



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 14th May 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.

Business transacted

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| Order of the Day | 345 |
| 1. Communications Bill 2018 – Third Reading approved as amended; Bill passed | 345 |
| 2. Council of Ministers (Amendment) Bill 2019 – Third Reading approved; Bill passed | 348 |
| 3. Town and Country Planning (Amendment) Bill 2019 – Third Reading approved; Bill passed. | 348 |
| <i>The Council adjourned at 10.50 a.m.</i> | <i>350</i> |

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

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

Members: Moghrey mie, Mr President.

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

PRAYERS

The Lord Bishop

Order of the Day

1. Communications Bill 2018 – Third Reading approved as amended; Bill passed

HM Attorney General to move:

That the Communications Bill 2018 be read a third time and do pass.

The President: Hon. Members, Item 1 on our Order Paper is the Communications Bill for Third Reading. I understand Hon. Member, Miss August-Hanson, has some amendments to be moved at the Third Reading stage and I call on her to move them. (*Interjection by the Clerk*)

10 I beg your pardon. Yes, Mr Attorney.

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

Before I move the Third Reading I would like to address some matters that were raised at the last sitting.

15 Mrs Lord-Brennan raised a query in relation to clause 112 of the Bill which addresses interference with public electronic communications network or service. Mrs Lord-Brennan asked whether interception of a message was caught by this legislation. I understand the question to be that if a message was to be intercepted but not modified or interfered with, would that be an offence under this Bill?

20 As I mentioned at the time, this is covered in separate legislation, the Interception of Communications Act 1988, which states:

... a person who intentionally intercepts a communication in the course of its transmission by post or by means of a [public] courier service or public telecommunication system shall be guilty of an offence ...

I can confirm that as interception itself is dealt with elsewhere, clause 112 is solely concerned with intentional modification or interference with that message and I trust that this clarifies the matter.

25 Mrs Poole-Wilson asked for more detail around the specification of periods for making representations. There are a number of instances in the Bill where the commission is required to specify a period in which a person may make a representation in response to an action or proposed action of the Commission. The Bill's provisions vary as to whether or not that time period for representation is specified in the Bill.

30 In relation to instances where a time period is not prescribed the short answer is that it would depend entirely on the prevailing circumstances. For example, there are instances where prompt action may be required in the interests of stakeholders, in which case a relatively short representation response time would be acceptable. On the other hand, there are other instances where an action may require a longer response period due to its complexity or scope. The Bill does
35 not prescribe time periods in all instances as it is important that the Commission has the discretion to address each case on its merits. The Commission must at all times specify a time period for representations when issuing a notice in a specific matter. That time period must be fair, reasonable and non-discriminatory.

40 There were some other queries from Mrs Lord-Brennan and Mrs Poole-Wilson around the funding and governance of the public service broadcaster and whether consideration had been given for addressing these issues further in this Bill.

45 As I have mentioned, the Bill primarily establishes a regulatory regime for the Commission. However, some provisions in the Bill address the recommendations made by the Tynwald Select Committee in March 2014. The Commission's primary role is to act as a content regulator for the broadcasters. It is generally accepted that it would be inappropriate for the Commission to be involved in determining what state funding would apply to a licence. It should not be the place of the Commission as an independent regulatory authority to make or contribute to determinations on Government policy as to how public funds are used.

50 The question of funding of the public service broadcaster is entirely one for Treasury with Tynwald approval. This reflects recommendation 4 in the 2014 Tynwald Select Committee that:

... any future public service broadcasting funding should be subject to periodical reviews based on reports to Tynwald and with Tynwald's consent.

55 Mrs Lord-Brennan asked whether there had been any consideration of a minimum period for the public service broadcasting licence. There was no consideration of a minimum licence duration, only of a maximum. The issue was not raised by any respondents by the consultation. The current licence was issued in 2015 for a period of 10 years. The next licence issued under this Bill may be for a further period of up to 10 years, as may subsequent licences. This allows for flexibility in an area which, as outlined by Council Members already, may change quite significantly in the coming years.

