



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 16th April 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 R W Henderson,
Mrs M M Maska, Mrs K A Lord-Brennan 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 prayer.

PRAYERS

The Lord Bishop

Leave of absence granted

The President: Hon. Members, I have given leave of absence to Mr Crookall and Mrs Poole-Wilson.

Order of the Day

1. Communications Bill 2018 – Second Reading approved

HM Attorney General to move:

That the Communications Bill 2018 be read a second time.

The President: We turn to our Order Paper. Item 1, Communications Bill 2018, for Second Reading. I call on the learned Attorney General.

10

The Attorney General: Thank you, Mr President.

15

If I could please start by stating for the record that in moving this Bill be read a second time and, perhaps by way of reminder to Hon. Members of Council, that I do so on behalf of the Council of Ministers. I am acting on instructions and have no view on any policies underlying or relating to the Bill and its provisions. I can, however, indicate to Hon. Members that in my opinion the Bill is compatible with the Convention of Rights within the meaning of the Human Rights Act 2001.

As I stated in my First Reading speech, the purpose of this Bill is to provide the legislative basis which will enable the telecommunications and broadcasting industries to move forward with changing technologies and new investment, which will benefit consumers and businesses.

20 The Bill's provisions are accordingly mainly technical in nature and provide a framework for economic regulation which will underpin these industries, providing certainty and stability in the regulatory environment. These businesses are ones in which certainty, order and long-term investment are key. The organisations the Commission deal with are accustomed to consultation, engagement and having a clear path of action laid out for them by their regulator in a fair, reasonable and non-discriminatory way.

25 Two weeks ago, at the First Reading of the Bill Members expressed strong views which were also voiced in the Keys when the Bill was considered by them on the issue of the political chairmanship of the Commission. The Commission recognises that this is an important matter and one that is worthy of further discussion and debate.

30 In October 2018, Tynwald unanimously accepted the National Telecommunications Strategy and all of its recommendations. One of those recommendations was:

To help develop regulatory certainty within the Isle of Man telecoms market the Communications Commission should seek to review its process, procedures and structure on enactment of the Communications Bill.

The Commission has therefore publicly undertaken to review its structure following the implementation of this Bill in line with the National Telecommunications Strategy.

35 The Commission's view on the issue of whether there ought to be a political chair has remained the same: they respectfully ask that you be patient and allow the various models that are used elsewhere and any potential impact for industry and consumers, to be discussed and evaluated. While there are some fears expressed in relation to the potential for political interference in the Commission, Hon. Members should bear in mind that the Chair of the Commission is only one member with one vote.

40 It is made clear in clause 8 of the Bill that the Commission must exercise its functions under the resulting Act independently of any other body. The Bill specifically states in clause 9 that the Council of Ministers must not direct the Commission in relation the performance of the Commission's functions with respect to licence holders or applicants for licences.

45 It is evident from Members' comments at the First Reading of the Bill that there are also strong feelings in Council about the Commission's political chairmanship, and Members are no doubt concerned about the perception to which that gives rise.

50 Mrs Lord-Brennan made a valid point at First Reading that, in her view, the Chair should not be an industry chair, but rather should have skills in managing a board. Mrs Sharpe also made the point that broadcasting, in particular, is likely to change. The Commission says that these issues should be further explored in the context of considering its processes, procedures and structures which it is required to do under the National Telecommunications Strategy.

55 Mr Cretney and Mrs Maska asked for more information on how other jurisdictions manage the structure of their comparative communications regulatory authorities. In order to assist Council in its deliberations, the Commission has asked me to address this issue and has provided me with some data for the record.

60 There is no universally accepted best practice. There is, however, some insight into how other jurisdictions have established their national regulatory authorities. The Commission found in reviewing the analysis it was possible to establish that there exist three broad categories of governance structures: firstly, political, with a politician or senior civil servant as the chair of the board; second, organisations with an independent chair; and finally, organisations solely under executive management that do not have a board in a traditional sense.

Nineteen different jurisdictions were analysed across Western Europe, which include some other jurisdictions with small markets similar to our own. Of these 19, two have a political chair, seven have an independent chair and 10 are under executive management. It may be useful to provide

65 some specific information in relation to some of the jurisdictions that Hon. Members may be most familiar with, or which are of similar size and scope to the Isle of Man.

In the UK, Ofcom is chaired by a crossbench peer with a distinguished background in economics; in Ireland, the Commission for Communications Regulation is under executive management. Looking at comparable jurisdictions to the Island, the Channel Islands and Malta have an independent chair
70 at the head of their national regulatory authorities; Luxembourg retains a senior civil servant in their chair; and Iceland is under executive management. So there are, Hon. Members, as you will note, different governance models.

The Gambling Supervision Commission and separately the Financial Services Authority on the Island are often cited as examples of regulators here on the Island who have a non-political chair.
75 The Communications Commission's view is that there is a significant difference between the roles of those two bodies on the one hand and the Commission on the other. The Gambling Supervision Commission and the Financial Services Authority are bodies that set and enforce much-needed technical and conduct standards in their respective industries with extensive investigatory powers supporting civil and criminal sanctions.

80 The Commission's role, however, is essentially as an economic regulator perhaps more akin to the role played by the Office of Fair Trading, which has a political chair. With that said, I take you back to the main focus of the Bill, which is to provide the Commission with the necessary tools to be an effective economic regulator. This is a comparatively complex and technical Bill that is much needed and anticipated by the communications sector, which is an essential part of the Island's
85 economy.

I beg to move that the Communications Bill be read a second time.

The President: Miss August-Hanson.

90 **Miss August-Hanson:** Thank you, Mr President. I would like to second.

I would like to give some further information that I hope will prove useful for the Legislative Council while they consider this issue. The Commission says that it is looking for the appropriate time to consider any changes to its structure in an evidence-led manner. The issue of the political chair of the Commission has been raised in many fora and the debate is always vital. However, we
95 cannot ignore the importance of other issues within the Bill so I would not want this to take prime position in looking at a rather extensive piece of legislation.

Alongside broadcasting, telecommunications is a key economic input that underpins strategically important sectors of the Island's economy. Without a properly functioning telecommunications market in the Isle of Man it would not be as attractive a prospect to sectors such as e-gaming and finance. So the Bill lays groundwork that underpins that sector.
100

The consultation responses in 2015 from the telecommunications sector, specifically Sure and Manx Telecom, state that they would prefer a non-political chair. Manx Telecom's views are based on their perception that the Government's involvement in e-Ilan Communications gave it a direct financial interest in telecommunications regulation.

