



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th March 2019

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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.

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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 Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Order of the Day

1. Income Tax Legislation (Amendment) Bill 2019 – Second Reading approved

Mr Henderson to move:

That the Income Tax Legislation (Amendment) Bill 2019 be read a second time.

The President: Hon. Members, our Order Paper begins with the Income Tax Legislation (Amendment) Bill for Second Reading, and I call on the mover, Hon. Member of Council, Mr Henderson.

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

This Bill confirms three Temporary Taxation Orders (TTOs), two of which it also amends. It also makes three amendments to the Income Tax Act 1970.

The Bill contains five clauses and I will now give an overview of what the Bill is intended to achieve.

15 The three Temporary Taxation Orders to be confirmed by the Bill were approved by Tynwald as part of the 2018 Budget and are already in operation. The confirmation of two of these Orders is subject to them being amended by the Bill. The two Orders to be amended are already producing positive results and the amendments being proposed are intended to further encourage their performance.

20 Before I provide a brief outline of the Orders, I would like to remind you and Hon. Members of the temporary taxation order process. A temporary taxation order is used by the Treasury to amend and introduce primary Income Tax legislation. It is mainly used to react quickly to international changes or to introduce measures for the Budget. The order has the same power as primary statute

25 and has immediate effect once approved by Tynwald. However, it will cease to have effect within
12 months of the day on which it was approved by Tynwald, unless a Bill confirming the order is read
for a second time in another place.

30 The first of the three Orders extends the existing tax relief available for nursing expenses so that
it can include the costs of engaging a qualified physiotherapist in certain circumstances. The second
Temporary Taxation Order introduces legislation enabling a new type of pension scheme to be
offered by pension providers, which will allow scheme members greater freedom to access their
pension funds. It also makes a small number of amendments to both the Income Tax (Retirement
Benefits Schemes) Act 1978 and the Income Tax Act 1989.

35 The third Temporary Taxation Order amends section 2PA of the Income Tax Act 1970 to clarify
the definition of 'distribution'. It also introduces an anti-avoidance measure aimed at limiting the tax
loss that can occur when Isle of Man companies are used to convert taxable income into capital
gains, which are not taxable in the Isle of Man.

Lastly, it updates section 105AA of the Income Tax Act 1970 to clarify an existing provision
regarding the appointment of authorised officers by the Assessor and their powers.

40 Confirmation of both the pensions Order and the anti-avoidance Order are subject to the
introduction of amendments that are contained in the Bill. The amendments to the Temporary
Taxation Order providing for the new pension scheme are intended to make the scheme both easier
to operate and more flexible and also contain a measure to encourage pension providers to keep
fees to a reasonable level. Meanwhile, the amendments to be made to the Temporary Taxation
Order introducing the anti-avoidance measure will help ensure that three specific and completely
45 legitimate scenarios will not be unintentionally caught by the measure. The Bill provides that both of
these amendments come into operation at the same time as the original Order.

50 As well as addressing Temporary Taxation Orders, the Bill also makes three amendments to the
Income Tax Act 1970. The first of these concerns the Income Tax Commissioners and introduces a
requirement in section 88 of the Act for at least one commissioner to be suitably qualified and
experienced to be appointed as deputy chairman of the commissioners. The second expands the
definition of 'tax position' in section 120 of the Income Tax Act 1970, so that it also includes
compliance with the Common Reporting Standard, which is the OECD's standard for automatic
exchange of financial account information.

55 The third and final amendment inserts a new section 63CA into the Act and is intended to
address a recommendation made in the peer review of the Island undertaken by the OECD Global
Forum on Transparency and Exchange of Information for Tax Purposes. The new section introduces a
requirement for a foreign company that is tax resident in the Island to ensure that information on
the legal owners of the company is held by a person resident in the Island.

60 Eaghtyrane, I beg to move the Second Reading.

Mr Cretney: I beg to second.

The President: Mr Cretney, thank you.

65 I put the question that the Income Tax Legislation (Amendment) Bill be read for the second time.
Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Income Tax Legislation (Amendment) Bill 2019 –
Clauses considered**

The President: We turn to the clauses stage. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

As we know, the Bill contains five clauses. It amends and confirms two Temporary Taxation Orders (TTOs) and confirms a third Temporary Taxation Order without amendment. It also makes three amendments to the Income Tax Act 1970.

Turning to the Bill, I look at clause, which provides the short title of the Act. I beg to move that clause 1 do stand part of the Bill.

The President: Mr Cretney.

Mr Cretney: I beg to second.

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

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 2 confirms three Temporary Taxation Orders that were approved as part of the 2018 Budget.

The first of these is the Income Tax (Nursing Expenses) (Temporary Taxation Order) 2018 [SD 2017/0374]. If a person is severely disabled physically or mentally, they or a relative can claim tax relief for certain nursing expenses in respect of that person. This Temporary Taxation Order amends section 39AA of the Income Tax Act 1970 to extend the scope of this relief so that it can also apply to some or all of the costs of a qualified physiotherapist providing treatment to the same person.

The second Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Pensions) Temporary Taxation Order 2018. This Order introduces a new part 5A into the Income Tax Act 1970 that allows for a new type of flexible pension scheme to be offered by pension providers. The new scheme must be approved by the Assessor of Income Tax and can take the form of either a personal or occupational pension. A person may only be a member of one such scheme at any one time and the member will be able to access their funds from the age of 55, although in special circumstances it will be possible to access them before this. On reaching 55, a member can access their entire funds in one lump, 40% of which will be paid tax free. The alternative option is for the member to take an initial lump-sum payment of at least 40% of the funds, which will be paid tax free. The member can then take further payments of such amounts and at such times as they specify, and these payments will be taxed as income in the normal way. Tax relief is allowed on contributions made into the scheme up to an annual maximum of £50,000 and, on the death of the member, any of the member's funds that remain are commuted and paid free of tax.

The new Part 5A also provides for a charge on unauthorised payments made from a new scheme, a supplementary charge on those payments and for a charge on excess contributions. It also includes provisions addressing the recycling of funds transferred from other approved pension schemes and makes it an offence for a person to knowingly make a false statement or representation to obtain relief or repayment of tax under the part.

In addition, the new part contains a reporting requirement for single payments of more than £10,000 made by an employer to one of the new schemes and introduces a similar reporting requirement into the Income Tax (Retirement Benefits Schemes) Act 1978 and the Income Tax Act 1989 for schemes approved under those Acts. It also provides that if funds are withdrawn from a scheme approved under either of those Acts and paid into a new scheme, then tax relief will not be allowed on those contributions into the new scheme as they will already have received tax relief.

The new part allows a pension scheme currently approved by the Assessor under sections 50B or 50C of the 1970 Act or the Income Tax (Retirement Benefits Schemes) Act 1978, or the Income Tax Act 1989 to be transferred into a new scheme following the payment of a 10% transfer fee.

The confirmation of this Temporary Taxation Order is subject to the amendments set out in clause 3 of the Bill.

The third Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Non-Corporate Taxpayers) Temporary Taxation Order 2018. Before I describe what this Order does, I would like to briefly remind Members why the amendments it makes are considered to be necessary.

125 In the Budget speech last year the Treasury Minister advised that the Assessor had informed him that although our Income Tax system for companies is simple and very generous, some individuals were abusing it and adopting aggressive planning measures to reduce their personal tax liabilities. This commonly involves using Isle of Man companies to convert taxable income into capital, which is not taxable. The method most commonly seen by the Assessor involves individuals selling either
130 goodwill or unquoted shares to their own companies in order to extract profits as non-taxable capital loan repayments. These repayments are made using money that is the taxable profit of the company and enables that money to be extracted as the repayment of a debt and in non-taxable form rather than as a taxable dividend.

