



# LEGISLATIVE COUNCIL OFFICIAL REPORT

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# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 3rd December 2019**

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## **Present:**

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

The Attorney General (Mr J L M Quinn QC),  
Miss T M August-Hanson, Mr D C Cretney, Mr T M Crookall, Mr R W Henderson,  
Mrs M M Maska, Mrs K A Lord-Brennan, Mrs J P Poole-Wilson and Mrs K Sharpe  
with Mr J D C King, Clerk of the Council.

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# Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

**The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie, Mr President.

5

**The President:** In the absence of the Lord Bishop I shall lead us in prayer.

## PRAYERS

*The President*

### Leave of absence granted

**The President:** Hon. Members, the Lord Bishop has leave of absence to attend to church duties this morning.

We turn to our Order Paper. Item 1, Question for Written Answer, which I assume will be circulated if it has not been.

## 1. Question for Written Answer

### HOME AFFAIRS

#### 1.1. Agricultural Holdings Act 1969 – Plans to introduce sunset clause

The Hon. Member of the Council, Mrs Lord-Brennan, to ask a representative of the Department of Home Affairs:

*What plans the Department has to introduce a sunset clause into the 1969 Agricultural Holdings Act?*

10 **A representative of the Department of Home Affairs:** The Department held a consultation on options to introduce a sunset clause into the Agricultural Holdings Act 1969 which opened on 6th August 2018 and closed on 15th October 2018.

There were 68 responses and the majority of respondents were not in favour of introducing a sunset clause in the Agricultural Holdings Act 1969. The table below summarises the responses. The Department is not planning on progressing amendments to the Act at this time.

*Table 1 – Summary of Responses*

Category	Number	%
A tenant under the Agricultural Holdings Act 1969	30	44%
A tenant under the Agricultural Tenancies Act 2008	11	16%
A landlord under the Agricultural Holdings Act 1969	9	13%
A landlord under the Agricultural Tenancies Act 2008	6	9%
Other (please state in comments box)	24	35%
Not Answered	7	10%

Category	Number	%
Agree with the proposal to amend the 1969 Act	17	25%
Disagree with the proposal to amend the 1969 Act	44	65%
Other (please state in comments box)	5	7%
Not Answered	2	3%

## Order of the Day

### 2. Children and Young Persons (Amendment) Bill 2019 – First Reading approved

Mrs Sharpe to move:

*That the Children and Young Persons (Amendment) Bill 2019 be read a first time.*

15 **The President:** Item 2, Children and Young Persons (Amendment) Bill, First Reading.  
Hon. Member, Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President. I apologise, please bear with me for a second.

20 Mr President, Hon. Members, I am pleased to move the First Reading of the Children and Young Persons (Amendment) Bill 2019.

The Bill amends the Children and Young Persons Act 2001, which I will refer to as ‘the Act’ and makes consequential amendments to the Safeguarding Act 2018. The Act is to be amended by inserting in a new Part 7A, a Part that will make provision for the review of child deaths that occur on the Island and for the analysis of information regarding such deaths.

25 Hon. Members will recall that such provisions were originally provided for in the Safeguarding Act 2018, specifically section 8(4), which required the Safeguarding Board to review information in relation to the deaths of children, and section 9(1)(b), which required the board to establish a Child Death Overview Panel.

30 However, given that such matters have wider public health considerations that go beyond safeguarding alone, it is proposed that such functions sit with ‘child death review partners’ under the aegis of Public Health. Therefore, this Bill establishes in statute the child death review partners. The partners, in accordance with the Bill, are to be responsible for making arrangements for child deaths to be reviewed and for the analysis of information regarding such deaths. The Bill confirms that the purpose of those actions is to identify matters relevant to the  
35 welfare of children or to public health and safety on the Island.

40 With regard to the analysis of information, Hon. Members will note that the Bill requires that the arrangements made are done so with an organisation outside the Island. The rationale behind this requirement is to ensure best practice is adhered to. As for the meaningful analysis of information to enable the identification of public health or safeguarding issues which might affect children, there should be a review of 60 child deaths per year. Given that the Island only has four to five child deaths per year, the partners will be entering into arrangements with the Merseyside Child Death Overview Panel. To better enable the child death review partners to carry out their functions, the Bill requires a person who has been requested to provide information by a child death review partner to comply with that request.

45 Lastly, Mr President, with regard to reporting, the Bill will require the child death review partners to periodically report to Tynwald regarding the arrangements made for the review of child deaths, the analysis of information regarding such deaths and the effectiveness of such arrangements.

50 Mr President, I beg to move that the Children and Young Persons (Amendment) Bill 2019 should be read for the first time.

**The President:** Mr Crookall.

55 **Mr Crookall:** I beg to second, Mr President, and reserve my remarks.

