



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 27th November 2018

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Present:

The Speaker (Hon. J P Watterson) (Rushen);
The Chief Minister (Hon. R H Quayle) (Middle);
Mr J R Moorhouse and Hon. G D Cregeen (Arbory, Castletown and Malew);
Hon. A L Cannan and Mr T S Baker (Ayre and Michael);
Hon. C C Thomas and Mrs C A Corlett (Douglas Central);
Miss C L Bettison and Mr C R Robertshaw (Douglas East);
Hon. D J Ashford and Mr G R Peake (Douglas North);
Mrs K J Beecroft (Douglas South);
Mr M J Perkins and Mrs D H P Caine (Garff);
Hon. R K Harmer and Hon. G G Boot (Glenfaba and Peel);
Mr W C Shimmins (Middle);
Mr R E Callister and Ms J M Edge (Onchan);
Dr A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Secretary of the House.

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House of Keys

The House met at 10 a.m.

[MR SPEAKER *in the Chair*]

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

Members: Moghrey mie, good morning, Mr Speaker.

5

The Speaker: I call on the Chaplain to lead us in prayer.

PRAYERS

The Chaplain of the House

Leave of absence granted

The Speaker: Hon. Members, the only leave of absence we have this morning is for Mr Malarkey.

1. Questions for Oral Answer

CHIEF MINISTER

1.1. Financial Ombudsman – Extension of remit to include business accounts

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Chief Minister:

Whether the remit of the financial Ombudsman could be extended to include business accounts?

10 **The Speaker:** We turn to Questions for Oral Answer and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse, to ask Question 1.

Mr Moorhouse: Thank you, Mr Speaker.

15 I would like to ask the Chief Minister whether the remit of the financial Ombudsman could be extended to include business accounts?

The Speaker: I call on the Chief Minister to reply.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

20 The aim of the Financial Services Ombudsman Scheme is to provide an informal dispute resolution service for small-scale consumers of Isle of Man financial products. The Financial Services Act 2008 enables the Office of Fair Trading to mediate disputes between individuals and Island based providers of financial services, which includes insurance services. If mediation fails the matter can be referred to adjudication, the OFT does not charge for this service.

25 The Act allows the OFT to widen the scope of 'individual' to include corporate entities in specified circumstances. This is via an order requiring Tynwald approval. The OFT has used this power once to extend the scope of the Ombudsman Scheme to a self-invested personal pension where the complainant would be a corporate trustee but the sufferer of any loss would still be an individual.

30 I am aware that the Hon. Member has been in dialogue with the OFT regarding banks closing business accounts. This is outside the scope of the Ombudsman Scheme under the present legislation, because the complainant is not an individual.

The Speaker: Supplementary Question, Mr Moorhouse.

35 **Mr Moorhouse:** Thank you, Mr Speaker and thank you, Chief Minister, for that Answer.

Are you aware that currently a business account can be closed with no prior warning or 30 days' notice, if they are being lenient? Given this situation could the Chief Minister look at whether any form of independent advice could be provided in such a situation? Is he potentially concerned for those involved in e-business and trading in some areas of the world where once a business account closes it could be a challenge to open another one?

The Speaker: Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

45 The importance of small businesses to the Isle of Man's economy is recognised. However, the role of the Financial Services Ombudsman Scheme is to mediate in relation to disputes between individuals and Island-based providers of financial services, rather than to provide an immediately accessible support mechanism for small businesses. In any event, the decision of a bank to close an account is generally regarded as a legitimate commercial decision and therefore the Ombudsman Scheme would be likely to decline to mediate.

50 I think there were only 13 complaints concerning bank account closures raised with the Scheme in 2017-18 and all of the complainants were individuals. Neither Treasury or the OFT are aware of any widespread demand for extending the scope of the Ombudsman Scheme to corporate bodies.

55 The general principle for consumer protection is that the relationship between small-scale consumers and large-scale commercial operations is in balance to the point that the consumer needs enhanced protection, and this is not normally the case with business-to-business relationships. However, should the Hon. Member for Castletown and Malew show me or the Treasury Minister that there is an abnormality of cases where a problem is happening then I am sure we would be more than happy to look at his problem.

The Speaker: Supplementary question, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

65 Would the Chief Minister agree with me that the financial Ombudsman provides a highly valued service to individuals on the Island and also that in certain situations Hon. Members may be unaware of the conduct of some business accounts which may cause concern to their bankers?

70 **The Speaker:** Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

75 Yes, I do agree with my hon. colleague for Middle, Mr Shimmins. The Ombudsman offers an excellent service: a small team who are doing a very good job, and yes, there may well be reasons that a bank does not want to renew or open an account for a business that they would not be able tell us for data protection rules, that would have to come from the member of the public.

TREASURY

1.2. Personal injury discount rate provisions – Legislation update

The Hon. Member for Douglas East (Miss Bettison) to ask the Minister for the Treasury:

Whether legislation to update our personal injury discount rate provisions is being considered?

The Speaker: Question 2 and I call on the Hon. Member for Douglas East, Miss Bettison.

80 **Miss Bettison:** Thank you.

I would like to ask the Minister for the Treasury whether legislation to update our personal injury discount rate provisions is being considered?

The Speaker: I call on the Treasury Minister to reply.

85

The Minister for the Treasury (Mr Cannan): Mr Speaker, the Treasury is monitoring developments in the UK as legislation is enacted to provide a new methodology for setting personal injury discount rates.

90 Once the UK has concluded a first review under this new legislation and the findings have been published, the Treasury will act swiftly to bring appropriate corresponding Isle of Man legislation forward for Tynwald consideration and approval. This will be in the form of an Order which will set a new Isle of Man discount rate. This can be applied with immediate effect and no changes to the existing framework of primary legislation will be required.

95 **The Speaker:** Supplementary question, Miss Bettison.

Miss Bettison: Thank you for the Minister's commitment to that. Obviously the Civil Liability Bill is now only awaiting Royal Assent. What timeframe does he envisage for being able to come back with an Order and will that be guaranteed to copy what the UK have done unless there are any grave concerns?

100

The Speaker: Treasury Minister to reply.

105 **The Minister:** I am always a little bit wary about setting timescales, but the Hon. Member is correct in the fact that the Bill is now awaiting Royal Assent. Once enacted, an independent advisory panel must be appointed and a review commenced within 90 days and concluded within 140 days. If Royal Assent happens quickly we could well see a new rate set in February,

and as I have indicated to the Hon. Member, we will be reacting as quickly as possible once this new rate has been set.

**1.3. Financial Services Authority –
Business banking accounts**

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for the Treasury:

Whether the Financial Services Authority collects numbers of business banking accounts opened and closed annually?

110 **The Speaker:** Question 3 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

115 I would like to ask the Treasury Minister whether the Financial Services Authority collects numbers of business banking accounts opened and closed annually?

The Speaker: I call on the Treasury Minister to reply.

120 **The Minister for the Treasury (Mr Cannan):** Mr Speaker, the Financial Services Authority does not currently collect information on the number of business banking accounts opened and closed each year.

The Speaker: Supplementary question, Mr Moorhouse.

125 **Mr Moorhouse:** Thank you, Minister.

Currently there has been a change in data collection and there is now the instigation of an annual AML/CFT returns. As part of that, data is collected on the opening of new accounts, the accounts declined for opening and the termination of accounts. In terms of this new additional data, is it possible that it will become part of the public domain when the reports are published annually by the Financial Services Authority?

130

The Speaker: Treasury Minister to reply.

The Minister: Thank you, Mr Speaker.

135 Yes, the Hon. Member is correct. The FSA are now collecting data annually from banks for AML/CFT purposes and this includes the number of new account relationships opened in the past 12 months, the number declined for AML/CFT or sanctions purposes, the numbers terminated and, for this, how many were for AML/CFT or sanctions purposes.

140 So this new data which is due to be received by the end of this year will be split between individuals, both Isle of Man and overseas individuals, charities, both Isle of Man and overseas charities, corporate and trust clients managed by the Isle of Man fiduciary service providers and other corporate trust clients and other customers. The data provided will not include customer names and I see no reason why the FSA will not be seeking to publish that part of their annual report.

145 **A Member:** Hear, hear.

**1.4. Isle of Man Steam Packet Company –
Shareholder agreement and operational business plan**

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for the Treasury:

How the Steam Packet shareholder agreement, requiring Treasury to approve the operational business plans of the company, meets the Tynwald objective that the Isle of Man Steam Packet Company operates at arm's length from Government?

The Speaker: Question 4 and I call on the Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

150 I would like to ask the Minister for the Treasury How the Steam Packet shareholder agreement, requiring Treasury to approve the operational business plans of the company, meets the Tynwald objective that the Isle of Man Steam Packet Company operates at arm's length from Government?

155 **The Speaker:** I call on the Treasury Minister to reply.

The Minister for the Treasury (Mr Cannan): Mr Speaker, the purchase of the Isle of Man Steam Packet Company was undertaken to allow Tynwald to take strategic control of this asset while allowing the company to operate at arm's length.

160 As shareholder the Treasury does need a mechanism to ensure that strategic and financial objectives for the company are reflected in its activities. The mechanism which is set out in the shareholder agreement is the company will produce and publish an annual business plan that will provide transparency regarding its strategic objectives and high level activities. The business plan will be a high level document to ensure that its strategy aligns with the shareholder objectives for the company.

165 Mr Speaker, an annual meeting with the directors does not seem unreasonable to me. It is a sensible and pragmatic measure designed to ensure a line of proper communication exists and an opportunity for the directors to explain and justify their proposals for the forthcoming year to the shareholder. I am confident that the shareholder agreement provides us with the foundations to establish an appropriate relationship moving forward.

The Speaker: Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

175 I am not sure myself and the Treasury Minister are looking at the same shareholder agreement. He has just referred to the business plan being a high level strategic business plan. The shareholder agreement actually refers to it as a 'detailed operational plan including its budgets'. Hence my Question, how is this a company that is going to be operating at arm's length when Treasury will have the veto over any detailed operational activities of the company?

180 **The Speaker:** Treasury Minister to reply.

The Minister: I do not think the Hon. Member is correct that Treasury is going to veto any plans brought forward. This is simply a practical measure that will ensure that the directors communicate effectively with the shareholder. As the Hon. Member knows, the basis of the framework under which they are operating will be set out in the shortly to be agreed user agreement which will set the operational criteria for the business. It is sensible that the directors come to the shareholder once a year to ensure that their business plans, their plans for the operations of the business over the next 12 months are put before the shareholder and that

190 they are meeting the requirements set out in that user agreement. But most importantly, it is a pragmatic approach to ensure that there is an effective line of communication.

As the Hon. Member rightly pointed out in his address when speaking about the Steam Packet purchase, there needed to be, and we needed to ensure, that under no circumstances we allowed another MEA situation to occur.

195 So I think it is absolutely right that the Treasury and the Treasury Minister at the time has the ability to communicate effectively and ensure that the finances of the business are being appropriately addressed. I see it in real terms, in no way is this an interference into the operational plans of the Steam Packet. The directors will have the full ability to be able to determine the business plan presented and then put it into effect.

