905 Eaghtyrane, I beg to move clause 21.

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

910 Thank you.

The President: I put clause 21. Those in favour, say aye; against, no. The ayes have it. The ayes
915 have it.

Clause 22.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 22 provides that a licence holder acts as the Treasury's agent in specified matters.

920 It formalises the responsibilities and duties of licence holders in respect of the dormant assets they have transferred to the Fund. The terms on which a licence holder acts as agent are found in the Schedule.

In accordance with subsection (4), the terms provided in the Schedule are binding on any liquidator or other persons acting in the place of a licence holder in accordance with Part 6 of the Bill.

925 Eaghtyrane, I beg to move that clause 22 do stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

930 **The President:** I put clause 22. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

Mr Henderson: Gura mie eu, Eaghtyrane.

935 Clause 23 deals with the costs of licence holders.

Subsection (1) provides that a licence holder may deduct costs or expenses from an asset prior to it being transferred to the Fund, but only insofar as the terms and conditions that are binding on an asset holder allow.

940 In the event of a successful repayment claim arising, a licence holder must repay to an asset holder any such amounts deducted from the balance of an asset under subsection (1).

A licence holder may not deduct any further amounts from the transferred asset to be paid out to the asset holder.

Eaghtyrane, I beg to move clause 23.

945 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
I would like to second and reserve my remarks.

950 **The President:** I put clause 23. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Henderson: Gura mie eu, Eaghtyrane.

955 Clause 24 deals with distribution policies, the setting of which will be the Treasury's responsibility.

A distribution policy will determine the value of assets held in the Fund at any time that must be retained to meet any repayment claims and cover any costs, and any surplus amounts that may be made available for distribution.

960 Concluding the potential liabilities of the Fund at any time will be complex, and until the Treasury has some repayment experience it will be difficult to establish the profile of assets that are more or less likely to be reclaimed.

Distribution policies will be transparent and will be reported in the annual report of the Fund in accordance with clause 14.

965 Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

970 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you.

975 I would just like to ask the hon. mover, in relation to the transparency point, I think in section 12(2) there is a power in the Bill for various policies and procedures to be published on a website and I wondered whether it is also the intention ultimately for the distribution policy to be published in that way as well as appearing in the annual report.

980 **The President:** Mr Henderson to reply.

985 **Mr Henderson:** Eaghtyrane, as far as I am concerned, I think it would be something that Treasury would consider. I cannot give a definite point at this moment in time, but to keep things consistent with the other issue that the Hon. Member has mentioned I have no doubt that Treasury will look into the matter to have these policies put on the internet.

Mrs Poole-Wilson: Thank you.

The President: I put clause 24. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

990 Clause 25.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 25 deals with the distribution of Fund money.

995 Subsection (1) provides that amounts held in the distribution account of the Fund may be used to pay the costs of a distribution organisation and may be used for distribution to charitable purposes specified in subsection (7).

1000 Subsections (3) to (5) deal with the appointment of the distribution organisation, which must be independent from the management of the Fund and whose terms of appointment must be approved by Tynwald. A body appointed as a distribution organisation will not be eligible to receive a distribution from the Fund for its own purposes.

The parameters for the distribution of money to good causes in the Island are set out in subsection (7).

1005 Eaghtyrane, the amendments that will be moved to this clause today will fully align the list of charitable purposes given in subsection (7) to those given in the Charities Act 1962. The amendments will provide the Treasury sufficient powers under subsection (13) to amend, by way of an Order approved by Tynwald, the reference to the Charities Act 1962. This will enable the realignment of charitable purposes under this Bill to those that will be brought about through the Charities Registration and Regulation Bill 2018, when indeed that legislation is introduced.

1010 Subject to the approval of Tynwald, the Treasury may specify proportions in which amounts may be distributed to the charitable purposes referred to in subsection (7).

A distribution organisation will be required to report to Tynwald annually on its activities in respect of dormant assets.

Eaghtyrane, I beg to move.

1015 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you.

I would like to second and reserve my remarks, Mr President.

1020 **The President:** Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1025 As the hon. mover Mr Henderson has indicated, the amendments to this clause in my name will align the list of charitable purposes in this Bill to those given in the Charities Act 1962 for the time being and will enable the realignment of the charitable purposes to those given in the new Charities Registration and Regulation Bill promptly after the enactment of that piece of legislation.

1030 A number of representations were made in another place that the charitable purposes listed under subsection (7)(a) of this clause should be aligned with those that will be introduced through the new charities legislation. Such alignment would be appropriate in order to provide consistency between what is considered to be in the public benefit under this Bill and what is otherwise considered to be a charitable undertaking in the Island. The Treasury has therefore made a commitment in another place that it will take steps to achieve that objective of coalescence.

