



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 22nd October 2019

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Present:

The President of Tynwald (Hon. S C Rodan OBE)

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, 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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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, Eaghtyrane. Good morning, 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 the Hon. Member of Council, Mr Crookall, who is attending the British-Irish Parliamentary Assembly in Warwick.

Welcome to Members of the Powers and Privileges Committee of the National Assembly of Kenya

10 **The President:** It is my pleasure to recognise visitors from the National Assembly of Kenya. Members of the Committee of Powers and Privileges and the leader of the delegation, Hon. Peter Mwathi. You are most welcome and I trust you will enjoy your study visit to Tynwald.

Members: Hear, hear.

1. Questions for Oral Answer

ATTORNEY GENERAL

1.1. Legislation Programme 2019/20 – Consultation upon Bills

The Hon. Member of the Council, Miss August-Hanson, to ask HM Attorney General:

How many of the Bills listed in the Legislation Programme 2019/20 [[GD No 2019/0051](#)], (a) have been consulted upon; (b) are being consulted upon; and (c) will be consulted upon?

15 **The President:** Item 1 on the Order Paper, Questions for Oral Answer. I call on the Hon. Member of Council, Miss August-Hanson. Question 1.

Miss August-Hanson: Thank you, Mr President.

20 I would like to ask Her Majesty's Attorney General how many of the Bills listed in the Legislation Programme 2019/20 have been consulted upon; are being consulted upon; and will be consulted upon?

The President: I call on Her Majesty's Attorney General to reply.

The Attorney General: Thank you, Mr President.

25 I regret it is not possible to give a simple numerical answer to each of the limbs of the Hon. Member's Question, not least because in some cases the decision on whether to consult, and if so, how to consult, has not as yet been taken.

30 The Government's policy on consultation is set out in GD 2017/0061, entitled 'Principles of public engagement and consultation'. Paragraph 6 of that document sets out the following principle – this is headed, 'Use suitable methods to deliver the consultation', and it reads:

- Make sure consultations have the right resources and support to be effective.
- Consider the types of stakeholder and how best to engage with them at an early stage as additional resources may be required.
- Use a mix of written consultation documents and face to face events.
- Use informal methods of consultation where appropriate – email, public meetings/ drop-ins, focus groups, and surveys. Avoid any disproportionate costs to the Government or stakeholders.

It is thus apparent, Mr President, that consultation takes a number of different forms. Having said that, I shall explain the position on each of the Bills listed in the programme so far as it is currently known.

35 Of the Bills listed in part 1 of the Legislation Programme, all have been the subject of consultation, either targeted or public, except: (1) the Limitation (Childhood Abuse) Bill, which began life as a Bill appended to a Committee Report; (2) the Regulation of Care (Amendment) Bill, which is a Bill aimed at curing a single small issue within the original legislation which needs to be resolved in order to avoid the Department of Health and Social Care having problems with the provision of hospital staff from the UK; (3) the Douglas Bay Tramway (Amendment) Bill,
40 which makes amendments in connection with the assumption by the Department of Infrastructure of the functions of the promoter of the tramway from Douglas Borough Council; (4) the Registration of Business Names (Amendment) Bill, which regularises an existing practice in relation to business names used by companies formed under the Companies Act; (5) the Administration of Justice and other Amendments Bill, which will be the subject of consultation
45 once it is complete; and then finally, (6) the Medicines (Amendment) Bill which urgently seeks to fill a lacuna in the legislation on supply of medicinal products otherwise than on sale.

It is possible that the subject matter of the International Maritime Standards Bill will be dealt with by means of secondary legislation. If it is not, there will be a need to consult on it.

50 Of the Bills in the second list, there has already been public consultation on the Competition Bill and the two electoral Bills, and there will need to be such consultation on the International Co-operation (Protection from Liability) Bill.

Consultation on the principles of the legislation has already occurred on the Rating and Valuation Bill.

55 The form of consultation on the climate change proposals has not yet been decided, but there is clearly intended to be a consultation on the subject.

All the other Bills in the second list will be the subject of consultation, apart from possibly the Public Sector Payments Bill. It is currently too early to state the position definitively on these Bills, except where consultation has not already occurred.

60 Mr President, I have by reference to the – I believe it is published – list of Bills prepared a table, which I will circulate to Members after the sitting if I may. That sets out the position as I have explained.

Thank you.

The President: Supplementary question, Miss August-Hanson.

65

Miss August-Hanson: No, that is quite all right, thank you.

I would like to thank Her Majesty's Attorney General for his forthrightness and also for his helpfulness in providing the table for Council Members.

The following information was later provided by the Attorney General:

**Consultation on Bills in the Legislative Programme 2019-20:
Background note on the Answer to Question 1 on the Order Paper**

Bill	Consultation position and other background information	Consultation?
Limitation (Childhood Abuse) Bill	This Bill was produced originally at the request of a Tynwald Committee, so has not been the subject of consultation.	No
Education Bill	DESC conducted an extensive public consultation on this Bill	Yes
Regulation of Care (Amendment) Bill	No consultation — purely technical Bill making minor adjustments	No
Children and Young Persons (Amendment) Bill	Deals with the establishment and powers of the Child Death Overview Panel. The concepts in the Bill were the subject of consultation in the context of the Safeguarding Bill and as a result of an undertaking given during the passage of that Bill, fresh provisions were drafted in the form of the present Bill, which has not been the subject of separate consultation.	Yes (as part of another Bill)
Domestic Abuse Bill	DHA have consulted widely on this Bill.	Yes
Douglas Bay Tramway (Amendment) Bill	As this Bill is to place on a proper footing the operation of the Tramway by DOI without substantive change, no consultation has taken place.	No (internal consultation only)
Road Traffic Legislation (Amendment) Bill	DOI consulted on the provisions of the original 2016 Bill. This Bill simply resurrects those provisions.	Yes
Administration of Justice (Miscellaneous Provisions) Bill	There was public consultation on the original proposals which appeared in a Bill of a different title, and there have been targeted consultations with the Law Society and the judiciary on this Bill. This present Bill is predominantly concerned with the machinery of justice.	Yes (both public and targeted)
Income Tax Bill	The Bill gives effect to two temporary taxation orders. Whilst it has not been the subject of consultation itself, there has been some consultation in relation to the underlying policy proposals. There was targeted consultation on the proposals in relation to the requirement to have a substantial economic connection with the Island for tax purposes. The Economic Policy Review Committee recommended making periodic payments of damages for personal injury tax-free. There has been no consultation on this aspect.	Yes (underlying proposals – in part)