60 Finally, I would like to extend my thanks to Members. While there has been robust debate on a number of issues, the Commission's main concern is that this Bill and the important provisions it contains in the telecom space is one step closer to being enacted. I wish to record my thanks to Miss August-Hanson in particular for her interest in the Bill and to the Hon. Mr Henderson for subsequently acting as seconder.

I would now like to formally move the Third Reading of the Communications Bill 2018.

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

Miss August-Hanson: Thank you, Mr President.

There are a number of amendments now moving into Third Reading –

70 **The President:** Mr Henderson to second.

Yes, to formally second. I beg your pardon.

Mr Henderson: Yes, I beg to second.

The President: Miss August-Hanson.

75 **Miss August-Hanson:** Yes, thank you.

I know that these came through a little late in the day so I would like to apologise to Council Members for that. It was a bit unavoidable in terms of the resource in the Attorney General's Chambers, so yes, that is why that came through a little bit later in the day.

80 Basically we have amendments to clause 8, clause 36, clause 74 and clause 89, and those are due to amendments that were made to clause 152 by Mrs Kerry Sharpe MLC in the clauses stage of the Bill. I am more than happy if Members wish me to take them through those line by line and exactly what they might need, if necessary.

85 The amendment to clause 81 is essentially just something that I picked up in the clauses stage of the Bill with the drafter and we both agreed that it needed amending just so that the clause makes sense.

So I would just like to move each of the amendments in turn.

Thank you, Mr President.

Amendment to clause 8

1. Page 29, omit from the beginning of line 27 to 'appropriate,' in line 28.

Amendment to clause 36

2. Page 45, omit from the beginning of line 11 to 'appropriate,' in line 12.

Amendment to clause 74

3. Page 61, omit lines 34 to 36 (which constitute subsection (5) of the Clause).

Renumber the following subsections and adjust cross-references accordingly.

Amendment to clause 81

4. Page 67, line 8 at the beginning insert 'confirming'.

Amendment to clause 89

5. Page 75, omit from the beginning of line 1 to 'appropriate,' in line 2.

The President: Does anyone else wish to speak?

Do we have a seconder for the amendments?

90

Mrs Sharpe: Mr President, I beg to second.

The President: Mrs Sharpe.

In that case, Mr Attorney.

95

The Attorney General: If I can say very briefly, Mr President, that I am, and the Commission are, content with the proposed amendments.

100 **The President:** In that case we will move to a vote. I will put the amendments in their entirety as moved and seconded. Those in favour of the amendments, say aye; against, no. The ayes have it. The ayes have it.

The Third Reading then of the Communications Bill as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.

105

**2. Council of Ministers (Amendment) Bill 2019 –
Third Reading approved; Bill passed**

HM Attorney General to move:

That the Council of Ministers (Amendment) Bill 2019 be read a third time and do pass.

The President: We turn now to the Council of Ministers (Amendment) Bill Third Reading.
I call on the learned Attorney.

The Attorney General: Thank you, Mr President.

110 If I could firstly express my gratitude to Hon. Members for their support through the previous
stages of the Bill.

Briefly, the aim of the Bill has been to establish in the law of the Island the constitutional
principles of the rule of law and the independence of the judiciary. Having established those
principles, the Bill then places responsibility for upholding and supporting those principles upon the
115 Council of Ministers through the insertion of a new section 6A and 6B into the Council of Ministers
Act 1990.

Mr President, Hon. Members, the Bill before this Chamber is very short. However, that does not
mean that it is insignificant. The principles of the rule of law and the independence of the judiciary
lie at the heart of our democracy and underpin our freedom to enjoy our Island as a special place in
120 which to live.

The Bill also – and this is very important – represents another step in our constitutional
development as a responsible and mature jurisdiction that takes very seriously its own responsibility
for its good and peaceful government.

I would like to record my thanks to my hon. colleague, Mrs Poole-Wilson, for her contribution in
125 the passing of this Bill and to the Hon. Mr Cretney for his seconding the Bill at its various stages.