200

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

205 Would the Treasury Minister agree with me that a shareholder agreement is an absolutely standard mechanism that businesses that are owned by professional financial investors, such as private equity houses, use to allow them to set the parameters within which the management team runs the business and to allow the shareholders to control its interests? And it is absolutely standard to include reserve matters which require a shareholder's consent in order that the management team has a clearly defined framework within which to operate?

210

The Speaker: Treasury Minister to reply.

The Minister: I would agree, but I would also suggest to Hon. Members that the whole business of owning the Steam Packet Company should be looked at as evolution rather than revolution. And that in all circumstances, both in terms of the shareholder agreement and in terms of the user agreement, we must ensure that built within those documentations is the ability of Tynwald to revisit if it is not working satisfactory, not only for this set of politicians and for the people of the Island, but also for future politicians.

220 I think that what has been put before Members meets the Tynwald objectives for the time being. It provides a sensible framework and it would be, I would suggest to Hon. Members, most bizarre were we not to have at least one annual meeting with the directors whereby the shareholder was represented.

The Speaker: Supplementary question, Mr Hooper.

225

Mr Hooper: Thank you very much, Mr Speaker.

230 Again I think there is a fundamental misunderstanding here. I have got no issue with an annual update; I have got no issue with the shareholder having strategic control of the Steam Packet, which is what was agreed by Tynwald. The issue is the shareholder agreement that has been presented to Tynwald clearly states that it is a 'detailed operational plan' the shareholder has approval of and that the directors do not have the full ability to control the company at an operational level without Treasury political approval that is required, that is built into the shareholder agreement. I think that is quite an unusual requirement to say the directors do not have control of any aspect of the operation of the company because Treasury can say actually, 'No, we do not like that operational plan, we do not like the detail at this level, we are not going to approve it.'

235 So my question to the Treasury Minister is what safeguards are there to stop future politicians interfering in the operational control and operational aspects of the company? I completely take him at his word that he and this Council of Ministers has no intention whatsoever of doing that themselves, but what safeguards has he built in to stop any future

240

Treasury Minister or Treasury Members interfering inappropriately in the operational aspects of the company?

The Speaker: Treasury Minister to reply.

245

The Minister: Mr Speaker, you could never 100% guarantee that, because if future politicians came together and decided to fundamentally change the operational structure or the business plan or the user agreement then they would have it within their remit to do so. I think the Hon. Member has no way, no mechanism, of safeguarding the fact that in the future the relationship between the Isle of Man Government and the operations of the Steam Packet are not somehow changed or interfered with.

250

What I would suggest to Hon. Members is to go back to what I said before, that we should take this as evolution and not revolution. There may well be points in this process whereby the first draft or first approved user agreement does not operate entirely satisfactory within the first couple of years and may need tweaking, and it may be that the shareholder agreement may at some point need amending. We are both effectively guiding the operations of this business through the user agreement and guiding the actions of the board of directors through the shareholder agreement. I would suggest it is not unimaginable or something that is not achievable for good governance to continue to be evolved if needed or for these documents to be amended and that all parties will be in a position to sensibly sit round a table and to do so.

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EDUCATION, SPORT AND CULTURE

1.5. Flu vaccine – Teaching and support staff

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Education, Sport and Culture:

What advice he has provided on offering front line teaching and support staff the flu vaccine?

The Speaker: Question 5 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

265

I would like to ask the Minister for Education, Sport and Culture what advice he has provided on offering front line teaching and support staff the flu vaccine?

The Speaker: I call on the Minister for Education, Sport and Culture to reply.

270

The Minister for Education, Sport and Culture (Mr Cregeen): Thank you, Mr Speaker.

We have not offered any advice, but if Public Health recommended this course of action then of course we would follow it.

The Speaker: Supplementary question, Mr Moorhouse.

275

Mr Moorhouse: Thank you, Mr Speaker, and thank you, Minister.

Given the cost of vaccinating all the teachers at the largest school in the Island should now be less than paying for one week's cover for one teacher off with flu, would the Minister consider the benefits of offering vaccination or improving access to it for teachers?

280 **The Speaker:** Minister to reply.

The Minister: Thank you, Mr Speaker.

As the Member asking the Question is a Member of the Department of Health, if he would like to recommend it to his Department we would happily follow.

**1.6. Secondary school mathematics –
Plans to change examinations board**

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Education, Sport and Culture:

What plans he has to change the examinations board for mathematics in secondary schools?

285 **The Speaker:** We turn to Question 6 and I call on the Hon. Member for Onchan, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

I would like to ask the Minister for Education, Sport and Culture: what plans has he to change the examinations board for mathematics in secondary schools?

290

The Speaker: I call on the Minister for Education, Sport and Culture to reply.

The Minister for Education, Sport and Culture (Mr Cregeen): Thank you, Mr Speaker.

The Department is awaiting proposals from the five secondary schools.

295

The Speaker: Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

300 I thank the Minister for that short response. Within another House in July 2014 the Minister at the time had some concerns about ensuring that one exam board was implemented for all the schools. I am assuming from his response today that he is considering the responses from the headteachers.

The Speaker: Minister to reply.

305

The Minister: Thank you, Mr Speaker.

We have met with the headteachers from each of the secondary schools and also the heads of maths. We have listened to their concerns and we are awaiting their advice.

310 **The Speaker:** Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

Is the Minister also taking into consideration the costs and the implications of costs with changing examination boards or choice of examination boards?

315

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

We are just looking at what is best for the students.

320

The Speaker: Supplementary question, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

Can I ask the Minister, in addition to maths, whether any other subjects are being considered to change exam board?

325

The Speaker: We are straying a little from the Question, Minister, but if you are in a position to reply ...

The Minister: Thank you, Mr Speaker.

330

We have spoken to the five secondaries and they have not raised concerns in the same way. Thank you.

The Speaker: Supplementary question, Ms Edge.

335

Ms Edge: Thank you, Mr Speaker.

I am pleased to hear the Minister say it is about the best outcomes for our students with regard to this. So, when the decision is taken, will the autonomy with the headteachers at that point, if there are to be any changes due to examination results that are received within the year of ...? If you look at the examination results for this year, there was a considerable change within the maths results. Will he be considering that and giving autonomy to the headteachers?

340

The Speaker: Minister to reply.

The Minister: I look for your advice, Mr Speaker, to understand where the Member is going on this. The results for the maths last year were the second highest that they have had, and once we have received the advice from the secondary schools they will be notified of what is happening.

345

ENVIRONMENT, FOOD AND AGRICULTURE

1.7. Policy on planning enforcement – Planning breaches

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

How low priority planning breaches are enforced under the current Operational Policy on Planning Enforcement?

The Speaker: We turn to Question 7 and I call on the Hon. Member for Ramsey, Mr Hooper.

350

Mr Hooper: Thank you, Mr Speaker.

I would like to ask the Minister for Environment, Food and Agriculture how low priority planning breaches are enforced under the current Operational Policy on Planning Enforcement?

355

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

The Minister for Environment, Food and Agriculture (Mr Boot): Thank you, Mr Speaker.

Following the last sitting, I circulated a copy of the Operational Policy on Planning Enforcement and addressed some of the outstanding queries raised at the time.

360 Overall, the Department is seeking to respond in a proportionate manner to complaints regarding an alleged breach of planning control. All appropriate requests to investigate are initially processed in the same way regardless of their priority. The priority system is then in place to provide a speedier initial site visit where allegations relate to development that threatens immediate, serious or irreversible harm. The aim is to prevent that harm from continuing. That policy sets out target timescales for initial site visits based on prioritisation.

365 What action, if any, is taken in respect of a breach of planning will then depend upon the individual circumstances of each case and in particular the level of harm that arises from that breach. The Department's planning enforcement powers are discretionary and we do not take further action simply because there has been a breach in planning control. Our response must always be proportionate. Similarly, the Police do not prosecute for every minor offence. Enforcement action is only taken where the Department is satisfied that it is expedient to do so, having regard to the provisions of the development plan and to any other material planning considerations.

370 Planning enforcement operational policy sets out the process. The Department will gather evidence regarding the nature and scale of the breach and whether it is unacceptably affecting public amenity or the built or historic environment. In deciding whether it is appropriate to take enforcement action, the degree of harm that the unauthorised development is causing or is likely to cause is carefully considered.

375 Another factor that needs to be taken into account in reaching a decision is the likely success of any formal action, for this does not mean that those breaches categorised as low or low priority may not ultimately lead to formal action.

380 Mr Speaker, as I said at the outset, the aim of the policy is to achieve a timely and proportionate response.

385 **The Speaker:** Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

390 Does the Minister not feel that the way the policy is set out, where the breach must demonstrate that it is sufficiently harmful in order to justify taking action, that where you have instances where planning breaches may be quite harmful to the immediate localised area, say, just a few neighbours, the Department actually will not be taking action simply because they determine it is not really affecting enough people?

395 Does he not feel that perhaps this policy is going to severely disadvantage those people who are in those kind of circumstances where they are not perhaps on the edge of a large development, where the planning breaches are not going to impact 10, 20, 30 people, when it is only affecting a small number of people and the Department's active choice not to prosecute, not to enforce the planning breaches is going to have a severely detrimental impact on people in those circumstances?

400 **The Speaker:** Minister to reply.

The Minister: Thank you, Mr Speaker.

405 I think we set out or prepare the policy because there was a feeling that the public were not able to see a transparent way forward for the complaints that they were making, and the policy does set out a pathway that we follow.

410 When it comes to the severity, as I said in my initial reply, it is discretionary as to whether we take action but we do not always take action unless it is expedient to do so and that is part of the Town and Country Planning Act. When it comes to perception of damage it is always difficult to assess and the officers have the difficult job ... very subjective. You are correct that a small complaint that affects a few people may seem insignificant in the scheme of things, but rest assured that officers do take into account the importance and the severity of breaches.

415 Unfortunately, there is a tendency for officers to get involved in what I call neighbourhood disputes and they try and use our authority to enforce or validate complaints against neighbours. This often occurs where temporary structures appear or things that happen that are not necessarily going to cause great community harm.

I understand where the Member is coming from, but please be assured that we do check all complaints seriously and we try not to trivialise things and take into account what the circumstances are.

420 **The Speaker:** Supplementary question, Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

There is a statement inside the operational planning policy that reads:

The decision that it is not expedient to pursue formal enforcement action is not the same as giving Planning Approval.

Then it goes on to say:

(i.e. The breach remains unlawful unless it becomes immune due to the passage of time.)

425 Given that there is no enforcement of a lot of planning breaches on the Isle of Man, these breaches will remain unlawful until they have been unlawful for so long the Department is not able to take action. That is in effect giving planning permission for unlawful planning.

430 So my question to the Minister is on what basis has he made this decision that it is appropriate to allow officers to make very subjective planning decisions without resorting to the actual proper formal planning process that exists on the Isle of Man?

