



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th March 2019

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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);
Hon. W M Malarkey (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 (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, leave this morning has been given to Mrs Beecroft and Ms Edge.

1. Questions for Oral Answer

TREASURY

1.1. Declarations of continuing entitlement to pensions – Number required to complete; number who have done so

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

How many pensioners were required by his Department in February 2019 to complete and return a declaration of continuing entitlement by 18th March 2019; and, of these, how many have done so?

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

Mr Moorhouse: Thank you, Mr Speaker.

15 I would like to ask the Treasury Minister how many pensioners were required by his Department in February 2019 to complete and return a declaration of continuing entitlement by 18th March 2019; and, of these, how many have done so?

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

20 **The Minister for the Treasury (Mr Cannan):** Mr Speaker, as I confirmed in my Written Answer to a Question from the Hon. Member in this House exactly one month ago, on 18th February 2019 letters were sent to 756 pensioners who had not at that time responded to a letter sent to them on 17th October 2018 asking them to complete and return to the Treasury a declaration of continuing entitlement.

25 The letters sent on 18th February 2019 asked the pensioners concerned to complete and return to the Treasury a declaration of continuing entitlement by no later than 18th March 2019 and advised that if they failed to do so payment of their state pension may be suspended.

30 As at noon yesterday, 325 of the 756 pensioners written to had provided completed declarations of continuing entitlement; 431 had not. Of those that had not, 47 have either unfortunately died or responsibility for payment to their pensions has been transferred to the UK Department for Work and Pensions since the letter was sent.

Thank you, Mr Speaker.

The Speaker: Supplementary question, Mr Moorhouse.

35 **Mr Moorhouse:** Thank you, Mr Speaker, and thank you, Minister, for such a detailed Answer. What happens to each of those individuals who have not returned their forms and what have been the benefits of carrying out such an in-depth analysis of this group?

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

The Minister: The benefits, Mr Speaker, I will be able to report back to the House in due course, but clearly, with 431 pensioners who have not responded I think it is incumbent that we follow through this matter properly to ensure that taxpayers' money in the form of state pensions is not being distributed in a way that it should not be, and obviously to ensure that the correct procedures are being followed by individuals who are claiming the state pension.

45 So what will happen now is that we will make every reasonable effort in the coming weeks to contact those people who have not returned forms and only in the event of having followed all reasonable and lawful avenues of enquiry, would we then suspend state pension pending further response or contact from the individual concerned.

50 **The Speaker:** Supplementary, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker, and thank you, Minister, for that reassuring answer. Is there any timetable for repeating this exercise and can it be carried out in any other areas?

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

The Minister: Mr Speaker, it is an exercise that should happen every few years or so. I do not think there is a specific timetable set at present.

60 In terms of other areas, obviously the Department seeks to ensure that all pensions and any benefits in payment are being distributed to people who are both needing them and require them and are receiving them in the appropriate manner, so where appropriate we will always carry out checks.

**1.2. AML/CFT (Specified Non-Profit Organisations) Framework –
Statement on consultation**

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

If he will make a statement on the consultation into Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) [AML/CFT] Framework?

The Speaker: Question 2, again I call on the Hon. Member for Arbory, Castletown and Malew,
65 Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Treasury Minister if he will make a statement on the consultation into
70 Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit
Organisations) [AML/CFT] Framework?

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

The Minister for the Treasury (Mr Cannan): Mr Speaker, I distributed my Answer, which is a
75 lengthy one, by email yesterday:

Mr Speaker,

I should perhaps start by noting that the consultation in relation to the Anti-Money
80 Laundering and Countering the Financing of Terrorism Code for Specified Non-Profit
Organisations is a joint project between the Department of Home Affairs and the Isle of Man
Financial Services Authority. The Treasury has responsibility for some elements of a wider
consultation that is currently taking place concerning the overall Framework for Anti-Money
Laundrying and Combatting the Financing of Terrorism.

85 Nevertheless, having consulted with Home Affairs, they are content that I respond to the
Hon. Member and make a statement regarding this consultation.

The update that is taking place to the Anti-Money Laundering Framework is being
undertaken partly to address issues identified by Moneyval in their 2016 report and also to
improve the clarity of the framework for those to whom it applies. This includes certain
90 organisations referred to as 'Specified Non-Profit Organisations' (SNPOs).

For the information of Hon. Members, an SNPO is a non-profit organisation that meets
criteria concerned with their level of income and the amount of that income that is remitted
overseas to recipients in or from jurisdictions with higher risks of terrorism or corruption.
These SNPOs therefore have to comply with certain requirements and register as a
designated business with the Financial Services Authority.

95 It is important to stress that the introduction of the code for SNPOs does not introduce any
new concepts. SNPOs – and currently there are only three of them – were brought into the
scope of the Island's AML and CFT requirements in 2015 in order to ensure that we complied
with international standards. SNPOs are required to meet the standards set out in the code
and the FSA is responsible for ensuring that this happens, providing such support and advice
100 as may be required.

There are many aspects of the current AML/CFT requirements that are simply not relevant to
SNPOs; however, at the moment an SNPO has to locate the parts of the legislation that are
relevant to them in a much wider code that applies to a broad range of financial and non-
financial sectors. Clearly this is not helpful. The Department of Home Affairs and the Financial
105 Services Authority are therefore seeking to take the relevant requirements out of the existing
code and create a new and much simpler and shorter code solely for use by SNPOs.