I am pleased, therefore, to be able to move this amendment today, which will allow that outcome to be achieved in the simplest and most convenient way.

1035 The amendment will provide that any person undertaking charitable purposes in the Island may receive dormant assets funding. Charitable purposes will, for the time being, be aligned to the meaning in the Charities Act 1962 and, subsequent to the enactment of the Charities Registration and Regulation Bill in the Island, the Treasury has agreed to bring forward an Order to Tynwald

1040 which will realign this subsection (7) to the new meaning of charitable purposes given by the new charities legislation. Such an Order will, of course, require the approval of Tynwald.

I beg to move the amendment standing in my name:

Amendments to clause 25

1. On page 28, line 30, before 'charitable purposes' insert 'the' and for 'specified' substitute 'referred to'.

2. On page 29, for lines 23 to 34 (the existing subsection (7)) substitute —
'(7) In accordance with the distribution policy, the distribution organisation must distribute amounts for charitable purposes undertaken in the Island.'

3. On page 30, for lines 16 to 20 (the existing subsection (12)) substitute —
'(12) In this section, "charitable purposes" has the same meaning as in section 14 of the Charities Act 1962.'

4. On page 30, for lines 21 to 26, (the existing subsection (13)) substitute —
'(13) The Treasury may by order amend subsection (12) in so far as may be necessary or desirable in consequence of any change to the law relating to charities in the Island.
Tynwald procedure —approval required.'

The President: Mrs Maska.

1045 **Mrs Maska:** I beg to second, Mr President, and reserve my remarks.
Thank you.

The President: Mr Cretney.

1050 **Mr Cretney:** If I could ask the mover of the amendment: in terms of consistency, if you look, for example, at the Public Lottery Trust on the Isle of Man, the sort of causes which are mentioned in clause 7 are those which normally apply – arts, culture, heritage, etc. – but there is an absence of sport. Sport, in the Public Lottery Trust, is one of the categories which can receive support. By your amendment, does that mean that sport will be able to be included?

1055 **Mrs Poole-Wilson:** Thank you to the Hon. Member of Council, Mr Cretney, for raising the question. This is precisely the question that was raised in another place, and the absence of sport from the wording of the Bill as it was originally drafted was raised as an omission. The intention is that once the wording in this Bill can be amended so that it is in line with the new Charities Bill that is currently moving through another place, that will incorporate that wider definition to include
1060 sport.

Mr Cretney: Thank you.

The President: Mr Crookall.

1065 **Mr Crookall:** Thank you.
Can I just seek the clarification that that would be amateur sport and not professional sport?

The President: Mrs Poole-Wilson

1070 **Mrs Poole-Wilson:** The Hon. Member of Council Mr Crookall is testing my memory with the exact wording of the Charities Registration and Regulation Bill, but I believe that is correct.

The President: Mr Henderson, do you wish to reply?

1075 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I think all that needs to be said has been said, so I beg to move.

The President: I put to Council the amendment to clause 25 in the name of Mrs Poole-Wilson. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1080 I put clause 25 as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

Mr Henderson: Gura mie eu, Eaghtyrane.

1085 Clause 26 preserves the rights of asset holders to reclaim their transferred assets from the Fund despite, amongst other things, the licence holder that originally held their asset no longer holding a relevant licence in the Island.

Eaghtyrane, I beg to move that clause 26 stand part of the Bill.

1090 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

1095 **The President:** I put clause 26. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Henderson: Gura mie eu, Eaghtyrane.

1100 Clause 27 provides that the operation of Part 4 the Bill in respect of repayment claims will continue despite the default of a licence holder.

I beg to move clause 27.

The President: Miss August-Hanson.

1105

Miss August-Hanson: I would like to second and reserve my remarks, Mr President.

The President: I put clause 27. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1110 Clause 28.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 28 provides that the Treasury may perform certain duties of a licence holder in clause 19 if they are not otherwise being undertaken by or on behalf of a licence holder.

1115 This clause ensures asset holders will always have a mechanism to reclaim their transferred asset, even if a licence holder defaults, or if the arrangements in clause 29 to provide for repayment claims in the event of a licence holder in default, have ceased to operate.

Eaghtyrane, I beg to move.

1120 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

1125 **The President:** I put clause 28. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 29.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 29 provides the arrangements for circumstances when a licence holder is in default.
1130 It specifically provides that in these circumstances the licence holder must put in place a successor to act on their behalf in respect of transferred asset holders and repayment claims for a period of at least six years.
Subsections (3) and (4) provide that in the case of any liquidation, any costs incurred by a liquidator in fulfilling their duties under this legislation will be drawn from the liquidation pot, subject to the same priority as their ordinary costs
1135 Eaghtyrane, I beg to move clause 29.