A Member: Hear, hear.

The Speaker: Minister to reply.

435

The Minister: Thank you.

440 It is unlawful, obviously, and that statement is correct and there is a statute that allows unlawful matters to become compliant by passage of time, but the reality is that there are a number of minor breaches that will occur that it is not expedient, and the Town and Country Planning Act 1999 explains what expedient is, to take action.

The resource we have is finite and we really need to look at where these breaches are causing considerable concern or damage to historic buildings. All planning is subjective and relies on the interpretation of officers.

445 If I can indulge myself with Members for a second or two, when someone makes a planning application it goes through a process and the planning application is assessed by officers and they decide what recommendations they will make in terms of the Planning Act. That goes to the Planning Committee; the Planning Committee then takes a subjective view of how that application sits and they may agree with the officers, they may disagree. When the application is approved or not approved it can then go to appeal and can be taken to appeal by a third party, interested party or the applicant. A professional planning officer then has another look at the Act and interprets it and it is a subjective interpretation. In the final analysis it comes to me or my Department delegation and we then assess it with a further independent planning officer, through the AG's office and through peer review, before making a final decision on an appeal.

450 It is a subjective process. It is always down to the interpretation of the officers and the individuals involved. So whether people are allowed to get away with breaches – and that is what you are, in essence, saying – is a matter of expedient action by the Department and I think that it will ever be thus.

The Speaker: Supplementary question, Mrs Beecroft.

460 **Mrs Beecroft:** Thank you, Mr Speaker.

I wonder if the Minister could comment on a situation where you would have two cases where people are in the same position, but because of the difference in the amount of people who are being affected by it, they are treated differently. I am wondering if he can confirm that he is satisfied that the policy is actually compliant with the Equality Bill?

465 **The Speaker:** I call on the Minister to reply.

The Minister: If the Hon. Member would like to approach the Department if there are cases where she believes that a different approach has been taken. We will not discuss individual cases on the floor of the House.

Regarding the Equality Act, I am not quite sure where that sits with this and I would like to seek advice on that.

475 **The Speaker:** I call on the Chief Minister, Mr Quayle.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

Would the Hon. Member not agree with me – and I note that in the House there are at least four ex-Chairs of Planning sitting here – that planning is an incredibly emotive area and that the officers do a very good job in an area that is incredibly difficult where they are trying to help and it is only when you actually have been the Chair of the Planning Committee where you see the neighbourly disputes that happen and the planning officers are used as a weapon to try and attack another neighbour? I think they do an excellent job given the circumstances that they work in.

485 **The Speaker:** Minister to reply.

The Minister: I thank the Chief Minister for those comments and I too have been Chairman of the Planning Committee in another place and I am only too aware. I would say that officers generally do a good job in trying to balance interests. Sadly, they are frequently dragged into neighbours' disputes.

The Speaker: Supplementary question, Mr Hooper.

495 **Mr Hooper:** Thank you very much, Mr Speaker.

I would like to thank the Minister for his quite long and detailed answer talking about rights of appeal and the rights of audience people have when something goes through the planning process, because those are exactly the rights that his planning policy is denying a large number of people on the Isle of Man.

My question for him though is this: we all know the Department does not enforce low level planning breaches, the Minister has admitted it himself; where there is no evidence of significant harm the Department chooses not to enforce; we know they cannot force you to put in place a retrospective planning application, they will not fine you, there is really no penalty ... So my question to him is this why would I bother going through the planning process, why would I bother paying planning fees, why would I bother putting myself through all that stress and effort when actually I know that there is a very good chance the Department is not going to prosecute me even if I am found to have done something that is unlawful?

The Speaker: Minister to reply.

510 **The Minister:** As I said at the very beginning, it is proportionate, isn't it? Yes, most people like to comply and do comply with planning law. I would also say that some low level cases do turn out to be quite important and will be escalated and there is always the element that having unlawful development will be an impediment in future when selling a property. So sometimes breaches do catch up with people who flaunt the planning laws, but the reality is that very small
515 breaches are often perceived by different parties in different ways and I refer to the subjective nature and interpretation of planning law.

The Speaker: Supplementary question, Mrs Beecroft.

520 **Mrs Beecroft:** Thank you, Mr Speaker.

Can I just, first, ask if the Minister would accept that I was not going to attempt to discuss an individual case on the floor of this House, because I certainly know better than to try and do that?

I am asking about a principle and if the Minister has not got the information to hand about
525 whether his policy complies with the Equality Act I would be grateful if he could find out and circulate the response to all Members. Is the Minister prepared to do that?

The Speaker: Minister to reply.

530 **The Minister:** As I said to the Hon. Member, I will look into the same and if the Equality Act is deemed to be applicable I will let Hon. Members know, but as far as I am aware at the moment it is not applicable in the way that you are referring to.

HEALTH AND SOCIAL CARE

1.8.-1.9. DHSC facilities – Governance; action in cases of non-compliance

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

1.8. Whether registration and inspections standards are being met by Department of Health and Social Care facilities; if not, what standards are not being met and what action is being taken?

1.9. Whether Community Care is complying with the Regulation of Care Act; if not, what action is being taken?

The Speaker: We move to Questions 8 and 9, which are to be taken together, so if I could ask Mrs Beecroft to read out Questions 8 and 9, please.

535

Mrs Beecroft: Yes, thank you, Mr Speaker.

I would like to ask the Minister for Health and Social Care firstly Question 8: whether registration and inspection standards are being met by Department of Health and Social Care facilities; and if not, what standards are not being met and what action is being taken?

540 And Question 9: whether Community Care is complying with the Regulation of Care Act; and, if not, what action is being taken?

The Speaker: I call on the Minister for Health and Social Care to reply.

545 **The Minister for Health and Social Care (Mr Ashford):** Thank you, Mr Speaker.

Can I start by thanking the Hon. Member for Douglas South for agreeing to take the two Questions together because the Answer will cross over both.

The Registration and Inspection Unit inspects social care services in respect of standards set out under the Regulation of Care Act 2013. During the 2018-19 inspection year it has so far
550 inspected 24 of the 38 Department of Health and Social Care facilities, which include adult care homes, adult daycare centres, domiciliary care services, children's respite services and the fostering service.

Not all services met the standards fully. In response to this, improvement requirements were issued. The main inspection findings have been issues with the environment, reviews of policies
555 and procedures, staff training, staff supervision, evidence of pre-employment checks for staff being available within the service and annual reports which are the outcome of the internal quality assurance process. Following receipt of a requirement, the service must then develop an action plan to achieve the appropriate requirement. Eight improvement notices have been served this year, three of which have now been lifted as the improvements have been made.
560 Services generally find the experience positive, as it allows them to continually improve the care and support they provide to the people using those services. I should also stress at this point that of the eight improvement notices none of the notices related to standard of care.

In addition, since April 2018 the Department has been introducing its own internal governance systems across Social Care services, which serve to further improve standards for
565 the people we serve.

The Speaker: Supplementary question, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

570 Where the Minister referred to eight improvement notices and there are three lifted, obviously that leaves five outstanding: what is the timeframe that has been given for those to be compliant and for those improvement notices to be lifted as well?

The Speaker: Minister to reply.

575

The Minister: Thank you, Mr Speaker.

I do not have the actual timescales with me, but I can give a flavour to the Hon. Member of what the improvement notices are that are still active.

For instance, as I said, most of them are in relation to ... There is one on pre-employment
580 checks, there is no evidence of a staff induction programme being completed in one case and no evidence of an annual report being completed, and also where there are certain policies and procedures out of date. I will find out what the timescales were for each of the outstanding ones and I will have them circulated to Hon. Members.

585 **Mrs Beecroft:** Thank you.

1.10. Respite care – Availability for those not requiring nursing care

The Hon. Member for Onchan (Mr Callister) to ask the Minister for Health and Social Care:

What respite care is available through his Department and privately, for those individuals who do not require any nursing care?

The Speaker: We turn then to Question 10 and I call on the Hon. Member for Onchan, Mr Callister.

Mr Callister: Thank you, Mr Speaker.

590 Can I ask the Minister for Health and Social Care: what respite care is available through his Department and privately for those individuals who do not require any nursing care?

The Speaker: I call on the Minister for Health and Social Care to reply.

595 **The Minister for Health and Social Care (Mr Ashford):** Thank you, Mr Speaker.

The Department offers respite care for older people, people who have a diagnosis of dementia and people with a learning disability.

600 There are 11 places available for older people in our residential homes – Southlands, Reayrt ny Baie and Cummal Mooar. This includes two rooms held for people in need of emergency respite care.

The Department provides five respite rooms for people with dementia, located in Ramsey, Port St Mary and Douglas. The Department commissions two respite care beds from the Corrin Home in Peel.

605 In total there are 11 rooms available for people with a learning disability and these are in Douglas.

Some private care homes enter into respite arrangements with individuals on an *ad hoc* basis dependent on their occupancy levels.

The Speaker: Supplementary question, Mr Callister.

610

Mr Callister: Thank you, Mr Speaker.

I thank the Minister for his detailed response. Could the Minister just outline if caring families can book respite care several months in advance in order to take advantage of flights, booking holidays and everything else around those arrangements?

615

The Speaker: I call on the Minister to reply.

The Minister: Thank you, Mr Speaker.

620 I am happy to confirm to the Hon. Member that although for learning disability and older people's social care there are no hard and fast rules in regard to bookings of respite, bookings are taken up to a year in advance, so if a carer needs to book a holiday, etc. there is that ability.

Obviously users of the service have to meet set criteria to be able to gain access to that respite, but if the Hon. Member has any particular instance that he is aware of where this has not been followed, if he lets me know I will have it investigated.

625

The Speaker: Supplementary question, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

630 Would the Minister agree that respite care is vitally important for partners and families looking after often very vulnerable people and it is vital for them to continue their function? Would he also outline some of the charges made to these partners and families for respite care provided by his Department?

The Speaker: Minister to reply.

635

The Minister: Thank you, Mr Speaker.

640 In relation to respite care it is absolutely vitally important that we provide carers with the ability to be able to take time off. They do a great service to us all, our carers out in the community, who quietly just get on with the caring that they are doing, a lot of the time without complaint or even acknowledgement. So I think it is important we recognise that and we make sure that adequate services are available. That is why, in the reconfiguration of Ramsey District Cottage Hospital, we now have four respite beds available up there that can be booked up to a year in advance and, in fact, we have 22 individuals currently on the books at Ramsey who are seeking respite care there.

645

The Speaker: Supplementary question, Mr Callister.

Mr Callister: Thank you, Mr Speaker and again I thank the Minister for his detailed response.

650 I was wondering if he could publish details of which facilities can be booked a year in advance? Can he also just clarify in respect of these units because I was under the impression that nursing care takes priority and anybody who does not need nursing respite care actually is secondary to the normal system, so can he just explain that and if he will publish which facilities actually can be booked a year in advance?