**The President:** Thank you.  
Mrs Poole-Wilson.

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

60 I had a couple of questions for the mover, if she might be able to assist, and they relate to the fact that what we are doing through this Amendment Bill is moving the arrangements for child death overview from the Safeguarding Act into the Children and Young Persons Act, and looking back at the Safeguarding Act it was a question I had about whether some of the things that are in the Safeguarding Act 2018 which would have applied had child death overview remained under that Act, whether we still need to provide for those under the new arrangements.

65 So the specific issues are, first of all, section 10 of the Safeguarding Act 2018 provides that the Department of Health and Social Care must provide support for the Safeguarding Board and any committee or subcommittee established under that Act, which would have included child death overview arrangements; and that support would be to such legal, professional and other services as are reasonably necessary for the proper performance of the relevant bodies' functions.

70 So my question is, when it comes to the child death review partners under this Amendment Bill, is there legislative provision for that type of support should it be necessary and if there is not do we need to provide for it? The second question which is in the Safeguarding Act 2018 relates to freedom of information – and it is section 16 of the Safeguarding Act 2018 which provides that the Safeguarding Board is not a public authority for the purposes of the Freedom of Information Act. Now it does not specify committees and subcommittees in that section, but again the question would be: do the child death review partners under this Amendment Bill ... do we need to say something expressly about their status as regards freedom of information or not?

80 I understand that these may be questions that the hon. mover may wish to consult further about so I perfectly understand if she does not have an answer for those questions today, but I wanted to raise them to understand what the position is.

Thank you, Mr President.

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

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

90 I note that the Bill removes the statutory requirement from the Safeguarding Act 2018 for there to be a Child Death Overview Panel and understand that the basis for this is to be because there may be public health considerations that go beyond safeguarding alone; therefore, it is proposed that such functions sit on Public Health rather than a safeguarding board. That is the policy that has been explained and one I do accept.

95 My understanding is that the idea of a Child Death Overview Panel will be replaced in effect by child death review partners who are cited in the Bill as various Government Departments and the Police. To form part of this process it is intended to have a link in with the Merseyside Child Death Overview Panel, which is considered more sensible for purposes of review and analysis and best practice in terms of data. I note that that is the intention and is anticipated.

100 With that then, I do wonder whether there should be space for an independent but locally based review partner and wonder why is the Safeguarding Board not a partner. I would welcome, perhaps in the next sitting, clarity as to how this would all work in practice. Will the Safeguarding Board have any link in with this or are they extracted from the process?

105 I understand that there may be also a link with Public Health. The Amendment Bill does not contain reference to either Public Health or the Safeguarding Board, unless I have missed something, and I wonder if such a reference should be made explicit, especially when in the Bill before us it would, as in the UK Children Act 2004, be part of the point of the review or analysis to identify any matters relating to the death or deaths that are relevant to the welfare of the children of the Island or to public health and safety.

110 It might also be considered on that welfare point that there may be value of the link in with the Safeguarding Board, especially from an independent view, angle or possibly from whether at some point in the arrangements, maybe after a review, relevant findings would be reported into the Isle of Man Safeguarding Board. I am curious about this aspect of workability, especially around reporting and taking actions.

115 In this, I note the following two distinct matters. The Bill, as mentioned, cites the purpose of a review as to identify matters relevant to the welfare of children on the Island or to public health and safety, as I have mentioned. A document from the Safeguarding Board website outlining the Child Death Overview Panel as an operational workgroup of the Safeguarding Board states that:

The main purpose of the panel is to identify factors that might have prevented a child death and to use this learning to try and prevent future deaths.

It goes on that:

The panel makes recommendations and reports on the lessons learned to the Safeguarding Children Board. The SCB takes action to ensure that lessons learned are built into future policy, practice and procedures with a view to reducing avoidable deaths.

120 Hon. Members, those are quite strong, compelling words. So it is capturing the benefit of that that I think it would be useful in principle to have and I am not sure how it all ties together in this Bill.

125 So in my evaluation of the Bill initially, I am comparing what I think is the only local reference point for such matters at the moment and I have tried to find more detail in cross-referencing various legislation, that is the info on the Safeguarding website which seems very sensible and what is presently in the Bill, to try and assess whether whilst accepting the principle of the Bill is correct, there are elements that might be left out by departing from the original plan, which was to have this operating under the Safeguarding Board as an operational work group.

130 Also I do wonder: should the Hospice and Public Health be specified as child death review partners in addition to the Government Departments and the Constabulary? I think it would be helpful, ultimately, for Tynwald, who would receive the reports on this as well as, I think,

receiving reports from the Safeguarding Board potentially, to have clear sight on how all this would work in practice, especially giving the related responsibility of the Safeguarding Board and the independent nature of that board, given things like serious case reviews etc.