Financial Intelligence (Amendment) Bill	The purpose of the Bill is to increase the independence and autonomy of the FIU in accordance with principles published by the Egmont Group.	Yes (targeted)
Registration of Business Names (Amendment) Bill	This is a minor technical Bill addressing an obvious lacuna in the existing legislation and which simply regularises existing practice. No consultation has been or will be undertaken.	No
Contempt of Court Bill	There has been public consultation on this Bill.	Yes
Statute Law Revision Bill	This Bill will make only minor and technical corrections to statutes. It is not envisaged that there will be any consultation on it other than with interested stakeholders,	No
Rating and Valuation Bill	There has been extensive consultation on the principles which the Bill will enact.	Yes (principles)
National Health and Care Bill	It is envisaged that there will be a public consultation on this Bill.	Yes
Climate Change Bill	It is envisaged that there will be a public consultation on this Bill	Yes (possibly on the principles of the Bill)
Licensing Bill	It is envisaged that there will be a public consultation on this Bill.	Yes
Trusts (Amendment) Bill	This Bill makes a number of discrete changes to trust law.	Yes (both public once the Bill is completed, and also targeted consultation as the Bill evolves)
Public Sector Payments Bill	Not yet consulted on (because a replacement Bill will be required once Department has decided on desired content).	Probably: this depends on the extent to which the Bill is revised.
Competition Bill	Public consultation has taken place	Yes
Landlord Registration (Private Housing) Bill	It is envisaged that there will be a public consultation on the Bill.	Yes
Estate Agents (Amendment) Bill	There will be a public consultation on this Bill.	Yes

1.2. Government's legislative programme – Drafting resources

The Hon. Member of the Council, Miss August-Hanson, to ask HM Attorney General:

Whether sufficient drafting resources are in place to deliver the Government's legislative programme?

The President: Question 2. Miss August-Hanson.

70

Miss August-Hanson: Thank you, Mr President.

I would like to ask again Her Majesty's Attorney General whether sufficient drafting resources are in place to deliver the Government's legislative programme?

75

The President: Learned Attorney to reply.

The Attorney General: Thank you, Mr President.

The current legislative programme is demanding, but I believe that it is manageable within the recently bolstered resource levels that I have in my legislative drafting team.

80 The current strength of the legislative drafting team within my Chambers is the equivalent of 4.2 full time drafters. Under normal circumstances this resource should be sufficient to deliver the Government's legislative programme. However, the legislative schedule for this parliamentary year is busier than for many years; but in the view of the team it is still manageable, providing clear instructions for the relevant Bills are delivered in reasonable time.

85 It has to be recognised, Mr President, that the delivery of the programme is a team effort between Departments and my Chambers and that this requires co-operation and active input from the sponsoring Departments, including their officers and their political masters, to provide clarity over the direction which a Bill is to take and what it is and is not intended to cover. Although drafting is by definition an iterative process, the number of iterations can be reduced if
90 the objective is clearly defined and expressed at the beginning of the process.

The recent arrival of legislation support officers from two Departments into Chambers means that there is now a possibility for much closer working between the drafters and those instructing them on behalf of those Departments, and that should improve communications and therefore the speed with which Bills can be delivered. Providing improved access to drafters
95 should also improve the quality of the Bills.

Thank you, Mr President.

The President: Supplementary.

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

I would just like to ask Her Majesty's Attorney General: with the 33 Bills that are suggested and then we have seen a plus one with the Mental Capacity Bill as well, what influence do the Attorney General's Chambers have in terms of prioritising their workload with those that that
105 arrange or prioritise Government's legislation?

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

110 The issue or the question of priority is a matter which is settled by the Legislative Sub-Committee of the Council of Ministers. I attend those meetings and if we are asked to achieve the impossible, I make the position quite clear.

So we do have an input into the management of priorities, but the actual decision is with that Sub-Committee.

115 **The President:** Supplementary, Mr Cretney.

Mr Cretney: Yes, if I could ask Her Majesty's Attorney General the same question I put to the political representatives and that is: does he agree with me that it is the quality of the legislation and the scrutiny it receives, rather than the quantity, that is the most important matter here?
120

The President: Mr Attorney.

125 **The Attorney General:** Yes, I entirely agree, Mr President, with the comment by my hon. friend. We have got to be very careful that we do not get overtaken by demand to just simply deliver a vast number of Bills. We have got to have a careful eye on the scrutiny and the quality of what is produced and it is very much with that in mind that I have been promoting the move of the various Departments' legislation support officers into Chambers, so that we can break down some of the barriers which existed previously, so we can hopefully speed up and improve quality.

130 **The President:** Supplementary, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you Mr President.

I would like to ask Her Majesty's Attorney General, just picking up on that point about the move of legislation officers into the Attorney General's Chambers, what the implications are both in terms of the ability to deliver primary legislation but also the implications for any secondary legislation drafting and scrutiny.

The President: Mr Attorney.

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

Clearly what I focused on at the moment, in answer, Mr President, was dealing with the issue of the primary legislation. But as far as the secondary legislation is concerned, working much closer with the legislation support officers from the Departments gives Chambers the opportunity of having a greater input and, more importantly, there is greater accessibility for those drafting the legislation to call upon the advisory lawyers within Chambers at an earlier stage.

The current process where the secondary legislation is drafted by the Departments and their legal support officers and then sent in to us, very much usually at the last minute, for review does not work. It is hopeful that by having those officers in Chambers now that will help improve firstly the scrutiny of what is being done and secondly, improving the quality.