655

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

660 The facilities were listed in my original Answer where I laid out the places available, so you have Southlands, you have Reayrt ny Baie, you have Cummal Mooar. In relation to dementia you have got areas in Ramsey, Port St Mary and Douglas. They are all listed out under the policy of the Department as well.

665 In relation to nursing care, I do not know if the Hon. Member is referring to private nursing homes there rather than the Department's operated facilities because in relation to ours, as I say, stated in my original Answer, there are 11 places available for older people in the residential homes run by the Department that are for respite care.

The Speaker: Supplementary question, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

670 I would like to thank the Minister for his previous answer but ask him again if he could outline some of the charges made to carers in terms of partners and families for some of the respite care which is available through his Department?

675 **The Speaker:** Minister.

The Minister: Thank you, Mr Speaker.

I do not have that information in front of me but, again, I will have it circulated to Hon. Members.

680 **The Speaker:** Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

685 I would just like to ask the Minister is he aware of what the occupancy levels have been of this respite service that is being provided? Is it really so stringent that it can only be dementia or learning disabilities at present? Is he considering extending that for people that have perhaps had minor strokes etc. to give families respite?

Thank you.

The Speaker: Minister to reply.

690

The Minister: Thank you, Mr Speaker.

I think the Hon. Member from Onchan has got slightly the wrong end of the gist. It is not limited to people with dementia and learning disabilities; it is available to older people as well.

695 In relation to the places that are available I believe there is good uptake of them. Equally the availability within Ramsey of the four respite beds up there, again, I believe there has been very good take up.

The Speaker: Supplementary question, Mr Callister.

700 **Mr Callister:** Thank you, Mr Speaker, final question from myself and again I thank the Minister for his detailed information this morning.

705 With regard to the 11 places, I think my colleague from Onchan has already outlined it, but can he just outline if there is sufficient space available at the moment or is it something that the Isle of Man should consider – setting up a dedicated respite unit here on the Isle of Man in order to enable support for caring families to look at actually taking that desperately needed respite period throughout the year?

The Speaker: Minister to reply.

710 **The Minister:** Thank you, Mr Speaker.

I am not aware of people suffering serious issues with respite care. There is the ability for emergency respite care with 48 hours' notice as well. I would direct the Hon. Member for Onchan to the Department's policies on this because they are laid out quite clearly as to how people access the services.

715 I believe there is good take up of the services but I am not aware of people being denied respite because the places are all full etc. If the Hon. Member has a case that he wishes to raise with me then obviously we will have that investigated.

The Speaker: Two final supplementaries on this Question, firstly, Mr Hooper.

720

Mr Hooper: Thank you, Mr Speaker.

725 I am glad that the Minister has made several references to Ramsey Hospital. I was provided with a copy of a letter from a constituent some time ago which was sent to him by the Department of Health and in that letter the Department made reference to the changes that were made in Ramsey as a result of integrating Martin Ward into the Noble's structure.

730 I would just like to read a line from that letter and ask for the Minister's comment, if he would. It says, 'In consequence of the move the ward is now exceptionally busy as many of the patients are medically unwell or coming towards the end of their life. The environment is often noisy and potentially intrusive and is no longer the ideal environment for patients who do not have a health care requirement.' So my question for the Minister then, are the respite care facility in Ramsey or the respite care facilities that are available within this Department ideal environments for patients who simply need respite care; and if not what does he plan to do about it?

735 **The Speaker:** Before I call on the Minister to reply, I will remind Members that the provisions of Standing Orders state that if you are going to quote from anything you must circulate that in advance to Members so that it is in their hands, they cannot be expected to react to things on the hoof.

Minister to reply.

740

The Minister: Thank you, Mr Speaker.

In relation to that, as I say, the view that I have had is the four ring-fenced beds up in Ramsey are well used, I think people appreciate them being there.

745 In fairness to the Hon. Member, Mr Speaker, although it is not obviously for the whole House, I think from memory the Hon. Member has shared that with me before where I have seen the particular email. In relation to that, obviously people have differing views, and if they do not wish to use the respite beds in Ramsey there are other facilities available by the Department for them to use to look to access. In relation to the use of Ramsey as well, I can say since we have reconfigured the service in April there has been a very good uptake and that, as far as I am aware, is the only complaint that has been received.

The Speaker: Final supplementary, Ms Edge.

Ms Edge: It is okay, it has been asked.

TREASURY

1.11. Discount rate for personal injuries – Statement

The Hon. Member for Douglas East (Miss Bettison) to ask the Minister for the Treasury:

Pursuant to his Statement to the July 2017 sitting of Tynwald, if he will make a statement about the Isle of Man discount rate for personal injuries?

755 **The Speaker:** Question 11, and I call on the Hon. Member for Douglas East, Miss Bettison.

Miss Bettison: Thank you.

760 I would like to ask the Minister for the Treasury: pursuant to his Statement to the July 2017 sitting of Tynwald, if he will make a statement about the Isle of Man discount rate for personal injuries?

The Speaker: I call on the Treasury Minister to reply.

765 **The Minister for the Treasury (Mr Cannan):** Mr Speaker, Hon. Members will recall that in my Statement to Tynwald in July 2017 I outlined the Treasury's commitment to keeping a close watching brief on legislative developments in the UK which will change the methodology for setting personal injury rate discounts. I understand that this UK legislation, in the form of the Civil Liability Bill, has now completed parliamentary passage and it is awaiting Royal Assent. Once the Bill is enacted, the Lord Chancellor will be required to instigate a review process through appointing an independent panel of experts to provide advice and thereafter will introduce a new UK discount rate, if considered appropriate.

770 I have stated my intent to consider the outcome of this review as soon as it is available and to then act swiftly to bring appropriate Isle of Man legislation forward for Tynwald consideration and approval. This will be in the form of an Order which will set a new Isle of Man discount rate. This can be applied with immediate effect and no changes to the existing framework of primary legislation will be required.

The Speaker: Supplementary question, Miss Bettison.

780 **Miss Bettison:** Thank you.

Would the Minister acknowledge that Isle of Man residents have been greatly disadvantaged for well over a year now, both in insurance premiums and their payment calculations? Why, on one hand, will we not move our position until the UK review is completed, and on the other hand would not amend our current position to mirror that of the UK as per their previous review and change of rate?

The Speaker: Treasury Minister to reply.

790 **The Minister:** Mr Speaker, whilst the delay in progressing this matter is regrettable, I am confident that the correct course of action has been taken given the uncertainty and disruption caused by previous UK actions. I am confident that a full and transparent solution is on the way and will be put in place and that future discount rates will be fair to all parties.

The Speaker: Supplementary question, Dr Allinson.

795

Dr Allinson: Thank you, Mr Speaker.

I would like to thank the Treasury Minister for his cautious approach to this. Would he recognise that sudden changes in discount rate can lead to quite dramatic increase in costs for the Department of Health and also in terms of medical indemnity for GPs and medical professionals on the Island?

800

The Speaker: Whilst potentially declaring an interest in that particular area.

Dr Allinson: I would like to declare a pecuniary interest in that particular area! *(Laughter)*

805

The Speaker: I call on the Treasury Minister to reply.

The Minister: Mr Speaker, I agree and concur with those remarks. I think it is absolutely important that the Government takes a pragmatic view on setting the discount rates and that they are proportionately fair both to those who are seeking compensation and of course to the taxpayer, who ultimately funds the said compensation.

810

The Speaker: Supplementary question, Miss Bettison.

815 **Miss Bettison:** Thank you.

In July 2017 the Minister stated:

if within the next few months the UK has failed to reach a decision on this then I suspect that we will have to have a very serious consideration as to how we then progress to try and give some certainty to the many different individuals and bodies who are interested in the stance of the Isle of Man Government.

It is now 16 months later – more than a few even in Minister Thomas's opinion, I suspect. I wonder: if the newly calculated rate were to be set at the same level as the current UK rate, would we still adopt it?

820

The Speaker: Treasury Minister to reply.

The Minister: What I promised, Mr Speaker, is that we will react quickly to the setting of any new discount rate, that there is now a transparent framework in the UK for the setting of the previous discount rate – whereas before I would suggest it was potentially rather subjective. That process will be in place once this legislation not only has received its Royal Assent but the

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appropriate actions have then followed, and as soon as we have done that then we will obviously take action in accordance with the new rate that has been set in the United Kingdom.

830 **The Speaker:** Supplementary question, Miss Bettison.

Miss Bettison: Thank you, Mr Speaker, and thank you to the Minister for his ongoing commitment to this.

835 I wonder whether he would confirm whether we are committed to just looking at the UK rate or whether he has also been following Jersey's draft legislation, who felt that they were in a position to drive forward some new legislation without waiting for the UK; or whether we are simply following the UK's considerations.

840 **The Speaker:** Treasury Minister to reply.

The Minister: Mr Speaker, in the past, historically, we have always considered aligning our discount rate with that of the UK. I see no reason to change that process at present. Clearly the differences have resulted in the fact that the UK set a highly controversial discount rate of minus 0.75% and the setting of that rate exposed the public purse to potentially hugely significant increased amounts of compensation.

845 As the Hon. Member for Ramsey pointed out, I believe we have taken a very pragmatic approach to this. We will continue to take a pragmatic approach and my assurance to this Hon. House is that we will act as soon as we have received the information regarding the new rate in the UK.

850 **The Speaker:** Final supplementary, Miss Bettison.

Miss Bettison: Thank you.

855 While I accept that the current UK rate is controversial, as the Minister stated, would he agree that by saying that we will 'give consideration to' just leaves a complete level of uncertainty for those people who find themselves in the horrendous position of having been injured and awaiting a payment of compensation to them?

860 **The Speaker:** Treasury Minister to reply.

The Minister: I think whilst I accept that the process that the UK has followed, the time it has taken to reach a conclusion, has caused uncertainty for some people involved in these situations, it would appear that clarity is on the horizon, and as soon as these matters have been resolved ... The earliest possible indication I have is that that could well be early February if matters progress at a pace, although with everything else that is going on one would hesitate to put a certain and definitive time around this. But I too, like everybody else, would like to see this brought to resolution and I hope that that will be the case in the first few months of next year.

HEALTH AND SOCIAL CARE

**1.12. Department of Health and Social Care –
Plans to improve waiting times**

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

What his plans are to improve waiting times?

The Speaker: I turn to Question 12 and I call on the Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

May I ask the Minister for Health and Social Care what his plans are to improve waiting times?

875

The Speaker: I call on the Minister for Health and Social Care to reply.

The Minister for Health and Social Care (Mr Ashford): Thank you, Mr Speaker.

Further to my response on 23rd October 2018 to the Hon. Member for Ramsey, Mr Hooper, I can again confirm that the intention of the Department of Health and Social Care is to achieve the 18-week referral to treatment standard within the next five years; and in so doing, bring the Isle of Man in line with the NHS in England.

Hon. Members will appreciate that a number of key waiting time standards have been introduced by NHS England, most notably the 18-week referral to treatment standard that I have already mentioned, also the four-hour A&E standard, the two-week wait cancer standard and the 31-day and 62-day cancer standards.

