



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 8th December 2020

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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 P A Greenhill, Mr R W Henderson, Mrs K A Lord-Brennan,
Mrs M M Maska, Mr R J Mercer, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

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

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

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

PRAYERS

The Lord Bishop

Order of the Day

1. International Maritime Standards Bill 2020 – Third Reading approved; Bill passed

Mrs Maska to move:

That the International Maritime Standards Bill 2020 be read for the third time and do pass.

10 **The President:** Hon. Members, we begin our Order Paper this morning at Item 1, the International Maritime Standards Bill and I call on Hon. Member, Mrs Maska, to move the Third Reading.

Mrs Maska: Thank you, Mr President.

15 Firstly, I would like to thank my hon. colleagues for supporting the Bill during the last sitting of this Chamber, and to consider the clauses of this Bill. There were some points raised by Hon. Members during that session and I would like to now try and provide further clarification on those matters.

20 Mrs Poole-Wilson raised some queries on potential sanctions. With regard to the administrative sanctions included within the provisions of the draft Bill there is a wide range of such sanctions that could be explored and used if the situation merits it. These could range from financial or budgetary sanctions to other sanctions including seeking directions to be pursued to ensure that obligations are being met.

25 In view of the statutory right of a Department's Minister to delegate the functions of the Department to an officer of that Department, there is the potential for sanctions to be imposed in respect of the delegate if the function is not satisfactorily discharged. Safeguards inherent in human resources-related disciplinary procedures and the delegate's possible union membership would also provide protection to an individual delegate against draconian sanctions that directly

30 affect that delegate's employment. It should, however, also be noted that it is highly unlikely that such sanctions will ever be required. As I have said previously, both the Department for Enterprise Ship Registry and the Harbours Division of the Department of Infrastructure have historically assumed responsibility for flag, port and coastal state obligations without the need for such legislation being in place. The Chief Secretary will only assign the responsibilities if absolutely necessary, and it is most likely that whoever is assigned this responsibility will undertake to follow it to ensure the international obligations are suitably discharged.

35 Mrs Lord-Brennan also raised a query in respect of powers given to the Chief Secretary. It should be worth noting it is anticipated that these powers will only be used if and when they are needed. As stated previously, both the Department for Enterprise Ship Registry and the Department of Infrastructure Harbours Division have historically assumed the flag, port and coastal state responsibilities from the relevant conventions, and have discharged them efficiently in the past without the need for legislation specifically allocating that responsibility. This Bill has
40 been produced to act as a backstop, essentially, so that it can be demonstrated to an International Maritime Organization auditor during the forthcoming audit, if pushed, that although these responsibilities are not specifically mentioned within much of the legislation, there are provisions that will enable the Chief Secretary once that person has been made aware that obligations are not being fulfilled, that they can at that point legally and with enforcement assign at that stage.
45 To date, all obligations are being worked on by both Departments in the absence of legislation and have proved effective.

If it is deemed appropriate at any stage in the future for the Chief Secretary to assign such responsibilities it will have been done following much discussion at the III Code Sub-Committee, the Territorial Sea Committee and discussions between the Chair of the Territorial Sea Committee
50 and the Chief Secretary, as well as the relevant advice sought as per provisions within the draft Bill. The types of responsibilities that will be assigned will be relatively general in nature, it is envisaged, and will be derived from the conventions themselves. For example, for coastal state obligations the Chief Secretary may be minded to assign the responsibility for hydrography, for search and rescue to a Department of Government, namely the Department of Infrastructure. It
55 will then be up to that Department to ensure they are meeting the specific requirements of the conventions in order to discharge the obligations for hydrography. This will be the same for any other responsibilities which are assigned.

As set out in the draft Bill, the allocation of responsibility will be done by way of a non-legislative public document, as is set out in Schedule 2 of the draft Bill. It is envisaged that the
60 actions of the Chief Secretary will be considered as part of the ongoing overall III Code project, which will continue to have monthly Sub-Committee meetings after the audit report is received. These will feed into the quarterly meetings of the Territorial Sea Committee, the minutes of which are shared with the Environment and Infrastructure Committee, a subcommittee of the Council of Ministers. The III Code project is also subject to routine informal audits from both the DoI and
65 the Department for Enterprise, who audit one another informally, as well as the UK and the International Maritime Organization as part of the seven-year cycle of existing audits.

Mrs Lord-Brennan also raised the issue of ambulatory powers within the draft Bill. This followed Miss August-Hanson's request for an explanation as to why the Department is being quite prescriptive in clause 3 and listing the conventions as such. To clarify, there are ambulatory
70 powers within the draft Bill as they relate to the existing conventions. Clause 3 states that:

... [it] includes any amendments made from time to time, and any Protocols, to any such convention listed in Schedule 1.

This means that if there is anything added to the conventions, or if indeed the conventions are amended, they will still be covered by these provisions.

Miss August-Hanson suggested the provision to include any additional conventions which may be added to the III Code in future by way of secondary legislation, but this is not deemed

75 appropriate or necessary at this time in this case, and if I can explain that if the conventions do
change slightly, the Bill is modelled that they can change in a minor way and we can be compliant
in that regard, but remain nimble and ready to respond as such.