The President: Miss August-Hanson.

1140 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 29. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
1145 Clause 30.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 30 provides powers for the Treasury to introduce regulations to provide for the arrangements in cases of default by a licence holder.
1150 The clause gives the Treasury the flexibility, should it be necessary in the circumstances of the licence holder in default, to determine how any third party carrying out the responsibilities on behalf of the licence holder under the legislation must do so.
Eaghtyrane, I beg to move.

1155 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
I would like to second and reserve my remarks.

1160 **The President:** I put clause 30. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 31.

Mr Henderson: Gura mie eu, Eaghtyrane.
1165 Clause 31 provides for the transitional arrangements that will be available to any licence holder that has no system, or no effective system, of identifying the dormant assets they hold in accordance with the definitions provided in the legislation.
The arrangements are equally available to any new licence holders that may be granted a licence in the Island after the legislation is introduced.
1170 Transitional arrangements provide an eligible licence holder a period of up to five years to establish a mechanism for identifying their dormant assets.
During a transitional arrangement, a licence holder will not have to comply with Part 3 of the legislation, which deals with the annual transfer process, nor will they be required to instigate the process that deals with the transfer of their historic stockpile of dormant assets to the Fund, in accordance with clauses 34 and 35.
1175

Eaghtyrane, I beg to move that clause 31 stand part of the Bill.

The President: Miss August-Hanson.

1180 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 31. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1185 Clause 32.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 32 provides a definition of the terms 'assets dormant at commencement' and 'applicable dormant at commencement date'.

1190 'Assets dormant at commencement' generally refers to any dormant assets a licence holder holds that will not otherwise transfer to the Fund as part of the normal annual transfer cycle owing to them having fallen dormant in the past.

'Applicable dormant at commencement date' is a term used to describe the date a licence holder's transfer obligations begin.

1195 I beg to move.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1200 I second and reserve my remarks.

The President: I put clause 32. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Henderson.

1205

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 33 deals with asset holder notifications that must be sent in respect of assets dormant at commencement.

1210 A notification under this clause must be sent after the legislation begins, or, in the case of a new licence holder in the Island, after their licence begins but before the assets are notified to the Treasury under clause 34.

The requirements of an asset holder notification under this clause are similar to the requirements of the equivalent notice that must be sent as part of the annual transfer cycle.

1215 The notification must include the balance of the account and must also advise the recipient of the effect of them not coming forward to claim their account.

Eaghtyrane, I beg to move that clause 33 stand part of the Bill.

The President: Miss August-Hanson.

1220 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: Mrs Poole-Wilson.

1225 **Mrs Poole-Wilson:** Thank you, Mr President.

Just to point out again that the wording in this clause, section 33(1), is not that the notification is to the asset holder but to the person in whose name the asset is held. So, it is the same clarification point as applies for the normal transfer cycle.

1230 **Mr Henderson:** And I can confirm that is the object of the legislation, Eaghtyrane, and that is the effect, as the Hon. Member has described.

The President: I put clause 33. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

1235

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 34 sets out the first stage of the process that deals with transfers of assets dormant at commencement to the Fund, known as the notice stage.

1240 In summary, a licence holder must notify the Treasury of the assets dormant at commencement that they hold within 12 months of their applicable dormant at commencement date.

A licence holder may declare these dormant assets by way of a single or multiple notices to the Treasury over the period.

The information that must be included in a notice under this clause will be specified by the Treasury by way of an order made under this subsection.

1245 Eaghtyrane, I beg to move that clause 34 stand part of the Bill.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1250 I would like to second and reserve my remarks.

The President: I put clause 34. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

1255

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 35 deals with the second stage of this transfer process, known as the transfer stage.

1260 Changes to the status of any assets listed on a notice under clause 34(1) that arise within three months of that notice being submitted to the Treasury must be applied by a licence holder for the purposes of the transfer to the Fund.

In the month that follows, a licence holder must submit a further notification to the Treasury, which must confirm the dormant assets they hold that will transfer to the Fund, and the transfer of the assets listed must take place before the end of that month.

Eaghtyrane, I beg to move.

1265

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1270 I would like to second and reserve my remarks.

The President: I put clause 35. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

1275

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 36 deals with the disclosure of information.

Subsection (1) provides for customer records to be passed from a licence holder or its successor to the Treasury, which will be necessary if the Treasury takes on responsibility for processing repayment claims directly.

1280 Subsection (3) provides a gateway for the Treasury to share information about dormant assets and their holders with law enforcement agencies for permitted purposes.
Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

1285 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 36. Those in favour, say aye; against, no. The ayes have it. The ayes
1290 have it.
Clause 37.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 37 sets out the offences in connection with information.