110 The consultation on the SNPO code and indeed the other changes being made at the same time is available on the Government's consultation hub and is due to finish on 27th March 2019. Details of the consultation were sent by email to the SNPOs that are currently registered with the FSA. The FSA also offered to meet with any organisation affected by the consultation that wanted to discuss any matters further, as a result of which one meeting has taken place to date.

115 I am also pleased to say that there is a Tynwald Members' briefing planned for 13th May 2019 in which officers from the Department of Home Affairs, the Financial Services Authority and my Department will be providing an overview of the proposed changes to the Island's AML/CFT Framework. This will include the changes to the SNPO Code and of course that will be a further opportunity for Members to ask questions or raise any concerns.

120 **The Speaker:** Thank you.
Supplementary, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker, and thank you, Minister, for that Answer. Following the AML/CFT Framework consultation, a significant change could potentially take place with the narrow term 'business' being replaced by 'activity', with wide ranging connotations. Could the Minister explain why such a change might occur?

The Speaker: Treasury Minister to reply.

130 **The Minister:** Thank you, Mr Speaker.
The Hon. Member has been in contact with me reference this point and the matter that he is referring to, I must present some reassurance because effectively, by way of explanation to the Hon. Court, the Hon. Member appears to be inferring that individuals carrying out financial trading activities by way of a hobby would be caught under the Act.

135 What I would like to reassure the Hon. Court and the Hon. Member, specifically, is that the schedules only apply when the activity is being conducted by way of business and this is now explicitly stated in both schedules.

HOME AFFAIRS

1.3. Emissions tests on vehicles – Constabulary's equipment

The Hon. Member for Middle (Mr Shimmins) to ask the Minister for Home Affairs:

What equipment is used by the Constabulary to carry out emissions tests on vehicles?

The Speaker: Question 3. I call on the Hon. Member for Middle, Mr Shimmins.

140 **Mr Shimmins:** Thank you, Mr President.
I would like to ask the Minister for Home Affairs: what equipment is used by the Constabulary to carry out emissions tests on vehicles?

The Speaker: I call on the Minister for Home Affairs to reply.

145 **The Minister for Home Affairs (Mr Malarkey):** Thank you, Mr Speaker.

The Constabulary does not carry out emissions tests on vehicles and therefore has no use of such equipment. However, I think we all agree that we want vehicles on our roads which are not polluting and are in good order. I know the Council of Ministers is very concerned about this and has been in discussions with myself and the Minister for DoI.

150 I would rather refer the Hon. Member to his Question 5 now, for which the Minister for Infrastructure will outline his details from his Department, Mr Speaker.

The Speaker: Mr Shimmins, supplementary question.

155 **Mr Shimmins:** Thank you, Mr Speaker.

Can the Minister tell us what action the Constabulary would take if they are following a vehicle which is pumping out lots of black smoke?

The Speaker: Minister to reply.

160

The Minister: As I said, Mr Speaker, these are questions that the DoI Minister could answer; we do not have such equipment.

I do thank the Hon. Member for bringing this to our attention and we are dealing with it in detail with our Departments at the moment.

INFRASTRUCTURE

1.4. Bus services in Ramsey and the north – Statement re changes

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

If he will make a statement about changes to regular bus services in Ramsey and the north of the Island?

165

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

Mr Hooper: Thank you very much, Mr Speaker.

170 I would like to ask the Minister for Infrastructure if he will make a statement about changes to regular bus services in Ramsey and the north of the Island?

The Speaker: I call on the Minister for Infrastructure to reply.

The Minister for Infrastructure (Mr Harmer): Thank you, Mr Speaker.

175 As all Hon. Members will recall, my Department has been asked to reduce the costs of public transport services by £1 million over three years. This is part of the SAVE initiative. Clearly, I would like to make these savings as a result of improving commercial success and operational efficiency, and not as a result of cuts to services.

180 Turning to services in the north, the initial results from the analysis of the introduction of demand responsive transport, connectVILLAGES, in Bride and Andreas have been very positive. There has been a 19% growth in passengers over the previous fixed bus routes and a substantial reduction in operating costs.

185 Based on the success of this change, the Department is intending to extend connectVILLAGES to cover Bride, Andreas and Jurby. In extending the service to these areas, the Department is also able to replace the current bus services serving the Clagh Vane, Lezayre, Ormley and

Thornhill estates, as well as off-peak journeys on the 17, 18 and 19 services. Analysis shows that the current use of these timetabled services is low and, given the success elsewhere, this demand is best met by demand responsive transport.

190 The new service will mean that those people who used to have a timetabled minibus service from one bus stop to another will now have a demand responsive minibus service from their door to the destination of their choice in the area served. We do ask customers to book by 1600 on the night before they want to travel, but we are adept at fitting in late bookings and try to carry everyone. Of course customers may have to be flexible about times and routes, but experience from the Andreas and Bride services was that passengers very quickly got used to the
195 new services and valued the improvements.