In further response to this query, Miss August-Hanson was sent some information ahead of
last Monday's sitting, explaining that the mechanism enshrined in the Bill is somewhat unusual
80 and was designed to address the particular challenges at hand – that is, preparing for the
forthcoming audit and ensuring the necessary legislation is in place beforehand. It is very much
tied to the particular Resolution and Code, and accordingly prescriptive provision is appropriate.
If the Resolution or Code is or are fundamentally changed to the point of being completely
different in substance, it would be appropriate for Tynwald to revisit this issue to determine
85 whether it wishes to make this mechanism available for use in a context substantially different
from that for use in which it was designed.

For the record, the Department would not presume that Tynwald would be content to apply
this mechanism to fundamentally altered circumstances without having fulsomely debated the
matter in its Branches. However, if amendments to the Resolution or Code are not as extensive
90 as to fundamentally change their character, the present provisions are flexible enough to
accommodate these changes while allowing the mechanism to continue to function as designed –
that is the ambulatory powers that Mrs Lord-Brennan enquired about.

As I have previously explained, the importance of this Bill is not just for the Department of
Infrastructure and the Department for Enterprise, but the whole of the Island's maritime industry,
95 as well as that of the UK and the rest of the members making up the Red Ensign Group.

This Bill has been prepared as part of the Island's interpretation of the International Maritime
Organization Instruments Implementation (III) Code in respect of its flag, port and coastal State's
obligations. Failure to ensure there is sufficient and appropriate legislation enacted to give effect
to the international obligations, to which the Isle of Man is a signatory, could lead to a non-
100 conformity as part of the forthcoming Isle of Man International Maritime Organization audit. This
Bill is a key step in our preparation for this audit.

I am pleased that we have reached this stage in this Bill, and I would like to thank the officers
of the Department, the officers of the Ship Registry and the legislative drafters for their tireless
efforts in bringing forward this key piece of legislation in such a timely fashion, and I know they
105 will continue to work together to ensure all convention-derived obligations are being met for the
good of the Island.

Finally, I would like to thank Mr Greenhill who I anticipate is going to second this Third Reading
of the Bill.

Thank you, Mr President. I beg to move that the International Maritime Standards Bill 2020 is
110 read for a third time.

The President: Mr Greenhill.

Mr Greenhill: Thank you, Mr President.
115 I beg to second and reserve my remarks.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

120 I would like to thank the mover, in particular, for coming back with the clarification that I
sought to do with the ambulatory references. I can see now that that is there and specifically says:

... includes any amendments made from time to time, and any Protocols ...

– and it lists the specific international commitments there. So to my mind now I see that, I think
it is pretty black and white. If and when those are updated it is relevant; and if they are *not*, they

125 are not. So there is no assessment that is required on behalf of Government to see whether they
are relevant or not, and whether they need to be debated or not. I think that is the point of having
those things work in step, effectively, to update our international commitments and the
provisions.

The other comments that I would make, which I suppose are in response to the matters raised
at the last sitting – and I am not going to labour this too much – I see that it is important, and I do
130 believe that the Isle of Man is committing fully to its obligations internationally by way of its
approach. I do think though that actually it is coming across a little bit confused in terms of how
this is going to be handled.

I think I have got absolutely no problem whatsoever with the Chief Secretary having express
powers to undertake the responsibilities under this Bill. So to me it is not a matter of it being
135 limited in terms of only when those powers are needed. However, hearing the explanation it feels
like a lot of people are involved and it is unclear to me, having asked the question about oversight
previously, fundamentally where the responsibility lies and then who has oversight. That for me
was then confused further by the idea of having the DoI and DfE auditing each other.

The matter of things being a ‘corporate matter’ still concerns me actually and I do not think
140 that has been addressed. I am conscious that amendments were considered. Is it necessary? My
point is that this Bill goes to quite specific lengths to state the powers that the Chief Secretary has,
and to be very clear that compliance is designated a corporate matter. Then we have all these
other bodies involved as well.

So I just think that I am going to take what has been said as an overriding commitment of
145 everybody to commit to what is necessary under the international obligations for the interests of
the industry and the standards. But it concerns me when responses come back from the
Department in that way, and I think that perhaps if it was considering something else where we
also have to deal with international standards, I am not sure how acceptable it would be.

So I am going to take it in good faith that everyone is committed. I am very concerned about
150 the corporate matter and what that is possibly going to set as a precedent. So I will just note that
here, I am not sure it is necessary and I am not sure it is clear, and I do not know really why we
are setting that sort of convention up in this Bill when it is not clear, and I am not even sure that
it is going to be relied upon.

Thank you, Mr President.

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

Miss August-Hanson: Thank you, Mr President. I will make this very brief, because I agree with
every word that Mrs Lord-Brennan has just said.

160 I did undertake to have a look at the words ‘corporate matter’ and making amendment to
those: one to remove the words ‘corporate matter’ and to essentially work our words around it
so that the Chief Secretary still has the power that he has –however, we are not making use of
those particular words, which seem quite undefined within the legislation; one that looks to refer
to it as a matter which is the responsibility of the Island’s Government; and another one that
165 explained a little bit more fully.

