



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 1st April 2014

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Present:

The Deputy Speaker (Mr L I Singer) (Ramsey);
Mr D M Anderson (Glenfaba); Hon. W E Teare (Ayre);
Mr A L Cannan (Michael); Hon. T M Crookall (Peel);
Mr P Karran, Mr Z Hall and Mr D J Quirk (Onchan);
Mr J R Houghton and Mr R W Henderson (Douglas North);
Mr D C Cretney and Mrs K J Beecroft (Douglas South);
Hon. C R Robertshaw and Mrs B J Cannell (Douglas East);
Hon. J P Shimmin and Mr C C Thomas (Douglas West);
Mr R A Ronan (Castletown); Mr G D Cregeen (Malew and Santon);
Hon. J P Watterson and Hon. P A Gawne (Rushen);
with Mr R I S Phillips, Secretary of the House.

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House of Keys

The House met at 10.00 a.m.

[MR SINGER *in the Chair*]

The Deputy Speaker: Moghrey mie, Hon. Members.

Members: Good morning, Mr Deputy Speaker.

5 **The Deputy Speaker:** The Chaplain will lead us in prayer.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The Deputy Speaker: Hon. Members, leave of absence has been given by Mr Speaker to the Chief Minister, Minister Quayle and Minister Skelly, who are off Island on Government business.

Procedural – Item 3.2 withdrawn

The Deputy Speaker: I understand the Minister for policy and reform, Mr Robertshaw, will not now be moving the Second Reading of the Landlord and Tenant Bill.

10 **Mr Robertshaw:** Not today, Mr Deputy Speaker.

1. Questions for Oral Answer

TREASURY

1.1. Pinewood – Government's ability to sell shares

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for the Treasury:

In what circumstances the Government would be unable to sell its shares in Pinewood?

The Deputy Speaker: Hon. Members, we turn to Item 1, Questions for Oral Answer. I call on the Hon. Member for Douglas South, Mrs Beecroft, to ask Question 1.

15

Mrs Beecroft: Thank you, Mr Deputy Speaker.
I ask the Question in my name.

The Deputy Speaker: Minister.

20

The Minister for the Treasury (Mr Teare): Thank you, Mr Deputy Speaker.
The two factors which would most likely prevent Treasury selling shares would be if there was a no-trading agreement in place or if Treasury was in receipt of unpublished price-sensitive information.

25

The UK's Financial Services and Markets Act 2000, the rules of the Stock Exchange and the Isle of Man's Insider Dealing Act 1998 as amended by the Financial Services Act 2008 provide full details of the regulations with which we must comply.

The Deputy Speaker: Mrs Beecroft, a supplementary.

30

Mrs Beecroft: Thank you, Mr Deputy Speaker.
Could the Treasury Minister confirm whether or not knowledge of the cost of the individual films by Pinewood Film Advisors that was recommended to Treasury... does this constitute insider knowledge which would prevent the sale of the shares?

The Deputy Speaker: Minister.

35

The Minister: I am advised that whilst details of the films are confidential, it would not constitute insider knowledge for insider dealing purposes.

The Deputy Speaker: Mrs Beecroft.

40

Mrs Beecroft: Thank you, Mr Deputy Speaker.
Could the Treasury Minister confirm who gave him that advice?

The Deputy Speaker: Minister.

45

The Minister: I am not prepared to give that advice, but advice I have received indicates that individual film investments would not be relevant for insider dealing purposes.

The Deputy Speaker: Mr Karran, a supplementary.

50

Mr Karran: Lhiass-Loayreyder, would the Shirveishagh Tashtee not agree that the issue of the advice that he has been given is of public importance in the fact that it could bring the credibility of his office and the Council of Ministers down as far as that advice is concerned when there has been a question mark about its legality?

55

The Deputy Speaker: Minister.

60

The Minister: Mr Deputy Speaker, what we are talking about here is hypothetical circumstances and I would prefer to deal with the actual circumstances, the physical circumstances, when they arise – not hypothetical issues.

The Deputy Speaker: Mr Karran.

Mr Karran: Would the Shirveishagh not agree that it is not hypothetical if he needs to cash in the investment; and would he not agree that the reason he will not answer that question is he

65 knows that he *cannot* cash in the shares at the present time because he will be... [*Inaudible*] as
far as the legislation is concerned? Does he not think that not all Members in this House are not
going to just nod through and allow this to go on?

The Deputy Speaker: Minister to reply.

70

The Minister: What I would say is that, in the Hon. Member's words, if we did need to 'cash
in', we would take specific advice as to the circumstances *at that time*.

The Deputy Speaker: Mrs Cannell.

75

Mrs Cannell: Thank you, Mr Deputy Speaker.

Can I ask the Minister: if he is not prepared to say who gave him the actual advice, how can
we, as Members representing the people of the Isle of Man, be confident that in fact the advice
that you have been given is sound advice?

80

The Deputy Speaker: Minister.

The Minister: The legislation is quite clear – it is contained within the three areas that I
indicated in my original response – and I am content that we need to be careful when we do
85 decide to proceed, and take appropriate advice at that time.

The Deputy Speaker: Final supplementary, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Deputy Speaker.

90

Given that the Treasury Minister has said he already has taken legal advice on this issue, how
can he now say he is going to take specific advice at the time when it becomes relevant? It is
obviously relevant now – otherwise, we would not be asking the questions – and he obviously
thought it was relevant, or he would not have taken that advice. So will he clarify why he will not
state who gave him that advice?

95

The Deputy Speaker: Minister.

The Minister: I did say in the supplementaries that we would have a look and take specific
advice at the time in the light of specific circumstances.

100

When I consider Answers to the Questions, I do take advice from my officials and others as to
what may come up in the supplementary questions. I feel that what we are looking at is a
hypothetical issue, and I would prefer to deal with actual circumstances at the time.

1.2. Divorce proceedings – Banning of advocates; use of arbitration

The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for the Treasury:

*What his policy is on an initiative to ban advocates from divorce proceedings and that such
proceedings should take place by arbitration; and when he will bring forward any required
legislative changes?*

The Deputy Speaker: We move to Question 2. I call on the Hon. Member for Douglas North,
Mr Houghton. (*Interjection*) (**Mrs Beecroft:** It is.)

105 **Mr Houghton:** Thank you, Mr Deputy Speaker.
I beg leave to ask the Question standing in my name, sir.

The Deputy Speaker: Minister for the Treasury.

110 **The Minister for the Treasury (Mr Teare):** Thank you, Mr Deputy Speaker.
I am not aware of any initiative to ban advocates from divorce proceedings and to require all such proceedings to take place by arbitration, and therefore there are no plans to bring forward legislative changes.

115 The judiciary, and in particular His Honour Deemster Corlett in relation to family matters, keeps all court processes etc under review both here and elsewhere and will from time to time, where appropriate, update these processes.

The Deputy Speaker: Mr Houghton, a supplementary.

120 **Mr Houghton:** Thank you, Deputy Speaker.
Can I ask the Minister: is it his initiative, though, or would it be the initiative of his... to bring forward such proceedings?