I can confirm that ahead of any changes being made, as we have done elsewhere, there will be roadshows and door-to-door information drops to ensure the public are aware of the changes and how best to access the new responsive service. There will also be a period of transition where the current buses will run alongside the new service to allow the demand
200 responsive service to bed in. This approach should allow us to repeat what we have done in Bride and Andreas to improve the service whilst at the same time we reduce the cost.

The Speaker: Supplementary question, Mr Hooper.

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

I have been contacted by a number of people in respect to these proposed changes, primarily concerned about the loss of their independence or the potential challenge to their independence.

The Minister has already said there will be some engagement around this and I am grateful
210 for that, but can he please detail what engagement there is going to be and why there has been no publicity about these proposed changes to the Ramsey routes specifically to date? I note from the application that has been made to the RTLC that the proposed go-live date is 8th April, which is 12 days away; does the Minister really feel that 12 days is enough time to properly engage with regular users of the bus service?
215

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

220 Yes, it is very important and I think customer engagement is absolutely critical and we will be doing brochures that will be, I think, advertised in the first week next week, engaging with people. We have also been talking to people and just to confirm there will be a transition period so the idea is that that carries on until the service beds in. So there is no immediate shock to the system but things will be transitioned.

225 The other thing I should say is this has been certainly on the discussions for four years and we have been discussing with local authorities and consulting with them and with others over the last few months and that consultation will continue; that consultation is really important. We will engage with everybody, community groups and so forth, to make sure and ensure that this service will be a benefit to the people of the north and that we transition properly.

230 **The Speaker:** Supplementary question, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

235 I would like to thank the Minister for his reply. I think most people are very supportive of the connectVILLAGES initiative which he says has been quite successful, but what we are talking about here is actually connecting estates to the centre of town, which is quite a different proposition.

240 Whilst I completely understand his drive to efficiency, would the Minister agree that a lot of these routes are used by elderly people on the estates, linking them into the centre of town, linking them into the library and also the GP surgery and College Hospital, and so consultation with these people is vital. Will he also make a commitment that in this transition period perhaps the bus drivers could give out details of the changes to the passengers who use these routes regularly so that the message gets through?

Thank you very much.

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

The Minister: Thank you.

250 On the first point, I would say consultation is absolutely vital and we will absolutely do that. I should add that the total number of people – obviously there have been a lot of comments – has actually probably exceeded the number of bus users. In actual fact, off-peak service demand in Jurby buses averages five passengers per roundtrip, meaning on average two and a half people arrive in Jurby, two and a half people leave; with Wednesday being the quietest day and Friday being the busiest, when the total reaches seven per hour which is three and a half per journey.

255 Obviously in other areas where there have been rural routes, such as across and in other jurisdictions, what it has actually meant is that the services have been pooled or cut. We absolutely do not want to do that and we want to actually improve the service to make things better and use this as an opportunity. I think if you have seen where services have been cut in St Mark's, Santon and other places where you slowly reduce the service, that has been a really bad thing. As the Department responsible for transport, we can actually improve the service. I have certainly had communication with people who have been cut off and now have actually been able to have visits because it is much more flexible and much more adaptable to what people need.

260 So I think the change must be transitioned appropriately, it must be sensitively done; but also remember that the service is very flexible and people can ring up on the day and the bus service will adapt to requirements and so forth.

265 It is a period of change. It has to be done right. It is important that we do this right and it is important that we do not rush this and we take our time to bring their services in and, as we have seen, actually increase the numbers, which we all want.

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

Mr Hooper: Thank you very much, Mr Speaker.

Could the Minister just confirm that the figures he just gave, were they for the Jurby routes or for the OT and CL routes around Ramsey?

275 Another second question for the Minister is: he just said that people can book up on the day but in his original Answer he said it is still going to be required to book 24 hours in advance; I would appreciate some clarity on that because that is an area of real concern for some residents in Ramsey – the ability to just decide, 'I would like to go into town today,' and hop on that bus. Dr Allinson's comments about this around town service being different to the services that are in the rural areas is quite valid.

280 My last question for the Minister on this is in respect of the types of buses being used. I have received a number of complaints about the type of bus, the fact that it does not lower to the ground meaning it is quite difficult for people with mobility difficulties to access the buses. Now that the demand responsive service will be picking people up from all over town rather than just simply designated bus stops, does he have any plans to investigate this and see whether the buses that are used are actually appropriate?

The Speaker: Minister to reply.

The Minister: Yes, I will try and answer all of those.

290 In effect, I think going back to the question of – sorry, there were so many questions in there, can you remind me of the first question, please?

Mr Hooper: Yes. The first question was the numbers that you gave in the original Answer, Minister, were they in respect of the Jurby service or the two bus services that run around the Ramsey estates?

The Minister: Thank you, and the second question?

300 **Mr Hooper:** The second question: again in your original Answer you stated the 24-hour notice, you would still need to book by six o'clock the day before; the question is in your subsequent follow-up you stated that you could book on the day; some clarity around that would be appreciated.

305 **The Speaker:** More repeats than the BBC here! Minister.

The Minister: Sorry, there were four or five questions in there and I wanted to answer every one.

310 In terms of the 24 hours, I think there has been a lot of misunderstanding there. It is actually you book by four o'clock the previous day and that is to be guaranteed of a service. It also means you can pick that service there and on the way back, but that does not mean that you cannot actually book on the day itself and obviously these buses will be doing round trips and they will fit you in as much as possible.