I have chosen not to lay those today but what I will say is that Mrs Lord-Brennan, having had
conversations with her about this, indicated to me, and she put it very well when she said it is
either meaningless or it is very significant, but we do not quite get why it is here and why it is
within this legislation. So I would appreciate a little bit more meat on the bones from the mover
170 of the Bill, if she would be so kind. I would also like to say, though, that the mover of the Bill has
been very helpful in trying to get some answers to questions that I have regarding the Bill, and I
thank her for that and I thank the officers for that in the DoI.

However, what I will say is that with this Bill and with other Bills that come from the
Department of Infrastructure, I would appreciate perhaps a little bit more clarity on both sides of
175 the fence, as opposed to being slightly more dismissive with some of the answers that I have been

presented with regarding potential amendments. Having a little bit more discussion would be helpful, and one-on-one with the officers in a little bit more of an open way would be helpful in the future.

Thank you, Mr President.

180

The President: Mrs Maska to reply.

Mrs Maska: Thank you, Mr President.

185

I am obliged to my colleagues for drilling down into the detail of this Bill. It is very important, because this is an important instrument that, if it is enacted, will enable the Island to demonstrate that it really takes its international obligations very seriously. But it is quite right to question the pathway and the mode that this Bill adopts to enable the Chief Secretary to act quickly, swiftly and responsibly in having to take a decision whether to assign certain matters further than from his desk.

190

If I can explain, the Department has worked very closely with the legislative drafters and colleagues in the ship infrastructure and the Ship Registry. We have had to really fully understand the requirements of the III Code and the relevant international conventions to make sure that the Bill is fully enabling us to respond in a responsible manner.

195

The Department is satisfied now that the Bill that is in front of us meets the standard that is necessary. I thank Members for considering amendments and for discussing amendments, but not bringing them today means that if this Bill is read for the third time and approved it will mean that there is an Act in place that will show when an audit comes forward. I think I spoke to the dates at the last sitting.

200

The original date had been September 2020, but due to the COVID situation it has been put back to the latest date 2021 and this is not just to ourselves, this is to the United Kingdom as a Red Ensign member. But it is highly likely that an audit may come the Isle of Man's way at short notice quite early in the New Year. I am also advised that if the Bill is still in transit it will not be considered as being a part of our ability to respond until it is fully enacted and receives Royal Assent. So that would be a finding that would not be a welcome finding for the Isle of Man or its fellow members of the Red Ensign Group.

205

If I can go on to explain, the inclusion of the words 'corporate matter' refers to an administrative concept that the Cabinet Office, supported by the Council of Ministers, has advised has a settled meaning in the context within which it is being used. There is therefore no apparent scope for misinterpretation and no discernible benefit to be derived from defining it in this Bill. 'Corporate' can be safely interpreted in its ordinary meaning as being 'shared'. The phrase therefore can be taken as referring to a matter that is not regarded as the responsibility of a single Department or Statutory Board. The remainder of the phrase:

210

... under the delegated authority of the Chief Secretary.

– indicates that authority is delegated to the Chief Secretary to attend to such matters.

215

As I explained at the sitting of the Second Reading and clauses last week, international obligations in the overwhelming majority of cases are imposed on the Island via extension of the relevant convention to the Island by the United Kingdom, which remains the Island's responsible state on the international stage. Accordingly, formal notification of such extension is given by the relevant UK authority to the suitable authority on the Island. Traditionally, that suitable authority has been the Chief Secretary.

220

In the UK, the Crown is indivisible. That is, it is a single entity and therefore the assignment of responsibilities such as those with which we are here concerned is left to the Prime Minister in that case, and is done administratively. The proposal to give the equivalent responsibility to the Chief Secretary is aimed at achieving parity with the UK to the extent possible, and therefore affording the Island a comparable level of administrative flexibility.

225 The Chief Secretary will therefore be answerable to the UK for the extent of the Island's compliance in this matter. It is therefore appropriate that the Chief Secretary should be empowered to make the arrangements necessary to ensure the performance of tasks, the completion of which he will ultimately be answerable for – he or she; and it is for this reason that clause 4(4) has been included within the draft Bill in the manner presented in this draft Bill.

230 It is the Department's firm belief that we should, or must, not risk any delay to the progress of the draft Bill. We need this legislation in place ahead of a potential audit. We know that the audit date has been pushed back; however, there is a chance that the UK could be even given an earlier slot for an audit in the Isle of Man. A period of three months' notice is all that would be given, and I would emphasise to my hon. colleagues the importance of the Isle of Man bringing this matter into enactment. I thank the Hon. Council today for their co-operation, for sharing their thoughts, and I do take back the concerns on some matters. But the importance of this draft Bill today has been clearly spoken about.

So I beg to move, Mr President, that the Third Reading be approved.

240 **The President:** I put to Council the question that the International Maritime Standards Bill 2020 do now pass. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

2. Medicines (Amendment) Bill 2020 – Second Reading approved

Mrs Sharpe to move:

That the Medicines (Amendment) Bill 2020 be read a second time.

The President: Item 2, Medicines (Amendment) Bill 2020, Second Reading. Hon. Member, Mrs Sharpe, to move.

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

Hon. Members, I am pleased to move the Second Reading of the Medicines (Amendment) Bill 2020, and in doing so I will highlight some of its key elements.