105 Sure, however, was reassured by the Bill's requirement that the Commission must act independently of the Council of Ministers. Douglas Borough Council recommended that the chair should be appointed by the Appointment Commission with Tynwald approval, and MICTA suggested that the chair should represent an independent and informed view.

In the broadcasting space the responses were from 3FM and Manx Radio, and 3FM stated:

The Commission should have no political members as this is incompatible where one of the licence holders is enshrined as a PSB (Public Service Broadcaster).

110 Manx Radio's opinion was that:

... regulation independent of the State is vital to preserve the right to freedom of speech

– and that if the chair was to be retained it should clearly be stated that the chair only has equal voting rights, which is the case, and should be silent on all broadcasting matters.

Isle of Media’s response to the January 2018 technical consultation argued that:

It is highly unusual in a European market to have direct political oversight of a Communications Regulator ...

It says:

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

115 However, it can be said that there is no universally accepted governance model for regulatory authorities across Europe, as the Attorney-General has stated.

The Commission says that it is not resisting change but it does not agree that now is the right time to address its structure in this Bill. It has acknowledged that one of the arguments proponents of change put forward is that there is a risk of political influence on decisions made by the Commission. It says that is not the case.

120 Investment in telecommunications infrastructure is currently a live issue for the Island and not only are licence operators contemplating investment in 5G technologies and next generation networks, but Government intends to invest substantial public funds in the sector as outlined in the National Telecommunications Strategy. This brings the issue of regulatory certainty into sharp relief and it is one of the factors that typically are considered when investments are scrutinised.

125 So focused scrutiny is welcome in ensuring the Bill is fit for purpose and enabling in that regard and I would add that the Communications Commission is highly supportive of my colleague, Mrs Sharpe’s proposal to widen the scope of the definition of public service broadcasting.

Thank you, Mr President.

130

The President: Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you, Mr President.

135 Last week I raised a concern that I had contacted the Communications Commission and asked them, in a public forum, to provide the information which Her Majesty’s Attorney General has provided for us this morning. I do not think that we have had it separately – I might be wrong, I might have missed an email. I do not think we have had it separately, but if we have ... Again, for me it is more than a little unfortunate that we have not had the courtesy of us being sent this in advance rather than being told by the Attorney General in this morning’s discussion.

140 But what I have picked up is that 19 jurisdictions were looked at and two had political chairs. In the UK model, which has been spoken about, it is a UK crossbench peer. The Attorney General then went on to talk about comparisons on Island and talked about the OFT and that having a political chair. Again, yes it has a political chair but it is not a Minister; and in the UK the person is not a Minister, he is a UK crossbench peer.

145 I just think that is the point that is of concern to me and remains a concern.

The President: Miss August-Hanson.

150 **Miss August-Hanson:** Can I just state for the record that was amended to reflect that point. We are aware that he is apolitical, and so it is two. That is the correct amount; he has been discounted from that.

The President: Mr Henderson.

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

I just want some points of clarification from the learned Attorney. I am at somewhat of a crossroads with the particular cause in question in relation to a political chair. In 2014 I voted with many colleagues in Tynwald at that point with a Select Committee report, and in one of the recommendations within it we voted to remove the political chair at that point. It was not successful but I just put my notice of intent on the record and a pre-declared position to a point, which would give me quite legitimate rights if I so wish to support the Hon. Member of Council, Mrs Lord-Brennan's aspirations.

However, the reason to be at a crossroads is the point that the Attorney General raised earlier with regard to the 2018 Telecommunications Strategy. I would just like him to reconfirm that within that approved Tynwald strategy – the approved Tynwald resolution – it was confirmed there that a political chair should remain for the foreseeable future with an appendix to that open for review or words to that effect. But, nonetheless, if he can confirm there is a Tynwald resolution live and active currently as a result of that, that says the political chair should stay *pro tem*.

I would further like him to confirm that as a result of the Tynwald debate in 2014 – a Select Committee into Manx Radio debate – that at recommendation 3 or 4 there was a debate with regard to Manx Radio and the retention of it as the Public Service Sector Broadcaster, which was carried. So if I have this right, Eaghtyrane, there are two pre-existing live Tynwald resolutions that make those facts very plain – and plenty of the voting on the recommendation was unanimous.

Then we have the House of Keys very recently passing this Bill and on the Third Reading I think the Bill passed unanimously. So we have a policy direction from the House of Keys live on the table as well.

So I just want the Attorney General to clarify that I have the facts of the matter correct as far as the two live motions are current and live – and maybe we might need our learned Clerk just to give a little background to that – and also the fact that currently the political will of the House of Keys and the Department of Home Affairs is that they are supporting the Bill in its current format.

We just need to have that clear on the ground first so we know what environment we are operating in going forward with this Bill, Eaghtyrane. I think you can see exactly where I am going with this because it *could* be – I am not saying it will be – but it could be that we end up in a bit of a pickle with this, and Legislative Council are out on a limb with regard to direct confrontation with two Tynwald resolutions and direct confrontation with the House of Keys – or conflict, anyway. I will leave it there, Eaghtyrane, in making those points.

The President: Mr Attorney, would it be helpful if you were to deal with Mr Henderson's points now?

The Attorney General: Yes, thank you, Mr President. I thank Mr Henderson for the queries he has raised and if I could just work backwards on those for the moment?

I think, as I said in my First Reading speech, the issue of a political chair was considered in the Keys when it considered the Bill and an amendment was tabled and debated upon which would have addressed the issue of a political chair, and that was defeated. So the Bill in its present format is as approved by the Keys and you can take from that the will of the Keys is that for the time being the issue of political chair should not be addressed in this Bill.

Moving then back to the Tynwald debate in 2014 with reference to the Public Broadcaster, Manx Radio, and the decision which the Keys reached at that stage: this Bill does not impact on that in any shape or form whatsoever and is not intended to, and I understand that an amendment will be brought forward to actually clarify that by a Member, which will be supported by the Commission which will make specific reference to Manx Radio within the Bill itself.

Then turning to the issue of the National Telecommunications Strategy which I have referred to, Mr President: it would be wrong of me to second guess what might have been in the mind of Tynwald at the time it made its decision to support unanimously that strategy. I cannot say with any certainty whether or not it was actually debated and decided upon that the issue of the political chair shall remain as it is for the time being. All I can take from the resolution was, as I said in my

Second Reading speech this morning that the conclusion, again accepted unanimously ... And I repeat what I said, the decision was:

To help develop regulatory certainty within the Isle of Man telecoms market the Communications Commission should seek to review its process, procedures and structure on enactment of the Communications Bill.

210 So Tynwald was clearly of a mind at that stage that this Bill was to come forward and, following the enactment of that Bill, the question of the structure and processes would then be determined. And, as I think I have already mentioned at my First Reading speech, the Commission has already gone out and started the consultation process in that regard. So at that point in time the issue of the political chair will certainly be addressed.