The Deputy Speaker: Minister to reply.

125 **The Minister:** No, it is not my initiative. The Hon. Member will recall that when the last revision to the Rules of Court took place, it was at the initiative of the judiciary, who then brought it forward to another place for consideration and approval.

130 **The Deputy Speaker:** Mr Houghton.

135 **Mr Houghton:** Mr Deputy Speaker, if the Minister says it is not his initiative, why is he quoted in a letter that he has signed and that... [*Inaudible*] 'there may be a strong argument that there should be no advocates involved in divorce proceedings and that they should all take place before an arbitrator,' – which I would agree with him on, but can he answer as to why he has stated that in a letter that he has signed, that I am sure this House would support, and why he has now misled this House this morning?

140 **The Minister:** I have not misled. What I did say in my Answer, which I stick to, is that it is up to the judiciary to come forward. I might have a view, I might have an opinion, but it is up to the judiciary to come forward and to make recommendations to another place.

145 **The Deputy Speaker:** Can I ask you, first of all, Mr Houghton... Accusing the Minister of misleading the House is not parliamentary. Would you kindly withdraw that remark?

A Member: Hear, hear.

150 **Mr Houghton:** I am not sure if I will, Mr Deputy Speaker. (**A Member:** You have to.) I am not sure if I will, because that is the Minister's idea and I have the evidence before me.

The Deputy Speaker: In that case, resume your seat and we will move on to the next Question. I would reconsider that, Mr Houghton.

**1.3. Rules of Court –
Small claims proceedings**

The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for the Treasury:

What plans he has to arrange a meeting with interested Members and the First Deemster to discuss the Rules of Court in relation to small claims proceedings?

155 **The Deputy Speaker:** Question 3. Mr Houghton, would you like to ask that Question?

Mr Houghton: Thank you, Deputy Speaker.
I beg leave to ask the Question standing in my name.

160 **The Minister for the Treasury (Mr Teare):** Thank you, Mr Deputy Speaker.

In Tynwald Court, on 18th March this year, I was asked by the Hon. Member for North Douglas if I would invite the First Deemster to make a presentation on the rules of the Small Claims Court, and at that time I advised Hon. Members that, as I was unclear as to what His Honour was being asked to present on, I did not consider that such an invitation was appropriate.

165 My view has not changed by the argument as used to date.

The Deputy Speaker: Mr Houghton, a supplementary.

170 **Mr Houghton:** Mr Deputy Speaker, I put the same supplementary as I was going to put in the previous Question: why does he have to wait for the judiciary to come forward with changes when we have a right, by being the legislature here, to do precisely that, and do do it?

Can the Minister not state why he will not make this arrangement and why he feels we should not interfere with legislative matters, when that is precisely what this Hon. House is about?

175 **The Deputy Speaker:** Minister to reply.

The Minister: I would respectfully suggest, sir, that we are not dealing with legislative matters. What we are dealing with is the separation between this Hon. Chamber and the judiciary. The two have to be kept apart for good governance purposes.

The Deputy Speaker: Mr Karran, a supplementary.

185 **Mr Karran:** Would the Shirveishagh not agree that it is in the hands of the questioner – that he could put a declaratory resolution down, which then the Council of Ministers would have to honour?

Would he also not agree that everyone should understand the separation of power in this Hon. House, even if it may not be the case; but the fact is that what we also... [*Inaudible*] do is deal with the problems of restrictive practices, (**Mr Houghton:** Hear, hear.) which are actually stopping individuals getting access to justice (**Mr Houghton and another Member:** Hear, hear.) because of the fact of the way there is a closed shop?

195 **The Deputy Speaker:** We are straying a little bit, but Minister for the Treasury to reply.

The Minister: Thank you, Mr Deputy Speaker.

Everybody will have different views on what is appropriate and what may not be appropriate in certain circumstances. I do see which way the hon. gentleman is coming at it, but I have to say

200 that we have to be *very* careful about the clear separation between the judicial processes and
the executive and Tynwald Court, so I would be very cautious about how this Hon. House should
proceed.

The Deputy Speaker: Final supplementary, Mr Houghton.

205 **Mr Houghton:** Yes, I thank you, Deputy Speaker.

In view of what the Minister has said, where he says there has to be a clear separation, there
obviously has to be a clear separation in ongoing court cases. That is fine, everybody
understands that. But this is changing back to what was for 25 years an operation that happened
in the Small Claims Court, that now has been changed, or changed since 2009, where advocates
210 are unwelcome in small claims proceedings.

Can I ask the Minister this question: if a declaratory motion was put down in another place
asking for the appropriate Rules of Court to be changed for advocates not to be present any
longer in small claims proceedings, would he support it? As the MHK for Ayre, would he support
it?

215

The Deputy Speaker: Minister.

The Minister: As I said in the original Answer to the Question, I have not been influenced by
the argument so far, so let's make a good argument and let's hear what the Hon. Members have
220 to say.

Also, there are those who assist and those who deal with claims in the Small Claims Court,
who are very experienced, who act on behalf of big companies, but who are not lawyers. So
where do you draw the line? Do you say that a lawyer should not act but it is alright for an
experienced individual who is operating on behalf of the big company to act –

225

Mr Houghton: It's a weak argument, that.

The Minister: – or, for that matter, a Member of this Hon. Court to support a constituent as
well? Where do you draw the line?

230

Mr Houghton: By putting some thought into it.

The Minister: In some respects, I would suggest that in the Small Claims Court some of the
experts who support and bring forward proceedings on behalf of big companies are more in
235 tune with what the Small Claims Court requires and are more able to prosecute cases. That is no
reflection on the advocates, far from it; but I have to say that in some of the proceedings I have
seen, people who act on behalf of big companies have been very good and very adept. So, if you
are talking about a level playing field, you need to consider all avenues.

240 **The Deputy Speaker:** Mr Karran, I am sorry, you had indicated, so if you would like to ask the
final supplementary.

Mr Karran: Would the Shirveishagh not agree that he talks... he cannot interfere because of
the separation of power, but then he says that there has not been a good argument put to him.
245 Can he be a little more consistent about this...? Just like his previous answer to Question 1 –
where he talked about the massive increase of money that they could make, but the reality is
you cannot cash the situation – will he be consistent with his questioning in his replies to Hon.
Members?

250

The Deputy Speaker: Minister.

The Minister: If I could just refresh the Hon. Member's recollection of my Answer to Question 1, I did not mention the substantial paper profits that –

255 **Mr Karran:** You did previously in this House.

The Minister: But not in the answer to Question 1, sir; so let's have a bit of accuracy in –

Mr Karran: It suits the law when it suits –

260 **The Deputy Speaker:** Mr Karran, please.

The Minister: So let's have a bit of accuracy around here, and not just twisting the facts to suit your particular perception of what are the facts. So let's get –

265 **Mr Karran:** *Hansard* will prove that.

The Minister: Yes, *Hansard* will prove you wrong, sir. (*Interjection by Mr Karran*) Let's get back to the Question.