Turning now to the Order, this TTO amends section 2PA(1) of the Income Tax Act 1970 to clarify
135 that any income distribution is taxable. It also amends section 2PA(5) to clarify that the meaning of the term 'distribution' in that section includes a payment made on the winding up, liquidation, cessation or dissolution of a corporate taxpayer.

The Order goes on to insert a new section 2PB into the Income Tax Act 1970 and this is the anti-avoidance measure. Under this provision, if an individual has sold unquoted shares or goodwill to
140 their own company after 6th April 2011 but before the coming into effect of the Order and the sale creates a debt to the individual, then any repayment of that debt made after the Order has come into effect will be a taxable dividend. The size of the dividend is limited to whichever is the smaller of the amount of the debt or the total debt at the date the Order came into effect and cannot exceed the amount of undistributed taxable profits of the company. If the sale of goodwill or shares occurs
145 after the Order came into effect, the sale will be treated as a dividend taxable on the owner, the amount of the dividend being whichever is the smaller of the total sale price or the undistributed taxable profits of the company at the end of the accounting period in which the sale occurred.

The Order also addresses the situation in which debt repayments are made to a number of individuals during an accounting period and the repayments exceed the undistributed profits. In
150 such a case it provides a calculation to be used for prorating the tax charge. In addition, the Order provides that if a repayment took place before the Order came into effect but the Assessor is not satisfied that it physically took place before that date, then the repayment can be charged to tax under the new section. In addition, if the Assessor believes someone has taken measures to avoid
155 Income Tax under the new part, then an assessment or additional assessment can be raised on that person.

The final provision of the TTO amends section 105AA of the Income Tax Act 1970. This section concerns the appointment by the Assessor of suitably qualified officers to perform certain functions as authorised officers, including functions delegated by the Assessor. The TTO inserts a new subsection (2A) which clarifies that the Assessor can, in writing, delegate any of the Assessor's
160 functions to a suitably qualified authorised officer. It also substitutes subsection (3) to provide that the role of the authorised officer is subject to any conditions set down in regulations or in the officer's notice of appointment or the Assessor's written delegation. A new subsection (5) provides that any previous delegation of the Assessor's powers is unaffected by the section. The TTO also takes the opportunity to change a reference to a civil servant to a reference to an employee of the
165 Public Services Commission.

The confirmation of this Temporary Taxation Order is subject to the amendments set out in clause 4 of the Bill.

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

170 **The President:** Mr Cretney.

Mr Cretney: Yes, Mr President, I beg to second, and in so doing, in relation to the tax planning part in particular I welcome that because I think it is something that has been known for some time that may be going on. Also I welcome the part about physiotherapy because again there is a shortage of physiotherapists and if this assists people in terms of obtaining physiotherapy support when they need it, then that is good.

The one question perhaps for clarification, if the Member could assist, is in relation to pensions: if somebody were to completely reduce their pension and place themselves in the position that they then become dependent on the state, is that something that there is any protection to avoid in the legislation?

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I thank Mr Cretney for his first two points acknowledging the benefits of the changes that we are making here, and in special reference I too am pleased with the addition of physiotherapy to be included for tax relief in the care of somebody – that is excellent; and indeed the avoidance measures that are produced in the legislation here.

As far as I am aware, if someone does use up all that particular pension pot, there is nothing to stop them from doing that other than advice from their pension provider or whatever mechanism they are using to make the withdrawals. However, if they do that, that may not be their only pension pot and if it were, then of course providing they meet the suitable qualifying criteria, they are open for the Manx State Pension and also, obviously if they meet the suitable qualifying criteria, they would be open to certain benefits from the Social Security system as well. So there is that backstop and I think that clarifies that point. The idea is to give people pensions freedoms to enable them to reach lifetime planning goals such as paying off a mortgage or whatever else they may consider – home repairs and so on. I think that is all I need to say, Eaghtyrane – the reasoning behind it, not to disallow people access to the funds when they could at times really need access to them for whatever reason.

The President: Mrs Lord-Brennan.

Mrs Lord Brennan: Thank you, Mr President.

I think something that I was not quite aware of was the significant impact of this Bill when I first looked at it. When we talk about pensions freedoms it is quite often of the sort that has been discussed today, about what age, but I am really pleased to see the freedoms that are being brought in to deal with personal pension schemes to provide benefits for the member and also requirements to enable pension payments to be made to a surviving spouse, civil partner or surviving child or dependant. I think that is really very welcome to see.

Also, on the matter to do with taxation of proceeds from companies, I think in the past there has been a lot of abuse to do with loan accounts and the mechanisms to not have the appropriate level of taxation from proceeds from companies and I think it is absolutely right that the authorities are just making this really super clear as to what should happen and how it should happen. I am just very pleased to see it and I think it is beneficial for the Island.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

I welcome this Bill and that it actually adds to the portfolio that the Island has to prevent avoidance of tax.

The question I have actually leads on from the Hon. Mr Cretney's question. If someone were to take their pension pot and, I think it has been termed elsewhere 'blow it all in one go' – for instance, purchase a property in another jurisdiction, a holiday home or something – but then resort to living

225 on the state, the Manx pension, is that entirely equitable and is there anything we can do to look
into that? It is very difficult, I know, to find out what happens in another jurisdiction in these kind of
circumstances.

Thank you.

The President: Anyone else wish to speak before I call Mr Henderson?

230 Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I think, starting with the Hon. Member Mrs Maska, in relation to her point I would suspect it
would be a very rare instance that somebody would be planning to do that, although it is obviously
235 something we would keep under review should their pension pot be that large.

What we have found so far is that pension pots are not maybe as large as that to allow for
somebody to participate in some sort of buying operation to allow them to have a holiday home
elsewhere. The usual thing for withdrawal of amounts from pension pots like this is to cover lifetime
goals, assisting with paying a mortgage off, some urgent repairs to a property that may need to be
240 undertaken and matters of that ilk. But just for completeness, Eaghtyrane, I think I would just like to
ask some of our Treasury staff who are in the Gallery this morning in case of technical questions just
to add a little more weight to my overview there. If that is agreeable to Hon. Members, I would like
Mr Martin, the Deputy Assessor and legislative officer to put some further clarification on
Mrs Maska's question.

245

The President: Thank you.

Good morning, Mr Martin. If you could speak into the microphone and state your name and title
for the record, please.

250 **Mr Martin:** Paul Martin, Deputy Assessor of Income Tax.

The President: Thank you.

Mr Martin: I think, first of all, I will make it clear that there is no protection within this Bill for
255 somebody taking their money and spending it on whatever they like. The whole point is it is pension
freedoms and they can take their whole pot to do with it what they want. I think the suggestion that
somebody could purchase a property either on or off Island and then fall back on the state ... If they
were to do that, they still keep the property so they still have capital, so when they claim benefits
the likelihood is that Social Security will look at their overall portfolio. They will know that they have
260 got capital, wherever that is, and the likelihood of them receiving income-based benefits from that
would be unlikely. They obviously would still be entitled to a retirement pension because everybody
is entitled to a retirement pension.

The President: Thank you very much, sir.

265 Mr Henderson.

Mr Henderson: Thank you, Eaghtyrane, and I thank Mr Martin for his clarification on that.

I thank Mrs Lord-Brennan for her positive comments regarding the changes we are making here
in special reference to aggressive tax planning.

270 I think we have answered Mr Cretney already on his use of the pension pot.

With that, Eaghtyrane, I beg to move the clause standing in my name.

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

275 Clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 3 sets out a number of amendments to the pensions TTO if that Order is to be confirmed.