215 Thank you, Mr President.

The President: Thank you, Mr Attorney.
Mrs Lord-Brennan.

220 **Mrs Lord-Brennan:** Thank you, Mr President.

I would like to thank the learned Attorney for bringing such comprehensive information based on the things that Council certainly felt were needed at the past sitting; and it was particularly interesting to hear the information about the set-up regarding the regulatory authority, particularly to do with what sort of chair they have in other countries as well. Also, I would like to thank the Hon.
225 Member, Miss August-Hanson for the summary again of actually the relevant consultation responses that really do seem to be along the same theme.

Perhaps the phrase, or the two words, that we have heard most in this entire sitting have been about what the Commission thinks and I think it is quite fine. The Commission may decide to consult and consider and review its procedures and they have given their insights as to what they, the
230 Commission, would like to have. But it is down to the Legislative Branches to set the parameters here and it is perhaps not for us to say, 'Right, this is exactly how we want you to do something', but it is appropriate I feel that we set the boundaries and then the Commission, as the regulator, would respond to that.

I think in some ways it is helpful to have the information from the Commission. In other ways I
235 feel slightly conscious that perhaps we are being steered towards a certain direction which I think, to be honest, the Commission should await the outcome of what is decided by the Legislative Branches. So I just think we need to be mindful that we are hearing a lot about what the Commission wants and that we should just consider about what is appropriate in terms of how we deal with this Bill before us. It is for us to settle.

240 The comments about the Gambling Supervision Commission and the Financial Services Authority – is it Authority or Commission now? I forget. (**The Attorney General:** Authority.) Authority. I shall change that C to an A. I mean, those are really good examples of how governance is approached positively and proactively and I do not really feel that I am convinced by the Commission making a statement that they should somehow be an exception or require a different approach. So I
245 will be looking at that further and indeed I have already started looking at what the set-up is around the FSA and the Gambling Supervision Commission.

I think rather than take assurance from the Commission that they will decide to go off and sort out these problems and then therefore based on that assurance we should not have to effectively draw a line. I think it needs to be something more than assurance. I do not think we would accept
250 assurance from the other statutory boards or the other regulatory bodies that are very well respected, and I do not accept that it is just to say, 'Oh well, economic regulation, that's all it is, don't worry about it'. Actually, broadcasting is involved here and so we need to be looking at the relationship between connections both ways – both between there being a political chair of the Communications Commission but also the other way coming back into the set-up that we have here.
255 But I am encouraged to hear that there is intention to change and if there was to be a change within

the framework of the legislation then, to me, I would take that as readiness and openness on the part of the Commission to put something in place to address concerns.

260 The concerns were well-voiced in the House of Keys and in fact I have been talking to Members in the other place, based along the timeline as to really how long a political chair of the Communications Commission is required and I am receiving quite varied responses. There are quite strong responses to say, 'Actually it is not needed at all now'; and others that are being a bit more pragmatic to say, 'Okay, we recognise that timing is the issue and secondary legislation is something we would feel that we can understand the arguments of it being brought through'. That is the argument that is coming from the Commission, which is that it would aid the passage of secondary
265 legislation that will need to be progressed really before the end of the next administration.

So I am trying to find what might be the sweet spot for acceptability to say, 'Actually, we recognise that it is not correct and it is not where we should be, to have a political chair, but in terms of being pragmatic we recognise the case put forward about timing'. But we should not be pragmatic to the detriment of being robust in terms of what we are setting out here, and it is the
270 time to deal with it. And if we have got industry representatives – those that are involved in the international scene and the likes of SES – strongly urging us to review, then that is something that we should be thinking about ourselves rather than taking a lead from the Commission.

So I would absolutely dismiss the idea that the Commission says it does not agree that it needs to be dealt with now. I would absolutely dismiss that and I think we need to look at it.

275 As has probably already been indicated – and as I have expressed to Members of the Council and also put forward to Keys Members, and also I have written to the Minister for Home Affairs who is the Chair of the Communications Commission – I have, based on conversations I had at this last sitting, and through talking to other Members, prepared an amendment that would seek to put a bar on a Member of Tynwald being Chair of the Commission. It is something that I will be putting
280 forward and seeking to have conversations with other Members over.

There would be scope within that to recognise that for a period of time it might be helpful and beneficial to have the political chair in place, so that would therefore be recognising what the present Chair has said about actually this is helpful and this is needed for now. So it would recognise the short-term, put-forward need, with the long-term recognition that a political chair should not be
285 something that is required indefinitely. The amendment will be very much in that sense and I do intend to keep having conversations about that and to find the level of acceptability within that.

I think just to pick up the point from Mr Henderson – and I thank him for his potential support of the idea of this amendment – I do not think we need to be worried about being out on a limb in terms of the House of Keys. There were 10 Members in the House of Keys that voted in support of
290 the previous amendment. What we need to have at the forefront of our minds is actually what we are doing is best for the Island and best for the structures that we have around the regulation and the governance of this. So it can really work both ways on that, I think.

I do not want to be out on a limb in terms of what we are doing with governance and making the correct provision in law because we are taking too much heed from perhaps what the regulator itself
295 says.

Thank you, Mr President.

The President: Mrs Maska.

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

I would like to thank the learned Attorney for the additional information he has provided to us today which is helpful and very interesting. And as my hon. colleague, Mr Cretney, has pointed out only two out of 19 have political chairs.

305 I keep an open mind in terms of what might result from further investigation that the Commission might carry out as to the appropriate structure of the Communications Commission ultimately. But it is important, if we are to retain the confidence of the sector in the Commission and

our operations, that it can be demonstrated that the Commission's operation is at arm's length and has the confidence of this sector of our business that exists out there.

310 It just occurred to me that the Planning Committee also has a political chair, but not a Minister, and so we do have evidence there are other structures that operate successfully. So I do keep an open mind and I would be interested to see on the enactment of this Bill, what goes forward in a meaningful way with regard to looking at the structure of the Communications Commission and particularly its Chair.

Thank you.

315

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

320 I would just like to underscore some of the comments I made previously and to ask the Attorney General, when we get to clauses stages, if he can provide some procedural information for Council with regard to the Telecommunications 2018 Strategy that was approved by Tynwald and is now a resolution of Tynwald; and in the matter and way in which that strategy proposed to address the issue of the political chair. And in particular, the strategy – as the learned Attorney has laid out, Eaghtyrane – laid forth a route to be followed inasmuch as the Communications Bill/primary
325 legislation should come in first, and then a review of the structure of the Communications Commission should be undertaken immediately afterwards.