The Department has chosen to adopt these respective standards and measures performance against them on either a weekly or monthly basis, depending on the reporting requirement of the respective standard. We have a significant amount of work to do in order to deliver the 18-week referral to treatment standard. Waiting times for first outpatient appointments, excluding two-week cancer referrals, are currently unacceptable in my view and compared to NHS England performance the Isle of Man is a considerable outlier.

The Patient Information Centre at Noble's Hospital is working with managers and clinicians at the Hospital to identify additional clinic capacity. This includes review of individual clinic templates and new to follow-up ratios in line with NHS England clinical pathways.

As the Hon, Member for Douglas South will be aware from her time as Minister, waiting times do vary by speciality and between clinician, and I am happy to circulate once again an updated list of this information should Hon. Members wish me to do so.

The Speaker: Supplementary question, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I thank the Minister for that comprehensive reply and for his commitment to be measured against some of the UK standards which is obviously what we want – proper benchmarking so we do know how good we are or whether we are not any good on certain areas.

Would the Minister agree with me, though, that actually the waiting list for diagnostic appointments is far too long, because if you are waiting for a decision on what is actually wrong with you it can pose a patient safety risk? What is the Minister doing about the diagnostics side of the waiting list to improve that?

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The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

915 Myself and the Hon. Member for Douglas South are in perfect agreement. The diagnostics side is absolutely essential because until you actually know what is wrong with you, you are not going to start receiving the appropriate treatment. So in relation to that, that is one of the first things that we will be looking at in terms of decreasing waiting time.

920 As I stated in my original Answer, one of the more interesting ones is the cancer pathway because the two-week cancer referrals up until 2016, I think it was, we did not actually have any information really in relation to this. So in 2016, performance against that standard was not even being measured and when the information was analysed it was found that only 37% of those patients referred were seen within the expected two-week timeframe. So then there was major action taken. This year the Hospital has achieved aggregate performance against this standard of 89.1%. There is still a long way to go, Mr Speaker, but I think that is good news –
925 that in the space of time available we have actually increased from 37% to 89.1%.

So there is movement on some of the diagnostics, but there is much further to go.

The Speaker: Supplementary question, Mrs Beecroft.

930 **Mrs Beecroft:** Yes, thank you, Mr Speaker.

I certainly do appreciate the vast improvement to the two-week cancer waiting time, because I think when I left as Minister, when I was sacked from that position, it was up to about 92% or 93%. So there had been enormous progress made in that area, but there are an awful lot of other areas where the diagnostic waiting times are far too long. I am pleased to hear the
935 Minister agree with me on that, but he said they will be looking at that as a first thing; I am wondering if he can give me some sort of timeframe and if he could report back to this House what he is actually going to do about the long diagnostic waiting times to give us some indication of how long people are going to have to wait, so that they have a sensible waiting time to know exactly what is wrong with them?

940

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

945 It is not a simple and easy project, as I am sure the Hon. Member for Douglas South knows from her time as Minister, because as I stated in my original Answer, the length of time splits down by the individual clinician as well as the individual area, some are longer than others.

950 So what is important is that we look at this holistically and that we do not just try and do one big bang and then find it has not worked and in fact it has made things potentially worse. We have got to ensure we look at it logistically, find out where the longest waits are and try and tackle those.

955 As I have said, the 18-week pathway referral, which is our ambition and we will be looking to deliver in the next five years – five years might sound like a long time, Mr Speaker, but then NHS England, if you look to their example, they tried to do a big bang with it and I think if Hon. Members want to go and look away at the figures you can see just what impact that had.

960

The Speaker: The Minister might forgive me for mishearing him, but when he mentioned the two-week cancer waiting time, I think the first time he mentioned it he said 81.9% and the second time he mentioned it he said 89.1%, so just for my own sanity would the Minister just tell me exactly what that figure is? I may have misheard him and I apologise if that is the case, but just give me that number again please.

The Minister: Yes, 89.1%, Mr Speaker, is the one that is those in the year 2017-18 that has the aggregate performance against the waiting list.

965 **The Speaker:** Thank you very much.
Supplementary question, Miss Bettison.

Miss Bettison: Thank you.

970 Would the Minister agree with me that there is a fine line between improving waiting times and creating a situation where GPs may not refer concerns for fear of worsening waiting lists, as a UK report has shown only this morning?

The Speaker: Minister to reply.

975 **The Minister:** Thank you, Mr Speaker.

I think that is the same with a lot of things that you measure, that you have got to be very careful you do not create the opposite reaction and that people are not trying to work to the statistics. That is the same in Education, it is the same in Health.

980 You have got to ensure that what comes first in Health is the patient on the pathway and nobody should feel that they need to be concerned about statistics. What we want is an honest picture of what is happening. I think we currently have an honest picture in terms of waiting times. We publish our waiting times on the website so we are open and honest with that, Mr Speaker.

985 But what we want to do is we want to use that data to improve the service and not use it as a stick approach which could actually end up, as the Hon. Member for Douglas East said, sending the service backwards.

The Speaker: Supplementary question, Mrs Beecroft.

990 **Mrs Beecroft:** Thank you, Mr Speaker.

Could I ask the Minister which of the diagnostic waiting lists are considered to be too long and therefore a patient safety risk, and are they on the risk register?

The Speaker: I call on the Minister to reply.

995 **The Minister:** Thank you, Mr Speaker.

There are various things on the risk register of the Department. I am not aware, with ... in front of me, what the individual diagnostic waiting times are. In relation to that, as I said, the waiting times are published on the website.

1000 **The Speaker:** That concludes the hour available for Questions for Oral Answer. Item 2 is Questions for Written Answer and those will be circulated in due course.

2. Questions for Written Answer

TREASURY

2.1. Construction workers – Numbers of employed and self-employed

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for the Treasury:

How many construction workers were classified as employed and self-employed on 5th April each year since 2008?

The Minister for the Treasury (Mr Cannan): I can confirm that the Quarterly Economic and Statistical Updates published by the Economic Affairs Division of the Cabinet Office contain details of jobs broken down by Economic Sector.

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These documents are available at: [Isle of Man Government - CoMin Reports – \[https://www.gov.im/about-the-government/government/the-council-of-ministers/comin-reports/\]](https://www.gov.im/about-the-government/government/the-council-of-ministers/comin-reports/)

The totals stated are based on data containing the current number of employees by economic sector supplied by the Assessor of Income Tax under a statutory gateway. After consulting with officers of the Economic Affairs Division, I can confirm that the total stated for 'construction' comprises the number of employees where the employer is within the construction, trade/contractors and property development sectors.

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I would draw to the Hon. Member's attention that no details are held in respect of the specific occupation of an individual and therefore although an employer may be classed in a specific sector it does not necessarily mean that all employees are engaged in the employer's primary activity. For example, the number of employees in a construction business may include those who are engaged in its administration.

1015

Turning to the matter of self-employed individuals engaged in the construction industry, I can confirm that the total number of resident taxpayers who have declared income on their annual tax return under the construction, trade/contractors and property development sectors are as follows:

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Tax Year	Total
2016-17	3,309
2015-16	3,215
2014-15	3,198
2013-14	3,126
2012-13	3,063
2011-12	3,211
2010-11	3,247
2009-10	3,327
2008-09	3,566

Data is not available in respect of the 2017-18 tax year as the Assessor is currently processing tax returns submitted in respect of the year ended 5th April 2018,

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The above numbers contain details of individuals who may have commenced or ceased self-employment during the tax year. Furthermore, the extent of self-employment may be on a full-time or part time basis and may be additional to any employment income.

POLICY AND REFORM

**2.2. Public Service Commission –
Different policies in place for Civil Service and Manual and Craft Workers**

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Policy and Reform:

Why there are different policies in place for Public Service Commission Civil Service and Public Service Commission Manual and Craft Workers?

1030 **The Minister for Policy and Reform (Mr Thomas):** The Public Services Commission came into being on 1st September 2015, and at that time the employment groups which became its employees were civil servants (formerly employees of the Civil Service Commission) and manual and craft workers (formerly employees of Departments, Boards and Offices under the auspices of the Whitley Council). The transfer into the Public Services Commission was conducted in accordance with section 8(1) of the Public Services Commission Act 2015, which states that:

a Public Sector employee who becomes an employee of the Commission ... is employed on the same terms and conditions that applied immediately before he or she becomes an employee of the Commission.

1035 Since 1st September 2015 work has been underway to harmonise terms and conditions including HR policies and procedures which are fully incorporated into contracts of employment. To date, the JNC constitution and bargaining machinery, arbitration agreement and facility time agreement have been harmonised. Work on other policies and procedures is ongoing including in particular, discipline, capability, grievance and redeployment/redundancy. Procedures of this nature also differ across other employment groups such as Teachers, MPTC, Fire and Rescue
1040 Service, Bus Vannin.

However, it is important to note that most HR policies, which are not embedded within terms and conditions, apply across the public sector as a whole, including PSC civil servants and manual craft workers. Examples include:

- 1045 • Alcohol and Drugs Workplace Policy;
- Anti-Bribery Policy and Procedure;
- Code of Conduct for Public Servants;
- Electronic Communications and Social Media: Policy, Standards and Guidelines;
- Fairness at Work policy;
- Management of Sickness Absence Policy;
- 1050 • Public Sector Compensation Scheme;
- Prevention and Management of Workplace Stress Policy;
- Re-Employment of Public Service Staff following Retirement;
- Retirement Policy;
- Smoking Policy;
- 1055 • Whistleblowing (Confidential Reporting) Policy.

**2.3. Public Service Commission –
Breakdown of numbers for different employee categories**

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Policy and Reform:

If he will provide a breakdown for each of the last five years, of the number of employees by (a) Public Service Commission Civil Service; (b) Public Service Commission New Terms (NTNSP);

(c) Public Service Commission Manual and Craft Workers; (d) Public Service Commission MPTC; (e) each Statutory Board; and (f) each Office?

The Minister for Policy and Reform (Mr Thomas): Table 2.3A below provides the data requested on the basis of people in post (not full time equivalent) at 31st March of each year, as recorded on the Central Government HR system. The system does not include Manx Utilities (Electricity) or IOM Post Office data.

Table 2.3A

As at 31st March		2014	2015	2016	2017	2018
PSC Civil Service (pre New Terms)		2,278	2,254	2,261	2,031	1,732
PSC Manual Workers (pre New Terms)		1,703	1,633	1,612	1,507	1,306
PSC New Terms (incl. Promotions)					367	848
MPTC ¹		1,308	1,305	1,340	1,359	1,341
Statutory Boards ²	Communications Commission	5	4	3	4	3
	Financial Intelligence Unit				5	10
	Gambling Supervision Commission	12	13	13	13	13
	IOM Financial Services Authority	67	71	71	74	73
	IOM Office of Fair Trading	17	15	16	17	16
	Manx Utilities Authority (Water)	151	135	124	125	123
	Manx National Heritage	71	71	63	63	85
	Public Sector Pensions Authority	19	19	19	18	19
	Road Transport Licensing Committee	3	3	3	3	3
Offices ²	Attorney General's Chambers	43	41	46	50	60
	General Registry	88	86	58	56	50
	IOM Information Commissioner	4	4	4	4	4

Notes:

1. MPTC (Manx Pay Terms and Conditions) employees are not part of the Public Services Commission. MPTC is a separate employment group for Nurses, Health Care Assistants and Allied Health Professionals. Most of these staff are employed by the Department of Health and Social Care.