The scrutiny with reference to that legislation by Hon. Members is another matter which is out of my control.

Mrs Poole-Wilson: Thank you.

155

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I would like to ask Her Majesty's Attorney General if he knows when the Legislation Programme for 2019-20 will be published on the Government website.

The President: Mr Attorney.

The Attorney General: Mr President, unfortunately I do not know the answer to that. It is not one of the roles that I am responsible for, but I will certainly make enquiries. It should be published.

The President: Miss August-Hanson.

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

I would just like to ask Her Majesty's Attorney General if he might clear something up for me. I am hearing that there was some legal advice that was being sought on the Communications Bill being the reason why it has not entered into Keys this time around. I was wondering if there is any truth in that.

175

The President: Mr Attorney, if you are in a position ...

The Attorney General: Mr President, I have no knowledge of that. I can say, I have not been asked for advice. That is a fact. Thank you.

180

Miss August-Hanson: Thank you.

HEALTH AND SOCIAL CARE

**1.3. Adoption and fostering –
Legislation to be brought before Branches**

185 The Hon. Member of the Council, Mrs Lord-Brennan, to ask a representative of the Department of Health and Social Care:

When legislation on adoption and fostering will be brought before the Branches?

The President: We turn to Question 3. Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

190 I would like to ask the Hon. Member of Council, Mrs Sharpe, as the representative of the Department of Health and Social Care, when legislation on adoption and fostering will be brought before the Branches?

The President: I call on a representative of the Department to reply. Mrs Sharpe.

195

Mrs Sharpe: Thank you, Mr President, I thank the Hon. Member for her Question.

Mr President, the Adoption Bill is on the legislative programme and is expected for progression through drafting during the period of October 2019 to June 2020, with the aim to introduce it before June 2020. The Bill predominately updates adoption law on the Island with some reference to fostering.

200

Drafting instructions for the Bill have now been finalised and the Department is in the process of approving the instructions so they can be submitted to the Legislative Sub-Committee for their meeting on 25th October 2019. The Department requires the Legislative Sub-Committee's approval to send the drafting instructions to the Legislative Drafting Division of the Attorney General's Chambers.

205

The Bill will then be drafted by the Attorney General's Chambers, following which steps will be taken in order to follow due process to ensure that the Bill is given the necessary scrutiny both within Tynwald and by the public to ensure it is fit for purpose. Both processes will take some time.

210

Although the Department cannot say with complete certainty how long it will take to draft the Bill or whether the results of the Bill will need any further consultation, we do hope it will be introduced before June 2020.

Thank you.

215

The President: Supplementary.

Mrs Lord-Brennan: Thank you, Mr President.

Would the Hon. Member be able to give a brief summary of the sorts of issues that the Bill would be trying to resolve?

220

Mrs Sharpe: Yes, certainly.

Just speaking very broadly, one of the issues that the Bill seeks to resolve is the fact that currently, it takes a long time to achieve permanence for a child. It can and it does take years. This is not good for the child or the prospective adoptive parents and sometimes also the birth parents. So this Bill will address the detrimental length of time which care and adoption proceedings take.

225

It will also ensure that adoption legislation links to the making of a care order in the Children and Young Persons Act 2001, which would avoid delay in adoption court processes.

230 It will address the lack of synchronicity in arrangements for children adopted on the Island from the UK.

Another important factor is that it will introduce statutory support for adopted children and adoptive parents, after adoption.

And finally, and essentially, really, it will put the rights of the child at the centre of the adoption process and introduce more long-term considerations.

235 Thank you.

The President: Mrs Poole-Wilson, supplementary.

Mrs Poole-Wilson: Thank you, Mr President.

240 I would like to ask the Hon. Member of Council just to clarify that she did say the intention at the moment is for an Adoption Bill to come within the current legislative year. So before June 2020 and that at the moment, though, it is not listed on the published list of legislation so it would be an additional Bill, in addition to the items already on the legislative programme. I wonder if she could just clarify that please.

245

The President: Mrs Sharpe.

Mrs Sharpe: I understand that it *would* be an additional Bill.

250 **The President:** Any further supplementary questions?

Mrs Maska: Yes, please, Mr President.

The President: Yes, Mrs Maska.

255

Mrs Maska: Given the information we have received to the Hon. Court today in terms of drafting capability, are we confident that if an additional Bill is being progressed that we do have the drafting capacity to address this?

260 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I believe so, but I do have members from the legislative team in the Chamber and perhaps they could give some further details – with your permission, Mr President?

265

The Attorney General: I think ...

The President: Mr Attorney.

270 **The Attorney General:** Yes, if I could possibly address that issue. I have already addressed and made a comment with reference to the question of priority. Clearly, the Legislative Sub-Committee of Council of Ministers will have to consider when it receives the paper on 25th October where this will slot in. My honest belief, talking to you today, is that we should be able to meet that timetable, even in the context of the work that we are already undertaking. A lot of work has been carried out by the legislative support team, who are present today, in preparation for the draft Bill, but of course that is a matter we will have to consider in the round with the Council of Ministers' Sub-Committee in due course. But I am hopeful. I cannot say more because I cannot commit, because I do not set the priority of Bills.

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

Miss August-Hanson: Thank you, Mr President, and with your permission, might I address Her Majesty's Attorney-General? Might I ask him a question?

The President: Yes.

285

Miss August-Hanson: Thank you, Mr President. I apologise.

I have had some level of conversation with those who are on the Legislative Sub-Committee regarding the amount of legislation that we have coming through, and there appears to be a number of pieces of legislation that perhaps are not on the legislative programme that are not in this 33 mix – like the one that we have just talked about and like, for example, the Mental Capacity Bill, that will require a substantial amount of drafters' time.

290

Just to lodge my concern, I suppose, for you and your team: is this definitely ... with there being pieces of legislation that are not actually before us, that we do not know about, do we have the resource for this?

295

The President: Hon. Member, we are straying beyond the particular Question that is before us and it is covering material in earlier Questions.

But I invite the Attorney to respond at his discretion.

300

Miss August-Hanson: Thank you, Mr President.