That is a resolution of Tynwald and I think we need some clarification at Second Reading because my understanding is, Eaghtyrane, that resolution is live and active at the minute; and that Legislative
330 Council is not supreme to Tynwald. Tynwald is the highest Court in the land – they have passed that resolution and what I do not want is for us to be in open conflict with Tynwald Court.

I also replace my concerns with regard to what the House of Keys has passed. I do that in all earnestness because the policy has been clearly articulated albeit, yes, there was debate at the clauses stage with regard to the chair, but ultimately the Third Reading was passed unanimously – or
335 virtually unanimously. There is a clear signal from the Keys, and I think we do have to take cognisance of the Department *and* the Communications Commission.

With any legislation or policy or strategy that comes through, of course the sponsoring person, agency or Department will be desirous of having that implemented and give us all the reasons why, and so on. And usually we have to take that as a matter of trust on them behaving professionally and
340 operating within the law of the land, as it were. I have always been of the opinion that as a first point of principle if somebody says they are going to do something you give them the chance to do it and you place a degree of trust in that person, agency or Department, or whatever.

Now, if it becomes apparent months down the line of a verbal agreement given in, say, Tynwald Court, for example, that nothing has happened, then it is open to every Hon. Member of Council or
345 Tynwald to pose questions to that Department, or otherwise, as to the progress of the verbal commitment they made, and to put them in the public spotlight and make them accountable and transparent in what it is they are doing; and, if necessary, to elicit a further agreement.

If it becomes apparent at that stage that there is some particular problem, then obviously we all have the options to go and see that Department or agency to discuss what the issues are. If there is a complete deadlock, as it were, and no desire to move any further then of course we can all come
350 back and place a motion to Tynwald if we like or a motion in Council to make the point, or cause meetings to occur, and so on.

So I do not think it is absolutely necessary to put a legislative lasso round somebody at this particular point when they have made a promise that that is what they are going to do. We have heard from the Attorney General that things are being progressed so I am a little more minded to
355 give some flexibility here currently to give the Department that chance, because they have made a verbal commitment. What we are saying has the potential of giving the view that, 'We do not trust you, Department of Home Affairs'.

360 So I think we need to be careful how we balance arguments and how it is we progress what we are doing. But nonetheless I would like to know the procedural position with the 2018 Tynwald resolution, Eaghtyrane, and what bearing that has here; and if we decide to go in an opposite direction then where does that leave Legislative Council in relation to the Tynwald resolution?

The President: Miss August-Hanson.

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

I would just like to state for the record that this is at arm's length from the Department of Home Affairs – the Communications Commission is not within the Department of Home Affairs. So to say that it would be a Department of Home Affairs Bill would be incorrect.

370 **The President:** Yes, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I would like to thank the learned Attorney for his comprehensive statement; and also Miss August-Hanson for her summary of relevant facts.

375 During our last sitting I did state that I felt it prudent not to tinker too much with this Bill but I have had further time to consider and I have come to the conclusion that there are perhaps some amendments which may be prudent to make. This Bill after all is a piece of primary legislation and as such it will be with us for a long time and, where we can, I would suggest that we need to consider future-proofing the Bill.

380 My intention is to bring an amendment before Hon. Members of Council during the clauses stage and if I may, Mr President, I would like to outline to Hon. Members a short overview of the amendment which will be in my name. Currently the Bill states in Part 1 that:

'public service broadcaster' means Manx Radio Limited ...

385 My point is that in real terms 'public service broadcaster' means any company which has an appropriate licence to provide a public broadcasting service. The broadcaster is the mechanism through which the service flows – it is the vessel or the conduit, it is not one company *per se*.

390 In seeking to move this amendment at a future sitting, Mr President, I would like to put on record that I am not seeking to unsettle or to undermine Manx Radio which, after all, does hold the public service broadcasting licence. Rather, I am recognising that this Act will be a piece of primary legislation, it will be with us for a long time and certainly it will be with us longer than either AM or FM radio. So I am merely seeking to future-proof this Bill.

On the subject of the political Member as Chair of the Commission, I think that where you have a Commission which has the power to regulate media output, it is inappropriate in any jurisdiction to have a political chair; but on a small Island where everyone lives cheek by jowl it is just plain wrong. We need to get this right because, as I said, this piece of legislation is going to be with us for a long time.

395 I hear what the Hon. Member, Mr Henderson, is saying in terms of the fact that this subject has already been discussed in another place, but I would argue that here in this Chamber of course we have the right to debate and discuss that so we can come to our own conclusions. Otherwise why are we here?

400 Thank you, Mr President.

Mr Henderson: Mr President?

The President: Mrs Lord-Brennan.

405 **Mrs Lord-Brennan:** Thank you, Mr President.

I think it is just worthwhile being really, really clear on this. It does not matter and it is perfectly fine if the Commission are themselves deciding to go and review their structure, and there is a Tynwald resolution saying that this will be looked at. They can do *all* of that whilst we still decide that actually in principle it is wrong to have a political chair of the Communications Commission in the long term – there is nothing stopping that. It is not for the Commission to say what type of Chair they would have; that is, quite correctly – as I think Mr Henderson has alluded to – for Tynwald. So I think we need to be comfortable here with what our role is in respect of the primary legislation. We will set the parameters and then the Commission can go off and take whatever approach it needs to fulfil that.

So I really hope that we are not going to get almost bogged down in the other distractions of, ‘Well, what would the structure look like? How would they do it? Who will they talk to?’ And I hope we are not going to get bogged down by what the other debates have been elsewhere. We just need to focus in on this issue and think, ‘What is the right thing?’ The right thing is not having a political chair in the long term.

Thank you.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I again wish to underscore, with a little more clarity, the commentary I have put on public record a little while ago in relation to the standing Tynwald resolutions.

Now, the Hon. Member, Mrs Sharpe is quite correct, we can debate what we like in this Chamber and come to whatever conclusions we like – but there are protocols, procedures, Standing Orders and conventions that we normally follow. It is highly irregular for the Legislative Council, I would hazard a guess, to actually overturn or to vote against – or what would ostensibly amount to voting against – a standing resolution of Tynwald. There are other avenues to express your concerns and in better ways, I would say, than trying to do it through the Legislative Council whereby if successful then there is the potential for an open conflict with a standing resolution of Tynwald. Now, that is a matter of fact; that is what would happen.