270 **The Deputy Speaker:** Can I ask you, please, to come through the Chair, not to have a –

Mrs Cannell: Hear, hear.

ENVIRONMENT, FOOD AND AGRICULTURE

1.4. Sewage effluent contamination – Capital savings; health and safety

The Hon. Member for Onchan (Mr Karran) to ask the Minister for Environment, Food and Agriculture:

To what extent his Department makes capital savings a priority over public health and safety in relation to levels of sewage effluent contamination?

275 **The Deputy Speaker:** We move on to Question 4. I call on the Hon. Member for Onchan, Mr Karran.

Mr Karran: I ask the Question standing in my name.

The Deputy Speaker: I call on the Minister for Environment, Food and Agriculture to reply.

280 **The Minister for Environment, Food and Agriculture (Mr Gawne):** Gura mie eu, Lhiass-Loayreyder.

My Department has a responsibility to set the standards which the discharger must...
285 *[Inaudible]* Capital costs do not form part of my Department's consideration in inspecting these standards. Sewage effluent treatment levels are controlled by licences to discharge required to be in place by the Water Pollution Act. An application is sought from the discharger and a

consultative determination process is undertaken, taking into account the environmental quality standards applicable at the point of discharge required by legislation or by Tynwald Order.

So, to reiterate, my Department does not expend any capital in achieving those standards, and capital is expended by the discharger in order to comply with the standards that we set.

290 Gura mie eu.

The Deputy Speaker: Mr Karran, a supplementary.

295 **Mr Karran:** Can the Shirveishagh explain why his Department has set the permitted sewage effluent contamination into Peel Bay four times greater than the recommendation by the design consultants for a bathing area?

The Deputy Speaker: Minister to reply.

300 **The Minister:** Gura mie eu, Lhiass-Loayreyder.

I think if the Hon. Member wants to ask that question, that is the question he should have put down. The Question on the Order Paper does not relate to Peel and does not relate to anything specific. (**A Member:** Hear, hear.) If he wants a specific answer to a specific question, I will give him that specific answer; but I have not got that information and so I cannot give that answer today.

305

The Deputy Speaker: Mr Karran.

310 **Mr Karran:** Can the Shirveishagh...? A further supplementary: can he explain then why a situation... As the authority that is supposed to be protecting the environment, how his Department, which is the policeman, is saying that we are permitting sewage effluent contamination into Peel Bay four times greater than the design consultants...?

Is he aware that the Water and Sewerage Authority have stated that the facility they are going to build will provide a retro-filter... improvement methods of effluent contamination reduction, if necessary?

315

Is this an issue of putting the capital savings as a priority over public health? And shouldn't Peel, especially being a popular bathing area, get the best possible sewerage system as far as the environment is concerned?

320 **The Deputy Speaker:** If you wish to reply, Minister, do so; then we are going to move on.

The Minister: Gura mie eu, Lhiass-Loayreyder.

Yes, I think it is an awful shame that Hon. Members want Questions answered and then do not ask me the Question on the Order Paper that they need answering – because there is no way that I can answer that question. Without the specific information on the specific question, how on earth could I be expected to answer that question?

325

Mr Karran: I am sorry –

330 **The Deputy Speaker:** I am sorry, Mr Karran, sit down, will you? (*Interjection*)

Mr Karran: A further supplementary!

The Deputy Speaker: Mr Karran, will you please sit down?

335

Mr Karran: We have had this three times this morning.

The Deputy Speaker: Will you please sit down? I called you for a supplementary. Mr Karran, you have asked two questions which the Minister has felt have not been relevant.
340 Mrs Cannell, you wished to ask a supplementary.

Mrs Cannell: Thank you, Mr Deputy Speaker.
Just to be helpful – (**A Member:** Hey!) I am often helpful, although under-appreciated. (**A Member:** Ah!) Can I ask the Minister, in order to be helpful to him and also the questioner,
345 whether or not he will circulate the answers to those questions raised today in writing when he has had time to look into the issue?

The Deputy Speaker: Minister.

The Minister: Gura mie eu, Lhiass-Loayreyder.
Certainly, if that is the wish of the House, I would be happy to do that; or indeed, if the Hon. Member wished to specifically ask the questions at a future sitting, I would be more than happy to answer in that way, so I am easy either way.

The Deputy Speaker: Mr Karran. Very quick, please, Mr Karran, then we are going to move on.

Mr Karran: Would the Minister not agree that the examples that I have given have shown bang to rights that your Department is, in this example, actually putting capital savings as a
360 priority over public health as far as allowing higher levels of sewage effluent contamination as far as our European neighbours are concerned?

Would he not agree that we would be hearing from Ministers, 'Give us the examples of where this is happening' – and here you have an example where the situation is we are permitting –
365

A Member: Is there a question?

Mr Karran: – the situation as far as this is concerned?

The Deputy Speaker: Was there a question mark at the end of that? (*Interjections*)
370

The Minister: Gura mie eu, Lhiass-Loayreyder.
There was a question at the start.

Mr Karran: It is an example of what the question is about.
375

The Minister: And he is obviously not interested in the answer.
Quite frankly, if you give me the information, I will give you the answer. I cannot possibly determine whether this is an example of my Department putting capital costs ahead of
380 environmental standards until I have had the chance to review the case. There may be a very good and sound reason why we are doing it this way. I think it is very unfair of the Hon. Member to suggest such.

**1.5. Post office counters –
Fishing licences**

The Hon. Member for Douglas North (Mr Houghton) to ask the Minister for Environment, Food and Agriculture:

Whether fishing licences will be on sale at post office counters for the new season?

The Deputy Speaker: We move to Question 5. Hon. Member for Douglas North,
385 Mr Houghton.

Mr Houghton: Yes, thank you, Deputy Speaker.
I beg leave to ask the Question standing in my name, sir.

The Deputy Speaker: I call on the Minister for Environment, Food and Agriculture to reply.
390

The Minister for Environment, Food and Agriculture (Mr Gawne): Gura mie eu, Lhiass-Loayreyder.

Reservoir concessionary season licences will be available for sale at post office counters for
395 the 2014 season. All other types of freshwater fishing licences will be available from online services only. This change has been introduced to achieve substantial savings both in terms of administration costs and staff time. Online licence sales will result in lower print costs and reduced waste, significantly reduced administration time and reduced commission costs.

The estimated loss of income to the Post Office is £1,295; so with 24 post offices previously
400 selling licences, this amounts to a loss of less than £54 each per annum.

The Department is aware that not everyone has access to internet facilities, so internet terminals are available for public use in libraries and at the Welcome Centre at the Sea Terminal building in Douglas, and there is an online facility within the DEFA offices at St John's whereby officers are happy to assist anglers with online purchases, should they need it.
405

I am pleased that the Post Office will continue to deliver the services the public need from their local post office. Clearly it is disappointing that the post offices will be losing on average £1 a week from this change, but it is important that we ensure that the services are delivered in a way which best suits the needs of the public.

Gura mie eu.
410

The Deputy Speaker: Supplementary, Mr Houghton.

Mr Houghton: Yes, thank you, Deputy Speaker.