135 Hon. Members, I was interested in the learning from a serious case management review presentation and report from the Safeguarding Board in June and July, and valued the thinking and approach with the work of the board. I did check but the report does not mention the sort of review panel we are talking about here. It does, however, make the point about identifying learning and also on multi-agency engagement in the protection and planning for children and  
140 young people in need of safeguarding. The historic review identified very poor engagement on a multi-agency basis in both identifying and assessing the issues. I just wonder if, in the spirit of capturing learning over what could potentially be very serious, indeed heart-breaking matters, are we happy that this Bill will get it right when there is a level of specificity that is not present in the Bill but that can be referenced elsewhere in the documents produced by our Safeguarding  
145 Board which was set up only recently?

Thank you for indulging my curiosity and I am more than happy to wait for any clarification.

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

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

I have just a short question to ask, and I thank my colleagues on Legislative Council, Mrs Poole-Wilson and Mrs Lord-Brennan, for what they have contributed so far, because they have peaked my interest in a couple of areas that I had not thought about.

I would like, if Mrs Sharpe would oblige: there was a presentation and report that Mrs Lord-Brennan makes reference to just in relation to this presentation with the Safeguarding Board; there was one issue that stood out in that presentation – and I think it was mentioned a couple of times by other Hon. Members in this place and in another – and it was just in relation to the sharing of information under GDPR and how this might work in relation to that, in terms of setting a precedent in sharing of information from the Safeguarding Board with partners cross-  
155 governmentally.  
160

I wondered if perhaps the Hon. Member might shed some light on how that might work, has it happened before from the Safeguarding Board and does the legislation regarding the Safeguarding Act allow for it?

Thank you, Mr President.

165

**The President:** I call on the mover to reply, Mrs Sharpe.

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

I would like to thank Hon. Members for their interest in this Bill and for their thought  
170 provoking questions.

Turning first to Mrs Poole-Wilson, she referred to section 10 of the Safeguarding Act 2018, which refers to the Department of Health and Social Care and the fact that it must provide support for the Safeguarding Board, and she asks will that be also provided for in the Children and Young Persons (Amendment) Bill 2019? That is something I will discuss with the Department  
175 and I will get back to the Hon. Member with an answer on that at the next sitting.

She also, in referring to the Safeguarding Act, referenced the section which mentions that the Safeguarding Board is not subject to freedom of information. That is an interesting point and again, I will be discussing this with the Department and the legislative drafter, and I will get back to the Hon. Member with an answer on that.

180 The Hon. Member, Mrs Lord-Brennan, had several questions. She pointed out that the child death review partners will be working in partnership with the Merseyside Child Death Overview Panel, and she asks should there be a space for a locally based partner in all of this, for example, the Safeguarding Board; how will the Safeguarding Board link to all of this? From my

185 understanding, the Bill we have before us separates out the review and the analysis of child  
deaths very definitely from the Safeguarding Board because it is perceived that the Safeguarding  
Board is not the place for that review and analysis to fall because the Bill is not concerned with  
safeguarding, it is concerned with review and analysis of child deaths. And by that I mean all  
child deaths, at the moment on the Island only unexpected child deaths are reviewed. Obviously  
any child death which requires a post-mortem or for the coroner to be informed, of course, the  
190 coroner would be informed and the post-mortem would be carried out, but there is no review  
and no statistical analysis currently, and that is what this Bill is about. But I will discuss this  
further with the Department and ensure that I have a fully comprehensive answer for the  
Hon. Member.

Getting on to other questions – excuse me one moment, Mr President, I have a message  
195 which has just been delivered to me – she refers to the Merseyside Child Death Overview Panel  
website and recognises the fact that it refers to the Safeguarding Board in the UK. Can I just  
clarify that with the Hon. Member?

**Mrs Lord-Brennan:** I am happy to clarify, I did not actually mention the Merseyside website.  
200 What was the other query?

**Mrs Sharpe:** That it made reference to the Safeguarding Board in the UK, I may have  
misunderstood the Hon. Member at the time.

205 **Mrs Lord-Brennan:** Maybe we can pick up afterwards, I am not quite clear, Mr President.

**Mrs Sharpe:** Okay, thank you, Hon. Member, I am just trying to make sense of my own notes  
which I made as you were speaking.

210 She talks about perhaps the need to have a local reference point and she highlights the fact  
that our current Safeguarding Board is our local reference point and she wonders how that local  
Safeguarding Board will fit in with all of this, and I will get back to the Hon. Member about that.

215 She also refers to the June and July Safeguarding Board report, which she was very impressed  
with, and in particular she was impressed by the multi-agency planning and the importance of  
this. She asks whether we are satisfied that there will be enough multi-agency planning under  
the terms of this Bill. I think the fact that the child death review partners will consist of the  
Director of Public Health, a representative from the Department of Health and Social Care, the  
Department of Education, Sport and Culture and the Constabulary means that there will be  
input from several bodies. But if the Hon. Member would like to clarify her question, because I  
can see her shaking her head, I am very happy, with your permission, Mr President, for her to  
220 clarify the question she needs an answer to.