250 Hon. Members, the underlying principle behind this Bill is to update the Island's regulatory framework for prescription-only medicines. To achieve this, clause 3(4) of this Bill would amend section 5 of the Medicines Act 2003 by inserting the following rules: (1) to prohibit a person from selling or supplying, or offering to do so, a prescription-only medicine otherwise than in accordance with a prescription given by an appropriately qualified healthcare professional; and (2) to prohibit a person from administering a prescription-only medicine to someone else if they are not an appropriately qualified healthcare professional, or acting under the direction of one. Such rules are subject to exemptions laid out in secondary legislation made under the Act; and the rule regarding the sale and supply of prescription-only medicines will not apply where the sale or supply is to a patient by their doctor or dentist. As a consequence of these amendments clause 3(5) of this Bill seeks to insert a new section 5A into the Act to create offences in relation to the general rules.

260 Hon. Members, as outlined at the First Reading of this Bill, no policy changes are being proposed. The Bill merely seeks to correct an anomaly and ensure the controls surrounding prescription-only medicines operate as the Department of Health and Social Care intends.

Mr President, I beg to move that the Medicines (Amendment) Bill 2020 be read for the second time.

265 **Mr Henderson:** I beg to second.

The President: Mr Henderson, seconded.

I put the question that the Medicines (Amendment) Bill 2020 be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Medicines (Amendment) Bill 2020 –
Clauses considered**

Mrs Sharpe to move.

270 **The President:** We turn to clauses.
Clause 1, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.
With your permission, I wish to move clauses 1 and 2 together.

275 **The President:** Is that agreed?

Members: Agreed.

280 **Mrs Sharpe:** Thank you, Mr President.
Clause 1 gives the resulting Act its short title. Clause 2 provides that the Act is to come into operation on the day that Royal Assent is announced in Tynwald.
Mr President, I beg to move that clauses 1 and 2 do stand part of the Bill.

285 **The President:** Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second, sir, and reserve my remarks.

290 **The President:** I put 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.

295 **Mrs Sharpe:** Clause 3 of the Bill updates the Medicines Act 2003 by amending sections 2, 3, 5, 30 and 32 and Schedule 2, and inserting into the Act a new section 5A.

Clause 3(2) of this Bill amends section 2, paragraph (1) of the Act, a section that places a statutory duty on the Department of Health and Social Care to make Regulations to control, restrict, regulate and prohibit in relation to medicinal products the following activities: (1) selling, supplying or otherwise placing on the market; (2) manufacturing and assembling; (3) distributing;
300 (4) procuring the selling, supplying or otherwise placing on the market; (5) importing and exporting; and (6) possessing with a view to selling, supplying or otherwise placing on the market.

Clause 3(2) amends section 2 paragraph (1) by inserting 'administering' to put beyond doubt that the Department's regulation-making powers extend to the administering of medicinal products.

305 Clause 3(3) of this Bill amends section 3 of the Act. The purpose of section 3 is to give the Department a regulation-making power to provide for exemptions from any controls and restrictions created by Regulations made under the aforementioned section 2.

Section 3 is being amended as a consequence of the amendments being made to section 5, specifically the controls being introduced as to the sale, supply and administering of prescription-
310 only medicines.

Clause 3(4) of this Bill amends section 5 by substituting subsection (2) in its entirety and inserting in two new subsections, (2A) and (2B). The substitution of subsection (2) is to make it clear on the face of the Act itself that, as a general rule, a person is prohibited from doing either of the following: (a) selling by retail, offering or exposing for sale by retail, or supplying in
315 circumstances corresponding to retail sale prescription-only medicines, unless they do so in accordance with a prescription from an appropriate person; and (b) administering, other than to himself, a prescription-only medicine unless he is an appropriate person or is acting in accordance with the directions of an appropriate person. These prohibitions are then, as briefly touched on above, subject to such exceptions set out in Regulations made under the Act.

320 Hon. Members will note, Mr President, the use of 'he' as a third-person pronoun here and although I believe we need to be mindful of weeding out 'he' and instead using 'they' as a third-person pronoun in our legislation, the legislative drafter has used 'he' in this amendment Bill in order to mirror the original legislation. This is just an aside, Mr President, but I think it is important to note for future historical purposes that we are mindful that our legislative language needs to
325 eventually become gender neutral.

So, back to the clauses before us, the insertion of subsection (2A) is to exempt from the general rules doctors and dentists when they are selling or supplying prescription medicines to a patient of theirs.

330 Lastly, with regard to clause 3(4), a subsection (2B) is being inserted to define for the purposes of section 5 *who* qualifies as an appropriate practitioner.

Clause 3(5) inserts as a consequence of the amendments to section 5 a new section 5A into the Act, the purposes of which are to make it an offence for a person to contravene section 5(2) or possess a prescription medicine with the intent of supplying it otherwise than in accordance with a prescription from an appropriate practitioner. A person found guilty of such an offence is liable
335 on summary conviction to a fine not exceeding level 5 on the standard scale; or, if convicted on information, to a maximum two-year custodial sentence or to a fine, or to both.

Now, Mr President, the learned Attorney has a proposed amendment to clause 3 paragraph (5). I would like to thank him for his careful consideration of the Bill and for his proposed amendment.
340

The President: You are moving clause 3?

Mrs Sharpe: Yes, Mr President.
Sorry, I beg to move clause 3.
345

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.
350

The President: Mr Attorney.