315 In terms of actual flexibility and buggies and things like that, again, there is a lot of misunderstanding on that. Buses hold up to four strollers and are not designed to take larger prams unfolded. There will be obviously the ability to take things on the minibuses and to have access for the disabled.

320 The numbers I have, obviously it depends what period you take but what I am talking about is on the round trip to Jurby. But essentially they were the people coming off and on in Jurby itself. I hope that answers everything.

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

325 Can the Minister confirm that the social inclusion aspects of the services are fully valued and that this is not just a financial decision?

330 Furthermore, that where constituents rely on buses for their day-to-day needs, the Department will ensure the service is sufficiently dependable and predictable so they can plan around that?

The Speaker: Minister to reply.

335 **The Minister:** I think the second point is a very good point because it is those repeat ones where that flexibility can absolutely be done by demand responsive transport and that should pick up patterns a lot better.

340 But as we move and as we change our buses we have two options: we can be very simplistic and we can say, whereas there are other places and other jurisdictions where bus passengers have dropped, we have seen increases. The way we see increases is by being flexible in exactly this area and social inclusion is absolutely a vital part of this. The transition period is really important. It is a pilot after all; we are learning as we do this. But the whole aspect is that

actually we increase numbers that we have in Bride; we actually improve services and we give people more flexibility which is appropriate for the numbers that we are dealing with.

345 **The Speaker:** Final supplementary on this question, Mr Hooper. You are happy you got answers to everything?

Mr Hooper: I am happy, yes, thank you.

350 **The Speaker:** Your face said otherwise earlier, that is all. I just wanted to double check we have covered everything. Wonderful.

1.5. Emissions tests on vehicles – Vehicle Testing Centre's equipment

The Hon. Member for Middle (Mr Shimmins) to ask the Minister for Infrastructure:

What equipment is used by the Vehicle Testing Centre to carry out emissions tests on vehicles?

The Speaker: Question 5, then. The Hon. Member for Middle, Mr Shimmins.

355 **Mr Shimmins:** Thank you, Mr Speaker.
I would like to ask the Minister for Infrastructure: what equipment is used by the Vehicle Testing Centre to carry out emissions test on vehicles?

The Speaker: I call on the Minister for Infrastructure to reply.

360 **The Minister for Infrastructure (Mr Harmer):** Mr Speaker, full calibrated emissions tests are not currently a requirement of the roadworthiness test. However, visual inspection is used to identify any smoke, visible vapour, toxic gases, grit, sparks, ashes, cinders or oily substances being emitted from a vehicle to an excessive extent. This is in line with the Road Vehicles (Maintenance and Use) Regulations 2012. In addition, a potential problem with emissions on a
365 vehicle may be identified during a vehicle test by a malfunction indicator lamp or a diesel particulate filter warning lamp shown on the instrument panel.

The Department is intent on introducing higher standards of emissions testing. To achieve this the Department intends to procure equipment that can be used to test vehicles during roadside checks and to make changes to appropriate legislation to ensure that checks take place
370 more frequently. I am hopeful that this enhanced approach will be in place within 12 months.

The President: Supplementary question, Mr Shimmins.

375 **Mr Shimmins:** Thank you, Mr Speaker.
I very much welcome the Minister's response and his commitment to introduce higher standards and procure the equipment necessary to test. Will he be working across Departments, with the Department of Home Affairs and also the Department of Environment as it looks to take us to a better place on this?

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

The Minister: Thank you, Mr Speaker.

Absolutely we will work ... I think it is a very important issue and it is important that we work together to resolve this.

385

The Speaker: Supplementary question, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

We just heard from the Minister for Home Affairs that his Department does not have any regulations to enforce this, and I would just like to ask the Minister for Infrastructure which Department he thinks should actually hold the regulations to have enforcement of poor vehicle emissions.

395

The Speaker: Minister to reply.

The Minister: They actually cross over, so that is why we need to work together on it. A number have effect in the Road Traffic Act and so forth but they also impact in DHA, so it is going to be a combined effort.

400

Mr Robertshaw: So, nobody then.

The Speaker: Supplementary question, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Would the Minister agree with me that it seems a bit ironic that you are having to save over a million pounds and yet we are trying to reduce our carbon footprint and you are having to splash out on all this equipment to measure the vehicles' emissions and cut back on bus services?

410

The Speaker: Somewhat straying from the Question, 'What equipment is used?' (*Laughter*) Minister, I leave it to you as to whether and how you respond.

415

The Minister: Okay. I think emissions testing is absolutely critical because of some of the gases that are coming through. We put in a strategy on electric vehicles last week which got the full support of Tynwald, which was excellent. That is a massive step forward. This is another step forward in our overall policy of becoming more environmentally friendly.

420

All I would say is encourage people to use the buses, because the best way to lower your carbon footprint is through growth and what I would say to Members is that we have been growing the bus network; it has been growing year on year. But this is not about buses, this is about emissions testing and we have a number of ... There is legislation under the Road Traffic Legislation (Amendment) Bill, which I am hoping to bring to the Branches very soon, that will give us some of the vehicles and tools to do this testing.