It would also obviously lead us to some sort of conflict situation, or the potential – unless in the interim to the clauses stages we learn otherwise – with regard to what the wishes of the Keys are. There is no overriding evidence that has been presented thus far to illustrate a national interest of urgency *now* to make the changes that have been suggested. We know from the record – and the Attorney General has placed it on the public record several times now – that the Department is fully intent on making changes following the legislation with regard to the structure of the Communications Commission. Now, to me, that is a fairly solid statement to make and is something that they are going to have to abide by, otherwise then they will face public scrutiny from Hon. Members; there is no question of that.

Then we have the issue of the 2014 resolution which I spoke of, Eaghtyrane, where Tynwald unanimously passed one of the recommendations in that report that Manx Radio be enshrined as the public broadcaster. That is a standing resolution of Tynwald. In this Communications Bill on its passage through the Keys, the particular clause that enshrines the will of Tynwald, as directed by Tynwald – we must remember this Hon. Members – the 2014 report was approved and the direction given was approved, so this Department ... Not only is there some commentary about why Mr Gumbley drew up the clause in a message that went round, but one of the main reasons for drawing the clause up is to honour the word of Tynwald, or that resolution from 2014, to enshrine Manx Radio into primary legislation. That is a standing resolution, that is not just a Henderson viewpoint, that is what actually happened when I took part in that debate.

We then have the Communications Bill 2018 debated in the Keys and on the points of Manx Radio being enshrined in primary legislation, that clause and two or three others were held over to the end of the clauses stage to allow for amendments; but on debating the clauses stage the Minister for Home Affairs made it very clear and blatant that the effect of clause 3 was to enshrine

460 Manx Radio in primary legislation. Every Keys Member knew exactly what that clause was and its
intention. The clause was voted through unanimously. So not only do we have a Tynwald resolution
of 2014, a standing active resolution, saying that for the time being the issue of Manx Radio being
enshrined in primary legislation, and directing it to be, we now have a unanimous Keys resolution on
clause 3 supporting that Manx Radio be in primary legislation.

465 The Third Reading of the Bill in the Keys was unanimously accepted. Nobody mentioned – or
there might have been one or two dissenters – but in the main the Third Reading went through quite
well and was well supported, and there was no mention at the Third Reading of clause 3 or the
enshrinement of Manx Radio in primary legislation. So obviously no Hon. Member in the House of
Keys had a concern with regard to what that was trying to achieve. Nobody placed an objection. So
to me that is a fairly clear and decisive message that this is what we see our policy as and this is how
470 we see it going forward with regard to Manx Radio in primary legislation.

Now, I say all that, Eaghtyrane, just to highlight to Members the possible effect of what it is that
you are trying to do, because to me – unless I stand corrected by the learned Attorney General – we
are flying in the face of two Tynwald active resolutions. They are not dead, they are not usurped and
they are not overtaken by anything, as we have heard; and also, a monumental affirmation from the
475 House of Keys with regard to Manx Radio being placed in primary legislation. So we need to be wary
of what we are attempting to do here.

Now, I take on board again, Eaghtyrane, the Hon. Member, Mrs Sharpe's comments that we are
here to do a job and we have to get on and we can debate what we would like. Well, yes, we can.
But given what I have just said I think we need to do it in a different way if that is what you want to
480 achieve, because if we are going to end up in direct conflict with Tynwald and potentially with Keys,
then that does not lead us anywhere in particular, other than we are out on a limb as far as
Legislative Council goes.

We have not got supremacy over Tynwald – Tynwald is the highest Court in the land. I do not
think it is within our gift to overturn a Tynwald resolution here in this place. However, we can if we
485 so wish, bring a motion to Tynwald and debate the points there, and Tynwald can relook at it and
then retake a vote in Tynwald. And I see headshaking going on, Eaghtyrane, but I think I am right in
what I am saying. Then, if that was successful there, Tynwald would be reversing its own decision
from a previous time and then that would be acceptable. And unless I stand corrected by the Hon.
Clerk or yourself, Eaghtyrane, I think that is the usual route of doing things.

490 I just caution Hon. Members to be careful in what you do with regard to heading towards a
potential conflict here.

The President: Now, before I call on the learned Attorney to reply, I will give other Members a
final opportunity to speak in the debate.

495 Mrs Maska.

Mrs Maska: No, thank you, I will rest with my comments.
Thank you.

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

Mrs Lord-Brennan: Yes please, Mr President, thank you.

Two short points: firstly, I have not had a sense that there is any direct conflict on this coming
either between this place and Keys, or specifically to do with Tynwald. I think it is our job to take a
505 second look at the legislation before us to see about the long-term impact, take a long-term view
and perhaps see if an aspect of it needs to be reconsidered. That is absolutely our job.

In fact at the previous sitting the Charities Bill did not go back in the form that it came to us,
there was a need for it to go back to Keys and not everything was accepted. So there is the point
that from time to time this does happen for various reasons and I think that needs to be taken into
510 account.

Also I would be interested to know, because I have certainly not seen a Tynwald resolution saying that there must or should be a political chair for the Communications Commission. That is a very specific point but it seems to be the one that is being laboured. So just to mention that.

Thank you very much. (*Interjection by Mr Henderson*)

515

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

520

The President: Lord Bishop, do you wish to speak?

The Lord Bishop: Thank you, Mr President. No.

The President: Mr Cretney?

525

Mr Cretney: I think the only point I would make is that I think in her submission, Mrs Lord-Brennan made it clear that she was talking about there would be a period of time before her amendment, which would change the status to a non-political chair, would come into effect. And I think that is what she is having a discussion about with others. I think the opportunity does exist in this legislation for such a formula to be accepted.

530

The President: Thank you.
Miss August-Hanson?

535

Miss August-Hanson: Thank you, Mr President.

I would just like to reiterate to Members of this Council that regarding the Department of Home Affairs – it is not the Minister for Home Affairs that brought through the legislation in Keys, it is the Chairman of the Communications Commission. DHA is the sponsoring Department for the Communications Commission. It does have a formal role but it is the sponsoring Department.

540

In relation to Manx Radio, as far as I am aware – and I am sure that my colleague on Legislative Council, Mrs Sharpe might be able to elaborate – Manx Radio is not being removed from the primary legislation via the amendment that could be suggested down the line. So I hope that she will build on that.

545

I think that we have strayed into a debate on whether or not amendments that come through from the House of Keys should or should not be debated in Legislative Council, which I think is potentially a debate for another day. And considering that we have had the Charities Bill go back to another place for a very similar reason, for different purposes, I am really failing to understand the point.

550

But what I will say is that the Communications Commission is intent on revisiting this one way or the other, and I will leave it at that.

Thank you.

The President: Mrs Sharpe.

555

Mrs Sharpe: Thank you, Mr President.