The Attorney General: Mr President, I am more than happy to be as helpful to Hon. Members as I possibly can. I have answered the question with reference to the resources which we have. What we should not do is to fall into the trap of trying to micromanage how we actually get to a conclusion here, because I am very mindful of what the Hon. Member, Mr Cretney has mentioned: we have still got to keep a weather eye on the quality and proper scrutiny of the legislation that we bring forward.

305

I can only assure Hon. Members, I will do my best, I will go back, we will talk to the team. We will see what we can slot in, and we should be able to – I am hopeful – bring this Bill forward within that time limit. That is following my meeting with the Chief Legislative Drafter this morning.

310

But I have got to add a word of caution: we do not know what is going to happen – and I am going to use the horrible word, 'Brexit', and what demands are then going to be made on us to act very quickly there. The Council of Ministers may set further overarching priorities for us.

315

But if I can give you some comfort again, if we do get our back up against the wall, so to speak, I have on occasions gone out and brought external drafters in. So I have got an external drafter working on the Education Bill. But there has got to be a good case for that and I am not going to pre-empt now whether we might need to do that.

Looking at what we have got on the agenda at the moment, we are relatively confident, with the support of the legislation support teams across the various Departments, that we can meet that programme. From my discussion this morning, I believe honestly that we can also bring in the Adoption Bill, provided we are not side-tracked and provided Council of Ministers does not actually impose any further priorities on us.

320

325

The President: Mr Attorney.

Miss August-Hanson: Thank you, Mr Attorney.

The President: Thank you, Hon. Members. We move on.

330

Can I say, I do welcome the tabling of parliamentary Questions in this place, as it does further emphasise the value of the scrutiny work undertaken by the Legislative Council. So this is to be welcomed.

Order of the Day

2. Regulation of Care (Amendment) Bill 2019 – First Reading approved

Mrs Sharpe to move:

That the Regulation of Care (Amendment) Bill 2019 be read a first time.

The President: Item 2, Regulation of Care (Amendment) Bill, First Reading. Hon. Member, Mrs Sharpe.

335

Mrs Sharpe: Thank you, Mr President.

Hon. Members, I am pleased to move the First Reading of the Regulation of Care (Amendment) Bill 2019.

340 The Regulation of Care (Amendment) Bill 2019, which I will refer to as ‘the Bill’, is receiving its First Reading in the Legislative Council rather than another place for the following reasons. Firstly, it is to ensure that there is a fair balance of Bills between the Branches. This, it is hoped, will prevent another place from becoming unnecessarily overloaded, to prevent delay in the progression of legislation. Secondly, the Bill is purely technical in nature and no change in policy is being effected.

345 The Bill amends the Regulation of Care Act 2013, which I will refer to as ‘the Act’, which makes provision for the registration and regulation of care services and consequently the Employment Agencies Act 1975. Section 52 of the Act makes it an offence for a person to carry on an independent medical agency or a nurses’ agency unless they are registered with the Department of Health and Social Care, which I will refer to as ‘the Department’, in accordance with the provisions of the Act.

350 The Department is introducing this Bill to amend the definitions of ‘independent medical agency’ and ‘nurses’ agency’ in sections 28 and 29 respectively of the Act. The Bill will exclude from the definitions of an independent medical agency and nurses’ agency businesses supplying or introducing doctors, nurses and midwives solely to the Department. The exclusion of those businesses from the definitions will ensure that the Department retains the ability to recruit essential temporary medical staff, who will help provide vital health and care services on the Island. Without the amendments proposed in this Bill, the requirement for those agencies to register with the Department would remain.

360 To give some background to this, it was never the intention of the Act to capture businesses that supply and introduce nurses and doctors solely to the Department. This anomaly was recognised by the Department, with assistance from the Attorney General’s Chambers, when work was being undertaken to establish a framework for employment agencies supplying staff. As this anomaly has only recently been highlighted, the Department has not historically required such businesses to register and nor would it wish to. The Department already requires agencies supplying staff solely to the DHSC to register with the Registration and Inspection Unit. It would be highly likely that the registration process and associated fee would deter such businesses from operating on the Island.

365 Many of these businesses have an established longstanding relationship with the Department. It would be a considerable risk if the Department were to now enforce the registration requirement. Any such action could lead to a significant shortage of essential health care workers, which would in turn hinder the Department’s ability to provide vital health care services.

370

375 Hon. Members will be aware that one of the five themes of the Programme for Government 2016 to 2021 is a Healthy and Safe Island, two outcomes of which are to improve services for people who really need care in hospital, and to work to ensure that everyone receives good-value health and social care services. In the Department's 'Health and social care in the Isle of Man – the next five years', the third strategic goal is to improve services for people who really do need care in hospital; and the fifth strategic goal is to ensure people receive good-value health and social care.

380 Mr President, I beg to move that the Regulation of Care (Amendment) Bill 2019 be read for the first time.

The President: Miss August-Hanson.

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

The President: Mr Henderson.

Mr Henderson: Thank you, Eaghtyrane.

390 I would just like to clarify from the Hon. Member: what it seems to me to be doing in a brief overview is rectifying a situation with recruitment agencies. (**Mrs Sharpe:** Yes.) Basically – so that they do not fall foul of trying to be professionally registered, in other words, and they can, as would doctors and nurses, apply to the Department's register anyway in a registration process, so that they can actually carry on being a recruitment agency, trying to recruit staff at the request of the DHSC – in loose terms.

395

Mrs Sharpe: I am wondering if the Hon. Member, Mr Henderson, would mind just summing up his last statement please.

400 **Mr Henderson:** Yes, I am just clarifying basically that we are dealing with predominantly recruitment agencies that the Department use to recruit staff from. The current position is that there is a potential through the current legislation that they have to somehow register with the Department under the Regulation of Care Act, say as a chiropractor has to. And in reality, there is no need for them to do this at all because they are a private employment agency that undertakes recruitment.

405

Mrs Sharpe: That is correct, Hon. Member, and also if they are supplying staff solely for the DHSC, they have to register anyway.