Mrs Sharpe: Oh, excuse me, Mr President, I am so sorry, I do apologise. I have not quite finished moving clause 3 and in my own head I thought we would be moving the learned Attorney's amendment at this point. I do apologise, Mr President.
355

Clause 3(6) of the Bill amends section 30 which falls under Part 4, Enforcement of the Act.

360 Firstly, section 30(1) is amended so that, regarding an offence of offering a prescription medicine for sale contrary to section 5 where that product was found on a vehicle from which medicines are sold, it shall be presumed unless the contrary is proven that the person in charge of the vehicle offered that product for sale.

Secondly, section 30(2) is to be amended so that, regarding the offence of possessing a prescription medicine with the intent of selling or supplying it contrary to section 5 where the

365 prescription medicine was found on premises at which there was a business which included the sale or supply of medicines, it shall be presumed unless the contrary is proven that he had the medicinal product in his possession for the purpose of sale or supply.

370 Clause 3(7) of this Bill makes amendments to Part 5 of the Act, a Part that seeks to apply with appropriate modifications the preceding parts of the Act to veterinary medicinal products as they apply to human medicines. Hon. Members, veterinary medicines and animal feeding stuffs are now regulated by DEFA under the Veterinary Medicines Regulations 2019, rather than by the DHSC under the provisions of Part 5 of the Act, which is not in operation.

375 Despite Part 5 not being operable, the amendments proposed by this Bill to human prescription medicines will, for completeness, carry through to veterinary medicinal products until such time as a wide review of the Act has been undertaken by the Department. It is anticipated that Part 5 will be revoked in due course.

375 Lastly, clause 3(8) inserts a definition of 'administering' into Schedule 2, Interpretation.

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

The President: Mr Henderson.

380 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second again, sir, and reserve my remarks.

The President: Mrs Lord Brennan.

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

Just to put on record my thanks to the mover for her assistance in my query to do with the amendment to section 5 of the Act, which is the insertion of subsection (2). My query related to 2(b) and:

... administer (otherwise than to himself) ...

390 I was interested in where the exemptions might be in connection with, for example, a family member, a parent administering prescription medication to a child, or a carer administering such prescription drugs to someone they were caring for. It has been highlighted to me that it is the Prescription Only Medicines (Human Use) Order 1997 (of Parliament), which is applied by the 2005 Regulations that are mentioned in this Bill that covers that exemption. So on that assurance, which I am grateful to have, I am happy to support her; and I thank her for her time in liaising with the officers and the drafters this morning to dig that out for me and confirm it.

395 Thank you, Mr President.

The President: The learned Attorney.

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

I have circulated to Hon. Members an amendment which I would propose to move in respect of clause 3(5) of the Bill. As clause 3(5) stands, it acts to insert a new section 5A into the Medicines Act 2003. The proposed insertion of section 5A in consequence of the amendments being proposed to section 5(2) will make it an offence for a person to contravene section 5(2), and also for a person to have in his possession a prescription-only medicine with the intent of supplying it otherwise than in accordance with a prescription from an appropriate practitioner.

410 The purpose of this amendment is straightforward, acting to ensure consistency with the amendments being made to clause 3(4) of this Bill to section 5(2) of the Act, ensuring two things are captured within the proposed section 5A of that Act. That is: firstly, that a person possessing a prescription medicine with the intention of selling it other than in accordance with a prescription form from an appropriate practitioner; and secondly, that a person possessing a prescription

medicine with the intention of administering it to someone else when not suitably qualified or acting in accordance with the directions of somebody that is.

Accordingly, Mr President, I beg to move that amendment standing in my name:

Amendment to clause 3

Page 6, line 14 in the inserted section 5A, for paragraph (b) substitute —

‘(b) has in his possession a medicinal product to which section 5 applies and which he intends to sell, supply or administer in contravention of that section,’

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

Mrs Poole-Wilson: Thank you, Mr President.

I would like to second the amendment. I would also like to take the opportunity, in looking at that amendment – and it may be something that, if it cannot be answered today be considered and if need be addressed at Third Reading – to ask the question why, in clause 3(4), which inserts a new (2A), there is a reference there to:

(2A) Subsection (2)(a) does not apply to the sale or supply of a medicinal product ...

– but that does not refer to the administration of a medicinal product. I just wondered, as we are picking up ‘administer’ in this amendment, whether it needs to be picked up in there. It may not, but just for good order I think it would be helpful to clarify that.

425 Thank you, Mr President.

The President: Mrs Sharpe to reply.

430 **Mrs Sharpe:** Thank you, Mr President; and I would like to thank the Hon. Member for her query. I will double-check with the drafter and have an answer ready for the Hon. Member. Thank you.

The President: I put first the amendment in the name of the learned Attorney. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

435 Clause 3, as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 4.

Mrs Sharpe: Thank you, Mr President.

440 Clause 4 of the Bill provides that the amendments being made to the Act by clause 3 are deemed to have come into operation on 9th December 2005, the date that the Prescription Only Medicines (Human Use) Regulations 2005 were made.

445 Subsections (2) and (3) of this clause make it clear that anything done by a person during the period from 9th December 2005 to the coming into operation of this Bill in reliance on an exemption in the aforementioned Regulations is: (1) to be treated for all purposes as validly done; (2) does not render a person liable to proceedings to which they would otherwise be liable if the prohibitions being introduced were not operative, and had not been brought into operation by virtue of clause 3 of this Bill; and (3) does not render a person liable to proceedings to which they would not otherwise be liable.