280 Before I go into these amendments in more detail, I would like to inform Members that this new flexible pension scheme has been very successful already. The new scheme has encouraged more of the large providers into the pension market and the Assessor has already approved many new schemes. However, these amendments will ensure that this new scheme is easy to use and even more flexible.

285 All of the amendments address Article 3 of the TTO, which is the Article that inserts a new Part 5A into the Income Tax Act 1970, providing for a new, more flexible type of pension scheme to be offered in the Island. The amendments are directed at the legislation forming the new Part 5A, which consists of sections 61G to 61X.

290 The first amendments address section 61H, which largely concerns the Assessor's approval of a pension scheme to qualify for tax relief. The first amendment to this section affects one of the considerations that must be met in order for the Assessor to approve a personal pension scheme. This substitutes subsection (4)(b) with a broader condition that requires the scheme to provide benefits not only for the member but also for a surviving spouse or civil partner, or a child, dependant or personal representative.

The second amendment substitutes subsection (5)(b) to make a similar change to the conditions for approval of an occupational pension scheme.

295 The third and final amendment to this section removes subsection (8), which currently prevents a person from being a member of more than one scheme of this type at any one time, regardless of whether it is a personal or occupational scheme.

300 The next amendment affects section 61L. This section currently provides the member with two options for accessing their funds. The first allows them to access their entire pension fund in one lump sum, whilst the second allows them to take an initial lump sum of at least 40% of the funds and to take the remainder in such amounts and at such times as they specify. The amendment introduces a third option to improve the flexibility of the scheme, which allows the member to specify any size of payment at any time until the funds are exhausted. It also amends the wording of the two existing options to clarify that they refer to funds in the pension scheme to which the member is entitled.

305 The introduction of a third withdrawal option requires a number of consequential amendments to be made to other sections. The first of these is section 61N, which concerns the tax treatment and calculation of the lump-sum payments. Three amendments are made to this section, the first of which addresses subsection (1). This subsection currently provides that if the entire funds are withdrawn in a single lump sum, then 40% of that amount will be tax free. It also provides that if the member chooses instead to take an initial lump sum of at least 40% of the total funds, then that 40% will be paid tax free, anything more being taxed in the normal way.

310 Following the addition of the third withdrawal option in section 61L that has just been described, subsection (1) is substituted in order to also include the tax treatment of the new option. This amendment will allow 40% of each payment made to the member under the new withdrawal option to be tax free. The new subsection also amends the wording of the second of the two existing options to clarify that it refers to funds in the pension scheme to which the member is entitled.

315 The second amendment made to section 61N concerns subsection (3). This subsection ensures that any funds that are transferred into one of the new pension schemes from another approved pension scheme after a tax-free lump sum has been paid out of that approved scheme are not taken into account when calculating the tax-free lump sum taken from the new scheme. The amendment to this subsection ensures that this treatment is extended to the new withdrawal option.

320 The second amendment made to section 61N concerns subsection (3). This subsection ensures that any funds that are transferred into one of the new pension schemes from another approved pension scheme after a tax-free lump sum has been paid out of that approved scheme are not taken into account when calculating the tax-free lump sum taken from the new scheme. The amendment to this subsection ensures that this treatment is extended to the new withdrawal option.

325 The final amendment made to section 61N substitutes subsection (4). This subsection requires the administrator of a scheme to notify the Assessor within 30 days of a lump sum being paid to a member. However, this now needs to be amended to reflect the introduction of the third withdrawal option. The amended subsection requires the Assessor to be notified within 30 days of a lump sum being paid or within 30 days of a first payment being made under the new option.

330 The next section to be amended is 61P, which concerns the treatment of any of the member's funds which remain after their death. This currently requires any remaining funds to be commuted within two years of the member's death and provides that those funds will not be taxable. The Bill amends subsection (1) to extend it to cover the scenario where a pension comes into payment under the new withdrawal option and funds remain after the member's death.

335 The Bill also substitutes subsection (2) to reflect the broadening of the condition in section 61H to require the pension to also provide benefits to surviving dependants. The new subsection (2) provides that where there is no surviving spouse or civil partner, or child, dependant or personal representative, any remaining pension funds should still be commuted in full within two years of the member's death.

340 However, where there is such a surviving person, the commutation can still take place in accordance with pension scheme rules but a second option will also be available. The second option will allow an appropriate surviving individual to claim and receive payments from the remaining funds of the member. If this option is chosen, the payments made to the surviving individual will be treated, for tax purposes, in exactly the same manner as they were treated for the member.

345 The next amendment inserts a new section 61PA into Part 5A. This provides Treasury with the power to make regulations to restrict the level of exit and transfer fees that can be charged by pension providers for this particular type of pension scheme. I would like to stress that these regulations will only apply where a person wants to transfer an approved pension into a new scheme or wants to take out the whole fund in a new scheme.

350 As well as making amendments to the pensions TTO, clause 3 also ensures that any pension schemes that have already been approved by the Assessor under Part 5A of the Income Tax Act 1970 when the amendments come into operation will not need to be re-approved by the Assessor in order to continue to qualify for tax relief after implementing the amendments. Normally, if an approved scheme is amended after approval has been given, it needs to receive further approval in order for relief to continue to apply.

355 Finally, clause 3 provides that the amendments will be considered to have come into operation at the same time as the pensions TTO itself came into operation in 2018 and to have been in operation since that time.

Eaghtyrane, I beg to move clause 3.

360 **The President:** Mr Cretney.

Mr Cretney: I beg to second, Mr President.

The President: Miss August-Hanson.

365 **Miss August-Hanson:** Thank you, Mr President.

I have just got a quick question, if that is all right? I may make myself unpopular by asking it, I suppose, as well.

370 It is just: we have, during a member's life, withdrawing the funds of a pension scheme to which the member is entitled, 40% of the amount withdrawn is to be exempt from Income Tax. This applies to whether the funds are withdrawn all in one go or in instalments. I suppose what I would like to ask the mover is where we actually came up with that particular figure? I wondered where the 40% itself came from, simply because I have just popped on to the www.pensionwise.gov.uk website and we have on there that there are two options: to take all the pension out in one go or to take it out in chunks – both. You can take 25% out as a lump sum without paying tax, leaving the remaining 75% untouched; and in chunks, again, the same.

I wondered where we actually came up with the 40% figure; and if you would not mind asking the experts from Treasury to answer that question I would be very grateful, if you are willing.

The President: Mr Henderson.

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

I just need to clarify the questioner's question, if I may. Is the Hon. Member indicating that our untaxed element is greater than that of the UK – if I have got that right?

385 **Miss August-Hanson:** I am asking that question, yes.

Mr Henderson: I think the overview answer is that it is a policy decision we came up with to have an attractive alternative flexible pension scheme here in the Isle of Man and to generate interest in the scheme, and to cause it to be positive and have membership and interest from providers to actually provide a new product here in the Isle of Man.

390 So we considered it was a policy decision for that. (**Miss August-Hanson:** Okay.) But, just to be on the safe side, Eaghtyrane, I will once again call on the Deputy Assessor for Income Tax just to confirm my overview there or add any more detail.

395 **Miss August-Hanson:** Thank you.

The President: Mr Martin, please.

Mr Martin: Thank you, Mr President.

400 Yes, you are quite correct, Mr Henderson, it was a policy decision to go for the 40%. The UK is 25%. Our current schemes, prior to this one coming in, are at 30% but the political decision was to go for 40% to encourage people to save for their retirement.

Miss August-Hanson: Permission to ask a question, please, Mr President.

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

Miss August-Hanson: Thank you.

I wonder then, the difference between the 30% and the 40%: why was the 40% arrived at from 30%? Was there any reason or evidence base behind that?