Even though the Minister has gone to great lengths to try and point out on average across a
415 number of post offices the reduction in losses actually appertaining to this arbitrary decision his Department has made... Notwithstanding that, does he not agree that by putting these matters available only online, people visiting the Island, small children buying day licences and weekly fishing licences in rivers etc, will be put at extreme disadvantage; and does he not feel ashamed of himself for doing that when the losses to the Post Office that he has made clear this morning are so small?
420

The Deputy Speaker: Minister to reply.

The Minister: Gura mie eu.

The losses to my Department though, of continuing the service, are in the region of £10,000.
425

What would be easier is if we could change the legislation to allow my Department to pay £1 a week to each post office directly, so that we can avoid the significant loss. Effectively, it is

costing us in the region of £8,000 to pay £1,200 to the post offices. I think, even though it is April Fools' Day, I am not that stupid. I think it is pretty obvious it is not an arbitrary decision, as the Hon. Member for Douglas North suggests.

I do admire him for his campaign in support of post offices. We all support the Isle of Man post offices. I think, though, what is necessary is for Isle of Man Post to start offering services that we actually need in the modern age, and certainly I am very keen to talk to Isle of Man Post about the services that we think they may be able to deliver for us. But quite frankly, in this particular case, it is ridiculous to spend in the region of £8,000 to allow £1 a week per branch post office.

The Deputy Speaker: Final supplementary.

Mr Houghton: Yes, thank you, Deputy Speaker.

In view of what the Minister has stated and in view that the Post Office itself is capable – and more capable than his Department, quite likely – of issuing fishing licences themselves and taking over the administration of it on behalf of his Department, just like they do for road fund licensing, may I ask the Minister if he would do this: if he would meet with the Chairman of the Post Office, who is sitting to my left and who is most concerned about this, (*Laughter*) and discuss this matter further with a view to the Post Office taking over the whole of the administration, running it properly and running it much better than his Department was ever able to do?

The Deputy Speaker: Minister, would you like to reply to that?

The Minister: Okay. Gura mie eu, Lhiass-Loayreyder.

I had not wanted to raise the fact that, due to substantial errors caused primarily by the Post Office, this was one of the reasons – one of the additional reasons – why we have decided that an online service is better. So the Hon. Member for Douglas North has been successful in getting that particular item out of me: yes, it is largely... or one of the significant reasons why we have made this change is because the Post Office has caused significant errors.

Mr Cregeen: Mr Deputy Speaker, as the new Chairman of Isle of Man Post, would the Minister agree to meet with me at his earliest convenience?

Mr Houghton: Hear, hear. He forgot to mention that.

The Deputy Speaker: Have you got time to meet Mr Cregeen?

The Minister: Gura mie eu, Lhiass-Loayreyder.

I am delighted to meet the Hon. Member for Malew and Santon – soon to be Arbory, Castletown and Malew (*Laughter*) – on whatever occasion he likes. However, we do need to have a reason for the meeting. If the meeting is to discuss this particular item, then quite frankly it would be a waste of time.

Mr Cregeen: And many other items.

A Member: Hear, hear.

The Minister: I am more than happy to discuss other items which I do believe... We should be working with the Post Office to deliver services that are relevant to the public.

**1.6. All-Island dog service –
Statement**

The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Environment, Food and Agriculture:

If he will make a statement on the new contract for an all-Island dog service?

480 **The Deputy Speaker:** We now move to Question 6, and from fish we are moving to dogs. I call on the Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Deputy Speaker.
I beg to ask the Question standing in my name, sir.

485

The Deputy Speaker: The Minister for Environment, Food and Agriculture to reply.

The Minister for Environment, Food and Agriculture (Mr Gawne): Gura mie eu, Lhiass-Loayreyder.

490 I thank the Hon. Member for asking this Question because I know there have been various rumours and counter rumours flying around on this issue.

My Department currently employs an external contractor to provide a dog warden service, and this contract was due to expire yesterday, 31st March 2014. The service typically collected up to 400 stray dogs per year – though last year there were 309 – most of which were picked up
495 by or returned to their owners within a matter of hours. Last year, just nine dogs had to be rehomed as their owners could not be identified.

Importantly, the statutory requirement of the service is to protect the public from the risk of dangerous dogs on the loose. However, last year, only three of the dogs were perceived as acting in a way which was dangerous to the public, with the majority simply being lost. It is costing the Department between £100 and £140 per dog to return them to their owners, yet
500 currently the service only charges for kennelling costs, with no charge for collection and returning the dogs to the owners who have allowed them to escape.

The Department is therefore exploring opportunities to reduce the cost either by reducing the service level or by introducing a proportionate charge for returning lost dogs to their
505 owners. The Department has identified that during the working day the service can be provided by the existing team of pest control officers, who already travel all over the Isle of Man on a daily basis. However, it is expected to continue having the out-of-hours collection and the overnight kennelling services provided by contractors. It is anticipated that there is scope to save over £20,000 per year by this approach.

510 The Department continues to discuss the potential changes with several stakeholders, some of whom have particular concerns about the welfare of dogs, whilst others are interested to see if we can broaden the service – for example, to work with local authorities with regard to control of dog fouling.

The existing service is provided professionally and expertly by the contract dog warden, to whom I would like to express my sincere thanks. Indeed, he has provided a service far in excess
515 of the Department's statutory requirements. (**Mr Houghton:** Hear, hear.)

Due to the ongoing discussions with interested parties, it has been agreed that the current contract will be extended by three months. During this period, the Department will satisfactorily resolve matters such as the long-term provision of kennelling, the provision of a basic out-of-
520 hours service and the appropriateness of charging owners for the return of their escaped pets, which acknowledges the cost of the service.

Gura mie eu.

The Deputy Speaker: Mr Quirk, a supplementary.

525

Mr Quirk: Thank you, Mr Deputy Speaker.

May I thank the Minister for his comprehensive Answer and for giving that assurance. Can I also thank him for extending the service while the hiatus takes place.

530 He says that he has had a number of interests in the contract: could he give us an actual figure – are we talking about three, five or seven? And when those contracts come about, is it possible for the contract to be given to Members of the House so that we can see the actual detail that is in it?

The Deputy Speaker: Minister to reply.

535

The Minister: Gura mie eu, Lhiass-Loayreyder.

Certainly, I am more than happy to explain to Members what the service is that we have contracted – no problem at all with that.

540 As to the exact numbers of how many people have expressed interest, as Hon. Members will be aware, I was away last week so I have not had the opportunity to find out the exact numbers; but I know there are several parties who have expressed interest.

The Deputy Speaker: Mr Quirk.

545

Mr Quirk: Final one from me, Mr Deputy Speaker, if I could.

Can I just ask the Minister, or seek an assurance from him that his policy regarding stray dogs will not change – we still will be able to look after the stray dogs and then rehome them if nobody picks them up?

550

The Deputy Speaker: Minister to reply.

The Minister: Gura mie eu, Lhiass-Loayreyder.