2. Data for Statutory Boards and Offices includes their PSC employees (where applicable).

EDUCATION, SPORT AND CULTURE

2.4. School catering – Prioritising local meat and Manx produce

The Hon. Member for Ramsey (Dr Allinson) to ask the Minister for Education, Sport and Culture:

Whether his Department has a record of the proportion of locally produced meat used in school meals and a policy for prioritising Manx produce?

1060 **The Minister for Education, Sport and Culture (Mr Cregeen):** The Department relies on local butchers to supply meat for school meals. These suppliers are aware of the Government's 'buy local' policy and aim to meet this requirement.

1065 100% beef and lamb purchased from the butchers is of Manx origin. Pork is more difficult to source locally and although the priority is to use local producers, there is not enough to meet demand, resulting in butchers having to source further afield. Most trim and diced pork is supplied locally, the exact proportion is unknown. Up to 50% of sausage meat and loins originate off Island, from Spain or Denmark. All turkey and chicken is imported, the origin being England, Poland, Germany or other European countries.

1070 Government has a single procurement policy, the objectives of which were approved by Tynwald in July 2017.

HEALTH AND SOCIAL CARE

2.5. Hospital catering – Prioritising local meat and Manx produce

The Hon. Member for Ramsey (Dr Allinson) to ask the Minister for Health and Social Care:

Whether his Department has a record of the proportion of locally produced meat used for hospital meals and a policy for prioritising Manx produce?

1075 **The Minister for Health and Social Care (Mr Ashford):** According to the Department's suppliers, 100% of all beef, pork, lamb and sausages used for hospital meals are locally produced. To date the hospital has been unable to secure a supply of locally produced chicken, turkey, gammon or bacon in the volumes required. That said, the Department continues to work closely with the Food Business Development Manager at the Department of Environment Food and Agriculture in order to identify future opportunities for the local supply of these products.

There is a single Government-wide Procurement Policy. This Policy was debated and the policy objectives approved by Tynwald at the Court's sitting in July 2017.

1080 In addition further guidance is issued by The Treasury under cover of the Financial Regulations – specifically, Appendix 4 of Financial Practice Note C.10 which provides direction to Department's on food procurement. This direction reflects Government's previous Food Procurement Policy, sponsored by the Department of Environment Food and Agriculture and approved by the Council of Ministers in May 2014.

The Department has no additional policies in this regard.

INFRASTRUCTURE

2.6. Number 58 school bus service – Capacity and passenger numbers

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Infrastructure:

What the capacity of the number 58 school bus service is, seated and standing, and how many passengers were on the service, morning and afternoon, each school day for the last six weeks?

1085 **The Minister for Infrastructure (Mr Harmer):** The number 58 school bus service provides for short local journeys in Ramsey and is operated by a Mercedes City 45 in the morning, which has capacity of 28, seating 17 with 11 standing.

In the afternoon the service is operated with a Mercedes Citaro which has a capacity of 69, seating 41 with 28 standing. This is because the service also serves the Grammar School.

1090 Over the six-week period the average passengers number 17.5 in the morning and 37.5 in the afternoon.

On two occasions during the autumn term passengers boarding from the first loop from the bus station around Queen’s Drive and back to the bus station have exceeded the capacity of the bus. On both of these occasions we have run the first load of passengers to school and returned to operate the remainder of the route. No passengers have been left stranded.

1095 The Department monitors school bus loadings all year round as they gradually reduce from October half term onwards and bus capacity is closely matched to demand.

Service 58		
	AM	PM
08/10/2018	13	35
09/10/2018	22	32
10/10/2018	15	28
11/10/2018	21	35
12/10/2018	27	43
15/10/2018	6	31
16/10/2018	20	42
17/10/2018	16	31
18/10/2018	17	25
19/10/2018	12	27
22/10/2018	15	46
23/10/2018	15	37
24/10/2018	14	33
25/10/2018	17	33
26/10/2018	17	37
29/10/2018	0	0
30/10/2018	0	0
31/10/2018	0	0
01/11/2018	0	0
02/11/2018	0	0
05/11/2018	16	53
06/11/2018	13	44
07/11/2018	21	50
08/11/2018	14	48
09/11/2018	17	38
12/11/2018	18	47
13/11/2018	21	40
14/11/2018	22	30
15/11/2018	23	34
16/11/2018	26	38

MANX UTILITIES

**2.7. Manx Utilities staff numbers –
Breakdown of figures by costs and contracts**

The Hon. Member for Onchan (Ms Edge) to ask the Chairman of Manx Utilities:

If he will provide a breakdown, for each of the last five years, of the number of employees by grade, pay scale and pension costs on (a) permanent contracts; and (b) temporary fixed term contracts?

The Chairman of Manx Utilities (Dr Allinson): The number of employees on permanent contracts for the last five years is detailed in Table 2.7A below. The number of temporary/fixed term contracts is shown in Table 2.7B.

Please note that the all figures relate solely to those employed on terms and conditions analogous to the Manx Electricity Authority terms and conditions of employment as data relating to the former Isle of Man Water and Sewerage Authority employees has already been supplied as part of the PSC's submission to an earlier question. Due to concerns regarding personal data becoming identifiable grades have not been shown and instead pay range data has been used in a similar format to those reported in Government Accounts.

It has not been possible to answer the final part of the question relating to pension costs as it is not clear whether this refers to employee contributions, employer contributions, the value of pension as a proportion of pensionable pay, the actuarial value of benefits accrued to date or some other definition. Manx Utilities' temporary fixed term employees are normally engaged through a recruitment company on the Isle of Man Government approved list and consequently do not incur any pension costs.

Table 2.7A

Remuneration Band	y/e 31/3/14	y/e 31/3/15	y/e 31/3/16	y/e 31/3/17	y/e 31/3/18
£0 - £19,999	8	4	6	4	3
£20,000 - £29,999	93	90	59	62	66
£30,000 - £39,999	60	52	83	82	76
£40,000 - £49,999	29	29	33	39	37
£50,000 - £59,999	12	17	18	9	15
£60,000 - £69,999	8	11	11	12	15
£70,000 - £79,999	2	1		9	5
£80,000 - £89,999	2	2	3	2	1
£90,000 - £99,999			1	2	2
£100,000 - £149,999	2	1	1	1	2
Number of Staff	216	207	215	222	222

Table 2.7B

Remuneration Band	y/e 31/3/14	y/e 31/3/15	y/e 31/3/16	y/e 31/3/17	y/e 31/3/18
Temps £0 - £19,999	3	7	8	8	4
Temps £20,000 - £39,999				1	1

Order of the Day

3. CONSIDERATION OF CLAUSES

3.1 Criminal Evidence Bill 2018 – Clauses considered

Dr Allinson to move.

The Speaker: Item 3, Consideration of Clauses, and we have the Criminal Evidence Bill 2018. Just to make sure that we are all working off the same version, there is a Criminal Evidence Bill 2018 incorporating Council amendments version – just to make sure we are all working off the same sheet.

1115

With that, I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

1120

The Second Reading of this Bill took place on 13th November 2018 and I am grateful to Hon. Members for their support.

With your consent, in turning now to the clauses I propose to move clauses 1 to 3, which form Part 1 of the Bill, together.

1125

Clause 1 provides for the short title of the resulting Act, clause 2 for the making of an Appointed Day Order for the commencement of the Act, and clause 3 with the interpretation of certain terms used throughout the Bill.

I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

The Speaker: I call on the Hon. Member for Douglas East, Miss Bettison.

1130

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: The question I put to the House is that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

1135

Clause 4, Dr Allinson.

Dr Allinson: Mr Speaker, we then come to Part 2, which contains the new rules on the admissibility of hearsay evidence. The Bill deals both with the issue of admissibility of evidence of a person's bad character and also the admissibility of hearsay evidence.

1140

Clause 4 defines what is meant by evidence of 'bad character' for the purposes of Division 1. The definition explicitly excludes evidence which is either to do with the alleged facts of the offence with which the defendant is charged, or is evidence of misconduct in connection with the investigation or prosecution of the offence – for example, by way of obstruction of the investigation or attempting to nobble the jury.

1145

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

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1150

The Speaker: The question I put is that clause 4 stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 5, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1155 In order for the Bill to restate the rules on the admissibility of evidence of bad character it must first abolish the common law rules, and clause 5 of the Bill does that, subject only to an exception for the common law about the admissibility of public records, and evidence of reputation as evidence of bad character.

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

1160

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1165 **The Speaker:** The question I put to the House is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1170 In order for evidence of the bad character of a person other than the defendant to be admitted, it must satisfy one of three criteria set out in subsection (1) of the clause, namely that: (a) it is important explanatory evidence, (b) it has substantial probative value in relation to a matter which is a matter in issue in the proceedings and is of substantial importance in the context of the case as a whole, or (c) all parties to the proceedings agree to the evidence being
1175 admissible.

Subsections (2) and (3) explain the meaning of the conditions in paragraphs (a) and (b) of subsection (1).

Subsection (4) makes it clear that evidence of bad character of a person other than the defendant must not be adduced without the leave of the court.

1180 Mr Speaker, I beg to move that clause 6 stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1185

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

Clause 7, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1190 Clause 7 deals, in a similar fashion to clause 6, with the defendant's own bad character. However, the range of circumstances under which the evidence may be admitted is wider than those in clause 6. The seven gateways in this clause include three which are specific to
1195 defendants, namely: (a) the evidence is adduced by the defendant or is given in answer to a question asked by the defendant in cross-examination which is intended to elicit it; (b) it is evidence to correct a false impression given by the defendant; or (c) the defendant has made an attack on another's character.

The first of these rather speaks for itself and arises where a defendant has put his own character in issue, either by mentioning it in the witness box or deliberately putting a question
1200 to another witness to elicit that same information.

The second arises where a defendant who has some previous convictions – albeit perhaps of a different character – represents himself or herself as a person of previous good character, or perhaps suggests, correctly, that he or she has no previous convictions for sexual offences but omits to mention previous convictions for dishonesty. In these circumstances the evidence of
1205 bad character becomes admissible.

The third, rather more straightforward, case in which a defendant's character becomes admissible is where he or she attacks the character of another person.

Clauses 8 to 12 supplement the provisions of clause 7(1) and I shall turn to them in a moment.

1210 Mr Speaker, I beg to move that clause 7 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1215

The Speaker: The question is that clause 7 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clauses 8 to 12, Dr Allinson.