410 **Mr Martin:** No. There were a number of different scenarios put to Treasury based on amounts going in. We must remember that in order to transfer from your current scheme into the new scheme there is a 10% charge, so people are paying that additional 10% if they want to move over. It was calculated and looked at as being ... It is generous, obviously.

415 **Miss August-Hanson:** But of course that would have been occurring before anyway, so they would have ended up being on 20% as opposed to ...

Can you please just explain a little bit of the detail around that?

420 **The President:** Miss August-Hanson, could you direct your questions through the mover, please?

Miss August-Hanson: Yes, of course, I apologise, Mr Henderson.

425 Can I ask, then, am I right in understanding that the 10% would have occurred before, anyway, when it was at 30% previously? I am wondering why the difference was made. I am trying to understand it.

Mr Henderson: Well, Eaghtyrane, if I can answer? We are now moving into policy direction here, which is a little unusual with regard to the Income Tax Act here.

430 As Mr Martin has explained already, the idea was to offset the 10% transfer charge in relation to offering a 40% tax relief on the lump sum withdrawal. Also, it was a policy decision that, if we were

going to have such a new, flexible product that it should be attractive and offer some chance of success on its launch and for providers to come into the market to offer the scheme as well.

So I do not think I can offer any more explanation other than Mr Martin and myself have put forward, Eaghtyrane.

435

The President: Thank you.

Could I clarify, Mr Henderson? The 10% transfer fee: who is that paid to? Is it the existing pension provider? Is it Treasury?

440

To take advantage of accessing 40% of the existing funds it would require a scheme-holder to transfer those funds into a new scheme. Presumably the 10% transfer fee – which could be quite substantial – will be money lost forever; and would it be then part of the calculation as to whether it was worthwhile foregoing that lost money through the transfer fee when deciding whether it was worth accessing the funds up to 40%?

445

Mr Henderson: Yes, Eaghtyrane, you make good observations. And yes, a person would have to make that calculation, presumably with their financial advisers or existing pension providers, before they wish to make such a transfer. But the converse is true also, whereby somebody may not wish to make a transfer but wish to start off a new flexible pension product in its own right. So, in that instance, there would be no 10% transfer fee.

450

And again, yes, if there were large sums of money involved a 10% transfer fee could be considerable, but it may be that that individual in their financial planning and upon best advice might see it as a viable alternative option to actually effect a transfer to the new pension product. However, there are capping restrictions with regard to the pension and to the amount to which the pension freedoms do apply.

455

And for that, if I may, I would just like to refer again to Mr Martin, if he can just give some technical clarity on the capping mechanisms and what you can put in in a year, and transfers –

The President: If it could also be clarified who the transfer fee is paid to?

460

Mr Henderson: And who the transfer fee is paid to, yes.

The President: Mr Martin.

465

Mr Martin: Mr President, the transfer fee is paid to the Assessor of Income Tax – it is a Treasury fee. (**The President:** Thank you.) And the amount of contribution into the new flexible pension scheme is restricted to £50,000 a year.

The President: Thank you, Mr Henderson.

470

Mr Henderson: Gura mie eu, Eaghtyrane.
If there is no further –

The President: Miss August-Hanson.

475

Miss August-Hanson: Thank you.

Just in relation to the transfer fee itself and the 10% that was come up with for that transfer fee: where did that figure come from? Where did the 10% ... It is another round figure, so I am just asking the question.

480

The President: Mr Henderson.

Mr Henderson: Again, I would just refer to my Treasury colleague in the Gallery, Mr Martin, if he could just put a little clarification on it?

485 **The President:** Mr Martin.

Mr Martin: Again, Mr President, it was a policy decision from Treasury. There were a number of different figures looked at and discussed, whether it should be 10%, 15% – and I think 20% at one point was being discussed. And the new scheme and how that should look.

490 All of these different things were weighed up by Treasury at the time and what you see now is what was decided.

The President: Thank you.
Any further comments? Mr Henderson?

495 **Mr Henderson:** No, just to further elaborate on what Mr Martin said there. The 10% fee was also looked at to try and make a sustainable product as well and ensure also – I think I am correct in saying – that we did not see a mass exodus from existing pension schemes transferring into this, which may cause individuals financial concern. So it was a considered measure to try and control any
500 transfers as well – if there were to be any transfers, that is, into the new scheme.

The President: I put the motion that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 4, please.

505 **Mr Henderson:** Gura mie eu, Eaghtyrane.
Clause 4 sets out the amendment which is to be made to the avoidance TTO if that order is to be confirmed.

Eaghtyrane, the Assessor has confirmed to me that she has already seen that this measure is working and, even at this early stage, her officers are seeing there is a change in behaviour.

510 The amendment is made to article 4 of the TTO. This article inserts a new section 2PB into the Income Tax Act 1970 which, as already described, addresses practices used to pay profits out of a company in non-taxable forms rather than in the form of taxable dividends.

515 The amendment inserts a new subsection (1A) into section 2PB. The new subsection sets out three scenarios to which the section will not apply provided that the Assessor receives satisfactory evidence that it should not do so. The scenarios address transactions involving the sale of unquoted shares. These are commercial and are in no way a form of tax avoidance but, without the amendment, they will be unintentionally caught by the measure contained in section 2PB. The scenarios have come to light since the TTO came into operation.

520 Clause 4 also provides that the amendment to section 2PB will be considered to have come into operation at the same time as the avoidance TTO itself came into operation in 2018 and to have been in operation since that time.

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

525 **The President:** Mr Cretney.

Mr Cretney: I beg to second.

530 **The President:** I put the motion that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 5.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 5 makes three separate amendments to the Income Tax Act 1970.

535 The first of these amendments addresses section 88 which provides for the Income Tax
Commissioners, including their constitution and certain practices and procedures. The
commissioners consist of a Chairman and eight commissioners who are appointed under the
Tribunals Act 2006 by the Appointments Commission. The Act requires the Chairman of the
540 commissioners to have been a barrister, advocate or solicitor for at least seven years. There is no
such requirement for the commissioners themselves.

Section 88 was amended by the Income Tax Legislation (Amendment) Act 2017 to require the
Income Tax Commissioners to also have a Deputy Chairman. The Deputy is appointed from the eight
commissioners by the Chairman and, like the Chairman, must also have been a barrister, advocate or
545 solicitor for at least seven years. However, there is currently no requirement for any of the
commissioners to have suitable qualifications and experience to act as Deputy. This Bill therefore
substitutes subsection (2)(c) in order to introduce a requirement for at least one commissioner to be
suitably qualified and experienced to be appointed to act as Deputy Chairman.

The second amendment to the Income Tax Act 1970 addresses section 120 which contains
550 definitions for the Act. The amendment to this section expands the definition of 'tax position'. The
Income Tax Act 1970 currently contains inspection powers which enable the Assessor to examine a
person's tax position. These powers permit an officer authorised by the Assessor to enter business
premises and to inspect those premises as well as the business assets and documents there if this is
considered necessary. Such a measure might be considered appropriate in certain cases of
suspected non-compliance with the Income Tax Acts.

555 The amendment to section 120 expands the definition of 'tax position' to include compliance
with the Common Reporting Standard. This standard was developed by the OECD and is the global
standard for the automatic exchange of financial account information. The Isle of Man has been
exchanging information under the Common Reporting Standard since 2017. Changing the definition
of 'tax position' in this way will mean that the inspection powers may also be used to investigate
560 suspected non-compliance with the standard.

The third and final amendment to the Income Tax Act 1970 concerns foreign companies that are
resident for tax purposes in the Island. However, before I describe what the amendment does I
would like to provide Members with a brief explanation as to why it is required.