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

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

I think in my contribution to the debate I was merely making the point, actually, that Public  
Health is not listed as one of the review partners. I am just broadly asking should there perhaps  
be other bodies mentioned? So I am happy for that point to be taken away to be considered.

230 It is notable, I think, that in other arrangements and set ups elsewhere where you do have  
the overview panels, there are representatives and voices from Safeguarding, Public Health, as  
well as exactly the other ... In the UK it will probably be local authority representatives and  
things like that too. I am happy to have made the point and for that to be considered, but Public  
Health is not included as a partner in this Bill as drafted.

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

235 The Department, from my understanding, will need to draft an order pursuant to section 68A(e) so that Public Health is included as a child death review partner.

Moving on to Miss August-Hanson, the Hon. Member also refers to the presentation report of the Safeguarding Board and one issue which stood out for her was the sharing of information under GDPR, and how that should work in terms of the Safeguarding Board and the partners and how that might look. Again, I will liaise with the Department and with the legislative drafter and I will have a response for the Hon. Member.

**Miss August-Hanson:** Thank you, Mrs Sharpe.

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

**The President:** Hon. Members, I put the question that the Children and Young Persons (Amendment) Bill be read for the first time, those in favour, say aye; against, no. The ayes have it. The ayes have it.

### 3. Limitation (Childhood Abuse) Bill 2019 – First Reading approved

Mrs Sharpe to move:

*That the Limitation (Childhood Abuse) Bill 2019 be read a first time.*

250 **The President:** We turn to Item 3. First Reading of the Limitation (Childhood Abuse) Bill.

Before I call on the mover, I would remind Members, of course, of the *sub judice* rule and the importance of not making reference to any individual cases or live cases, as may have been referred to in the Social Affairs Policy Review latest report, I remind Members of that situation.

Mrs Sharpe.

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

Mr President and Hon. Members, I am pleased to introduce the Limitation (Childhood Abuse) Bill 2019 and today will briefly explain the purpose and scope of the Bill.

260 The purpose of this Bill, which amends the Limitation Act 1984 for one specific reason, is to remove the present limitation period for bringing an action in damages for personal injuries where the action relates to abuse and the person who sustained the injuries, and who is bringing the action, was a child at the time of the abuse. It responds to the recognition of the impact of historic childhood abuse on the victims of such abuse, by removing the limitation which constitutes a barrier to access to justice for this specific group.

265 I would like to address the current law on limitation in personal injury actions: under the current law, as provided for in section 11 of the Limitation Act 1984, personal injury claims, including claims involving child abuse, have to be brought within three years of the cause of action arising or, if later, three years from the date of the knowledge of the person injured. If the person was a child at the time when the right to bring an action arose, the three-year period starts to run from when the person is 18, or 21 for causes of action arising before 1st April 1972, because until that time that was the age of majority.

270 If a person wants to bring an action for damages for personal injuries after the limitation period, at present they must persuade the court to exercise its discretion, under section 31 of the 1984 Act, to permit the action to be brought out of time. Accordingly, it is possible, but by no means certain, that the court will exercise its discretion and permit a childhood abuse action to proceed if it is brought outside the limitation period.

275

In the very specific context of child abuse, the current law is burdensome on a person who has suffered such abuse. It can take years before the abused person reaches the point where they feel able to bring an action for damages; and once a victim feels able to bring a claim, if it is outside the three-year period, the victim faces the additional hurdle of persuading the court it would be fair to allow the claim to proceed.

In terms of the aim of the new legislation, the Bill seeks to facilitate access to justice in such cases by removing the limitation period so that a claimant would no longer have the burden of establishing before a court why a claim should be allowed outside that period. Under the proposed legislation, the burden would be on a defendant to show why a case should not proceed. It closely follows similar provision made by the Scottish Parliament in the Limitation (Childhood Abuse) (Scotland) Act 2017.

Specifically, the Bill inserts additional provisions into the Limitation Act 1984 to remove the limitation period in childhood abuse cases if: (a) the damages are in respect of personal injuries; (b) the person who sustained the injuries was a child when the act or omission which caused the injuries took place, or if the act or omission was a continuing one, on the date the act or omission began; (c) the act or omission to which the injuries are attributable constitutes abuse; and (d) the person bringing the action is the person who sustained the injuries.

Actions meeting the criteria are not subject to limitation, including those that arose before the provision removing the limitation period comes into operation. This will allow claims to be brought which currently fall outside the limitation period. Retrospective application of the legislation is considered appropriate in the case of childhood abuse for the reasons outlined earlier, that it can take a long time before a victim of child abuse can in practical terms bring a damages claim.