Yes, just referring back to my colleague, Miss August-Hanson's comment, the draft amendment which I have previously circulated to Members does set out that 'public service broadcaster' would mean Manx Radio, or Manx Radio and another licence holder, or other licence holders. So Manx Radio would still be named in that primary piece of legislation.

560

Thank you.

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

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

565 I would firstly like to thank all Hon. Members for their careful consideration of this matter and, if you will agree with me, I am not going to deal with you individually and the points you raised, because I think I ought first to go to Mr Henderson which I think may well solve quite a few of the problems which have been voiced.

570 As we sit here today, Mr Henderson is correct there are two live Tynwald resolutions which you may have regard to. But the fact of the matter is that a resolution of Tynwald *cannot* override primary legislation and nor can it preclude the possibility of subsequent primary legislation amending it – otherwise we would be in a bit of a cleft stick. If we go back in history and look at Tynwald resolutions that have been passed, subsequent developments of the law through primary legislation would have been thwarted. That is not the intention and that is not the process which applies to us.

575 Mr Henderson is correct, you ought to have regard to what the House of Keys have concluded, but that is – and I emphasise – to ‘have regard’ to what they say. As we have already seen, as Mrs Lord-Brennan has pointed out, we beg to differ as a Council with reference to the Charities Regulation Bill. And certainly in this Bill, if it is the will and the intention of Council to move an amendment to deal with and address the issue of the political chair it is a matter that is entirely in your hands – having regard, as I have said, as Mr Henderson has quite appropriately pointed out, to what the other House has done. But it does not stop you addressing the issue. So I think that takes a lot of the sting out of it in many ways, you have the power to look at this Bill.

580 What I would like to go on and say, however, is really to clarify a point which Mrs Lord-Brennan has made with reference to the Commission’s role in relation to the promotion of this Bill, and that is as I spelt out at the start of my Second Reading speech. I am here at the behest of the Council of Ministers on instruction to move this Bill which, as I have said the First Reading and again today, is a technical Bill. It is not designed to address the policy issue relating to a political chair; that is not the intention of the Bill.

590 The Commission has not formed any view as to what the model ought to be and I think that needs to be emphasised. (**Miss August-Hanson:** Hear, hear.) What the Commission is doing, and I made it clear at the First Reading and again today, is to comply with the resolution of Tynwald which is still live which is when it unanimously agreed the National Telecommunications Strategy, and that is after the enactment of this Bill – and I am summarising now – it had to then go on to consider and review its processes, procedures and structures. That is what the Commission is committed to do.

595 It is not a question of choice: as we stand here and sit here today they are obliged by virtue of that resolution to proceed to do so. And as I have already pointed out, when I did at the First Reading, they have commenced that process. (**Miss August-Hanson:** Hear, hear.) But they commenced that process with an open mind. They have looked at and analysed the 19 examples which I have referred to. There is no best model out there which they are promoting. They are leaving it to the consultation to decide what they as a Commission would recommend. But at the end of the day it will be a matter for Tynwald to decide because it will require a change in primary legislation.

600 That said, I think the message which I gave to you in the Second Reading from the Commission is really to invite Council to be patient – let them do what they are required to do. All Hon. Members will have an opportunity to contribute to the consultation which will be carried out and then you can express whatever views you might have with reference to what the structure might be going forward, address the issue of a political chair, and then that will inform the Council of Ministers no doubt in due course to bring forward a Bill to address the results of that consultation.

605 I hope, Mr President, that addresses the general issues. I can, however, and wish to apologise to Mr Cretney as, despite my request, you were not provided with the detailed information which you have on two occasions asked me for in here. I have addressed the details today. I have noted carefully your concerns with reference to the model and of course they will be on the record and no doubt they will be considered in the context of the ongoing consultation.

615 And if that is content to Hon. Members I will close with that and thank Miss Tanya August-Hanson for seconding the movement of the Bill.
Thank you.

The President: Hon. Members, I put the question that the Communications Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Communications Bill 2018 –
Clauses stage deferred**

HM Attorney General to move:

That under Standing Order 4.3(5) the Clauses stage be deferred to a future sitting

620 **The President:** We turn to the second motion under Item 1. Mr learned Attorney.

The Attorney General: Mr President, if I could please move that under Standing Order 4.3(5) that the clauses stage be deferred to a future sitting.

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

Miss August-Hanson: I second.

The President: Is that agreed, Hon. Members?

630

Members: Agreed.

**2. Town and Country Planning (Amendment) Bill 2019 –
First Reading approved**

Mr Cretney to move:

That the Town and Country Planning (Amendment) Bill 2019 be read a first time.

The President: Item 2, Town and Country Planning (Amendment) Bill, First Reading.
Hon. Member, Mr Cretney.

635 **Mr Cretney:** Thank you, Mr President.

The Town and Country Planning (Amendment) Bill 2019 comes to us from the House of Keys with several purposes. They arise out of extensive consultation and are part of continuing work to ensure that planning for our Island is transparent, fair and gives the public confidence. This work must continue, and I thank the efforts of the Hon. Members of the House of Keys in improving the Bill as it comes to us from them. The amendments and contributions made in the House of Keys have significantly improved the Bill from its introductory form; indeed, I would not have taken the Bill in its previous form.

I would like to speak on one particular element: the establishment of a consultative body to provide the involvement of outside organisations in planning, contained in section 40(1) of the current Town and Country Planning Act 1999. The Bill before us today seeks to amend that section

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to remedy a problem by replacing the word 'shall' with the word 'may'. The ability to have a consultative body remains, but is made discretionary.

The purpose of this change, as set out in the Reform of the Planning System which was laid before Tynwald in May 2018, is to:

Allow more flexibility in how Government involves stakeholders in policy matters, to ensure we are able to fully understand their views, without extra bureaucracy.

650 Indeed, it should be recognised that since this body was first conceived of there have been other improvements in the way that stakeholders are engaged, not least the publication in 2017 of the Council of Ministers' Public engagement and consultation principles.

Nevertheless, the changes set out in the Bill would not diminish the potential value of such a consultative body, nor the power to establish one. Indeed, the good sense in having such a
655 consultative body remains and I strongly encourage the Council of Ministers to go ahead and set one up.

Let us consider what such a consultative body would do. It would be involved in strategic planning – the future direction of the place where we live, work and thrive. Consistent advice and engagement with stakeholders in our environment, economy and society is most valuable and such
660 a body could be helpful to the Cabinet Office in this regard.

What would the consultative body *not* do? Well, it would not be involved in the functions of the Department of the Environment, Food and Agriculture, in particular its day-to-day assessment of planning applications. That is not the intention and is not the function provided for in section 40 of the Town and Country Planning Act 1999. In the daily matters of applications there are already
665 requirements to consult and the ability for individuals and organisations to comment should they wish to. That is not changed in any way by this Bill.