565 The Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of
Information for Tax Purposes and is subject to an in-depth peer-review process which assesses the
implementation of international standards of transparency and exchange of information for tax
purposes. The Island has been subject to two rounds of peer reviews, the first in 2010 and the
second in 2017, and has been awarded the top rating of 'compliant' in both reviews. However, in the
follow-up report to the 2017 review a recommendation was made for rules to be put in place to
570 ensure the availability of legal ownership information for foreign companies that are resident in the
Isle of Man for tax purposes.

In order to address the recommendation, the third amendment to the Income Tax Act 1970
inserts a new section 63CA into the Act. As the majority of foreign companies on the Island will
already have a corporate service provider here who is regulated and who will keep the necessary
575 ownership information on the Island, this section is directed only at those companies that do not
have a corporate service provider with regulatory oversight. The new section introduces a
requirement for such a company to nominate an individual who is tax-resident in the Island and who
will hold information on the legal owners of the company and provide it to the Assessor if requested
to do so. In order to help ensure compliance with this measure the section also makes it an offence
580 for the company to fail to comply with this requirement, and for the individual to fail to hold the
necessary information or to provide it when requested.

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

The President: Mr Cretney.

585

Mr Cretney: Happy to second, Mr President.

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

**Income Tax Legislation (Amendment) Bill 2019 –
Suspension of Standing Orders to take Third Reading –
Motion lost**

590 **Mr Henderson:** Eaghtyrane, could I move a point of order, or a point ...?

I was just wondering if I could indulge yourself and Hon. Members for the suspension of Standing Orders to allow for the Third Reading of the Income Tax (Amendment) Bill on the grounds that it is a very short Bill, non-controversial. I think from Members' questions they are suitably satisfied with the contents therein. And to progress the legislation.

595

The President: We have had a motion to suspend Standing Orders to allow the Third Reading to be moved at this sitting. Is there a seconder to that motion?

Mrs Lord-Brennan: I will second it.

600

The President: There is a seconder. Would anyone like to speak to the motion?
Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

605

I accept the hon. mover's rationale for requesting suspension of Standing Orders in the case of this Bill. My one concern, which I think is worth articulating, is that we do not get into a habit of moving through all the stages of a Bill (**Two Members:** Hear, hear.) unless there is an overriding need, because sometimes there are points of reflection and it is the reason that we have the procedure in Standing Orders.

610

So whilst I accept that probably in the case of this particular Bill what he says is correct and there probably would not be any adverse consequence if we did suspend Standing Orders today and take the Third Reading, I just wanted to express that concern that we do not make it a habit.

Thank you, Mr President.

615

The President: Yes, Lord Bishop.

The Lord Bishop: Thank you, Mr President.

620

I think I would like to express that same concern. We have suspended Standing Orders recently to move legislation through in cases where there has been a compelling requirement or necessity. I am not entirely convinced in the current case that I see that necessity and I wonder whether the suspension of Standing Orders perhaps is taking on a profile beyond that which it deserves.

Thank you, Mr President.

The President: Mrs Lord-Brennan.

625

Mrs Lord-Brennan: It is really just to ask if there is a pressing time-sensitive requirement. That would be good to know.

Miss August-Hanson: Quite.

630

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

635 I accept the points that the Hon. Member, Mrs Poole-Wilson has made and they are fair and correct. As I said in my opening commentary to Hon. Members, the reason I am asking for permission is the fact that the Bill is very short and it is technical in detail. It has positive outcomes and measures contained within it which have been well-consulted upon throughout the industry and indeed it is acting upon industry commentary coming back to us.

640 So for those reasons, Eaghtyrane, and to note that there are no controversial elements within the Bill, or negative impact, and that it has been well-discussed and thoroughly examined – and in the interest to expedite the legislation, Eaghtyrane. There is no timeframe on it but, having said that, the fact that it is essentially a technical Bill it would seem practical to try and move it on. And those are my reasons.

645 **The President:** I will put the motion, in that case. Those in favour, say aye; against, no. The motion is not carried.

Thank you very much.

2. Communications Bill 2018 – First Reading approved

HM Attorney General to move:

That the Communications Bill 2018 be read a first time.

The President: We turn now to Item 2, Communications Bill 2018 for First Reading, and we call on Her Majesty's Attorney General.

650

The Attorney General: Thank you, Mr President.

655 The main purpose of the Communications Bill 2018 is to bring together the legislation governing the regulation of telecommunications and broadcasting currently dealt with separately in the Telecommunications Act 1984 and the Broadcasting Act of 1993. This Bill, in updating the regulation of telecommunications and broadcasting on the Island, also updates and modernises the terminology used in existing legislation.

660 Hon. Members, the scope and use of technology has changed significantly since 1984 reflecting the fast-changing nature of the communications industry. The Bill largely adopts a technology and service-neutral approach to allow for flexibility in the future and it has been drafted with future-proofing in mind. The Bill is therefore largely a technical document and it has taken some years to draft, including two rounds of formal consultation with additional supporting input from specialists. Throughout the development of the proposals contained in the Bill, the Commission has consulted with industry here on the Island and I am advised that industry is supportive of the Bill's provisions.

665 The Bill provides for, and better defines, the functions of the Communications Commission as the national regulatory authority for the communications sector on the Island. Whilst the Commission is primarily an economic regulator of the telecommunications market on the Island it also has a role in establishing and regulating standards in the broadcasting sector. The Bill also provides the Commission with new stand-alone competition powers in the telecommunications field. There are also more clearly defined enforcement measures, such as fines and other penalties, in both
670 broadcasting and telecommunications. These provisions will help the Commission ensure that the market is a level playing field for all operators in the communications sector to compete.

In the telecommunications field, the Commission's *ex ante* regulatory provisions are placed on the face of the Bill rather than in the licence, as at present. Regulation is typically either *ex ante*, before the event, or *ex post*, after the event; the main difference is that *ex post* regulation seeks to impose a penalty after an issue has occurred, while *ex ante* regulation seeks to prevent the issue from occurring in the first instance. The competition powers the Commission will receive under the Bill are an example of *ex post* regulation. Anti-competitive actions must have occurred or be occurring in order for the Commission to impose a sanction or penalty. The powers on which the Commission currently relies are in the telecommunication licences which are now contained on the face the Bill and will be *ex ante*. The Commission believes that *ex ante* regulation is the most appropriate form of regulation, though it acknowledges the need for *ex post* complete competition powers at the same time. *Ex ante* regulation is also in keeping with best practice for telecommunication regulation around the world.

The Commission's view is informed by the fact that the telecoms market is well-established and understood and it is possible to proactively impose suitable remedies to ensure harm does not occur to competition. It is also due in part to the fact that in a market in which there is an incumbent with significant market power, while taking action after the event may well punish the anti-competitive behaviour it is oftentimes too late to impose a remedy as the market could have been foreclosed before the harm came to light. That is not to say that the *ex post* competition powers are not required. But what the Bill does is ensure that the Commission has a full range of regulatory tools at its disposal.

In this regard, the *ex ante* approach to telecoms regulation is to ensure that all operators have equal access to the existing network at a wholesale level, thereby ensuring that operators in the retail market are competing on the basis of efficiency rather than any other factor. The most efficient and innovative operator should be able to win consumers by being able to offer the most advantageous products to consumers. In practice, it is uneconomical for a new entrant to build a new network to effectively compete with Manx Telecom. To ensure competition occurs in the retail market, Manx Telecom must offer competitors access to its network on the same costs and terms as its own retail arm. This in effect means that the network itself covers its own operating and investment costs, with these costs being covered proportionately by all users and removes the opportunity for anti-competitive behaviours by preferential pricing or restricting access.