425

The Speaker: Supplementary question, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

Would the Minister agree with me that emissions testing actually is a public health issue and as such is very important and is certainly not in any way linked to the attempts to grow the number of passengers on our buses?

430

The Speaker: Minister to reply.

The Minister: Well, yes and no, because in one sense you are absolutely right – yes, it is about health, but also the fewer cars that are out there the more people either have to be

435 travelling ... or electric ... You can see the theme that we have been generating and the strategy that we have been developing is about better travel, but I would say obviously we have very highly efficient Euro 5, Euro 6 buses that do not have these fumes, so obviously the more people who use the buses the better – but also active travel.

POLICY AND REFORM

1.6. Government living wage – Date by which all public sector workers will be paid

The Hon. Member for Ramsey (Mr Hooper) to ask the Minister for Policy and Reform:

By what date all Government employees, and all public sector workers who are employed through agencies, will be paid at least a living wage?

The Speaker: Question 6. I call on the Hon. Member for Ramsey, Mr Hooper.

440

Mr Hooper: Thank you very much, Mr Speaker.

I would like to ask the Minister for Policy and Reform: by what date will all Government employees and all public sector workers who are employed through agencies be paid at least a living wage?

445

The Speaker: I call on the Minister for Policy and Reform to reply.

The Minister for Policy and Reform (Mr Thomas): Thank you, Mr Speaker.

450

The Cabinet Office contracts with employment agencies for the provision of administrative and secretarial staff within Isle of Man Government primarily to cover short-term absences or vacancies and the option to guarantee payment of the living wage to staff engaged through this contract is being examined as part of the ongoing management of the contract.

455

The Isle of Man living wage is scheduled to be updated in April 2019 and at that point the Cabinet Office will be in a position to assess the cost implications of modifying the contract and to determine how to take the matter forward.

The use of agencies within other employment groups is generally restricted to professional roles such as doctors, nurses and teachers, where pay rates are significantly higher than the living wage.

460

The Speaker: Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker. I am not sure if you were listening carefully there, but I know the Minister did not answer the Question.

465

The Government has previously committed to being a living wage employer and has already committed to employing all its own staff on at least a living wage, so my question to the Minister is: does he not believe that all workers working for Government are entitled to equitable treatment? And I will reiterate my first question, which is: by which date does he intend to bring in this equitable treatment for all Government workers?

470

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

475 I think I did answer the Question exactly as asked. All non-agency employees, except two in the categories previously identified probably to the Hon. Member who is asking the questions, now do earn the living wage because the lowest Public Service Commission grade is lower than that. That includes people who work on zero hours contracts. Agencies are different. The contract term for the agency contract is from September 2017 to 31st August 2020. However, the contract does include provision for a variation of rates if considered necessary as part of the change control procedure.

480 I am sure the Hon. Member remembers that when the minimum wage was raised by his Department and Treasury we did have an adjustment to the contracts and information about that was provided to all members of staff in a management position that it affected.

485 I am sure the Hon. Member is also aware that his Department is responsible for employment law and I am sure the hon. Member is also aware that we do not have any legislation like the Agency Workers Regulation 2010 across, which applies to agency workers in relation to their employment in an organisation that has other workers on different rates of pay. So, if the Hon. Member wants to take forward that legislation, for instance as discussed between Cabinet Office and the Department for Enterprise just before Christmas, please do. And if the Hon. Member does not accept that the right time to revisit the contract is after either the minimum wage changes or the living wage changes, there is not a lot I can say really.

490 Thank you, Mr Speaker.

Mr Robertshaw: You did, though!

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

Mr Hooper: Thank you very much, Mr Speaker.

500 I am a little confused. The Minister mentioned before it was a matter of contract, not a matter of employment law. He did clarify that the contract allows it to be varied where it is considered necessary – so does the Minister consider it to be necessary?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

505 Perhaps six months ago the contract was varied because the minimum wage went up, as a consequence of his Department's action, from £7.50 to £7.85. Once the living wage is calculated, which it is today or tomorrow, we will be in a position to see whether we could uprate the contract to allow the living wage. Once the minimum wage is uprated in October, which I understand is the Department for Enterprise's intention, we can see whether we uprate that contract.

510 As I have said, Government does not have a policy as yet to make sure that every person working in the Isle of Man is paid at least the living wage. Government does have a policy that every established post inside the public sector is paid the living wage. If the Department for Enterprise, the Treasury, the Council of Ministers and Tynwald decide to change the policy, so be it, but currently the policy is to do everything we can to increase payment rates for all public servants and all people working outside Government, and the agency work should be seen on that basis.

520 **The Speaker:** It does somewhat demonstrate that the length of an oral answer is inversely proportional to its usefulness. *(Laughter)*

Mr Robertshaw, a supplementary question.

Mr Robertshaw: I hope, Mr Speaker, that was not directed at me! *(Laughter)*

525 It would appear to me that the answer that the Hon. Minister has given to the questioner is actually in the negative. Does he not therefore feel that that is a very poor exhibition of leadership on the part of the Government?

The Speaker: Minister to reply.