It should be noted that only surviving victims of child abuse may make a claim without any limitation period applying under the proposed new legislation. However, child abuse claims which have already been subject to litigation may be re-litigated in certain specific circumstances. As the limitation on actions is being removed for survivors of child abuse who have never made a claim, it would be unfair not to permit those survivors of child abuse who have made a claim, but who have never had the claim heard by a court because the claim was time-barred under the present legislation, to have the benefit of the new legislation.

There are, nevertheless, restrictions on the ability to re-litigate under the Bill. The Bill will only permit a previously brought child abuse action to be re-litigated if the court did not make a decision on the merits of the claim and the reason the previous claim was unsuccessful was the limitation period. The initial claim must either have been disposed of by the court as being time-barred, or disposed of under a settlement between the parties in the belief the claim would be likely to be time-barred.

In addition, if a previously litigated case was disposed of by a settlement, the claim can only be re-litigated if the claimant recovered no more than the costs of bringing the action under the settlement — a claimant will not be able to bring the claim again if the claimant recovered any financial compensation beyond his or her costs in bringing the claim.

The Bill does not permit repeat claims on the same issue. New proceedings which are in substance the same as cases previously litigated are only permitted to be brought where there has been an initial claim disposed of by the court before the Bill comes into operation.

Mr President and Hon. Members, I should also stress that the provisions permitting retrospective application of the new law, and indeed the provisions of the new law itself, relate only to the removal of the limitation period for a very specific category of claims. The Bill does not change the existing law on rules of evidence, liability and procedure for the hearing of a claim in damages. A survivor of child abuse would still have to make out the substantive claim and establish the liability of the defendant, judged by the standards of the time when the abuse took place.

I would now like to address the issue of safeguards for defendants: clearly, Mr President, the Bill aims to make the law fairer for victims of childhood abuse by removing the limitation period

330 in these specific cases. To strike a balance between the need to remove the limitation barrier for claimants and the right of a defendant to a fair trial, the Bill includes two important safeguards for defendants.

First, the court must not permit an action to proceed if a fair trial of the action is impossible. This reflects the current position under Article 6 of the European Convention on Human Rights.

335 Secondly, the court must dismiss the action if the defendant satisfies the court that, because of the law's retrospective effect, the defendant will suffer substantial prejudice which outweighs the claimant's interest in the action proceeding.

In this way, the Bill aims to strike a fair balance between facilitating access to justice, for the very specific and vulnerable group of surviving victims of child abuse, and protecting a defendant's Convention rights.

340 In terms of financial implications, as set out in the explanatory memorandum to the Bill, the proposed new legislation will have financial implications for Government and for other bodies which have provided care for children, but the implications are difficult to quantify. Nevertheless, the Government takes the view that it is proper to accept the risk which is involved in order to secure justice for victims of child abuse.

345 Mr President and Hon. Members, what is paramount is the principle that those harmed as children should be entitled to seek compensation through the court process, provided the person defending the claim can have a fair trial. That principle, I suggest, is far more important than the monetary cost involved.

350 If I may make one last point in closing, Mr President, with your permission, I should like to make it clear that there are live civil proceedings afoot at present, as you mentioned earlier, the claimants in which will be assisted by the passage of the Bill. But equally, there are criminal proceedings involving child abuse allegations ongoing and I am sure Hon. Members of Council will not wish to prejudice their outcome by referring to them. So, I respectfully suggest that the debate today, and forthcoming debates on the Bill, should be confined to discussing only its merits and provisions. I would respectfully suggest, Mr President, that there should be no pre-emptive debate on the work of the Social Affairs Policy Review Committee, as you mentioned, on this topic. Nor, for obvious reasons, should specific reference be made to individual cases which are before the courts or which may come before them in the future.

355  
360 Mr President, I beg to move that the Limitation (Childhood Abuse) Bill 2019 be read for a first time.

**The President:** Hon. Member, Mr Crookall.

**Mr Crookall:** I beg to second, Mr President.

365

**The President:** I put the question that the Limitation (Childhood Abuse) Bill 2019 be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

#### **4. Registration of Business Names (Amendment) Bill 2019 – First Reading approved**

Mr Henderson to move:

*That the Registration of Business Names (Amendment) Bill 2019 be read a first time.*

**The President:** We turn to Item 4, Registration of Business Names (Amendment) Bill. Mr Henderson, please.

370

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

I am pleased to bring this First Reading of the Registration of Business Names (Amendment) Bill 2019 before Council today. This is a very short Bill which focuses on resolving a specific technical issue in relation to the requirement to register business names under the 1918 Register of Business Names Act.

The primary purpose of the original 1918 Act is to create and maintain a public register of companies, firms, or individuals carrying on a business under a name other than their legal name.

This is a matter primarily of consumer protection. The requirement to register extends to companies defined under the Companies Act 1931 to 2004, the Limited Liability Companies Act 1996, and the Foreign Companies Act 2014, but does not currently extend to companies defined under the Companies Act 2006.