As far as setting prices in the retail market, with all operators having a level playing field in terms of the cost of their input – that is the access to the telecoms network – they are incentivised to offer the best value package they can achieve to customers. Furthermore, they are incentivised to maximise their returns through operational efficiencies as common costs in terms of network access are the same for all operators. This means that prices are set by market forces which are far more likely to be closer to the true cost – that is, what the price would be if there was no profit included – and a price set by a regulator.

Regulated prices are also typically only relevant at the time they are set and can quickly become out of date as demand, operational efficiencies and other forces evolve. This is typically seen when all market offerings tend to differ little from a regulated price; for example, in areas where a maximum rent is set it is typical to see all properties offered at or very close to the price regardless of other factors. There is also the danger that the price can be set too low and long-run competition can be harmed through operators not being able to make sufficient returns and pulling out of the market.

The regulatory provisions contained in the Bill have been considered in the context of them being human rights compliant. I can confirm that they are considered compliant being, as I mentioned, in keeping with best practice around the world and in particular in line with European Union standards and practices reflected in the United Kingdom's approach to such matters.

Hon. Members will note that there are repeated references to rights of appeal and the requirements for procedural fairness are applied extensively to ensure compliance. A question was raised in the Keys about the absence of an appeal right in respect of class licences. The reason is that a class licence is, by its very nature, a matter in respect of which no one individual or body will have

725 a particular interest and whether or not there should be a class licence is a policy question, which is not readily susceptible to review by a legal right of appeal.

It was said in the House of Keys and has been commented upon elsewhere, that having a political Chair of such a body as the Communications Commission is unusual. There was considerable discussion in the House of Keys on the matter of the political chairmanship of the Commission with an amendment put forward by Mrs Caine which would remove the political chairmanship. That amendment was defeated. The Bill is concerned with function not structure and, whilst there was a lot of discussion about the merits of the Chair being political or not, what is not being considered at all is what is the most suitable structure and what that structure would be.

730 My understanding of the Commission's position is that its board would prefer to defer the further examination of the actual structure of the Commission until after the Bill, if passed, has been implemented. In this regard the Chairman of the Commission provided an overview of the Commission's position on the matter in the House of Keys – specifically, that the Commission is not averse to supporting a change in its governance structures. The Commission's only concern is that the decision on its future governance structure is ultimately informed by a consultation process that considers all available options in an objective manner and takes into account the views of all stakeholders.

740 The Commission would like me to assure Council that commencing a consultative process on the Commission's governance structure is in the Commission's work plan for the coming operating year. The National Telecom Strategy recommended that the Commission consider and consult on its structure after this Bill has passed into law, and that is what the Commission intends to do.

745 The mechanism for amending the chairmanship of the Commission lies in secondary legislation. It can be amended at any time by the exercise of the power in Schedule 2 to the Government Departments Act 1987, as applied to Statutory Boards by section 5 of the Statutory Boards Act 1987, whereby Council of Ministers may by order change the constitution of a Statutory Board. Such order is subject to the approval of Tynwald.

750 To conclude, the Hon. Member for Ramsey, Mr Hooper, put forward amendments to the Bill designed to recognise the harm that can be caused by messages; and, thanks to further amendments from Dr Allinson, the harm that images sent online can also cause. Those amendments were accepted by the House of Keys and are incorporated in the Bill now before you.

755 There will be a further minor amendment to the amendments made in the House of Keys for Council to consider and that is to bring the defence to any offences in relation to messages and harmful images in line with existing legislation.

Mr President, I beg to move the Communications Bill 2018 be read for the first time.

The President: Miss August-Hanson.

760

Miss August-Hanson: Thank you, Mr President.

765 I second the Bill in support of Home Affairs, the Communications Commission and, chiefly, the Attorney General. I do not intend on repeating the words of the learned Attorney General, who put it so well, but what I will say is that there is a great need for modernisation, positively promoting confidence in the legislative foundation stones of the telecoms and broadcasting industries, in keeping stability and continuity with the regulator to enable a thriving and innovative set of industries.

770 In relation to the political Chair, the Chairman of a Statutory Board is not the same position as a Minister of a Department – the Chairman has no authority to act or take decisions on behalf of the Statutory Board except in the very limited circumstances as provided for in Schedule 2 of the Statutory Boards Act 1987, or in accordance with an authority to exercise functions approved by the board. There was discussion, as the learned Attorney said, in another place and strong words on both sides of the debate following an amendment put forward by Mrs Caine, which was defeated, regarding the political Chair.

775 I would like to shed some light on how the Communications Commission intends to react to that
debate. It says it is not averse to change; it simply wants the matter to be dealt with in an
appropriate and evidence-based way. Any form has to be appropriate for the entire industry and not
just for certain parties, so the Communications Commission has released an information notice on
its website yesterday and we have circulated that to Members of Tynwald this morning. I would just
780 like to read that out for the benefit of *Hansard*:

1. During the Clauses stage and the Third Reading of the Communications Bill 2018 there was a debate surrounding the appropriate governance structures of the Communications Commission (the Commission) – specifically in relation to the Chair of the Commission being the sitting Minister for Home Affairs. The Commission acknowledges that this is a discussion that has been ongoing for some time in certain quarters.
2. The Commission also notes that there is a recommendation in the Government’s National Telecommunications Strategy that urges the Commission to “review its processes, procedures, and structure on enactment of the Communications Bill”.
3. The Chairman of the Commission provided an overview of the Commission’s position on this matter in the House of Keys, specifically that the Commission is not averse to changing its governance structures.

–something which the Chairman of the Commission stated at Third Reading, saying that it is not averse to change, it simply wants the matter to be dealt with appropriately.

The Commission’s only concern is that the decision on its future governance structure is ultimately informed by a consultation process that considers the available options in an objective manner and takes into account the views of all stakeholders.

4. In light of the [*previously*] mentioned recommendation, and a proposal in the House of Keys that the Commission commit to consulting on its structure within 12 months, the Commission can confirm that commencing a consultation process to elicit the views of all stakeholders on its future structure has been included as an action in its Work Plan for the coming operating year. This is also an acknowledgement on the part of the Commission of the importance of ensuring it is best positioned to effectively regulate what is one of the most important sectors on the Island in both economic and social terms ...

5. The Commission will be in a position to provide further details and timelines once the Communications Bill has passed through the Legislative Branches; however, the Bill’s passage through the Legislative Branches is currently a priority as is the current round of market reviews.

And we need to enable that.

Thank you, fellow Council Members and Mr President.

785

The President: Mr Cretney.

Mr Cretney: Thank you, Mr President.

790 I would like to thank the Communications Commission for the presentation they gave Members
in advance.

This morning at 9.49 a.m. I, and I presume all other Members of Tynwald, received this information notice which I think I have just heard was released last night. So to start with, that is a bit disrespectful to Tynwald Members for it to be released publicly last night and then for us only to receive it at 9.49 this morning. However, a minor point.

795 I think, in terms of telecommunications, we are all at one and we all recognise that the
Communications Commission needs to have the best facilities for it to regulate that area of the
Island’s economy – very important for the future. So I do not think there is any question there.

800 My concern is about regulation of broadcasting and *perception*. I hear what the Hon. Member,
Miss August-Hanson has said in relation to the difference between the Chairman of the Commission
and the position of a Minister. I still believe there is a perception that there could be a conflict and I
regret that, having taken as long as it has, which the learned Attorney mentioned earlier, to get
before us that we are still now going to have a further consultation on whether or not there should
be a political Chair.

805 At the presentation we received in the Barrool Suite, I asked the officers present would they be
prepared to circulate to Hon. Members what models exist elsewhere and, in particular, those that

have a political Chair. To date, I have received no response whatsoever to that request and I think that is a bit unfortunate as well, really. This is something we should correct here in this piece of legislation rather than consulting further.