This Bill, in the form we see it today, retains the ability to establish a consultative body to provide input into strategic policy matters. That process has not yet been fully implemented and I encourage the Council of Ministers to remedy this. In doing so, I do suggest that the regulations made under
670 section 40(1) in 2006 should be updated and replaced with input from Members being sought in that process.

There are other elements of the Bill which are important to a well-functioning planning system. These include the ability to make minor amendments to existing planning approvals which will save complexity and effort where it is not warranted, enabling resources to be better directed to other
675 matters. The definitions and functions for that will be subject to development procedure orders, which will come before Tynwald.

I thank the Hon. Member for Ayre and Michael, Mr Baker, for his contribution in debate and for the amendments to the Bill he put forward. Those have made significant improvements to the national policy directives component of this Bill. I also thank the other Hon. Members who put
680 forward amendments designed to improve the functioning and establish proper reporting routine back to Tynwald on the function of national policy directives.

Mr President, this legislation is technical in substance and in our Public Gallery today we are joined by Mr Dean Balkin, Senior Planner for the Cabinet Office and Mr Steve Butler, Head of Development Management at DEFA who may be able to assist with some enquiries if I struggle.

685 I thank the Hon. Members in the House of Keys for their amendments which are now incorporated in the Bill now before us.

Mr President, I beg to move the Town and Country Planning (Amendment) Bill 2019 be read for the first time.

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

Mrs Lord-Brennan: Thank you, Mr President. I second this Bill.

695 Mr Cretney has been clear in providing us with his view of some of the elements arising from the debate and the amendments in the House of Keys, and I do not disagree with nor need to repeat what he has said on this.

Mr President, I would like to outline the other elements of this Bill and to remind Council Members of the purposes behind it.

700 There are six elements to this Bill and they are: (1) national policy directives; (2) development procedure orders for minor amendments to existing planning approvals; (3) an amendment of the procedure for referring applications for planning approval to the Council of Ministers in certain circumstances, and a definition of the term 'general importance'; (4) power for a community infrastructure levy; (5) bringing the basis for the Planning Committee into the Town and Country Planning Act 1999; (6) the involvement of outside organisations, to which Mr Cretney has referred.

705 Turning to the first element, national policy directives. Mr President, I wish to thank the Members of the House of Keys, and in particular Mr Baker, for the consideration and amendments brought to this provision. As Mr Cretney has already stated, what comes before us today is an improvement on the Bill as it was introduced in the House of Keys.

710 Moving to the second element, at the present time there is not the legal ability to make minor amendments to a planning approval after it has been granted. The purpose of the proposed process is to facilitate the sorts of changes which happen in real life, where building projects uncover design errors, problems with the supply of materials and other practical issues that arise, so they would be intended to be of a practical nature. These types of minor amendments could include a change to the dimensions of a window to match a product available on the market, for example, thus avoiding an unreasonable cost imposition; or another example would be swapping the location of a door and a window to correct an oversight in design and drafting.

715 It is important to state what this provision does not do: it does not provide for a transformation. What I mean by that is that a minor amendment does not and shall not transform a shed, for example, into a house. The term is not over-defined in the Bill before us, and I remind Council Members that the development order which would provide for a minor amendments procedure would come before Tynwald, subject to negative resolution. Therefore, Tynwald Members will see that order and have the opportunity to provide proper scrutiny to it.

720 Turning to the next element, clarifying the referral of applications for planning approval to the Council of Ministers, and a definition of the term 'general importance', there are some things to point out. What is proposed would place an obligation on the Department of Environment, Food and Agriculture to refer certain applications, including applications of general importance, to the Council of Ministers, and provides a definition of 'general importance'.

725 It is perhaps helpful to outline how things work now. Currently, the Council of Ministers has the power to instruct DEFA to refer applications to them – sometimes referred to as 'calling in' – for determination, where they feel they are of general importance or where for some other reason the application should not be determined by the Department. However, there is no requirement for DEFA to bring any applications to the attention of the Council of Ministers, nor is there a clear definition of general importance. The new definition will provide clear procedural triggers to enable a predictable and a consistent way for DEFA staff and members of the public to understand what circumstances an application for planning approval is to be referred to the Council of Ministers. In this way, it would seek to bring some credibility through establishing a proper process for this.

730 The subjectivity of 'general importance' is replaced by a proportionate consideration of demonstrable facts. Each of the conditions in the definition must be satisfied so it is not anticipated that there would be a large number of applications referred.

740 It is important to note that once an application has been referred to the Council of Ministers, it will first make a decision as to whether to either accept that referral or to decline it and send the application back to the Department of the Environment, Food and Agriculture for determination in the usual way.

The next element is the power to set a community infrastructure levy – something I am very supportive of – and I note that amendments were proposed and accepted in the House of Keys to

745 replace the word 'may' to 'shall' in terms of the Council of Ministers introducing a levy. The
introduction of a community infrastructure levy should be used to set out transparent and
consistent mechanisms to ensure that new development facilitates wider social, green or grey
infrastructure improvements. The levy will be imposed by way of regulations which would need to
750 be approved by Tynwald. The regulations will need input from the development industry as well as
from Government Departments, those who provide and maintain the infrastructure and those who
would use the infrastructure – in other words, local communities.

The Bill also puts the Planning Committee on a statutory basis within the Town and Country
Planning Act 1999. This shows a commitment to continue using the mechanism of the Planning
Committee as an important and integral part of transparent and accountable decision-making.
755 Although the existing Planning Committee currently operates under an authorisation from the DEFA
Minister, the explicit referencing of the Planning Committee within the Bill is considered to be
preferable in the interests of clarity and the avoidance of doubt.

Mr Cretney has spoken ably about the involvement of outside organisations and I share his view.
The Bill does not *remove* the ability to create and involve such a body. We are seeing a proposed
760 change from an obligation, which was only partly fulfilled in the past, to an ability, a choice.
Mr Cretney is right to anticipate and encourage the establishment of such a consultative body. I
agree with him on that and remind Council Members that the views of the consultative body would
be sought only in strategic policy matters for planning.

Thank you, fellow Council Members and Mr President.

765

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I have just one question for the record that has already been referred to by my colleagues on
770 Council, Mr Cretney and also Mrs Lord-Brennan, in relation to section 40 which is amended – the
involvement of outside organisations in planning.

15. Section 40 amended

In section 40 (involvement of outside organisations in planning) –

- (a) in subsection (1), for 'Council of Ministers shall', substitute 'Council of Ministers may'; and
- (b) in subsection (2), for 'Cabinet Office must', substitute 'Cabinet 26 Office may'.