The exclusion of such companies from the requirement to register under the 2006 Act is inconsistent with the treatment of other companies and creates a gap within the intended application of the 1918 Act.

In June 2019, the Companies Registry became aware that it had been incorrectly applying the 1918 Act to companies incorporated under the Companies Act 2006. Consequently, the Registry took the step to stop accepting business name applications for the 2006 Act Companies after that time. The Registration of Business Names (Amendment) Bill brings into effect provisions which extend the requirement to register to companies also formed under the 2006 companies Act. The Bill also includes retrospective provisions which confirm that decisions in relation to companies formed under the Companies Act 2006 have effect.

For this reason, business names already registered to the 2006 Companies Act prior to June 2019 have not been removed from the register and those businesses will not therefore have to re-register. The notes are not incorrect, they refer to business names registered to 2006 companies.

Eaghtyrane, there is a degree of urgency associated with this Bill, given that the lack of registration for 2006 companies could give rise to confusion for consumers who may not be aware of who they are conducting business with.

Hon. Council Members will be aware that Hon. Members in the House of Keys supported the suspension of Standing Orders to enable the clauses and Third Reading of this Bill to be heard together. In that context, I would be respectfully asking Hon. Members of the Legislative Council to assist me, Treasury and business to expediate this matter and enable us to correct this anomaly as soon as practicable – by way of requesting, at the due point, Council Members to support holding all further Readings of the Bill together when it returns at the next sitting; that is to support the Second Reading, clauses and hopefully Third Reading together, if practicable to do so.

Given the size of the Bill and the recognition from all stakeholders that there is a need to resolve the gap in legislation as quickly as possible, I hope Hon. Members will feel able to support this proposal at the appropriate time.

Eaghtyrane, I therefore beg to move that the Registration of Business Names (Amendment) Bill 2019 be read for the first time.

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

**Mrs Poole-Wilson:** Thank you, Mr President. I beg to second and reserve my remarks.

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

**5. Public Sector Pensions (Amendment) Bill 2019 –  
Second Reading approved**

Mr Henderson to move:

*That the Public Sector Pensions (Amendment) Bill 2019 be read a second time.*

**The President:** We turn to the final Item, Public Sector Pensions (Amendment) Bill.  
Mr Henderson, please.

**Mr Henderson:**

425 Gura mie eu, Eaghtyrane.

I am pleased to move the Second Reading of the Public Sector Pensions (Amendment) Bill 2019.

The objective of the Public Sector Pensions (Amendment) Bill 2019 is to amend the Public Sector Pensions Act 2011.

430 The Public Sector Pensions Act 2011 is the statutory basis for the Isle of Man's public sector pension schemes. This short amendment Bill seeks to improve upon its provisions by: amending section 3 of the Act which sets out how schemes for the judiciary are made; amending sections 4 and 6 which contain the provision for making schemes, so that they include pension regulations and orders in the definition of schemes; and amending section 15 to amend the Tynwald  
435 procedure for schemes that make administrative changes to schemes, i.e. those that do not amend contribution or pension accrual rates.

Stakeholder consultation took place on this amendment Bill, with seven responses, including a collective response from members of the judiciary.

440 This Bill neither introduces changes to current schemes nor gives new or different powers to the Public Sector Pensions Authority (PSPA), but it amends the current Act in light of the experience of having to progress pension changes through it.

Eaghtyrane, I beg to move the Public Sector Pensions (Amendment) Bill 2019 be read for a second time.

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

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

450 **The President:** I put the question that the Public Sector Pensions (Amendment) Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Public Sector Pensions (Amendment) Bill 2019 –  
Clauses considered**

**The President:** We turn to clauses. Mr Henderson.

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

I am pleased to move on to the clauses stage of this Bill.

455 As mentioned, it contains seven clauses which seek to remove the requirement to obtain consent for the making of pension schemes for future new members of the judiciary; to extend the definition of pension schemes and to provide for the amendment of existing schemes; to amend Tynwald procedures for making orders, regulations and schemes.

460 Eaghtyrane, I would like to move clauses 1 and 2 together as they are introductory in nature.  
I am, however, happy to have them voted on separately if Hon. Members are content.

**The President:** Are we content? (**Members:** Content.)

Mr Henderson.

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

Clause 1 gives the short title of the resulting Public Sector Pensions (Amendment) Act 2019 and will cover those pension schemes made under the Public Sector Pensions Act 2011.

470 Clause 2 sets out when the Bill shall come into operation when one or more orders are made by the PSPA. The power includes provision to make consequential, incidental, supplemental and transitional provisions in connection with its commencement.

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

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

475 **Miss August-Hanson:** I beg to second and reserve my remarks. Thank you.

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

Clause 3.

480

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

Clause 3 confirms that the Bill will amend the Public Sector Pensions Act 2011 and the amendments are set out in the following clauses.

I beg to move that clause 3 do stand part of the Bill.