810 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

It also concerns me, the idea of going back for a third consultation about this particular matter because it makes me think that actually the regulator is setting up its own way of doing things. It is
815 right that the regulator should be there to regulate industry, but I think the learned Attorney commented that we are looking at function, not the structure; that is right, but I think that the function of something is totally affected by the structure of it. So I really do think it is worthwhile addressing that here.

I suppose I would take a bit of a step back because I think there is a certain unease ... 'We don't
820 know what the answer is and we're not sure about the best way to go; let's ask industry and let's ask all the stakeholders'. Whereas, to my mind, from I suppose a bit of a detached taking the long-term view which is right – we have heard about best practice and the long-term view, and I think it is really appropriate for us to consider that here.

If you think about the governance matter, then quite clearly a best practice governance approach
825 would indicate that the Chair is not a political Chair. And the other options, of course, would be to have things like ... 'You would not want it to be an industry Chair; you would not want it to be a political Chair – you would want it to be an independent Chair'.

I guess my point of view, coming from a background where I have had training to do with
830 governance and that side of things, is that actually it is quite possible to have an independent Chair that is skilled at being a Chair and that is what they bring to the table. But they do not necessarily need to be somebody who is engrossed in all the actual detail of the industry; they need to be able to chair.

So I think we do need to think about best practice and the long-term view, and I do not really
835 take comfort from the further round of consultation. We should, as the legislature, be able to set out the parameters and the expectation of the Government in the long term.

That is probably all I would say at this stage.

Thank you, Mr President.

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

Mrs Poole-Wilson: Thank you, Mr President.

I think I would like to echo some of what my fellow colleagues, Mr Cretney and Mrs Lord-Brennan
845 have highlighted. I do think it is unfortunate that we know this Bill has taken a considerable amount of time already to come before us. There have been two rounds of consultations already. Stakeholders *have* made their views known on the issue of a political Chair, some of whom say that there absolutely should not be and some of whom are a bit neutral about it. But there is some information.

I think what is missing from those consultations and this current information notice is no
850 reference to what best practice governance should involve. I think if you ask your stakeholders you will get different answers because they are going to be quite driven by their own interests. I think there has to be a recognition of what best practice governance and regulation involves.

I also think it is unfortunate that this Bill, we have been told, future-proofs in many ways – which
855 is quite right that we have a piece of primary legislation that takes a long time to develop and that therefore includes some future-proofing. But given that the mood seems to be that we should look at this issue of governance and structure, and indeed the sense actually even from the current political Chair seems to be that, yes, we should change it but just not at the moment. It seems somewhat unfortunate that we do not then provide in a future-proofing way in this primary piece of

860 legislation for that change to occur. A change, then, that is considered and thought about and debated by both Branches of Tynwald as opposed to waiting for an order to be made at some point by the Council of Ministers under the Statutory Boards Act.

So I do have some concerns that we do not now pick up correctly these issues and take the long-term view and ensure that this piece of legislation, into which an awful lot of hard work and time and energy has been put, does not miss a trick by not providing for the potential for future change, even allowing for potential consultation.

865 I think the other thing that I would like to ask is: if there is going to be further consultation on the governance structures of the Commission, is there going to be an absolute guarantee that it will look at *best practice* governance, not just the views of stakeholders?

Thank you, Mr President.

870 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I hear and I understand the arguments which have been put forward by my hon. colleagues in Council that it is not appropriate that we should have a political Chair of the Communications Commission. And I agree. But I wonder whether now is the exact point in time to be addressing this issue. I say that because I think that we are just at the beginning of looking at the future of broadcasting on the Isle of Man. I think that the recent report into public service broadcasting was just the very beginning of a conversation which is yet to be had.

875 It is essential that we bring this Bill through as soon as possible because we need to bring Manx legislation into line with that of Europe, and beyond, in order to encourage the telecommunications industry. That is one side of the coin. The other is the broadcasting, of course.

But I have issues with this Bill. I know that it has taken a long time to get here, but one of the issues I have is that it amalgamates telecommunications and broadcasting which really ... I know that at the time when the Bill was in its embryonic stage this was considered to be the logical thing to do. 885 But I think now it is roundly accepted that they are two very different subjects and they are two very different worlds. And as one of the contributors to the report said, it is the difference between the pipes, which are the telecommunications, and that which flows through the pipes, which is the content – your broadcasting content. Really, they should not be in the same Bill. But we are where we are.

890 I think that when we look to the future there may be a separation out again between telecommunications and broadcasting. The Communications Commission which, to its credit, has been very open in saying that they are willing to discuss potential changes, the Hon. Minister, Mr Malarkey also is willing to discuss future changes. I think that the whole role of the Communications Commission could change; we could see a separation out between telecommunications and broadcasting. 895

There are a lot of changes to be made in the future and what I am saying is this might not be the time to start interfering with the Chair of the Commission at the moment.

Thank you.

900 **The President:** Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would like to wholeheartedly endorse the comments by the Hon. Member, Mrs Sharpe; I think she has made some very valid and pragmatic commentary on the progress of this Bill to our Chamber. I am just a little worried: this Bill is 153 clauses long, of which the issue of the chairmanship is only one tiny speck and why this is taking almost extreme prominence – not just here, but in another place. I say that because if you balance that against the changes and the upgrading to the old legislation that this makes, it has considerably more effects taking place and we need to be analysing those as we go along.

910 The House of Keys resoundingly passed this Bill and resoundingly rejected the issue of the
Chairman that was placed before it by way of amendment. And they have resoundingly voted upon
what they see as the policy and the legislation coming up here, so another reason why I support
Mrs Sharpe's commentary there, in reference to that. And there are a lot of big issues within this Bill
915 to consider – all, in my view, pragmatic and common-sense approaches to addressing what, in the
Bill it is replacing, has not become defunct exactly, but the wording and upgrades that are required
certainly do ... So we need to take that on board as well, Eaghtyrane.

Gura mie eu.

The President: Yes, Mrs Lord-Brennan.

920

Mrs Lord Brennan: Thank you, Mr President.

I just want to comment, I do not really think it is right for us here in this Council to be pragmatic
to the detriment of being robust with what we are doing and what we are reviewing.

925 Next, I would like to say that I think in the other place it was very hotly debated, the matter of
the political Chair. I would not go as far as to say it was resoundingly rejected, I think it was a
significant point that was rightly laboured over. So I do not think it was as clear cut as that.

930 Also, I think earlier on the Attorney General mentioned that the industry was supportive of the
Bill's provisions, but talking about going to another consultation I wonder if there was a summary to
hand of any industry comments on, particularly, the political Chair. I just think it is probably good, if
there is, to air that now, if that is available. If not, that is fine, it can be revisited.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

935 I think this is a very important Bill, when we consider that communication and broadcasting
affects every citizen in this nation whether it is coming into our home or whether it is
telecommunications technology that you have in your hand. Sometimes it is not always perceived,
the importance of a Bill like this – so the importance of it being absolutely open and transparent is a
vital impact on all of us.

940 I do think issues such as a political Chair also need to be seen in that context so that again, when
this Bill becomes an Act and is future-proofed, it can be seen that this is going to operate in a very
'at arm's-length' manner for the benefit of all.

945 I also would welcome the information referred to by my colleague, Mr Cretney, in looking at
benchmarking in other jurisdictions or in other setups that really give a good example of how it
might operate, whether it be a political Chair or not. I would welcome that kind of information.

The fact that we might have to go out to yet another consultation seems very unfortunate to me.
I would have thought we have enough information before us to be able to put a good Bill together. I
look forward to further dialogue and development on what we have before us today.

Thank you.

950

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

955 I would like to just put on record the fact that I do not approve of there being a political Chair,
even though I do not think that now is the right time to address that.