410 **Mr Henderson:** Right, okay. Thank you.

The President: Mr Cretney.

415 **Mr Cretney:** Yes, I am sure that this is an acceptable move. Just for clarification, this would not affect in any way the fact that the Department would be able to check out the validity of any professional people who want to be used by the Department, by not requiring them to register?

And secondly, I just express a little concern about the use of agencies, inasmuch as there have been a number of social workers used by the Department who have had no knowledge or little knowledge of Isle of Man legislation, and this is a concern sometimes.

420

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

425 To answer the Hon. Member, I understand where he is coming from with his first question
and that was also a question which I had. But there is no way that this Bill would in any way,
shape or form affect the registering of the agencies, which need to register with Registrations
and Inspections anyway.

As far as agency staff are concerned, it is true that we, as a Department, are trying to reduce
use of agency staff but agency staff may ... There is always a need, for example, with private care
430 homes, etc. for private agency staff.

Thank you.

The President: Mrs Maska.

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

Again for clarity really from the Hon. Member. I do share my colleague, the Hon.
Mr Cretney's concerns about the scrutiny of qualifications of medical practitioners, who would
be coming to work on the Island. I wonder if the Hon. Member could clarify what the current
position is: are the agencies that we are talking about all based off Island? Are some on Island?
440 And given that there has been no deemed requirement for a consultation, has there been any
engagement with those stakeholders who are engaged in this process at the moment and how
that might affect them?

Thank you, Mr President.

445 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

There has been no consultation, because this Bill will not actually cause any difference in the
mechanisms which are already in place. The Bill is very technical in nature and it is just rectifying
450 an anomaly in an existing Act.

Mrs Maska: Thank you, Mr President.

The President: Mrs Poole-Wilson.

455

Mrs Poole-Wilson: I wanted to actually just put on record and reflect on the fact that even
though this is a technical change to correct an anomaly, the impact assessment that has
accompanied the Bill, setting out the different options that were considered to correct this
anomaly, I have found to be extremely helpful so that we have understood why this has come
460 before us as primary legislation, as opposed to any of the other options. I just wanted to put that
on record and see if the Hon. Member wanted to make any comment on that, but I suppose I
would express that I would hope to see more impact assessments of this nature coming forward
to assist in the scrutiny of legislation and the options and direction that has been chosen.

Thank you, Mr President.

465

Mrs Maska: Hear, hear.

The President: Mrs Sharpe.

470 **Mrs Sharpe:** Yes. Thank you, Mr President.

I would agree with the Hon. Member. I think that, clearly, to have this impact assessment
takes you through the thought processes which have led to this decision and that is very useful
to understand.

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

Miss August-Hanson: Thank you, Mr President.

I would just like to ask the Member moving the Bill – and accepting that it is well within the right of Legislative Council to receive Bills before Keys – but I wondered if perhaps you might be able to explain why this particular piece of legislation, in its technical nature, has been received
480 by Legislative Council first before having gone to the policymakers before – usually seeing that we might see it following that.

The President: Mrs Sharpe.

485 **Mrs Sharpe:** Thank you, Mr President.

To answer the Hon. Member, it was felt that once this anomaly had been spotted, it really did need to be dealt with as soon as possible because the Department did not wish there to be a situation whereby agencies which have been supplying staff solely to the DHSC would suddenly have to register under this Act and pay fees, as this could put agencies off and the Department
490 relies on agency staff at the moment.

Also, it was felt that because it was purely technical in nature, it could perhaps pass more swiftly through if it started its life in Legislative Council, especially at the moment in this current climate where we are not swamped with legislation.

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

The President: Thank you. Mrs Lord Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I am taking the introduction of the Bill to Legislative Council absolutely at face value as an opportunity to rectify a single small issue as it was described by the learned Attorney and also explained by the hon. mover. I actually think it is quite helpful, when there are these things identified, if it is thought a useful and helpful function of the Legislative Council to be able to fix
500 a piece of legislation where it is known that it is something that is not actually a policy question, but something that has gone awry and needs to be corrected. I think that is a useful function that we can play.
505

I also welcome the impact assessment very much: that can help guide us in what we are doing and where we should look to for the level of appropriateness, in terms of the other options considered.

I did actually speak to the Member who was the Minister at the time of when the original Regulation of Care Act 2013 passed through the Branches. It was a very substantial piece of legislation at over 100 pages long. These things will happen and actually if there is a role that we can play to aid the other place and get things going, I am satisfied that we do that here and I welcome all the information that has been provided.
510

515 Thank you, Mr President.

The President: Mrs Sharpe, you may reply to the debate if you wish.

Mrs Sharpe: Thank you, Mr President.

520 I thank Hon. Members for their contributions. I think that the Bill is very short in nature and I do not really have anything further to add, other than to thank Hon. Members for their understanding.

Thank you.

525 **The President:** Hon. Members, I put to Council the question that the Regulation of Care (Amendment) Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**3. A Bill to remove the Attorney General's right to move motions or amendments –
Leave to introduce –
Motion withdrawn with leave of the Council**

Miss August-Hanson to move:

That leave be given to introduce a Bill [to amend the Isle of Man Constitution Act 1971] to remove the right of the Attorney General to move a motion or amendment in the Legislative Council or in Tynwald Court; and for connected purposes.

The President: Item 3, Leave to introduce. Miss August-Hanson to move.

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

I would like to move that leave be given to introduce a Bill to amend the Isle of Man Constitution Act 1971 to remove the right of the Attorney General to move a motion or amendment in the Legislative Council or in Tynwald Court; and for connected purposes.

535 **The President:** Just before we move on, I just want to clarify the text of the wording. I understand the phrase 'to amend the Isle of Man Constitution Act 1971' was subsequently taken out of the motion.

Miss August-Hanson: Yes, there has been some confusion in relation to all this.

540

The President: So it is important for the record that we get the wording correct.

Miss August-Hanson: That is fine, yes. Thank you.

545 **The President:** So with that in mind, do I have a seconder?

Mrs Sharpe: Yes, Mr President.