485

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

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

I beg to second and reserve my remarks.

490

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

Clause 4.

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

Clause 4 repeals section 3(2)(a) of the Public Sector Pensions Act 2011 for future new members of the judiciary.

Section 3 of the Act sets out the specific groups of public servants that the Public Sector Pensions Act 2011 applies to.

500 The purpose of clause 4 is two-fold. Firstly, it revokes the section that states that the consent of the Judges of the High Court, within the meaning of section 3(1) of the High Court Act 1991, the Attorney General and the Solicitor General for the Island is required for the making of a superannuation scheme in respect of those persons. With the repeal of this provision, the consent of these individuals to make changes to schemes will no longer be required. Secondly,  
505 the amendment also has the effect which is to insert a saving clause to the repeal of this provision, but only for the current members of the judiciary identified in the High Court Act 1991.

510 For the avoidance of doubt, clause 4 revokes the current clause only for those new individuals who are appointed to such posts once the Bill has been enacted. For the current Judges of the High Court, the Attorney General and the Solicitor General who are still in post, the

current section 3(2)(a) of the Act will continue to apply. Therefore, for the time they remain in the scheme their consent will still be required for the making of a superannuation scheme in respect of these individuals.

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

515

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

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

I would like to second and reserve my remarks.

520

**The President:** I put the motion that clause 4 do stand –  
Sorry, Mr Cretney.

525

**Mr Cretney:** I just wondered, the Hon. Member towards the end of his remarks said ‘for the time being’, does he have any idea when that situation will cease and everybody will fall under the Act?

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

530

**Mr Henderson:** Yes, essentially the current serving members of the judiciary will still have to consent to any changes. The changes will then apply to any new appointees, so however long it takes to reappoint new positions going forward, is the answer to the question. So however long the current members are serving, until they retire and then we get a new person in post, so it is on that rolling basis.

535

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

540

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

Clause 5 amends section 4 of the Public Sector Pensions Act 2011. Section 4 provides the definitions of a number of the terms used within the Public Sector Pensions Act 2011 and clause 5 amends section 4 to clarify and extend the definition of ‘scheme’ to include superannuation provisions originally made by orders or regulations before the Public Sector Pensions Act 2011 was in operation, such as the Police Pension Regulations or Teachers Superannuation Order, which are treated as a scheme validly made under the 2011 Act.

545

Whilst the pension arrangements for police and teachers have been deemed to have been made by the PSPA, currently it has to update the appropriate orders and regulations via an amending scheme. This adds an unnecessary layer of complexity; for example, rather than Police Pension (Amendment) Regulations, changes need to be made through a Police Pensions (Amendment) Regulations Scheme.

550

Going forward, extending the definition in this amendment makes it more straight forward as it enables the PSPA to make amending regulations and orders as well as schemes.

Eaghtyrane, it is important to note that whilst this clause extends the definition of schemes to include orders and regulations, in doing so it does not extend the powers of the PSPA beyond those already in place, namely to make pension provisions for public servants.

555

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

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

560

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

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

565 Clause 6.

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

Clause 6 amends section 6 of the Public Sector Pensions Act 2011.

570 Section 6 sets out the specific functions of the new PSPA. The key roles are to manage, administer and maintain public sector pension schemes for which it is responsible, and in accordance with the legislation that underpins those schemes.

575 Firstly, turning to section 6(1)(c), this sets out that the final decision on the approval of new or amending statutory legislation for existing schemes lies with Tynwald. However, this is considered superfluous as the procedure for the making of the schemes, orders and regulations, which includes gaining Tynwald approval, is already set out in more detail in section 15 of the Public Sector Pensions Act 2011.

580 I am aware that clause 7 seeks to amend section 15 of the Act. However, whether or not clause 7 is approved, the omission of section 6(1)(c) is still considered to be appropriate. For the avoidance of doubt, I would assure Hon. Members that clause 6 does not mean that the PSPA can amend schemes without Tynwald approval as this is covered in section 15.

Secondly, clause 6 also inserts into section 6 of the Public Sector Pensions Act 2011 a new subsection (1A) and ties in with clause 5.

585 This amendment clarifies that the Public Sector Pensions Authority is able to amend existing schemes, which are treated as schemes made under the Public Sector Pensions Act 2011 but were originally made by orders or regulations, and if amended will enable the PSPA to make amending orders and regulations, rather than just schemes.

In addition, clause 6 will apply retrospectively to apply to the regulations and orders that have already been made by the PSPA but prior to the application of the extended definition of schemes, as amended under clause 5, for the purposes of this Act.

590 Eaghtyrane, I beg to move that clause 6 do stand part of the Bill.

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

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

595 Thank you, Mr President.

**The President:** I put the motion that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

600 Clause 7.

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

Clause 7 substitutes section 15 of the Public Sector Pensions Act 2011 with a revised section 15.