1295 Subsection (1) sets out the offence connected with providing false or misleading information to the Treasury under the legislation, and subsection (2) deals with the offence of failure to comply with a requirement of the legislation and failure to provide specified information to the Treasury.
Eaghtyrane, I beg to move.

1300 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
I would like to second and reserve my remarks.

1305 **The President:** I put clause 37. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 38.

Mr Henderson: Gura mie eu, Eaghtyrane.

1310 Clause 38 provides that the Treasury and the distribution organisation will not be classed as deposit takers in respect of the fulfilment of their responsibilities under the legislation.
Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

1315 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put the question. Clause 38: those in favour, say aye; against, no. The ayes have
1320 it. The ayes have it.
Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 39 clarifies the extent of the liability of the Treasury under the Act.

1325 Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
1330 I would like to second and reserve my remarks.

The President: I put clause 39. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 40.

1335

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 40 provides that nothing in the Act authorises a disclosure in contravention of existing data protection legislation on the Island.

Eaghtyrane, I beg to move.

1340

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

1345

The President: I put clause 40. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 41.

1350

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 41 ensures any other obligations, whether imposed by another enactment or otherwise by law, are not affected by the operation of this legislation.

Eaghtyrane, I beg to move.

1355

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

1360

The President: I put clause 41. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 42.

1365

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 42 provides generally for the making of statutory documents under the Act.

Tynwald approval is required for the making of statutory documents unless otherwise expressly stated.

Eaghtyrane, I beg to move.

1370

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I would like to second and reserve my remarks.

1375

The President: I put clause 42. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 43.

1380

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 43 provides that nothing in the Act affects the operation of *bona vacantia* in the Island.

Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

1385 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 43. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Finally, clause 44.

1390 **Mr Henderson:** Gura mie eu, Eaghtyrane.
Clause 44 provides for the Treasury, or any other person authorised to perform the Treasury's functions under the Act, to recover reasonable costs from the Fund for the performance of their functions under the Act.
1395 Eaghtyrane, I beg to move.

The President: Miss August-Hanson.

1400 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: I put clause 44. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Thank you, Hon. Members. That concludes our consideration of the clauses stage of the Dormant Assets Bill.
1405

Highways (Amendment) Bill 2019 – Point of order under Standing Order 4.2

The President: The Hon. Member of Council, Mrs Lord-Brennan, wishes to raise a point of order under Standing Order 4.2, 'Public Bills – introduction'.
Mrs Lord-Brennan.

1410 **Mrs Lord-Brennan:** Thank you, Mr President, for the opportunity to make a short statement regarding the Highways (Amendment) Bill 2019, which is due to be considered by this place next week.

As a point of order, I wanted to advise Hon. Members of my intention to seek the suspension of Standing Orders next week to expedite this short Bill, so that it can progress on from the Legislative Council. Ideally, as it is a short Bill with only four clauses, two of significance, and being one page in substantial length, it would be concluded in one sitting.
1415

The reason for seeking to handle this Bill quickly is the impact that it will have locally if it is not in place. The Bill is correcting an error in legislation further to the Transfer of Planning and Building Control Functions Order 2015 and the correction is needed to allow the Department of Infrastructure to divert or extinguish highways, which includes footpaths, where there is a development reason to do so in accordance with planning approval already gained. As such, there have been developments that have had planning permission since last summer that have been unable to progress because the Department as it stands does not have the power to make the orders to make this change in the highways.
1420

1425 Upon pressing this matter further, I am told that this situation has become more urgent, as one such development is for the expansion of a quarry which is running low on aggregate reserve and so there are understandably economic reasons, given the impact on construction – and other issues as well to do with, to my surprise, farming. Hon. Members might remember that the issue in this respect to do with the quarry was flagged at the Members' presentation. Although the Department

1430 has been aware since last summer that this change was needed, it has just taken a while to get the Bill to this stage. Indeed, there are other developments affected, so Government needs to be able to act to issue appropriate orders, in the same way as it would have done before the change was made and the error identified.

1435 If Members agree, it will allow for the Bill to go to the Ministry of Justice in time, which I am assured should be straightforward, and to allow for related Orders to come before May Tynwald.

Mr President, thank you for allowing this time for me to give Members advance notice of my intention.

I would be glad if Members of this Council would consider this over the coming week and I am very happy to be approached with any questions on it.

1440 Thank you.

The President: I thank the Hon. Member for giving Council advance notice of the way she intends to handle the Bill and make her case next week. Thank you, Hon. Member.

1445 With that, Hon. Members, the business before the Council is concluded this morning and Council will now adjourn to the next sitting, on 12th March at 10.30 here in our own Chamber.

Thank you, Hon. Members.

The Council adjourned at 12.06 p.m.