So for the record, would the mover of the Bill please outline in detail what the political history of
that particular amendment is?

Thank you.

775

The President: Does any other Member wish to speak?

Mrs Maska.

Mrs Maska: Yes, thank you, Mr President.

780 Thank you to the Hon. Member Cretney for bringing this and I agree that the form of the Bill as
we see it today is a very much improved format. It was well debated in another place and raised
some very interesting matters.

I agree that it is very sensible to have a matter such as national policy directives that can aid and
speed up the process in circumstances which are deemed to be exceptional. I would not want to see
785 this used as a device, especially by larger development applicants, that they might see it as an
opportunity to come in almost by the back door really and used habitually for that kind of purpose.
Although if I am understanding the Hon. Member, this is not the intention of this inclusion. So I
welcome that but it would have to be used prudently.

I also welcome the ability to amend an application in a minor way. This has proved to be a bit of
790 an obstacle in the past where an applicant would have to start all over again and delay a
development to the hardship of an applicant or a development.

I am also concerned that we still have the wording that gives mandatory powers to form an advisory committee, and it is changing the wording from 'must' to 'may'. The perception I think still would remain with those outside who have a special interest in in our Island environment that this is really letting a certain sector of our public down in that this power has existed since the 1999 Town and Country Planning Act.

I also refer to the meeting we had for which, again, I thank the Minister for Policy and Reform who came and briefed us and that was very helpful. But it was inferred that there had been no interest by what I would call 'amenity societies' in the past to take part in such a body. However, my early investigations have led me to believe that there was interest and there had been exchanges of letters in the past expressing an interest, but unfortunately this was never acted upon. So I feel that it is so unfortunate – although I do accept that the ability to form such an advisory body still exists – that it has sat inactive for so long, and all I can interpret is that there has been no political will to do that. And again I see that as being very unfortunate.

Other than that I think the Bill is, as I said, a much better Bill as it has come to us today. But I will continue to do research into some of the more controversial small, but important, changes that this makes. And I would reserve the right to maybe talk to this at clauses stage.

Thank you.

Miss August-Hanson: Hear, hear.

The President: Are there any further contributions before I call the mover?

In that case, Mr Cretney.

Mr Cretney: Yes, thank you, Mr President.

I thank Hon. Members, in particular Mrs Lord-Brennan for seconding and her valuable input on the other elements to the Bill. In relation to Miss August-Hanson, the 1999 legislation as has been picked up obviously never enacted the consultative body. Mr Rimmington in 2006 placed this matter before Tynwald. Sadly, it was just before the general election and he lost the seat in the general election and sadly whoever replaced him – and I am not sure who it was who replaced him as Minister for Local Government and the Environment after that – clearly did not have the same interest and nothing ever happened. And to respond to Mrs Maska, it does appear that there has been little, if any, political will.

I do not share that and as I said in my remarks I do hope that the opportunity is taken by the Council of Ministers because I think planning is about all of us. It is not just about one Minister or one political Member – planning is for all of society. And if at the early stage in the formation of the forward-planning policies interested groups can be at last involved, I think that would create a great deal of respect in the community for us taking such a move and I do hope that the Council of Ministers will be prepared to do that.

I agree also in relation to Mrs Maska, yes, it would be prudent use. And in terms of the planning amendments, yes, I think that this is a practical thing that would provide for the officers the opportunity for minor matters to be settled which do not cause any distress to anybody perhaps, other than the person who is doing the property and has been caught out by a particular thing.

I think those are the points that have been raised. I would like to thank Hon. Members for their interest and contribution. And again I would like to thank Mr Thomas for facilitating the meeting which we were able to have in advance. I think that was a useful exercise and hopefully something we can replicate in terms of other legislation coming before the Council so that we have a better feel, particularly when it is of a technical nature like this. I thought that was very helpful.
(Miss August-Hanson: Hear, hear.)

I beg to move that this Bill be read for the first time.

The President: I put the question that the Town and Country Planning (Amendment) Bill be read the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**3. Council of Ministers (Amendment) Bill 2019 –
First Reading approved**

HM Attorney General to move:

That the Council of Ministers (Amendment) Bill 2019 be read a first time.

The President: Item 3, Council of Ministers (Amendment) Bill, First Reading. I call on the learned
845 Attorney General.

The Attorney General: Thank you, Mr President.

I am moving the Council of Ministers (Amendment) Bill in this Chamber as the Crown's Principal
850 Law Officer on the Island and on behalf of the Council of Ministers, because its significance in terms
of the fundamental principles of the supremacy of the Rule of Law and the independence of our
judiciary should not be underestimated. Although these principles have been unwritten, they have
been followed and accepted by all, by convention, as if they had had the force of law. This
convention has served us well. However, times are changing and in many cases conventions are
being replaced by statute law, both here and on the adjacent island.

855 Hon. Members will know, for example, that the principles set out in many of the Articles of the
European Convention on Human Rights expressly require important matters to be set out in, or
prescribed by, law. The Bill also provides assurance to the judiciary that its independence is so
important that the duty on the Council of Ministers to uphold and support that independence
should be stated in law.

860 Responsibility for ensuring the Rule of Law and the independence of the judiciary may not
currently be set out in law, but it does not mean that no-one is responsible. In fact, responsibility
currently lies with His Excellency on behalf of the Crown. This Bill will place a responsibility on our
own Council of Ministers. This is important because it is another step along the road of the Island
865 taking fuller and greater responsibility for its own affairs and represents a further constitutional
development on the part of the Island. This Bill also speaks to the international community and says
that we are a mature and responsible jurisdiction that is taking responsibility for more and more
aspects of our own good governance.

Mr President, the Bill has three clauses: clause 3 contains the detail as it inserts new sections 6A
870 and 6B into the Council of Ministers Act 1990. I will go into more detail about those two new
sections during the clauses stage of the Bill.

Mr President, Hon. Members, I have outlined the purpose and context of the Bill and now beg to
move that the Council of Ministers (Amendment) Bill 2019 be read for the first time.

The President: Miss August-Hanson.
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Miss August-Hanson: Thank you, Mr President.

I second, and I would also cite the level of importance of this piece of legislation in separating
powers between the judiciary and Government. And what I will say is that the principle itself of
judicial independence is one of the core values of any justice system.

880 Thank you, Mr President.

The President: Does any other Member wish to speak?

In that case, I put the question that the Council of Ministers (Amendment) Bill be read for the
first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

885 Hon. Members, that brings us to the end of the Order Paper. Our next sitting will take place on
Tuesday 7th May. I take the opportunity to wish Hon. Members a happy Easter recess.

The Council adjourned at 11.56 a.m.