605 Section 15 of the Public Sector Pensions Act 2011 enables the PSPA to make schemes and regulations that enable the introduction or application of a new scheme or an amendment to a current scheme. It sets out the actions required to be carried out in relation to schemes or regulations made under the Act, in particular, the requirement that schemes should be laid before Tynwald, but if they are not approved they shall cease to have effect.

610 Clause 7 revises section 15 to provide a Tynwald procedure which is dependent upon the nature of the amendment, with new schemes, orders or regulations and those amendments that introduce substantial change to the benefits or structure of schemes made under the Act being subject to the affirmative procedure. However, those amendments that are considered to be administrative in nature would fall under the negative procedure.

615 I would like to assure Hon. Members that this amendment is not seeking to put in place a procedure that can be utilised to introduce any form of change by stealth. This amendment is seeking to reduce the burden upon Tynwald time in respect of changes to schemes which are only administrative in nature.

Sir, I beg to move that clause 7 do stand part of the Bill.

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

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

625 **The President:** I put the question that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Henderson.

**Public Sector Pensions (Amendment) Bill 2019 –  
Standing Orders suspended to allow Third Reading**

630 **Mr Henderson:** Eaghtyrane, I beg your indulgence, sir, and that of the Hon. Council, and was wondering if I could put a short motion to Council which would be that if there is Council agreement, I could move to the Third Reading of this Bill, which is only very short in nature.

It has been consulted upon; no contentious issues, but would help in the administrative process in the background, I am advised, sir.

635 **The President:** This would require the suspension of Standing Orders, you so move, sir?

**Mr Henderson:** Yes, sir, I do.

640 **The President:** Do we have a seconder? Mrs Poole-Wilson. I put the motion that Standing Orders be suspended to allow the Third Reading to be taken at this sitting. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Henderson.

**Public Sector Pensions (Amendment) Bill 2019 –  
Third Reading approved**

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

645 I am very grateful, sir, and to Hon. Members, for allowing me the privilege of moving to the Third Reading of the Public Sector Pensions (Amendment) Bill. I am grateful for that, and it will assist in the administrative process in the background, which is ongoing as we speak.

Sir, the objective of the Public Sector Pensions (Amendment) Bill 2019 is to amend the Public Sector Pensions Act 2011. The Public Sector Pensions Act 2011 is the statutory basis for the Isle of Man's public sector pension schemes.

650 This short amendment Bill seeks to improve upon its provisions by: amending section 3 of the Act, which sets out new schemes for how the judiciary are made; amending sections 4 and 6 which contain the provision for making schemes so that they include pension regulations and orders in the definition of schemes; and amending section 15 to amend the Tynwald procedure

for schemes that make administrative changes to schemes, i.e. those that do not amend contribution of pension accrual rates.

655 Stakeholder consultation took place on this amendment Bill. There were seven responses, including a collective response from members of the judiciary. This Bill neither introduces changes to current schemes nor gives new or different powers to the Public Sector Pensions Authority, but it amends the current Act in light of the experience of having to progress pension changes through it.

660 Sir, I beg to move the Public Sector Pensions (Amendment) Bill be read a third time.

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

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

665 I believe that this is an eminently sensible piece of legislation, making the necessary provisions to tidy up practices and putting on a statutory basis the making of amendments and administration of such schemes in the Isle of Man, with statutory provisions that underpin pension arrangements for the Police, teachers and the judiciary, and it is enabling the PSPA to undertake its work fairly.

670 This being the second time that I have had the opportunity to work in scrutiny in seconding a piece of legislation with my hon. colleague on Council, Mr Henderson, I would just like to say that I was very impressed with his diligence and thorough questioning in the lead-up to bringing this piece of legislation to this place, as it is often hidden, the scrutiny that takes place in proposing and seconding legislation through Legislative Council.

675 Thank you, Mr President, I would like to second.

**The President:** Mr Henderson.

**Mr Henderson:** If I could make a closing comment, Eaghtyrane. (**The President:** Indeed.)

680 I would just like to thank you for allowing me ... Thank you to my seconder. And I would just like to say thank you to the PSPA staff as well for their help, assistance and patience in my questioning of the process of this Bill, to gain my understanding of it and test out the different sections, and I am grateful for their assistance in that, Eaghtyrane.

Thank you.

685

**The President:** The motion is that the Public Sector Pensions (Amendment) Bill be read a third time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members, that brings us to the end of our Order Paper this morning. Council will now stand adjourned until its next sitting which will be Tuesday next, 10th December at 10.30 a.m. in Tynwald Court.

690

**Mr Crookall:** Mr President, sir, I think that is Tynwald, the 10th.

**The President:** That is what I said. The next sitting will be in the Tynwald Court Chamber.

695

**Mr Crookall:** Apologies.

**The President:** Thank you, Hon. Members.

*The Council adjourned at 11.29 a.m.*