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

Respect we are due, and the answer is very clear – it is in the positive, which is the contract is being revisited. There are about 55 to 60 people who are employed by agencies. Those agencies can pay people whatever they want. Then there is a tender process. We have four people inside each process who bid competitively to provide a service. Obviously the minimum wage applies because it is law. The living wage is not law; therefore, there might have been people who lost the tender who bid a lot more than the living wage rate. So, as I have said, we are revisiting the contract. We will do that at the right time once we know what the living wage is, which is calculated today or tomorrow. It will then go to Cabinet Office and Council of Ministers and then be announced publicly, and at that point I think it would be the right time to make a decision about whether or not we insist that the agency contractors ... it becomes effectively a contractual obligation to pay the living wage.

540 I revisit that a lot of this is in the hands of the hon. questioner from Ramsey because the Department for Enterprise is responsible for employment law. We have agency workers regulations. If the Member for Ramsey cares passionately about this, his Department should be working harder to revisit employment law.

The Speaker: Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

550 I did not realise I had been promoted to Minister for Enterprise – thank you very much for that, Mr Thomas! (*Laughter*)

The Minister has obfuscated a lot here. (**A Member:** Hear, hear.) He is talking about applying the living wage to all Isle of Man workers, but actually I am talking specifically here about Isle of Man *Government* workers employed through agencies. He is arguing that we cannot make a decision on whether people are entitled to earn a living wage until we know what that rate is. We know what the rate is.

560 The question I am asking the Minister is a policy question: does he believe it is necessary to go through that contract process to amend those contracts to make sure that all agency workers employed by Isle of Man Government are receiving a living wage? That is a matter of Government policy and is not a matter of law.

Mr Robertshaw: Hear, hear.

The Speaker: Minister to reply.

565 **The Minister:** There is a policy element to this, but I repeat, as I have said lots of times, there is a contract in place that goes from 27th September to 31st August 2020. The procedure in place inside that contract is a change control procedure, which could include rates. It was used to change it when the minimum wage went up in October. The living wage does not exist because it is being recalculated in March. What is the point of changing to last year's living wage, which was calculated in March 2017? Why not wait until the living wage has been recalculated in March 2019? At that point we can make a decision about whether or not we insist that the people inside each of the two groups to provide agency workers have to revisit it.

575 It will be traumatic for people, because what happened last time was that the increase in Government's contract price was not passed through to the people because previously the

people providing the service earned a lot more than the minimum wage but when the minimum wage was increased that was not all passed through to the 50 or 60 people who were actually working, providing those services to Government.

580 **The Speaker:** Final supplementary from Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I am going to try again: after the new rate has been calculated, does the Minister intend to use the change control procedure to make sure that all Government workers that are employed through agencies on these contracts are receiving at least a living wage? Yes or no, Minister? I do not want a long answer: yes or no?

585

Mr Robertshaw: Yes or no?

590 **The Minister:** The Isle of Man living wage is scheduled to be updated in April 2019. At that point the Cabinet Office will be in a position to assess the implications of modifying the contract and will determine whether or not it will take it forward by modifying that contract, as I said 10 minutes ago.

EDUCATION, SPORT AND CULTURE

1.7. School Equality Statements – Guidance to schools

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

Whether the Department has provided any guidance on wording for the expected school Equality Statements to schools?

595 **The Speaker:** Question 7. I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Minister for Education, Sport and Culture: whether the Department has provided any guidance on wording for the expected school Equality Statements to schools?

600

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.

It is unclear what is meant by the Hon. Member for Arbory, Castletown and Malew as regards 'Equality Statements' for schools. However, I can advise that following a pre-arranged meeting with the Government's equality adviser today my Department intends to develop a standardised equality and diversity policy which will cover all schools and other areas of the Department's responsibility. This will allow an Island-wide approach to promote consistency within schools.

605

610 **The Speaker:** Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker, and thank you, Minister, for that reassuring Answer. Is there any timeframe for introducing this statement of equality?

The Speaker: Minister to reply.

615

The Minister: Thank you, Mr Speaker.

As I said, there is a meeting today with the equality ... and we will move forward. As soon as we have got a date, I will circulate it.

**1.8. Ballakermeen High School; St Ninian's High School –
Pupil numbers, past and predicted**

The Hon. Member for Douglas East (Miss Bettison) to ask the Minister for Education, Sport and Culture:

How many pupils, broken down by year group, have been at Ballakermeen High School and St Ninian's High School for each of the last 10 years; and what the predicted numbers are for the next seven years both with and without the proposed catchment area changes affecting Scoill yn Jubilee?

The Speaker: Question 8. I call on the Hon. Member for Douglas East, Miss Bettison.

620

Miss Bettison: Thank you, Mr Speaker.

I rise to ask the Minister for Education, Sport and Culture: how many pupils, broken down by year group, have been at Ballakermeen High School and St Ninian's High School for each of the last 10 years, and what the predicted numbers are for the next seven years, both with and without the proposed catchment area changes affecting Scoill yn Jubilee?

625

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. As the table is quite detailed, I have circulated it to Hon. Members.

630

The Speaker: Supplementary question, Miss Bettison.

Miss Bettison: Thank you.

635

I do not know where the Minister has circulated it, but I have not got it as yet.

The Speaker: Minister, I will look into what has happened, whether there has been a failing somewhere in the communication.

Is there a supplementary you ...?

640

Miss Bettison: Based on what?

The Speaker: We will look and see what has gone wrong there and respond to Hon. Members with that information.

645

Miss Bettison: He has not answered.