Mr President, I commend this Bill to Hon. Members and beg to move that the Council of
Ministers (Amendment) Bill 2019 be read for a third time and do pass.

The President: Mr Cretney.

130

Mr Cretney: Mr President, I am happy to second that.

The President: I put the motion that the Council of Ministers (Amendment) Bill be read for the
third time. Those in favour say aye; against, no. The ayes have it. The ayes have it.

**3. Town and Country Planning (Amendment) Bill 2019 –
Third Reading approved; Bill passed**

Mr Cretney to move:

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

135 **The President:** The Town and Country Planning (Amendment) Bill for Third Reading.
Mr Cretney.

Mr Cretney: Thank you, Mr President.

The Town and Country Planning (Amendment) Bill 2019 makes amendments to the Town and
140 Country Planning Act 1999. This Bill came to us for consideration in Council after significant

amendments from the House of Keys, and I think that these amendments made great improvement to the function and form of the Bill overall.

145 In order to remind Hon. Members here assembled, the Bill makes provision for, or amends, existing provisions for the following matters: national policy directives; development procedure orders, for the minor amendment to existing planning approvals; a mechanism for the referral of applications for planning approval to the Council of Ministers, which includes a definition of the term 'general importance'; power for a community infrastructure levy; bringing the basis for the Planning Committee into the Town and Country Planning Act 1999; the involvement of outside organisations – section 40 of the Act.

150 I would like to again state that I strongly encourage the Council of Ministers to move ahead and establish an advisory body under section 40 of the Town and Country Planning Act 1999. Valuable experience and skills are present in our community, and these need to be input into the strategic planning of our common future.

155 Once again I thank the Hon. Members of the House of Keys who provided amendments and constructively improved the Bill, and I thank the Hon. Members here in this Legislative Council who provided valuable contributions at the First Reading and clauses stages.

Mr President, I move that the Town and Country Planning (Amendment) Bill 2019 be read for a third time.

160 **The President:** Mr Crookall.

Mr Crookall: Happy to second, Mr President.

Mrs Lord-Brennan: I was going to second!

165 **Mr Crookall:** Oh, sorry.

The President: Thank you. Does any Member wish to contribute to the debate?
Mrs Maska.

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

I think this is a valuable opportunity in this legislation. Following on from the Chief Minister's statement on Friday where this Government has acknowledged that there is a climate change emergency, I think this Bill, when we look at it, offers a facility, especially under national policy directives, to address the issues of climate change; and built into that enablement in this Bill is the possibility or a mandatory capability of consulting with those that seem appropriate at the time.

175 In his statement, the Chief Minister referred to the carbon emissions being highly identified with residential development and I think again we have a capability of changing emphasis, and I think emphasis has to shift from building just new properties on greenfield sites with the initiatives that the Chief Minister has in mind. There is a strong capability now of looking at retrofitting existing buildings reminding ourselves of the carbon emissions that are already built into the fabric of our built environment. I see this rather as we should not be opposed to this legislation, this is a greater capability of enabling us to be more nimble and addressing the climate change issues that face us.

185 So I welcome this even more in this sitting and I thank the Hon. Member for bringing this forward.

Thank you.

The President: Thank you.

Mr Cretney.

190 **Mr Cretney:** Just to thank the Hon. Member for her contribution throughout. Her interest is well-known in the subject matter, which is of great importance to the Island in the future and perhaps

195 even more so given comments that are currently being made by various politicians. Let's hope that those comments turn into reality (**Miss August-Hanson:** Hear, hear.) and I thank the Hon. Member for her contribution today and beg to move that the Third Reading of the Bill be passed.

The President: Thank you, Mr Cretney.

200 The motion is the Town and Country Planning (Amendment) Bill be read for the third time. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business this morning. Council will now stand adjourned until the next sitting which will take place on Tuesday, 21st May at 10.30 a.m. in Tynwald Court.

The Council adjourned at 10.50 a.m.