1220 **Dr Allinson:** Thank you.

With your permission, Mr Speaker, I shall speak to clauses 8 to 12 together because each of these defines a concept which is used in clause 7.

Clause 8 defines the concept of 'important explanatory evidence', for the purposes of clause 7(1)(c).

1225 Clause 9 defines 'matter in issue between the defendant and the prosecutor' for the purposes of clause 7(1)(d).

Clause 10 defines 'matter in issue between the defendant and a co-defendant' for the purposes of clause 7(1)(e).

Clause 11 defines 'evidence to correct a false impression' used in clause 7(1)(f).

1230 Clause 12 defines 'attack on another person's character'.

Mr Speaker, I beg to move that clauses 8 to 12 do stand part of the Bill.

The Speaker: Miss Bettison.

1235 **Miss Bettison:** I beg to second and reserve my remarks.

The Speaker: The question is that clauses 8 to 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Dr Allinson.

1240

Dr Allinson: Mr Speaker, clause 13 contains a very important safeguard which empowers the trial Deemster to stop a jury trial in its tracks where evidence has been adduced under one of paragraphs (c) to (g) of clause 7(1) but the Deemster later concludes that the evidence so admitted is contaminated and the extent of the contamination is such that any resulting conviction would be unsafe. Subsection (4) makes it clear that the powers to stop proceedings under the provisions of the clause do not limit any other power a Deemster has to stop a trial.

1245

Mr Speaker, I beg to move that clause 13 do stand part of the Bill.

The Speaker: Miss Bettison.

1250

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1255 Clause 14, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1260 I turn next to clause 14. Since the rulings which are given under clause 7 will normally be given at or before the start of the defendant's trial, the assessment of the relevance or probative value of the evidence to be adduced is necessarily speculative. Clause 14 therefore provides that in evaluating the evidence which would form part of the case if it were admitted, it is to be assumed to be true unless there is clear evidence before the court that no court or jury could reasonably find it true.

1265 Mr Speaker, I beg to move that clause 14 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1270 **The Speaker:** The question I put to the House is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 15, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1275 Clause 15 requires the court to give reasons for: (a) any rulings under the Bill about whether any item of evidence is evidence of a person's bad character; and (b) any ruling about the admissibility of evidence under clause 6 or clause 7.

Mr Speaker, I beg to move that clause 15 do stand part of the Bill.

1280 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1285 **The Speaker:** I put the question that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

Dr Allinson: Mr Speaker, clause 16 provides definitions for some of the terms used in the Division.

1290 I beg to move that clause 16 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1295 **The Speaker:** I put the question that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 17, Dr Allinson.

1300 **Dr Allinson:** Thank you, Mr Speaker.

We now come to Division 2 of this Part of the Bill, which deals with hearsay evidence in some detail, in part restating the common law exceptions to the general rule under which hearsay evidence is inadmissible in criminal proceedings. The Division effectively constitutes an overarching code on the admissibility of hearsay evidence, although some existing statutory provisions in the area are retained as free-standing rules.

1305 Clause 17(1) provides four bases for hearsay to be admissible, namely: (a) a provision of this Division of the Bill or other statutory provision makes it admissible; (b) any of the previous common law rules preserved by clause 21 makes it admissible; (c) all parties in the case agree

1310 that it should be admitted; or (d) the court is satisfied in the interests of justice that it should be admitted.

1315 Clause 17(3) makes it clear that nothing in the Division prevents a court from excluding a piece of evidence on grounds which do not relate to the fact that it is hearsay. For example, a Deemster may take the view that, although it would otherwise be admissible, a piece of evidence is more prejudicial than probative and may therefore determine not to admit it in any event.

Mr Speaker, I beg to move that clause 17 do stand part of the Bill.

The Speaker: Miss Bettison.

1320 **Miss Bettison:** I beg to second and reserve my remarks.

The Speaker: I call on the Hon. Member for Onchan, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

1325 I am finding in principle that hearsay evidence is extremely concerning on a small Island, where a person's reputation or character can be tainted on the hearsay of someone else. Are we really taking away a person's fundamental basic right to face their accuser?

1330 Can the hon. mover please advise under what criteria hearsay evidence can be gathered and what governs this? Can they scour social media? Can they listen to a mate? Do we believe that vexatious or malicious evidence can be put before a judge?

1335 Concern is turning in the UK on whether the changes to clause 11 of the UK Criminal Justice Act 2003 that the hearsay rules are contrary to the idea of facing your accuser ... I would appreciate if the hon. mover can advise whether it is an infringement of common law and civil liberty rights, taking into consideration we live in a small jurisdiction. We should have the right laws for our Island, not becoming followers of other jurisdictions, and I would just like the hon. mover to respond to that.

The Speaker: If no other Member wishes to speak, I will call on Dr Allinson to reply.

1340 **Dr Allinson:** Thank you, Mr Speaker.

1345 I think the Hon. Member makes a very valid case. The parts of this Bill that we are bringing in very much mirror the Criminal Justice Act 2003 which was brought in across the water. What she is concerned about is the inherent provision of innocent until proven guilty, but also we need to balance that with the way that justice is delivered, and in a time when we have different crimes, different ways crimes are committed, it is important that a jury is provided with the right evidence in the right way to make a valid judgment.

1350 Whilst she has concerns about the admissibility of hearsay evidence, if I can draw her attention to clause 17(1), it explicitly says that all parties of the proceedings agree to it being admissible or the court is satisfied that in the interests of justice it has to be admissible. So what we are doing here is not creating a *carte blanche* for hearsay evidence to be brought in, but we are replacing judge-made laws with laws made by the legislative system to actually ensure that a jury is provided with the right levels of evidence that it needs to arrive at the correct decision, but already having the safeguards in there that hearsay evidence cannot be misused just for the sake of either the prosecution or the defence.

1355

The Speaker: The question I put to the House is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Dr Allinson.

1360 **Dr Allinson:** Thank you, Mr Speaker.

Clause 18 deals with the concepts of 'statements' and 'matters stated' for the purpose of this Division of Part 2.

Mr Speaker, I beg to move that clause 18 do stand part of the Bill.

1365 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: Hon. Member for Middle, Mr Shimmins.

1370

Mr Shimmins: Thank you, Mr Speaker.

I would like to ask the Member whether social media posts and messages are covered by clause 18, for the avoidance of any doubt.

1375 **The Speaker:** I call on Dr Allinson to reply.

Dr Allinson: Thank you, Mr Speaker.

I would like to thank the Hon. Member for bringing this up, as he did previously. I can confirm that the interpretive key is that whether it is a text via a mobile or material sent or extracted from social media, it merely has to be a representation of fact or opinion made by a person by whatever means. The clause goes on to add that this could also include a sketch, photo-fit or other pictorial form, so if a person is accused of making a threat, or the intention is to cause another to believe they are going to be threatened, an inappropriate emoji could be constituted as such a statement.

1380

1385 We have previously discussed the problems with horizon scanning, looking at different parts of legislation that has been brought across from other jurisdictions and making sure that they are adopted, and that is very important but also it is extremely important to make our laws future proof as much as possible, and so I can confirm and guarantee to him that, with the advent of social media and different ways of communication, this law will be able to take that, if necessary, as evidence in a criminal procedure.

1390

The Speaker: The question I put to the House is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19, Dr Allinson.

1395

Dr Allinson: Thank you, Mr Speaker.

We come, then, to the principal categories for admissibility of hearsay evidence, which are set out in this clause and in clauses 20 to 23.

Clause 19 deals with circumstances in which a witness is unavailable to give evidence either because the witness is dead, unfit to give evidence because of bodily or medical condition, outside the Island in circumstances where his or her attendance cannot be reasonably secured, cannot be found, or has been placed in a state of fear such that he or she will not give evidence.

1400

'Fear' in this context is given a very wide meaning. This is often a factor leading to the collapse of trials, but there are appropriate safeguards within the section, in subsection (4), to ensure that leave to adduce hearsay evidence in reliance on the basis that the maker is fearful is given only in appropriate circumstances.

1405

Mr Speaker, I beg to move that clause 19 do stand part of the Bill.

The Speaker: Miss Bettison.

1410

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 19 stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

1415 Clause 20, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1420 One of the longstanding exceptions to the hearsay rule relates to documents which are generated in the course of a trade, business or performance of an official function by one person relying on information given him by another – for example, a registrar of births and deaths – and clause 20 maintains this rule.

Mr Speaker, I beg to move that clause 20 do stand part of the Bill.

The Speaker: Miss Bettison.

1425

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1430 Clause 21, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1435 Clause 21 preserves a variety of common law exceptions from the general hearsay rule. They were the product of judicial creativity in particular circumstances where it was recognised the normal hearsay rule would create injustice and be completely impracticable.

Mr Speaker, I beg to move that clause 21 do stand part of the Bill.

The Speaker: Miss Bettison.

1440 **Miss Bettison:** I beg to second and reserve my remarks.

The Speaker: I call on the Hon. Member for Ramsey, Mr Hooper.

1445 **Mr Hooper:** Just one brief question for the hon. mover. Clause 21(3), 'Reputation or family tradition', makes specific reference to proving or disproving pedigree or the existence of a marriage: I just want to be clear if this also includes civil partnerships.

The Speaker: I call on Dr Allinson to reply.

1450 **Dr Allinson:** I would like to thank the Hon. Member for his comment there. In terms of the pedigree or existence of a marriage, it is my interpretation that marriage would include civil partnerships.

1455 **The Speaker:** The question I put to the House is that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 22 and 23, Dr Allinson.

Dr Allinson; Mr Speaker, with your permission, I will deal with clauses 22 and 23 together.

1460 Clause 22 deals with the status and admissibility of previous inconsistent statements made by a witness, and clause 23 with previous consistent statements which are admitted to dispel a suggestion that a witness is making his evidence up late in the day. Both reflect existing rules of law.

I beg to move that clauses 22 and 23 do stand part of the Bill.

1465 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1470 **The Speaker:** I put the question that clauses 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 24, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1475 The abolition of the general rule on inadmissibility of hearsay gives rise to a further issues for consideration, namely what to do about multiple hearsay where, for example, A, who saw what happened, tells B, who in turn tells C, and the only person in a position to give evidence now is C who has the story from someone who could only give hearsay evidence himself or herself.

1480 Clause 24 permits the evidence to be admitted but only on the basis that either: (a) one of the statements in question is admissible under the rules in clauses 20, 22 or 23; or (b) the parties agree; or (c) the court is satisfied that the evidential value is so high that the interests of justice require the evidence to be admissible.

Mr Speaker, I beg to move that clause 24 do stand part of the Bill.

The Speaker: Miss Bettison.

1485

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 24 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1490 Clause 25, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1495 Clause 25 deals with exhibits admitted into evidence under clause 22 or 23 and provides that unless the Deemster considers it appropriate, or the parties agree, the exhibit should not accompany the jury when they retire.