The President: Mrs Sharpe.

550

Mrs Sharpe: For the purposes of debate, I am happy to second and reserve my remarks. Thank you.

The President: Thank you.

555

Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, Mr President.

I would like to thank the hon. mover for raising this motion with me in my capacity as Chair of the –

(The President consulted the Clerk.)

560 **The President:** I beg your pardon, I should have invited you to come back. I thought you had formally moved it, Miss August-Hanson. You can make your case now.

Miss August-Hanson: Thank you, Mr President, and I apologise to my colleague in Council, Mrs Poole-Wilson for the confusion there.

565

I do have a speech and I hope that I can beg patience of Legislative Council Members, my colleagues on Council in hearing this.

570 Removing the right of Her Majesty's Attorney General to move a motion or amendment in Tynwald and the Legislative Council: to begin, may I make a statement of fact that this motion is most certainly not a reflection of my views relating to the capability, and the very high degree of professionalism, from Her Majesty's current Attorney General, but is instead a reflection of a mood by some Members of Tynwald Court, myself included, on the role of the AG, and his powers as a Member of our parliament.

The Attorney General's Chambers states that the role of HM Attorney General consists of, and I quote:

Providing legal advice to the Lieutenant Governor, the Council of Ministers, Government Departments, Statutory Boards and Offices within Government; representing those persons and bodies in Courts and Tribunals when taking legal action on their behalf and defending the same against civil actions brought against them. The role also involves supporting Government Departments, Statutory Boards and Offices with procurement advice, administration and drafting of tenders and negotiation of contracts.

575 So, what does my motion mean?

Here, I seek leave to develop a Private Member's Bill to address the AG's promotion of Bills as an *ex officio* Member appointed by the Crown; moving motions, moving Government amendments, and seconding Government amendments in parliament. I have been looking at this intermittently, for some time, and I feel it is right and proper to bring it to my hon. colleagues in Council for debate.

580 There have been questions as to whether or not the impartiality of the Attorney General's Chambers can be relied upon when parliamentarians are moving amendments to legislation. This is evidenced by the sharing of amendments by drafters with Government officers before they are signed off, and drafters refusing to aid parliamentarians in producing amendments that do not follow the line of the Government Bill in its Branch-ready form.

590 That drives the concern that if the Attorney General is instructed by a Department, Board or Office of the Isle of Man Government to move a Bill in Legislative Council, that individual may be under a conflict of interest – duty bound to put forward the best case for the approval of a Bill. Might this conflict with the ability to provide impartial advice about that legislation during debate? If a change is suggested, would the Attorney General be supportive or not?

That political impartiality is in principle underpinned by there being no vote for the Attorney General; but in putting forward a motion, does that post-holder have a preference as to how other Members place their votes?

595 There are two ways that Mr Attorney General might move a piece of legislation in our Branch: (1) that it has been brought about in response to a need not satisfied by our statutory framework, brought to light by the judiciary or prosecutions, or if the drafters found some technical anomaly that catalyses fixtures of past mistakes; or (2) because the post-holder has been told to do so by the executive and can provide no good reason to turn it down, should the executive reassure them that it is not political. We have a number of pieces of legislation that have indeed *become* political as they travel through the Branches – the Communications Bill, for example; the Equality Bill.

600 Why am I questioning this ability to provide the executive with a convenient solution? Does it outwardly look like the Attorney General approves of these Bills? He is promoting them. Is he an expert on the matter? He has advised the executive on legal matters, and his drafters have written them. Is the Attorney General duty bound to put forward the best possible case for the approval of that Bill?

605 Looking to the history, there was a time for heritage and a time for revestment. Legislative Council was once a place for bigger beasts – the power base; a place for policymaking and shared rule.

610 There is no founding document that states that the Attorney General might move motions or amendments in Council or in Tynwald. It is instead laid out in a history of custom, practice and precedent.

615 Though the role was created in the early 1400s by the ruling family to aid captains and lieutenants to oversee administrative duties and manage domestic governance, in 1765 to 1919, it is first recorded that the Attorney General has a seat on Legislative Council. The commission reported to George III on the Constitution in 1792 the following:

That; 'the laws and ordinances that were enacted in the Island during the fifteenth and sixteenth centuries, appear by the Manks Statute Book, to have been prescribed by such different powers, or combinations of power, that as precedents of the exercise of Legislative Authority, they can have but little weight'

Subsequent to this period was established the more regular mode of legislation, which subsisted at the time of revestment; and from the beginning of the last century, with few exceptions [...], the legislative authority of the country has been vested in the Lord Proprietor, the Governor and Council, and the Twenty-four Keys.

When these three estates, or the two latter of them, were assembled, they were called the Tynwald Court; and by the joint concurrence of these three branches of the Legislative power of the Island, the laws which governed its inhabitants were enacted.

[...]

With respect to the persons who composed, and had a right to a seat and voice in that Council, which, together with the Governor, formed the second branch of the legislative power in the Island, various opinions have been offered ...

620 The report goes on to specify the composition of Council according to the Deemster, the Clerk of the Rolls, and finally, the Attorney General. All three accounts include the Attorney General as having a 'right to a seat and voice', though each account is different.

625 In 1887, the Attorney General moved the Poor Relief Bill, and in 1888, the Second Reading of the Local Government (Theatres) Bill. It was at a time when Deemsters could also move legislation. Deemster Drinkwater moved another Local Government Bill the following year, and the same year the Vicar General moved the Second Reading of the Douglas and Laxey Railway Bill.

Following the reforms of 1919, the Attorney General continued to move legislation as a Member of Legislative Council, like the First Reading of the Pharmacy and Dangerous Drugs Bill in 1921. And from 1971 to present, we follow the Isle of Man Constitution Act 1971 by approval of Her Majesty, the Lord of Man. The Isle of Man Constitution Act 1971 states:

The Attorney General shall cease to have the right to vote either in Tynwald or the Council, but he shall continue to be a member of both such bodies with, save as aforesaid, the same rights to speak therein as heretofore.