450 Clause 4(4) defines ‘the relevant period’ as being the period beginning with the day on which the Prescription Only Medicines (Human Use) Regulations 2005 were made and ending with the day section 3 of this Bill comes into operation.

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

The President: Mr Henderson.

455 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second, sir, and reserve my remarks.

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

460 Thank you, Hon. Members.

3. Road Traffic Legislation (Amendment) Bill 2020 – Consideration of clauses commenced

Mrs Maska to move.

The President: Thank you, Hon. Members.

We move on now to Item 3, Road Traffic Legislation (Amendment) Bill, it having received its Second Reading before the summer recess, so this morning we consider clauses.

465 I call on Mrs Maska to move clause 1.

Mrs Maska: Thank you, Mr President.

The Second Reading of this Bill took place at the end of June, as you have so rightly said, Mr President, and I would like to thank the Hon. Attorney General for presenting the Second Reading at that time. Having literally joined the Department of Infrastructure at that time in June, before the Second Reading, there had not been an opportunity for me to be fully briefed on the scope and complexity of this Bill.

I would also like to say that much time and hard work has been devoted to improving aspects of this Bill, and I would like to thank officers of the Department, the legislative drafter, my colleague in Council, Mrs Poole-Wilson, in her capacity as Equality Champion, and Mrs Dawn Kinnish, the Equality Adviser, for the many hours spent working towards improving this important piece of legislation.

I would add, Mr President, that certain clauses relating to equality matters are still being refined and I would, with the leave of Council, bring these clauses in January. I would like to think that we are nearly at the point where we have a meeting of conditions and minds on those equality matters.

I would also add, Mr President, that since the formulation of this morning's Order Paper, very late in the day a number of technical amendments and questions have arisen which do require clarity, further scrutiny and investigation. On that basis, Mr President, for the purpose of making the Bill appropriate and fit for use, I would ask that I move just clauses 1 to 6 today rather than all clauses. I would ask to bring the balance of clauses at the future sitting, together with the Equality clauses which I have referred to.

So, Mr President, I now refer to Part 1, the introductory provisions. I would ask that I be allowed to move clauses 1 and 2 together as they relate to the short title of the Bill and other provisions.

490 **The President:** Is that agreed?

Members: Agreed.

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

These clauses give the Bill its short title and provide for it to come into operation on one or more days appointed by the Department by order.

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

The President: Mr Henderson.

500

Mr Henderson: I beg to second and reserve my remarks.

The President: I put 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.

505

Clause 3.

Mrs Maska: Thank you, Mr President.

These clauses form part of Part 2 which relate to amendments to the Road Traffic Act 1985. Clause 3 is Part 2 of the Bill and makes amendments to the Road Traffic Act 1985 and reference in this Part to a section or schedule is actually reference to a section or schedule in that said Act.

510

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

The President: Mr Henderson.

515

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second, sir, and reserve my remarks.

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

520

Clause 4.

Mrs Maska: Thank you, Mr President.

Clause 4 amends section 3A, causing death by careless driving when under the influence of drink or drugs, and it is amended by inserting a paragraph 3A(1). This introduces a new basis for the commission of the offence created by that section. That new basis is the presence in one's body, at the time of the incident in question, of a specified controlled drug, the proportion of which in the person's blood or urine exceeds the prescribed limit for that drug.

525

Mr President, I beg to move clause 4.

530

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second, sir, and reserve my remarks.

535

The President: I put 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.

Mrs Maska: Thank you, Mr President.

540

Clause 5 inserts a new section 5AA, and this is:

Driving or being in charge of a mechanically propelled vehicle with concentration of specified controlled drug above specified limit

This section creates the new offence of driving, attempting to drive, or being in charge of a mechanically propelled vehicle on a road or other public place at a time when the person in question has in their body a specified controlled drug in a proportion exceeding the specified limit. The section specifies the limit for each of the drugs and also specifies defences available to an accused.

545

Mr President, I beg to move clause 5 of the Bill.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
550 I beg to second, sir, and reserve my remarks.

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

Clause 6.

555

Mrs Maska: Thank you, Mr President

Clause 6 amends section 5B by the substitution of 'preliminary breath test' for 'breath test', this being a more accurate description of the test to which the section relates.

In addition, a 'specified offence' is substituted by a 'serious driving offence'.

560 Mr President, I beg to move clause 6 do stand part of the Bill.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

565 I beg to second, sir, and reserve my remarks.

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

Mrs Maska.

570

Mrs Maska: Thank you, Mr President

That completes my presentation to Council today, and I do thank Hon. Members for their help and indulgence in trying to bring this important piece of legislation forward. I do hope to be in a position to move the balance of clauses at the next appropriate sitting of the Legislative Council.

575 Thank you, Mr President.

The President: Thank you, Hon. Member.

4. Human Tissue and Organ Donation Bill 2020 – First Reading approved

Mrs Lord-Brennan to move:

That the Human Tissue and Organ Donation Bill 2020 be read a first time.

The President: We move on now to Item 4, Human Tissue and Organ Donation Bill for First Reading.