**1.9. Home educated students –
GCSE performance figures**

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

What records his Department has of the GCSE performance of home educated students in the last three years?

The Speaker: We turn to Question 9 on that basis, and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

650 **Mr Moorhouse:** Thank you, Mr Speaker.

I would like to ask the Minister for Education, Sport and Culture: what records has his Department of GCSE performance of home educated students in the last three years?

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

655

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

We do not have any records on GCSE performance of home educated children, even though some may register to sit exams at our schools or at the UCM. The schools and UCM only have results data for students who are students at the schools or UCM enrolled; the results for children who are home educated would go to the child at their home address.

660

The Speaker: Supplementary question, Mr Moorhouse.

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

665

Island schools focus on the delivery of internationally recognised qualifications which are seen as the most advantageous to all students. Does the Minister agree that we are potentially failing our duty of care to home educated children by placing no emphasis on formal qualifications, which potentially means these children could be disadvantaged for the rest of their lives?

670

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

675

We are currently operating under the 2001 Education Act. There will be changes made in the new Bill.

The Speaker: Supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

680

I would have thought that a prerequisite on the part of the Minister for Education would be to know what all the outcomes for home educated children were before any other steps were taken. Would he not agree with that?

The Speaker: Minister to reply.

685

The Minister: Thank you, Mr Speaker.

Yes, we have concerns regarding this area but currently we are abiding by the 2001 Education Act, which just requires the parents to register with the Department.

690 **The Speaker:** Supplementary question, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

I am intrigued by the Minister's response. Would he confirm that in March last year the Department issued draft home education procedures and noted that it was recognised home-educating parents were not required to teach the National Curriculum or provide a broad and balanced curriculum, or have a timetable or have any set hours, or have any specific qualifications; that in fact GCSEs are not the be-all and end-all to the Department – or indeed the Government, when the Government now does not require civil servants to have GCSEs – and in fact there are alternative qualifications?

700 So, does the Minister agree that in fact home education, the point about it is the freedom to depart from a rigid curriculum and choose what is best for the child, not necessarily GCSEs?

The Speaker: Minister to reply.

705 **The Minister:** Thank you, Mr Speaker.
That is the current legislation. The draft was an approved policy from the Department.

ENVIRONMENT, FOOD AND AGRICULTURE

1.10. Renewable energy projects in Isle of Man waters – Qualification for UK Contract for Difference scheme

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

Whether renewable energy projects in Isle of Man waters qualify for the UK Contract for Difference scheme?

The Speaker: Question 10 and I call on the Hon. Member for Ramsey, Mr Hooper.

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

I would like to ask the Minister for the Environment, Food and Agriculture whether renewable energy projects in Isle of Man waters qualify for the UK Contracts for Difference scheme?

715 **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.

Renewable energy projects in the Isle of Man are *not* eligible for the UK Contracts for Difference scheme. However, in August 2014 the UK issued a document, Contract for Difference for Non-UK Renewable Electricity Projects, which considered the benefits of supporting renewable electricity projects located outside of the UK.

720 I have raised this matter personally with the relevant UK Ministers on at least three occasions discussing eligibility of Isle of Man projects. The most recent letter I received on this matter was in August 2018 from the Minister of State for Energy and Clean Growth and it was answering in that vein. I am also expecting to raise the matter with the UK Minister of State, when the UK Minister of State hosts the British-Irish Council ministerial meeting this summer.

725

Such a change would require the UK to vary their legislation and I understand they are considering this change. However, given the current challenges they face with Brexit it is understandable that this is not their current number one priority.

730

The Speaker: Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

735

Would the Minister agree, given the Island's aims to move towards a more renewable energy structure and the fact that a lot of our electricity generated is sold into the UK markets in the first place, that actually enabling Isle of Man projects to fully access the UK system would be a win-win for both jurisdictions?

And will he keep pushing for this policy change across in the UK when he talks to UK Ministers?

740

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

745

Yes, I will continue to push very hard. I think it is a no-brainer from both sides of the Irish Sea, as it were. As you are probably aware Ørsted, formerly Dong, have an agreement for lease for a wind turbine array that would produce 700 megawatts. But it is essential for them to go ahead with that scheme – that some kind of contract is in place. So we are working very hard on that.

EDUCATION, SPORT AND CULTURE

1.11. Home educated students – Numbers expected to take GCSE examinations

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

How many home educated children are in the age band where they would be expected to be sitting their GCSE examinations this summer; and how many have applied to use the secondary school examination centres or University College Isle of Man to sit GCSE examinations this year?

750

The Speaker: Question 11 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

755

I would like to ask the Minister for Education, Sport and Culture how many home-educated children are in the age band where they would be expected to be sitting GCSE examinations this summer; and how many have applied to use secondary school examination centres or University College Isle of Man to sit GCSE examinations this year?

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

760

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

From our records there are 16 children who are by age born between 1st September 2002 and 31st August 2003, who would be eligible to sit their GCSEs this year.

There are students who will pay for this privately to sit the exams at UCM this year, but UCM do not know if they are home educated. No children who are home educated have applied to our secondary schools to sit their GCSEs this year.

765

The Speaker: Supplementary question, Mr Moorhouse.