630 Let's dig deeper into the words: 'with, save as aforesaid, the same rights to speak therein as heretofore' are significant. The 'rights to speak as heretofore' are taken to include the right to move motions – although they are not laid out in that fashion.

635 In 1972, the Attorney General moved the Recognition of Divorces and Legal Separation Bill. No one queried that right. Why deprive him of his right to vote, though, but not to move motions?

So enough of the history lesson – back to the present day. Her Majesty's Attorney General has a complex and multi-faceted role. It is a busy Chambers, as we know and, as we have heard this morning, it is growing.

640 LegCo is becoming a place for legislative engineering – does legislation work? How does it work? In what context? Why does it work like that? What does it connect with? How do they relate? So many questions. Not necessarily policymaking – something new, something different, something evolved.

Her Majesty's Attorney General's oath is sacrosanct, but what does that pledge involve? I will recite it for the record:

I will faithfully, justly, truly, without favour or affection, dread or fear, envy or malice, and without respect to love or gain, kindred or friendship, consanguinity or affinity, plead and defend the causes of our Sovereign Lady the Queen in all and everything and things whatsoever as by Law required. I will also from time to time when thereunto required by the Lieutenant Governor or Deputy Governor of this Isle of the time being, plead and defend the cause of all widows, orphans and fatherless children. I will from time to time be aiding and assisting

with my best advice and Counsel to the Lieutenant Governor or Deputy Governor so often as is needful or I shall be called upon for the furtherance of the Government and benefit and preservation of this Isle. These and all other things and things whatsoever which shall or may in any wise concern my said Office of Her Majesty's Attorney General of this Isle, I will truly and faithfully do and perform to the best of my skill. So help me God.

645 The Queen, the Lieutenant Governor, the Government, the vulnerable – an admirable oath. However, where in that speech does it make an oath to Tynwald, to parliament and to Legislative Council?

I do not go so far as to say that the learned the Attorney General should not be a member of our parliament, nor that the Attorney General should not be a member of this Council. I say it is
650 worth the debate on whether or not the post-holder should be freed up for good counsel on legal and legislative matters in our Branch.

Some have asked, when is a Member not a Member of Tynwald? How far do we go before the lifeline keeping Her Majesty's Attorney General in Tynwald is cut? It has begged the question of why the Attorney General should not be removed from his duties in Tynwald and of
655 Legislative Council completely, but this proposal that I put forward creates a new type of Tynwald Member: one that cannot vote and cannot move motions either. If the Attorney General can do neither one, then why retain membership of parliament? It creates a position much like the Clerks of Tynwald and the Legislative Council, but with the ability to ask and answer questions formally.

660 If the Attorney General was not a member, the post-holder would be able to move easily between LegCo and Keys and would be able to use modern technology to answer questions from Chambers, instead of attending to LegCo as Keys sits – although Keys Members can request that the Attorney General's presence, with the permission of Mr President, of course, is made available to them.

665 However, his voice is still extraordinarily useful and well respected in Legislative Council – every group of individuals across this Island has their own agenda in this particular area, so who would we choose in his place? Of course, we do have legal advice from our Clerk, who is legally trained.

So I have looked into what happens elsewhere. In the UK, Her Majesty's Attorney General and the Solicitor General for England and Wales are elected Members of Parliament and a non-cabinet minister, as the Attorney General, heads the Attorney General's Office – making both directly answerable to Parliament. Most Attorneys General refrain from attending cabinet meetings so as to draw a distinct line between them and the political decisions on which they are giving legal advice. As a government minister, the Attorney General is directly answerable to
670 Parliament. As a parliamentarian, the UK Attorney General is well within his or her rights to pass legislation in a parliamentary sitting.

In Jersey and Guernsey, Attorneys General are not elected members. They have a right to speak, but they do not have a right to put amendments and motions forward in parliamentary sittings.

680 Scotland's current Advocate General is a member of the House of Lords, and does have the right to vote and place Bills.

In Northern Ireland, in 1921 originally, the Attorney General was an elected parliamentarian, with a seat in the parliament for Northern Ireland. The Attorney General there is now a participant with no vote, under additional rules that prevent his proposal of motions in
685 parliament via standing orders.

In New Zealand, we see a hark back to a different time. The Attorney General takes the form of a political and legal officer, simultaneously also a ministerial position and chief law officer of the Crown, responsible for the supervision of New Zealand law, and advising the government on legal matters. They are both political, and apolitical – with multiple hats.

690 Australia presently sees a party politician – an elected member – a Liberal member of the House of Representatives from Western Australia, as the Attorney General: First Law Officer of the Crown in right of the Commonwealth of Australia.

695 In Bermuda: a prosecutor in all criminal matters, main legal adviser to the Government of Bermuda by recommendation of the premier; party political in supporting the Progressive Labour Party, but not directly elected. They do have a seat on the senate, and can vote. They do propose legislation.

In the Cayman Islands, the Attorney General is an *ex-officio*, and cannot vote, but is the principal legal adviser to both the executive and the parliament equally.

700 In the Falkland Islands, the situation is very similar to that of the Isle of Man. The position is appointed by the Crown, on recommendation from the UK Secretary of State for Justice. Main legal adviser to government, they determine the legality of government proceedings and action. However, the exercise of his or her powers are not subject to any direction or control in any way, by any other person or any other authority. That individual has a constitutional right to attend all meetings of the assembly and meetings of the executive; however, not typically one to propose or promote legislation.

705 I must add that research and planning for this motion was put forth around six months before details of a piece of prospective parliamentary research came to light, which I must absolutely give way to.

710 I will make one more point, before thanking my colleagues on Council for their patience with listening to me this morning. We have five pieces of constitutional statute, four by amendment. As the Consolidation of Bills Committee has no membership, nor has it sat for some time – this, as with many other Acts, has been left to swell.

715 Should another Member take up this cause in the future – indeed, if I do not take this cause up again, as I have on this occasion – then I suggest that our constitutional law is tidied up at some juncture.

The suggestion by drafters has been to repeal the 1971 Act and amend the 1919 Act, producing a more elegant outcome, more transparent and more accessible to the public.