580 Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

585 It is an honour to move this Bill in Legislative Council. The Private Member's Bill before us is a result of the efforts of Mr Perkins MHK and the tireless and dedicated advocacy work of the charity Organ Donation Isle of Man and in particular, Diane Taylor. It is in the name of Diane's son, Daniel Boyde and Diane's good work, inspired by her son, that the Bill is known informally as Daniel's Law.

On Saturday at St George's Church I attended, with many others, the service organised by Organ Donation Isle of Man; and that, as well as paying tribute to and remembering donors and their families and the difference that such a gift – which may well be a gift that is life-changing or life-saving – presented a further cause for reflection on the experience of donor and donor-recipient relatives which no words can do justice to here, but that this Bill hopes to improve upon.

Mr President, the primary purpose of the Human Tissue and Organ Donation Bill is to modernise the law relating to consent to the use of organs and other human tissues for transplant activities; and, in doing so, to follow the UK, Scotland and Wales in terms of adopting an opt-out system of consent. Additionally, the Bill would update our legislation in terms of human tissue. This has resulted in a larger Bill than first anticipated, and it has been necessary. Since this work on drafting the Bill in connection with organ donation progressed it became clear, following discussions with the Isle of Man Health Service professionals and the drafter, that the Isle of Man human tissue legislation also required updating. So the Bill, on the human tissue side, modernises Manx legislation regarding post-mortems and tissue retained for other purposes.

Therefore, as well as seeking to have the effect of increased availability of and access to organs for donation and transplant, with an overarching view to save lives and reduce distress on families, the Bill deals with some technical updates which – like the main aspects of the Bill – have also involved professionals on and off Island including Public Health, the Human Tissue Authority in the UK and DHSC medical and, indeed, mortuary staff.

In closing, I would like to thank Hon. Members in advance of their close consideration of this Bill and, given the nature of it, encourage that any issues of concern or queries are raised as we progress – or indeed ahead of the next sitting to consider this Bill, should this stage pass – in a way that might accommodate me reverting to the professionals and experts in order to answer or clarify any issues. I would be only too happy to attend to any broad or specific queries for Hon. Members and indeed clarify on the record.

Mr President, having drawn the main purpose and principle of the Bill to the attention of this Council, I beg to move the First Reading of the Human Tissue and Organ Donation Bill.

The President: Miss August-Hanson.

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

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to welcome the First Reading of this important Bill. It is important for all the reasons that the mover has outlined.

The only thing I would like to say therefore at this stage, is that I absolutely welcome the principle and the aim of the Bill. I agree that it is a detailed and technical Bill that does merit some close consideration, and take on board the mover's request to have that consideration applied here and for any questions to be raised with her.

Thank you, Mr President.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I also would like to thank the hon. mover for bringing this Bill to us, acknowledging its complexity and thanking the hon. mover for the opportunity to reflect on these things in advance.

I suppose I would add simply at this point, in addition to the comments already made, there would be significant pastoral implications within this Bill not least, for example, in assisting people

640 occasionally to grieve in terms of bereavement if they know, for example, that actually their departed relative is able to sustain life elsewhere.

So in addition clearly to the significant medical complexities, there are a number of pastoral issues as well that strike me as hugely important. I thank the Hon. Member again for bringing this Bill to us.

Thank you, Mr President.

645

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

650 I would like to thank the Hon. Member for bringing this Bill before us today; and also the Hon. Member, Mr Perkins, for his perseverance in creating this Bill. I think most people, when asked whether they would be willing to donate their organs to save a life, would say yes; but, along with all the other less important commitments in daily life, putting their name on a list of donors might be something they do not actually get around to.

655 I believe that in Wales an opt-out system has been in place since 2015 and from what I understand, since Wales introduced its opt-out system, their consent rate has risen from 58% to 75%. So I very much welcome this Bill.

Thank you, Mr President.

The President: Mr Henderson.

660

Mr Henderson: Gura mie eu, Eaghtyrane.

665 I too would like to support the Bill going through the Legislative Council, it is very important; and, for the reasons that Mrs Sharpe has just laid out, whereby it can demonstrate the increase in donations, especially. An example is drawn to mind from some constituency work I did a few years ago with regard to corneal grafts, etc., whereby the constituent was visually hampered for years on the waiting list for a corneal graft, due to the very facts that Mrs Sharpe has just pointed out. So it is very good to see this here.

670 I would just like to add my support to the Bishop's comments as well, because the pastoral aspects here tend to be overlooked sometimes; and they too are important, as the Lord Bishop has pointed out, Eaghtyrane.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

675 I would just like to echo the support that my colleagues have expressed for the principles behind bringing this Bill forward. It is a very emotive subject and, as the Lord Bishop has said, there are pastoral issues which make it even more difficult to consider.

680 So I think, as we go forward, this will be a very difficult subject to fully give our attention to; but it is actually something that I welcome, because I think this is going to be a great addition to the opportunity on the Island to enhance a quality of life, or even give a person a prospect of life that they may not have otherwise had.

So I look forward to the passage of the Bill through this Council.

Thank you, Mr President.

685

The President: Mr Greenhill.

Mr Greenhill: Thank you, Mr President.

From my own experience, I would like to fully support the Bill.

Thank you.

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

Miss August-Hanson: Thank you, Mr President, I will make this quite brief.