555 Certainly that is the policy of the Department, although I think the statutory responsibility is that we look after the dogs for seven days and if an owner cannot be found then the dog is destroyed. Clearly that is not something that we would find acceptable (**Mr Quirk:** Hear, hear.) in this current age. However, that is currently the statutory responsibility of the Department.

POLICY AND REFORM

1.7. Transfer of functions from DCCL – Changes to organisational structure in affected Departments

The Hon. Member for Douglas West (Mr Thomas) to ask the Minister for Policy and Reform:

What changes to organisational structure have been made in the Departments of (i) Economic Development, (ii) Education and Children, (iii) Infrastructure and (iv) Environment, Food and Agriculture following the transfer of provision to them from the former Department of Community, Culture and Leisure?

The Deputy Speaker: We move then to Question 7. I call on the Hon. Member for Douglas West, Mr Thomas.

560 **Mr Thomas:** Thank you, Mr Deputy Speaker.
I beg leave to ask the Question standing in my name.

The Deputy Speaker: Thank you.
I call on the Hon. Minister for Policy and Reform to answer his very first Question.

565 **The Minister for Policy and Reform (Mr Robertshaw):** Thank you, Mr Deputy Speaker.
In respect of the transfer of provision from the former Department of Community, Culture and Leisure to the Department of Economic Development, the Villa Marina, Gaiety Theatre and Welcome Centre have been added to the delegation of Mr Cretney, the departmental Member with responsibility for the visitor economy. Responsibility for these areas has been allocated to the Department's Deputy Chief Executive.

570 In respect of the Department of Education and Children, a temporary change has been made to the organisational structure arising from the transfer of responsibilities for sport, the NSC and arts. Following an internal selection process, the post of Sports Development Manager has been made Head of Sports, Youth and Recreation for 12 months commencing today, 1st April 2014. This role will oversee sports development, the Youth and Community Service and the NSC and will identify synergies and any duplication of provision across these services. This will enable the Department to ascertain the longer-term feasibility of integrating sports development, the Youth and Community Service and the NSC into a single unified service and, if determined appropriate, the most appropriate structure for such a service – the objective being to maximise the use of resources, achieve efficiencies and ensure early intervention in supporting the health and well-being of children and young people. I understand Mr Anderson has the delegation in this area. Support for arts and development and the Arts Council has been integrated into the Department's Corporate Services Division. Responsibility for the transferred functions has been allocated to Mr Corkish as the departmental Member.

575 In respect of the Department of Infrastructure, the Public Transport Division has been transferred from the former Department of Community, Culture and Leisure. This has not created an increase in the number of posts other than those being transferred within the Division, nor any changes in the grading or remuneration of existing staff. Responsibility for the transferred functions has been allocated to Mrs Beecroft as the departmental Member.

580 In respect of the Department of Environment, Food and Agriculture, the Curragh Wildlife Park has been transferred from the former Department of Community, Culture and Leisure and now sits within the wider Corporate Services Directorate of DEFA. Responsibility for these transferred functions has been allocated to Mr Turner as departmental Member.

585 Thank you, Mr Deputy Speaker.

The Deputy Speaker: Supplementary, Mr Thomas.

Mr Thomas: Thank you very much, Mr Deputy Speaker, and to the Minister for informing us about those organisational and structural changes.

600 Can the Minister advise whether he has managed, or the Departments involved have managed to lose any posts during the abolition of the Department of Community, Culture and Leisure? I remember in his personal manifesto when he talked about the abolition of DCCL, it was about encouraging everyone in public services to appreciate that senior positions are not immune to scrutiny.

The Deputy Speaker: Minister to reply.

The Minister: Thank you, Mr Deputy Speaker.
610 I am pleased to reassure the Hon. Member for Douglas West that Beamans were involved in the process of reviewing the structures of the Departments as we went forward, and I am sure

he appreciates and understands that the process is an ongoing one and dynamic in our determination to reduce the size and slim Government down.

Thank you, Mr Deputy Speaker.

615

The Deputy Speaker: Mr Quirk, a supplementary.

Mr Quirk: Thank you, Mr Deputy Speaker.

620 Could I ask the Minister, with reference to the number of persons who may be not in employment at the minute but are in the pool that is set aside to be taken up, do you know what the figures are?

The Deputy Speaker: Minister.

625 **The Minister:** Mr Deputy Speaker, I do not have that figure to hand.

The Deputy Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Deputy Speaker.

630 I noticed a very interesting exposition of the changes at the Department of Education and Children in respect of sports administration with a new Head of Sports and talk about linking it to Youth Services.

635 Again, in the Minister's own manifesto he talked about corporatising sports and culture. Has the Minister's mind changed, or is that still for discussion? For instance, might the Arts Council and the Sports Council become responsible rather than the Department?

The Deputy Speaker: Minister to reply.

640 **The Minister:** Mr Deputy Speaker, I am grateful to the Hon. Member for holding me to task on my manifesto. It is good that such scrutiny is occurring.

We are obviously looking at a variety of options and a whole range of areas, but I am confident that the direction that the DEC is currently taking is a sound one.

645 **The Deputy Speaker:** It might be wise for Ministers in future to carry around their previous election addresses.

No more supplementaries?

A Member: No.

650 **The Deputy Speaker:** In that case, we will move on to Item 2, Questions for Written Answer, and Hon. Members have had the ministerial replies distributed.

2. Questions for Written Answer

CHIEF MINISTER

2.1. Acting Attorney General – Extension to term of office

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Chief Minister:

When the Ministry of Justice was approached regarding the extension to the term of office for the Acting Attorney General?

The Chief Minister (Mr Bell): The Ministry of Justice was approached regarding the extension to the term of office for the Acting Attorney General on 26th February 2014, as it would not have been appropriate to progress the position of the Acting Attorney General sooner as court proceedings in respect of the Attorney General were ongoing. It was considered important not to be premature with an extension to the term of the Acting Attorney General and put any measures in place unless necessary.

2.2. Investigating Government as a single legal entity – Details of independent review body

The Hon. Member for Douglas West (Mr Thomas) to ask Chief Minister:

How the independent review body which is investigating the establishment of the Government as a single legal entity was formed; and what the scope, structure and cost are of its investigation?

The Chief Minister (Mr Bell): The Modernising Ministerial Government Report, approved by Tynwald in January, proposed that a review be commenced to reconsider the basis on which the departmental system operates, to determine whether it remains the most appropriate structure for the effective delivery of public services or whether an alternative approach is now required. In particular, the review will consider whether there is merit in examining whether it would be appropriate to establish the Government as a single legal entity with responsibility and accountability delegated from the Council of Ministers.

An independent review body will be established by the Cabinet Office to consider this matter further. The terms of reference for the review are still in the process of being finalised, following which the review body will be appointed.

I will ensure that Hon. Member Members are informed of the scope, structure and cost of the review once this information is available.

2.3. Beamans Management Consultants – Reports produced and cost

The Hon. Member for Douglas North (Mr Houghton) to ask the Chief Minister:

- (i) How many reports have Beamans Management Consultants provided for the Government in the last 12 months and
(ii) What the cost was in respect of each contract?