With that, Mr President, I thank my colleagues for their time and patience.

720 **The President:** The motion has been moved and the motion has been seconded.
Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

725 I want to thank my hon. colleague, the mover, for raising this motion with me in my capacity as Chair of the Constitutional and Legal Affairs and Justice Committee, and I want to speak in that capacity now.

730 Having raised this, I shared the matter with the full Justice Committee as the Committee had separately already determined to hold an inquiry into the office of the Attorney General, including in particular the multiplicity of responsibilities within that office and the potential for conflicts. As part of that inquiry, the Justice Committee will take evidence and will produce a report for consideration by Tynwald Court.

735 It is the Committee's collective view that from a timing and sequencing perspective, it would be preferable to allow the Justice Committee's inquiry and reporting on that to happen prior to any particular steps being set in train with a view to changing aspects of the current arrangements.

In discussion with my hon. colleague, Miss August-Hanson, I thank her for her understanding about this and that so as not to pre-empt the inquiry, given my position as Chair of the Justice Committee, I do not think it would be appropriate for me to comment any further at this stage on the motion itself.

740 I would add, though, that the Committee in progressing its inquiry does of course welcome evidence both from the hon. mover, as well as other Hon. Members of Council and Hon. Members in another place, and it would invite those with any evidence that wish to put it before the Justice Committee to please contact the Committee.

Thank you, Mr President.

745 **The President:** Does any other Member wish to speak?
Mr Attorney.

The Attorney General: I think, Mr President, very briefly if I may – and only because the subject matter of the motion clearly has some impact on *part* of my role as Her Majesty's Attorney General – I do not have a view, and I think for the record, on the appropriateness or otherwise of the proposed Bill. I see the objective of the proposed Bill as a parliamentary issue, insofar as Tynwald determines how it best organises its business and how to stipulate the roles of its Members, of which as Attorney General I have the privilege of being one.

750 I want to then just make a very brief mention to Miss August-Hanson with some thanks for reminding me of the oath of office which I took, which I remember well, because it does in fact pass a heavy burden on the holder of the role of Her Majesty's Attorney General in the Isle of Man.

755 She does make a point, which I think I ought to mention, that that oath is silent with reference to parliament or to the role which I have the privilege of having within Tynwald Court. I suggest to you, Hon. Members, it ought not to refer to that role because I do not believe it is for Her Majesty the Queen to seek to impose any obligation on her Attorney General here any specific role with reference to our own parliamentary arrangements. That is, as I say, a matter for Tynwald Court to determine. I stand, under that oath, totally independent and with no parliamentary interest or political interest, save to serve Tynwald as it sees fit. I think I would leave it at that, sir.

Mr Cretney: Hear, hear.

The President: Thank you.
770 Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

775 We had quite a long history of the role of the learned Attorney. I am actually quite at ease sometimes with the fact that we have an unwritten constitution. I think that you cannot always strive to define everything just via one statutory instrument. It is made up of history and convention and precedent and an evolution. So I feel quite at ease with that. I think that just because something is not laid out specifically in a piece of legislation, it does not mean that there is not a certain way about it and a certain value and a background to it. It does also mean that it can be ready and timely for consideration.

780 I would look to having a detailed and considered response so I welcome the thinking from the Hon. Member, Mrs Poole-Wilson very much in that regard, but I think that we sometimes need to value what we have got in terms of the evolution of how things have come along. Yes, it may be an unwritten Constitution made up of various elements. I would hold that in value and I would be at ease it and I would not always strive absolutely to nail everything down in one particular way.

785 Thank you, Mr President.

The President: Mrs Maska.

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

I welcome the hon. mover's bringing this motion for discussion. I also welcome the advice and information provided by my colleague, the Hon. Member Mrs Poole-Wilson. It is refreshing to know that this matter has been decided to be scrutinised by the Constitutional and Legal Affairs Committee, which I think is very prudent and appropriate role.

795 I would just like to add that when Mr Attorney has put motions to this Council and the other Hon. Court as well, I have always been able to accept his motion in a very unbiased and

objective way and respect his role as enabling a motion to be brought forward but not in a political way, acting in a role that is a technical role and without bias or fear or favour. And I have accepted it in that spirit.

800 So I look forward to receiving the report that hopefully will come forward on the learned Attorney's role. But I also thank him for the advice and counsel he gives to this Hon. Court. Thank you.

The President: Does any other Hon. Member wish to speak before I call on the mover?
805 Miss August-Hanson

Miss August-Hanson: Thank you, Mr President.

I would like to thank my colleagues on Council again for their patience in listening to me, but also I would like to just say that I have every faith in the Constitutional and Legal Affairs and
810 Justice Committee. I have every faith in them in bringing their report, and about the very professional mix of parliamentarians on that Committee.

Also at the same time I would like to thank all Members of this Council that have contributed to the discussion today. I am sure that what they have had to say will be considered as well down the line.

815 I would like to say to Her Majesty's Attorney General that this morning he has proven that he is indeed a very useful and brilliant Member of this Council and he has been extraordinary in terms of being helpful about the drafting quality and resource, regarding his Chambers.

Yes, thank you, Mr President.

820 **The President:** Are you moving this?

Miss August-Hanson: Yes, I would also like to move that we do not go to a vote on this and that I leave it to the Committee to undertake their work.

825 **The President:** Now, just for absolute clarity, you are not moving; you are withdrawing the motion?

Miss August-Hanson: I am withdrawing the motion.

830 **The President:** Now, it having been moved and seconded, it may be withdrawn with the leave of Council, and that requires under our Standing Orders to be unanimous leave. If unanimous leave is not given, I will put this to the vote. (**Miss August-Hanson:** Okay.)

The motion now is that the motion be withdrawn, not moved. Those in favour, say aye; against, no. The ayes have it. The ayes have it. The motion is withdrawn.

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

The President: Thank you, Hon. Members. That concludes the business before us this morning.

840 Council will now stand adjourned to our next sitting, Tuesday next, 29th October at 10.30.

The Council adjourned at 11.34 a.m.