I beg to move that clause 25 do stand part of the Bill.

The Speaker: Miss Bettison.

1500 **Miss Bettison:** I beg to second and reserve my remarks.

The Speaker: I put the question that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26, Dr Allinson.

1505

Dr Allinson: Thank you, Mr Speaker.

1510 Clause 26 makes it clear that a statement can be admitted in evidence under clauses 19, 22 or 23 if, but only if, the person who made it had the required capability – that is he or she must be capable of understanding questions put to him or her about the matters in issue and giving answers to those questions which can be understood. A similar rule applies in relation to evidence furnished under clause 20 but in modified form to address the fact that the provider of the information may not be readily identified. In such a case the court has to be satisfied that the provider of the information did not lack the required capability.

1515 Finally, subsection (4) makes it plain that proceedings to determine the admissibility of evidence to which clause 26 applies are to take place in the absence of the jury, that expert

evidence may be received for the purpose of determining the issue and that the party seeking to rely on the evidence has the burden of proving its admissibility.

Mr Speaker, I beg to move that clause 26 do stand part of the Bill.

1520 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I call on the Hon. Member for Onchan, Ms Edge.

1525

Ms Edge: Thank you, Mr Speaker.

I wonder if the hon. mover could just clarify, it is clearly stating about capability and how that is reached and is capacity taken into account on this, the person's mental capacity or their physical capacity to be able to deal with this?

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The Speaker: I call on Dr Allinson to reply.

Dr Allinson: Thank you, Mr Speaker.

1535 I would like to thank the Hon. Member for asking for that point of clarification. Unfortunately on the Isle of Man we still lack a formal Capacity Act and so what this clause gives is the courts discretion if there is a question of the capability to actually get that expert evidence, whether that necessarily be from a psychiatrist or a doctor, to prove that that person is capable of giving that evidence. So I would like to reassure her that there are steps within this legislation to try to ensure, as much as humanly possible, that the evidence is provided by the right person in the right way with the right safeguards.

1540

Thank you.

The Speaker: I put the question that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1545

Clause 27, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1550 Clause 27 deals with the important issue of credibility. Precisely because the new rules admit material which would not have previously been admitted, it is important to balance the scales by affording the court the opportunity to examine the reliability of the evidence which is admitted under the new rules.

Mr Speaker, I beg to move that clause 27 do stand part of the Bill.

The Speaker: Miss Bettison.

1555

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1560

Clauses 28 and 29, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

With your permission I propose to speak to clauses 28 and 29 together as they both deal with circumstances where a Deemster may stop the proceedings.

1565

Clause 28 deals with the situation where a Deemster concludes that the case relies in whole or in part upon hearsay evidence, but the Deemster finds the hearsay evidence unconvincing to

the point where any resulting conviction would be unsafe. In such circumstances the Deemster may discharge the jury and, if appropriate, order a retrial.

1570 Clause 29 deals with the court's general discretion to exclude hearsay evidence where, although admissible, the case for excluding the evidence, including the likelihood that to admit it would cause an undue waste of time, substantially outweighs that for admitting it. Finally, subsection (2) of the clause makes it clear that nothing in this particular Division limits or otherwise affects the court's power to exclude evidence.

1575 Mr Speaker, I beg to move that clauses 28 and 29 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1580 **The Speaker:** I put the question that clauses 28 and 29 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 30, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1585 Clause 30 deals with the use of analyses and other information prepared by one person as the basis of an expert's report. If the conditions set out in subsection (1) of the clause are satisfied, the expert may base his or her opinion on the content of the material prepared by the other person and that material becomes admissible evidence in the proceedings.

1590 Mr Speaker, I beg to move that clause 30 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1595 **The Speaker:** I put the question that clause 30 do stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 31, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1600 Clause 31 deals with the admissibility of a confession by one defendant in the case of his or her co-accused. It is open to the court or any other party to assert that the confession was the product of oppression or was, in the circumstances, unreliable. If that should be the case, the party seeking to adduce the confession in evidence has to demonstrate that it is more likely than not that the confession was not the product of oppression, or is not unreliable. This clause
1605 effectively dispenses with one of the absurdities of the law of hearsay, namely that a defendant's confession can only be looked at in determining that defendant's guilt, and not that of the co-accused.

Mr Speaker, I beg to move that clause 31 do stand part of the Bill.

1610 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1615 **The Speaker:** I put the question that clause 31 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 32, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1620 Clause 32 deals with evidence produced by a machine, but which necessarily depends on the accuracy of information supplied to it by a human being. Clearly, a machine cannot give oral evidence itself, and the information upon which it relies must be proved separately. Subsection (2) makes an important qualification: the clause does not affect the normal presumption that, in the absence of contrary evidence, a mechanical device, such as a breathalyser, is working properly.

1625 Mr Speaker, I beg to move that clause 32 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1630

The Speaker: I put the question that clause 32 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 33, Dr Allinson.

1635 **Dr Allinson:** Thank you, Mr Speaker.

1640 Clause 33 addresses the question of evidence to be given at a retrial in the Court of General Gaol Delivery. If evidence was given orally at the first trial, it must be given in that way in the second unless one of three conditions is met, namely: the parties agree; secondly, the conditions in clause 19 are met; or thirdly, the witness is unavailable otherwise than in circumstances mentioned in clause 19(2), but the court decides that it is in the interests of justice of it to be admitted.

Mr Speaker, I beg to move that clause 33 do stand part of the Bill.

The Speaker: Miss Bettison.

1645

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 33 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

1650 Clause 34, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1655 Clause 34 deals with the ways in which the content of statements in documents can be proved: either the document, a copy or an extract may be admitted provided it is authenticated in a manner approved by the court. There are numerous circumstances in which it is desirable that a transcript or a redacted copy of a document should be admitted, and this clause permits this to happen.

Mr Speaker, I beg to move that cause 34 do stand part of the Bill.

1660 **The Speaker:** Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1665 **The Speaker:** I put the question that clause 34 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 35, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1670 Clause 35 defines certain terms used for the purposes of the Division and also makes it clear that where a defendant is charged with two or more offences, the Division applies as if each were charged in separate proceedings.

Mr Speaker, I beg to move that clause 35 do stand part of the Bill.

The Speaker: Miss Bettison.

1675

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 35 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

1680

Clauses 36 and 37, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

We come to Division 3 of this Part. With your permission I propose to deal with clauses 36 and 37 together as they both deal with video evidence.

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Clause 36 deals with the admissibility of a video recording which has been created before a trial, of a witness's evidence in criminal proceedings relating to an offence which is triable on information. The witness must adopt the video recording for it to be admitted. The clause does not apply to a recording of a statement made by a defendant.

Clause 37 contains supplementary provisions about the admission of video recordings under clause 36.

1690

Mr Speaker, I beg to move that clauses 36 and 37 do stand part of the Bill.

The Speaker: Miss Bettison.

1695

Miss Bettison: I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 36 and 37 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 38, Dr Allinson.

1700

Dr Allinson: Thank you, Mr Speaker.

Clause 38 places a long-standing rule about the use by a witness of contemporaneous notes to refresh his or her memory of events on a statutory basis. It also deals with the use of a transcript of an earlier oral statement.

1705

Mr Speaker, I beg to move that clause 38 stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1710

The Speaker: I call on the Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1715

This section refers to earlier oral statements made or a transcript, but only of a sound recording. I would just like some clarity; what happens if the original recording was a video recording? Could a transcript of that be used to refresh the individual's memory? Would they be able to refer back to a video recording that was made a transcript of that video recording?

The Speaker: I call on Dr Allinson to reply.

1720

1725 **Dr Allinson:** I would like to thank the Hon. Member for his precise interpretation of the legal document. From my interpretation the ability to use documents to refresh memory would include documents which referred to a video confession as well as an auditory confession or a written confession. So whilst I am quite happy to refer back to the Hon. Attorney General, what we are doing here is allowing the use of documents to refresh memory based on previous evidence.

1730 **The Speaker:** The question I put is that clause 38 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 39, Dr Allinson.

1735 **Dr Allinson:** Thank you, Mr Speaker.
Clause 39 deals with the interpretation of certain terms used in Division 3; I beg to move that clause 39 do stand part of the Bill.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1740 **The Speaker:** I put the question that clause 39 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 40, Dr Allinson.

1745 **Dr Allinson:** Thank you, Mr Speaker.
We come finally to clause 40 which repeals statutory provisions relating to and dealing with admissibility of certain classes of evidence in criminal proceedings. The provisions repealed are replaced by provisions in the Bill.

1750 Before moving the adoption of this clause, Mr Speaker, I am grateful to my hon. friend, Mrs Caine, the Member for Garff, who has agreed to move the amendment set out on the Order Paper, with your leave.

The Speaker: Miss Bettison.

Miss Bettison: I beg to second and reserve my remarks.

1755 **The President:** I call on the Hon. Member for Garff, Mrs Caine, to move amendments 1 and 2 on the Order Paper.

1760 **Mrs Caine:** Thank you, Mr Speaker.
I rise to move the technical amendment standing in my name by indicating that clause 40 was amended in the Upper Chamber so as to complete the repeal of legislation in sections 1 to 6 of the Criminal Justice Act 1991 relating to the rules on hearsay, which are replaced by this Bill.

1765 It also repealed the definition of 'confession' in section 10, on the basis that the instances of the term in Chapter 1 of Part 1 of that Act are all repealed by the Bill. However, a definition of this term is still required for the purposes of Chapter 2 of that Part. At present, section 19(1) simply refers back to section 10, but the amendment I am moving inserts a full definition of 'confession' in that section instead of the existing cross-reference because the latter would no longer work.

1770 My amendment therefore inserts a new subsection (1) into clause 40 after line 13, giving effect to this. The existing repeals then become subsections (2)(a), (b) and (c), and the heading for the clause in line 13 is replaced to reflect its new content.

Mr Speaker, I beg to move the amendment to clause 40 standing in my name:

Amendments to clause 40

1. Page 37, in line 13 (the heading to the clause) for 'Repeals' substitute 'Consequential amendment and repeals'.

2. Page 37, after line 13 insert—

«(1) For section 19(1) of the Criminal Justice Act 1991 (meaning of 'confession' for Chapter II of Part I) substitute—

'(1) In this Chapter "confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.'».

In consequence of this amendment, renumber the existing text of the clause as subsection (2).

The Speaker: I call on the Hon. Member for Garff, Mr Perkins.

1775 **Mr Perkins:** Thank you, Mr Speaker.

I beg to second the Hon. Member's amendments.

1780 **The Speaker:** If no Member wishes to speak, I will put the question, firstly, that amendments 1 and 2 together be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting, finally, that clause 40 as amended stand part of the Bill: those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That brings us to the conclusion of the clauses stage of the Criminal Evidence Bill 2018.

1785 That also brings us to the conclusion of the Order Paper, and we therefore stand adjourned until 10 o'clock on 4th December in our own Chamber.

Thank you.

The House adjourned at 11.38 a.m.