The Chief Minister (Mr Bell): In the 12 months to 31st March 2014, Beamans Management Consultants have provided four management/organisational structure related reports to Departments and Boards across Isle of Man Government including, as Hon. Members will be aware, a report in respect of the future management and governance structures in Noble's Hospital.

The fees in respect of each report are listed below:

- | | |
|-----|------------|
| (a) | £3,003.75 |
| (b) | £30,515.63 |
| (c) | £7,120.00 |
| (d) | £16,131.25 |

Notes:

- i) The report costs listed above exclude:
a) travel and other expenses at cost; and
b) VAT.

ii) The above financial information has been provided by the relevant Departments.

HEALTH AND SOCIAL CARE

2.4. Children in care – Details regarding service providers and foster carers

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for Health and Social Care:

What plans he has for only one agency to be responsible for children in care; what clear lines of communication he has with service providers, including foster carers; how many children under the age of 13 years old are in the care of St Christopher's; whether the Department's criteria for appointing foster carers are the same as the foster panel approval criteria; and why some foster carers who have been approved and who are willing to serve have been refused placements that they are approved for?

The Minister for Health and Social Care (Mr Quayle): My Department, through the Children and Families Division, is the one agency responsible for children in care, as we have the statutory responsibility for all children who are looked after.

675 Contracted partners who provide services for children in care are communicated with on a
variety of levels. Contractually there are quarterly partnership meetings to manage performance
under the contract and identify issues of practice and performance that need joint attention.
There are operational management forums where managers from service provider organisations
meet with operational managers from the Department. There is a Foster Carers Forum,
680 managed by the fostering service provider, which senior officers from Children and Families are
invited to attend from time to time, where general issues can be raised. Foster Carers have an
allocated Supervising Social Worker who can raise any issues they may have with the
Department, if they wish. On an individual case level the allocated Social Worker has the
responsibility to manage the care provided to each child and co-ordinate services and agencies.
685 Each looked after child has a six monthly review chaired by an Independent Reviewing Officer

where the Care Plan is examined and those who have a current role in providing services are part of that review either by invitation to the review meeting itself or by consultation as part of the review process.

690 There are four young people under the age of 13 who are in residential placements commissioned from St Christopher's (the children are 'in the care of' the Department not St Christopher's).

The Department does not have a criteria for approving foster carers as we do not appoint foster carers directly, this service is commissioned from The Children's Centre and they can, as a registered Fostering Service provider, approve foster carers via their fostering panel (a Departmental social work manager sits on the fostering panel). The Department, as the placing authority on the Island, determines where to place children in its care based on their needs.

700 It should be noted that there are more complex factors involved than whether a foster carer is approved for that age and gender of child in determining whether a placement can meet a child's needs. Standard 8 of the Minimum Standards for Fostering Services makes clear that there must be a 'careful matching process' undertaken to ensure a carer can meet the assessed needs of a child. This is particularly important when determining long-term fostering placements, where the matching process has to consider whether the carer can meet the child's needs today and into the future, potentially for the rest of their childhood. This involves a careful process of understanding the child, their needs now and what they are likely to be as they grow and the carer's skills, motivations, commitment and ability to meet both the current and future identified needs, thus reducing the risk of placement breakdown.

705 Without the specifics of a case, it is difficult to explain why placements have been 'refused'; it could be that the matching process described above is in train or has identified that the placement is unlikely to meet the child's needs.

2.5. Children in care – Statement on Stage 2 and 3 complaints

The Hon. Member for Douglas South (Mrs Beecroft) to ask the Minister for Health and Social Care:

How many formal stage 2 and 3 complaints the Department has received in the last two years in relation to children in care; if he will make a statement on the complaints procedure and the average duration from the time a complaint is received until it is resolved; and what the independent complaints stage 3 procedure is; and whether the Department, as an independent body, oversees this stage?

710 **The Minister for Health and Social Care (Mr Quayle):** There has been one Stage 2 and one Stage 3 complaint in the last two years in relation to children in care.

The complaints procedure described on our website at: <http://www.gov.im/about-the-government/departments/social-care/problems-with-our-service/> exists to ensure members of the community who receive services from the Department have an opportunity to identify when they believe our service has not met the standards we strive for, so that we can make improvements where necessary. We do our utmost to adhere to the timescales within the procedure but clearly investigation of some complaints is straightforward and dealt with easily within those timescales and some are extremely complex and take longer – no 'average' can sensibly be extrapolated when it is wholly dependent on the nature and complexity of the case.

720 We endeavour to communicate progress to complainants whilst lengthy investigations are ongoing and are open and honest in admitting where we have failed to reach the high standards we set for services we offer.

725 Stage 3 involves the Department appointing an independent professional (independent from the service area involved) to re-examine the matter and report on their independent findings and make recommendations which are considered as final. The Department has engaged independent experts from the UK where the matter has been complex and highly specialised. The Department fully co-operates with the person appointed to investigate a Stage 3 complaint and accepts the findings. For information, when the Social Services Act is enacted it provides for a statutory Independent Review Body to manage complaints at Stage 3.

EDUCATION AND CHILDREN

2.6. Primary-age children – Numbers in home education, private education and Department schools

The Hon Member for Douglas West (Mr Thomas) to ask Minister of Education and Children:

How many primary-age children in the Island are educated (i) at home (ii) in independent schools and (iii) in the Department's schools; and whether he expects an increase in the number of children educated outside the Department's schools?

730 **The Minister for Education and Children (Mr Crookall):** (i) There are 34 primary aged children registered as being home educated.
(ii) There are 64 primary aged children registered as being educated in independent schools.
(iii) There were 6,276 primary aged children registered at Department of Education and Children provided or maintained primary schools at the start of the Academic Year 2013-14.
735 Projected numbers for Island primary schools for the year 2014-15 are showing an increase.

2.7. Primary-age children – Registration and monitoring regime for home or independent education

The Hon. Member for Douglas West (Mr Thomas) to ask Minister of Education and Children:

What the registration and monitoring regime is for children having primary education (a) at home and (b) in an independent school?

740 **The Minister for Education and Children (Mr Crookall):** (a) Section 5(i) of the Education (Miscellaneous Provisions) Act 2009 amends section 24 of the Education Act 2001, and places a duty on parents to notify the Department of the arrangements for a child's education, where the child is not a registered pupil at a provided school, maintained school or special school. Failure to do so within the time allowed is an offence and on summary conviction a fine not exceeding £1,000 can be imposed by the Court. The Department places a Public Notice each summer to remind parents of the requirement.

The Department has limited powers to monitor the provision of home education:

'it is the duty of the parent of every child of compulsory school age to cause him to receive suitable education, either by regular attendance at school or otherwise'
Section 24(1), Education Act 2001.

745 The Department does have the power to enforce the parents' duty if it believes that they are failing to provide suitable education to a child who is educated otherwise (home educated).

Unfortunately we do not have the power to require a parent to submit to the Department an annual report on the child's progress. We are only able to act if it is drawn to our attention that a child is not being educated appropriately. (Section 25(1) and (2), Education Act 2001)

750 (b) Parents who educate their child at an Independent School are also required under the Education Act 2001 as amended, to register with the Department that their child is being educated other than at a provided or maintained school. This applies to attendance at a school on and off the Isle of Man.