I would like to thank Mr Perkins for having brought this, and he has worked so incredibly diligently on this piece of legislation and made himself so *au fait* with every single aspect of it. He has been truly, extraordinarily helpful as well in terms of briefing Members and taking questions from Members, and being able to answer so many questions about this piece of legislation, which is such a groundbreaking piece of legislation. I think it is going to do an enormous amount of good.

Mr President, I would also like to thank you for giving so many young people a voice in Junior Tynwald, because a couple of years ago they actually voted unanimously for the opt-out option in that place. And just to say that also, I know there is an awful lot of talk about us following pieces of Westminster legislation at times, because it is useful and helpful and cuts down on time and resource ... not to reinvent the wheel in places. However, the human tissue side of this piece of legislation was very much adopted from the Scottish legislation. They do have an extraordinary way of drafting over that way, so it is nice to actually see some of their good work adopted in places here as well.

The public consultation was overwhelmingly very supportive of this legislation; and I would also like to give thanks to the mover of the Bill as well for her introductory speech.

Thank you, Mr President.

710 **The President:** Mrs Lord-Brennan to reply.

Mrs Lord-Brennan: Thank you, Mr President.

I would like to thank everybody who has spoken this morning for their support of the Bill, it is very much appreciated; and in particular to pick up on one or two comments.

First of all, Mrs Poole-Wilson: I thank her for her support of the approach of detailed scrutiny that I feel sure will happen in this place. I am sure the Legislative Council will do a good job of checking the Bill and have its proper role carried out here. So I am grateful for that.

I think it is definitely important to have the detailed scrutiny of such an important matter and, as the Lord Bishop has said, he is quite right to raise that there are significant pastoral implications for this. I thank him very much for raising that and we can obviously discuss that further as we progress with the Bill. That should of course be given significant weight when we are dealing with legislation of that matter, and I imagine absolutely it will be very important for people to have the right support in the way that the Lord Bishop has raised there. So I will close the comments and thank everybody in advance of their consideration of this Bill; and I would like to also thank my seconder, Miss August-Hanson.

Thank you, Mr President. I beg to move.

The President: I put the question that the Human Tissue and Organ Donation Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

5. Statute Law Revision Bill 2020 – First Reading approved

HM Attorney General to move:

That the Statute Law Revision Bill 2020 be read a first time.

730 **The President:** Final Item, Statute Law Revision Bill 2020 for First Reading. I call on the learned Attorney General.

The Attorney General: Thank you, Mr President, and Hon. Members.

This Bill makes a series of minor amendments and corrections to Acts of Tynwald and repeals obsolete provisions. It is by its very nature and content a piece of legislative good housekeeping.

735 If I may briefly explain, my legislative drafting team in Chambers keep a log of minor amendments, necessary repeals and corrections to existing legislation which either they, Departments or indeed Members, or the Clerk of Tynwald and his Office helpfully bring to my attention. Then periodically, with the approval of the Council of Ministers, I seek leave to bring forward a Statute Law Revision Bill for consideration by the Branches.

740 Statute Law Revision Acts provide a convenient way of making such revisions which are necessary or advisable to tidy up statutes, by making necessary corrections to the text when they contain obvious errors, be they grammatical or typographical, perfecting cross-references and at times repealing obsolete provisions – the intention being to ensure that the legislation in question, when so amended, operates as Tynwald originally intended.

745 Without the provisions of the Bill before you today, the minor changes provided for would otherwise have to be made by way of separate amending Bills to each of the relevant Acts of Tynwald, perhaps by making bespoke provisions, which would clearly take longer to achieve. The purpose of the Bill is therefore to ensure that the Acts of Tynwald referred to are amended by the Bill, and continue to be accurate and up-to-date.

750 The Bill has not been subject to public consultation because it is only intended to be of a technical nature and lacks any policy content. It has no financial implications, either.

The Bill has two Parts and contains 34 clauses. Part 1 of the Bill, clauses 1 and 2, contains preliminary matters, the Bill's short title and commencement provisions. Part 2 of the Bill then contains 32 clauses which make miscellaneous amendments and repeals to Acts of Tynwald. These
755 clauses of the Bill each address a specific provision in existing primary legislation which, as I say, are either amended, corrected or repealed. The provisions in these 32 clauses will be brought into operation by the Council of Ministers in the usual way, by Appointed Day Orders.

In advance of today's sitting, Mr President, I have circulated to Hon. Members of Council a note in relation to each of the clauses of the Bill explaining their intent. I will of course address the
760 detailed purpose and intent of each of those clauses, in the event that Hon. Members pass the Bill to its clauses stage.

Mr President, I would like to thank Hon. Members and move that the Statute Law Revision Bill 2020 be read for the first time.

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

Mrs Poole-Wilson: Thank you, Mr President.

I would like to second the First Reading of this Bill. It may be a technical Bill but, as we all well know, the process of making legislation is a demanding one; and of course it is important, where
770 errors and inaccuracies are identified, that we take the opportunity to correct them.

Thank you, Mr President.

The President: I put the question that the Statute Law Revision Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

775 Thank you very much, Hon. Members, that concludes the business before us this morning. Council will now stand adjourned until our next sitting, which will take place at 10.30 a.m. in Tynwald Court on 15th December.

Thank you.

The Council adjourned at 11.39 a.m.