960 I did give evidence to the Committee for the Public Service Broadcasting and this is a piece of
evidence which I did not give at the time and has only occurred to me since. But during 2007-08
when I was working as a broadcast journalist at BBC Isle of Man, I decided to investigate the
abortion laws on the Island. I received a call from a fairly senior civil servant at the Isle of Man
Government telling me not to pursue this story any further and accused me of inventing news

because this topic had not been in the press at the time; it was something that I was looking at personally.

965 So I just want to put that on record because other journalists on the Island have not come forward to describe similar situations, even though I know that they have occurred. I do not know whether they still occur, I suspect they do. But had I at the time made a complaint for example to the Communications Commission and it had gone all the way to the top, of course it would have ended up on the desk of the Minister for Infrastructure. So that is just one example of why we should not have a political Chair; and also how the rest of the world perceives the Isle of Man, an odd democracy.

970 These things are important and that is why this does need to be dealt with but I do not think now is necessarily the time because I think we are at the start of a very long conversation about broadcasting on the Island and what the people of the Isle of Man want. And maybe instead of just consulting on the issue of the Chair we should use this as an opportunity to have a conversation with the public on the Island and to ask, 'What do you want from your public service broadcasting?' And look at the whole thing.

975 Thank you.

The President: Mr Henderson.

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

Again, I concur fully with the remarks made the Hon. Member, Mrs Sharpe that now is not the time to be looking at a political Chair – in the future, yes.

I would like to just clarify on the voting in the House of Keys with regard to this Bill, Eaghtyrane, and special reference to the amendment and Mrs Lord-Brennan's observation on that. I would like to put on record that she is quite right, the amendment was close but the actual overall Bill when it was finally voted upon was more or less resounding.

990 What I would like to ask further, Eaghtyrane, though, from the Attorney General – now or at a further stage when the information is available. He mentioned something regarding that regulations and current legislation allow for the chairmanship of the board to be changed now. I am just wondering if he could clarify that a little, and how easily that would be achieved should the Department so desire following this consultation that is going out now, Eaghtyrane?

The President: Mr Crookall.

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

Mr Henderson has just asked the question that I was going to ask.

But can I just pick up on Mrs Sharpe and the point she made before that about literally the pipes and what goes through those pipes – telecasting and broadcasting. I think she is probably quite right and she said we are where we are, and it is probably a bit late, and that is for another day.

1000 But as Mr Henderson said he had a Bill of 153 clauses and the political Chair is just a tiny, small part. But I think it is seen as a very integral part of this and the perception of it outside, and I think if we can make provision if it is not already there for the changing of that if that is what is needed, then why shouldn't we? Why should we wait for the end of the third consultation?

Thank you.

1005

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1010 I just think it is also worth highlighting that the issue of governance and structure, we have heard about it from the perspective of broadcasting but I think it is also relevant to the regulation of the telecoms sector as well.

1015 Mrs Lord-Brennan asked the question: is there a summary of views so far of industry around the current chairmanship of the Commission? And there is in this document, which I accept I have not circulated to everybody but it is on the Commission's website. It is clear that this issue is not just pertinent to public sector broadcasting and with your permission, Mr President, I can highlight why people raise it in the context of telecoms regulation as well.

1020 For instance, Manx Telecom says they would prefer to see an independent Chair and commented that due to the state involvement in e-Ilan Communications Limited, the Government has a direct financial interest in telecoms regulation. You also have a view from MICTA that the Chair should represent an independent and informed view.

Now, you have Sure's response that says they recognise the issues but were reassured by the Bill's requirement that the Commission must act independently of the Council of Ministers.

And then you have SES's response in January 2018 that said:

It is highly unusual in a European market to have direct political oversight of a Communications Regulator. We very strongly urge a review of this relationship. It is against recommended good practice and could be seen by inward investors as a serious risk of political intervention in their business, and thus a disincentive to invest on the Isle of Man

1025 So it is seen, I think, from a broadcasting perspective, but it is clearly pertinent to the regulations of our telecom sector. I think there is a range of views here but I think what is also important is best practice governance in any event.

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

1030 **The Attorney General:** Thank you, Mr President.

Could I just start off by thanking all Members of Council for their very valuable contributions and with their permission and yours, Mr President, I would prefer to come back at the Second Reading and explain in detail some of the issues which have been raised.

1035 I said in my opening speech that this Bill is all about function not structure, and I think you have set me the challenge now of moving a little bit away from that because you certainly want, from what you are saying, to look at the structure as well as function. And the difficulty is not a difficulty I cannot face, but clearly I am here today with a policy decision which has been made simply on the basis of the Government's own national strategy, that the issue of the political Chair will be considered if this Bill completes its journey through this House and is passed, and is then implemented. So that is the course of action which the Government at the moment is on and which
1040 was explained to the House of Keys. And, as I have pointed out, the issue of the political Chair was debated there and a decision was made. But of course it is clearly for Council to make its own decision and make its own views known with reference to that.

1045 Some of the issues which have been raised, and I turn to you, Mr Cretney: we will certainly provide you with the details that you request and to the extent that we have failed to do so before now I do give you my apology. Certainly, with reference to consultation, I will ensure that whatever further information and detail we have will be circulated to you to help inform your decision-making.

1050 The difficulty clearly is that the House of Keys have made their position well known. But of course as I have already said that does not prevent you looking at it in the same way.

1055 Mrs Sharpe, I thank you for your comments with reference to your view that perhaps the Bill ought to look, if I can summarise your view, separately at telecoms and broadcasting in that they are two very different regimes and what I will suggest to you when we come to look at the clauses stage, if we get through this First Reading, is that the Bill already sets out in its powers the ability for the Commission to look at both aspects separately; but all of the powers of the Commission, and this is the intention of the Bill, in its functional regard is to enable it to look at those sectors separately. So I am hoping that I might be able to explain to you that your concerns in that regard have been addressed and can be addressed.

Turning to Mr Henderson, there is a point which I can deal with quite quickly at the moment. As I
1060 have said to you, the mechanism for amending the chairmanship of the Commission lies in
secondary legislation currently. The simple answer to your question is, it could be changed
immediately if that was the will of the Council of Ministers because they have the ability to, by
order, change the constitution of a Statutory Board, subject to that order being approved by
Tynwald. So if it was the will of the Council of Ministers, they could pick up that issue and make the
1065 change now irrespective of the passage of this Bill or whatever other comments Council may pass on
when it comes to consider the clauses later on.

If you are content without that, Council, I would prefer to come back in more detail at the Second
Reading stage but – a very good expression – we are where we are. I have taken away the comments
which you have all very kindly made and which will add to our further consideration of the matter.
1070 And, with some hesitation or nervousness, I move the Communications Bill be read the first time.

The President: The motion is that the Communications Bill 2018 be read for the first time. Those
in favour, say aye; against, no. The ayes have it. The ayes have it.

**Procedural –
Timely circulation of information**

The President: Now, Hon. Members, on a procedural point, if it is intended to bring to Council
1075 information relating to a debate this should be done in a timely manner. Standing Orders require
that it be lodged with the Clerk 24 hours in advance. It is not acceptable to have the information
sitting on our desks. And if, as I understand it relates to an email which was published a matter of
minutes before the sitting, nor is that acceptable.

As it happens, from my reading of the information, it is identical to that contained in the
1080 presentation of the mover anyway. But that is a moot point. I make the procedural point that in
future I expect the Communications Commission, in particular, and any Member on their behalf to
communicate in an appropriate manner with Council.

With that, Hon. Members, Council will now adjourn and our next sitting will be on 2nd April at
10.30 a.m.

The Council adjourned at 12.10 p.m.