755 The Department has no powers in respect of the quality of independent schools, unless the school is registered with the Department, i.e. an Island-based school. In this case we can only act on receipt of a complaint from a parent about the quality of education being offered. (Section 43, Education Act 2001). We have no powers of inspection of off-Island Schools.

**2.8. Pupils with English as a second language –
Numbers broken down by school and details of assistance**

The Hon. Member for Onchan (Mr Karran) to ask the Minister of Education and Children:

How many pupils in each maintained school have English as a second language, broken down by school; and what resources in each school are devoted to assist those for whom English is not their first language?

The Minister for Education and Children (Mr Crookall): The number of pupils with English as an additional language in each school is as follows:

School	Number of pupils with English as an additional language (December 2013)
St Ninian's	69
Ballakermeen	139
QE2	22
Ramsey Grammar	23
Castle Rushen	12
Anagh Coar	0
Andreas	0
Arbory	6
Ashley Hill	0
Ballacloan Infants'	39
Ballacottier	18
Ballasalla	1
Ballaugh	0
Braddan	15
Cronk-y-Berry	20
Dhoon	0
Fairfield	47
Foxdale	0
Jubilee	45
Jurby	0
Kewaigue	1
Laxey	5
Manor Park	0
Marown	10
Michael	0
Onchan	16
Peel Clothworkers	28

HOUSE OF KEYS, TUESDAY, 1st APRIL 2014

Rushen Primary	1
Rhumsaa	25
Phurt Le Moirrey	3
Vallajeelt	11
St Johns	0
St Mary's	51
St Thomas'	0
Sulby	4
Victoria Road	1
Willaston	1

760 As there is a wide range of need, which changes frequently as pupils make progress and new pupils arrive, it is not possible to quantify what resources each school devotes to supporting pupils with English as an additional language. However, where specific English language support is required, the Department's Bilingual Service can provide schools with advice and training, along with additional resources, to support pupils develop their English. The allocation of support is continually reviewed to ensure those pupils with greatest need take priority.

765

Order of the Day

3. BILLS FOR SECOND READING

3.1. Trusts (Amendment) Bill 2014 – Second Reading approved

The Deputy Speaker: So we now move on to Item 3, Bills for Second Reading – 3.1. Trusts (Amendment) Bill 2014. I call upon Mr Henderson.

Mr Henderson: Gura mie eu, Lhiass-loayreyder.

770 Lhiass-loayreyder, Hon. Members, this Bill is the Trusts (Amendment) Bill 2014. The Bill seeks to address three small areas of trust law which will bring the Island into line with its near neighbours and competitors. The amendments are modest and conservative. The first of the amendments is the abolition of something known as the ‘two trustee rule’. The second is the abolition of the perpetuity period, for future dispositions of property. The perpetuity period is the time limit for which any property can be held in trust.

775 Hon. Members, for clarity, I will give a definition of ‘perpetuity period’ or as it is also known, the ‘rule against perpetuities’.

This concept was introduced in the common law during the 17th century. This was as a result of the industrial revolution which saw a shifting of the accepted social order. It restricts the amount of time for which property can be held and tied up in a trust. At its most basic, it prevents too much money from being tied up for too long in too few hands.

780 Another concept that would benefit from definition at this point is that of the ‘disposition of property’. This is fundamental to the concept of the trust. It is the act of disposing of property by transferring it to the care or possession of another. It can also be described as the parting with, alienation of, or giving up of property.

785 The third area that is being revised is the matters determined by the Island’s trust legislation as the law governing Manx trusts. Hon. Members, it may be appropriate to explain what is meant by the phrase the ‘law governing Manx trusts’. In short, this is accepted trust language for the Isle of Man law that governs trusts. When a trust is created in a country under the law of that country, the law of that country is said to be the governing law of that trust.

790 Lhiass-loayreyder, the ‘two trustee rule’ requires two trustees to be in place in order to give valid receipt for capital moneys on the sale of settled land. In essence this means that there must be two trustees acting when land owned by the trust is sold.

795 There are problems with this requirement. The first problem is that the trustees must act in the best interests of the beneficiaries. A quick sale of land might be optimal for the beneficiaries. However, this might not be possible. It is probably easiest to understand why this needs to be changed by means of an example.

800 Consider the following circumstances: Trust A is required by the terms of the trust deed or instrument to have two trustees in place. Trust A now only has one trustee in place due to the death of the second trustee. The remaining trustee is actively seeking a second or replacement trustee but it is taking time to find a suitable replacement.

805 Trust A has some land which is for sale. An excellent offer is made for the land, but this is conditional on the transaction taking place very quickly. All trustees have a duty to act in the best interests of the beneficiaries of the trust. The remaining trustee would be unable to act on his own. The sale might be lost before a replacement trustee could be found.

Clearly this would not be in the interests of the beneficiaries. However, while the two trustee rule remains in place, this situation could be a reality.

What makes the current position even harder to justify are the next two points:

810 Point one is that if a trust deed or instrument does expressly allow a trustee to act alone, this is permitted under the current law. The second point is that the law currently makes provision for a trust corporation to act alone in these circumstances.

Lhiass-loayreyder, Hon. Members should note that this is a trust corporation and not a trust services provider here. I will now explain the similarities and differences between these two concepts. Hon. Members will see that there are far more similarities than differences, despite 815 which they are afforded very different treatment.

The business of providing of trust services in the Island is a licensed activity. The FSC's policy is that both trust service providers and trust corporations must be companies. Trust corporations and trust service providers must both hold a class 5 licence.

820 The business conducted by trust service providers and trust corporations is substantially similar and is, for the most part, subject to the same levels of oversight by the FSC. The FSC's own licensing policy confirms that class 5 licences do not automatically permit a licenceholder to act as a trust corporation.

825 Basically, a trust corporation is able to undertake all the activities of a trust company plus functions reserved to a trust corporation. These functions include: competence to undertake matters of probate; ability to act alone to give valid receipt for money arising under a trust; being named as attorney in an enduring power of attorney.

Trust corporations pre-date the creation of the Island's regulated trust services industry. In recognition of the important nature of the work they undertook, they were required to be well capitalised. In the UK, the required level of issued share capital was £500,000. The Isle of Man 830 required £100,000 of issued share capital.

The UK continues to require this amount. The UK does not regulate its trust services industry. With the advent of licensing in the Isle of Man, the capital requirements reduced to £25,000. The legislation also provided an alternative to the original safeguard of a large issued share capital. This is the requirement for all providers of trust services to carry professional indemnity 835 insurance.

Lhiass-loayreyder, over time, the distinctions between trust corporations and trust service providers have been eroded. Despite all of this, trust service providers are still not able to act alone to give valid receipt for settled land unless the trust instrument allows this. Trust corporations by way of contrast can.

840 This Bill seeks to further reduce the differences between trust corporations and trust service providers. I am sure that the Hon. Members will agree that the abolition of the two trustee rule is a small amendment that has the potential to make a big impact on the regulated trust services sector.

845 As mentioned earlier, the concept of the perpetuity period was introduced into the common law during the 17th century. It was designed to restrict the amount of time for which property could be held and tied up in a trust. The perpetuity period in the Isle of Man is currently ordinarily 150 years. This is the maximum amount of time for which assets can be held in trust. Within this time, the trust must end and the trust property must be distributed to the people entitled to benefit under the terms of the trust deed or instrument. This is what is known as the 850 trust 'vesting'.

Hon. Members, when a trust is created, there are several players. It may be helpful to give a quick guide to some of these people.

855 First is the settlor. This is, for example, a person who has made a pot of money that he wants to leave to his descendants – and I am using 'he' here, by way of ease of definition, Lhiass-loayreyder. He has, however, made so much money that he wants to ensure that several generations into the future, the money will still be funding his remote descendants.

860 Mr Settlor's solution is to create a trust that is going to be for the benefit of his descendants through the ages. Being a man of modest aspirations, he intends that this will last several hundred years or until the money runs out. Those whom he has identified as being able to benefit are known as his beneficiaries.

With this aspiration in mind, Mr Settlor looks around to see where his dynastic trust can be created. The UK would be ruled out, as would the Isle of Man as both still have perpetuity periods in place. By way of contrast, Ireland, Jersey and Guernsey do not. So, Mr Settlor is likely to take his business to one of these three jurisdictions and not the Isle of Man. I am sure that
865 Hon. Members will agree that this is, from a Manx perspective, highly undesirable.

Now, if the perpetuity period were to be abolished in the Isle of Man, as proposed by this Bill, is it likely that the Isle of Man would assist with tying up too much money, for too long, in too few hands?

Mr Settlor's first generation of beneficiaries are likely to respect his wishes and be grateful to benefit from the trust. The second generation may also respect his wishes. However, the harsh
870 reality is that by the third generation at the latest, the beneficiaries will probably want to see that the trust vests. This will be with a view to all property being distributed.

It is because it is unlikely that the trust will last in perpetuity, or even until the current 150-year perpetuity period, that this is probably more about perception than reality. Nonetheless,
875 the perception exists and the Island is losing business on the back of it. This is a good reason for seeking to abolish the perpetuity period – it is a business-friendly initiative.

Lhiass-loayreyder, I am coming to the end of the Second Reading, Members will be pleased to know. **(Mr Watterson: Hear, hear.)**

The Island has retained the concept of settled land. This is quite literally land that has been
880 put into a trust. There is no reliable means of ascertaining how much property in the Island is held as settled land. No attempt has been made to quantify this. For this reason, the Bill restricts the provision to future dispositions. This will ensure that the Island remains competitive but without the risk of invoking our old friend, the law of unintended consequences.

The third amendment considers the scope of what is determined by the governing law, under
885 the Trusts Act 1995.

The Trusts Act 1995 contains what are known as 'firewall provisions'. These are designed to shield trusts from the impact of foreign laws and judgments. As it currently stands the legislation affords protection only to the settlor of a trust. The Bill proposes to extend these protections to other parties to the trust, such as the beneficiaries and trustees, as well as the protector if there
890 is one. The protector should 'do what it says on the tin' – he really is there to protect the interests of the beneficiaries and make sure that the trustees act properly.

The second change to the Trusts Act 1995 would see a change to the application of foreign court orders to trusts governed by Manx law.

Lhiass-loayreyder, Hon. Members may be aware that trusts are not universally popular,
895 particularly in countries where there are forced heirship rules in place. Under the rules of forced heirship there is a list, defined in law, of who should inherit what property and in what proportions. This is in direct contrast to common law countries which permit testamentary freedom. The IOM is a common law jurisdiction. Essentially, if you own the property or money, you are free to give it to whomever you wish – this being common law.

The two distinct approaches to matters of inheritance obviously create the potential for tension and conflict. This can result in disgruntled relatives of the testator mounting a legal challenge. This is often referred to as 'attacking a trust'. While the attack is more likely to be
900 from a country that has forced heirship provisions, it is not unheard of for attacks to be mounted from common law countries.

This introduces the concept that there may be a moral obligation to provide for the well-being of some person. The Isle of Man's courts are well regarded. They have a reputation for acting fairly and conservatively. It is assumed that they will continue to do so. This may mean that they make an order that requires the terms of a trust to be over-ridden, to ensure that adequate provision is made for the well-being of some person. Indeed, it is right that they
905 *should* have the power to direct that this should happen.

The critical point here is that it is the Island's judiciary who are empowered to determine what is just and equitable under trusts that are subject to the governing law of the Isle of Man.

The courts of foreign jurisdictions should not be able to dictate what happens in the Island. The Bill seeks to make it absolutely clear that the power lies within the Island.

915 This brings me to the final point, Lhiass-loayreyder. Hon. Members should note that the Island does have the Judgements (Reciprocal Enforcement) Act 1968 in place. Under this Act, there is an expectation that, subject to certain conditions being met, the judgments of the courts of certain other countries will be recognised by our Isle of Man High Court. They would be the United Kingdom, Guernsey, Jersey, Suriname, Israel, Italy, Netherlands and the Netherlands
920 Antilles. It is possible that the new provision may potentially be seen as creating a conflict within the Island's legislation.

The Bill has been drafted in the full knowledge of this. It is suggested that in most instances the High Court will agree to the foreign judgment being recognised in the Island. However, in respect of this one small area, the courts will be given the power to determine whether or not a
925 foreign judgment is reasonable and should be recognised. Provided that the courts continue to act in a responsible and conservative manner, there should be no reason to suspect that there will be in reality any conflict in this area.

Vainstyr Loayreyder, I remind the Hon. Members that in an increasingly competitive market, it is critical that our industry is given the tools to allow it to compete. This Bill, with its modest
930 aspirations, will ensure that the Island competes on a level playing field.

Lhiass-loayreyder, I beg to move the Second Reading.

The Deputy Speaker: Hon. Member for Ayre.

935 **Mr Watterson:** That made hard work of that Bill!

Mr Teare: Thank you, Mr Deputy Speaker. I beg to second and reserve my remarks, sir.

The Deputy Speaker: No-one indicated they wished to speak.

940 Hon. Members, the motion therefore is as on the Order Paper at Item 3.1. All those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business of the House for today. The House will now stand adjourned until next –

945 **Mr Quirk:** Sorry, Mr Deputy Speaker, if I could just ask, I did not hear at the beginning there – I thought... Was Mr Robertshaw withdrawing his Bill?

A Member: Yes.

950 **Mr Robertshaw:** No.

The Deputy Speaker: He did not wish to move it today.

955 **Mr Quirk:** I thought he was withdrawing it.

Several Members: No. *(Laughter)*

Mr Watterson: Nice try, David!

960 **The Deputy Speaker:** To make that clear, I repeat again, that concludes the business of the House today. The House now stands adjourned until the next sitting, which will take place at 10.30 a.m. on 8th April in Tynwald.

The House adjourned at 10.54 a.m.