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

770

Given the numbers of children involved and the potential impact on their futures of not having formal qualifications, could the Department encourage home educators to make more use of the support that is available and the potential to sit these examinations?

I know some home educators would not want the additional input, but just in the form of advice could be very useful for them; but, more importantly, the students they are guiding into the future.

775

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

780

We have had discussions with a number of home educators and under the new Bill we are trying to put in that they can access the schools to use their facilities. So we are trying to encourage home educator parents to actually utilise the facilities that we have.

The Speaker: Hon. Members, that concludes Questions for Oral Answer.

785

Item 2, Questions for Written Answer: those will be circulated by the Table Office in due course.

2. Questions for Written Answer

CHIEF MINISTER

2.1. Upper Tribunal: Appeal No. GIA/2481/2018 – Representation by Attorney General

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

Who instructed the Attorney General to make representation to the Upper Tribunal in respect of Appeal No. GIA/2481/2018; and what the cost has been of work undertaken to date?

790 **The Chief Minister (Mr Quayle):** The decision of the First Tier Tribunal given on 1st August 2018 upholding the FOI request made by Mr Webber was brought to the attention of the Cabinet Office in the Isle of Man by the UK Home Office at which time – as I informed Tynwald when answering the Written Question of Mrs Beecroft MHK in September 2018 – advice was sought from the Island’s Law Officers. In addition to work undertaken by the Cabinet Office with its counterparts in Jersey and Guernsey, the Attorney General of each of the Crown Dependencies became involved given their concern as to the legal position adopted by the Home Office in defending the Tribunal proceedings and, in particular, their unease that the Home Office had not sought in those proceedings to rely upon the exemption provided for in section 27 of the Freedom of Information Act 2000 (of Parliament) to claim justification for withholding the requested material on the grounds that it concerned international relations between each of the Crown Dependencies and the Home Office. That the Tribunal had not therefore addressed the section 27 exemption risked its judgment being treated as unhelpful precedent in all future Home Office FOI cases relating to information emanating to or from the Crown Dependencies and in those circumstances the Attorneys General jointly agreed that there were public interest implications for the Crown Dependencies warranting their seeking involvement in the Tribunal proceedings resulting from the appeal lodged by the Home Office with the Upper Tribunal.

805 The representations to which the Question refers were made on behalf of the respective Attorneys General in their official capacities and as such none were ‘instructed’ to participate in the Tribunal proceedings: that decision was taken by each of them in discharge of their respective Law Officer functions which, as is well established, are matters for them rather than politicians or civil servants.

810 The Attorneys General agreed to share equally the cost of Instructing Counsel to prepare submissions on their behalf and to appear before the Upper Tribunal (on 4th February 2019) in connection therewith: the costs incurred by the Island’s Attorney General for period to 18th February 2019 amount to £720.00. There is the possibility of a further cost being charged for work done since 18th February 2019 but it is thought likely to be a fraction of what has been charged to date.

815

TREASURY

**2.2. Pension forecasts –
Date of issue of last 20; date of arrival**

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

What date were the last 20 pension forecasts issued and on what date did the applications arrive?

The Minister for the Treasury (Mr Cannan): I can confirm that as at 19th March 2019, of the last 20 pension forecasts issued three were issued dated 16th March 2019 and 17 were issued dated 18th March 2019.

All applications for the above forecasts were received on 6th February 2019.

ENVIRONMENT, FOOD AND AGRICULTURE

**2.3. Planning decisions and appeals –
Number decided by Council of Ministers since October 2018**

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

How many (a) planning decisions, and (b) appeals have been decided by the Council of Ministers since 1st October 2016; and, of these, how many were determined as a result of being considered matters (i) of general importance; (ii) for some other reason ought not to be determined by the Department; or (iii) as a result of a development procedure order?

820 **The Minister for Environment, Food and Agriculture (Mr Boot):** In response to the Written Question by Mr Hooper I can clarify the following:

(a) Planning decisions –

- 825 i. Matters decided by the Council of Ministers since October 2016 as a result of them being considered of ‘general importance’ – **NONE**¹
- ii. Matters decided by the Council of Ministers since October 2016 as a result of them being matters that ‘ought not to be determined by the Department’ – **NONE**²
- Matters decided by the Council of Ministers since October 2016 as a result of a Development Procedure Order – **TEN**³

830

(b) Appeals

There is no mechanism to appeal a decision made by the Council of Ministers, save for through legal challenge. Consequently, no appeals were determined by the Council of Ministers.

¹ Section 11(1)(a) of the Town and Country Planning Act 1999.

² Section 11(1)(b) of the Town and Country Planning Act 1999.

³ Section 11(3) of the Town and Country Planning Act 1999.

HEALTH AND SOCIAL CARE

**2.4. Coroner for Inquests –
Recommendations made to DHSC in last five years**

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

What recommendations the Coroner for Inquests has made to his Department in the last five years, stating for each recommendation (a) when it was received; (b) whether it has been fully complied with; (c) if it has been fully complied with, when full compliance was achieved; and (d) if it has not yet been fully complied with, why not and when it will be complied with?

The Minister for Health and Social Care (Mr Ashford):

**Coroner of Inquest Recommendations
Last five years**

Inquest Date	Date Received (a)	Recommendation	Compliance Status (b)	When Full Compliance Achieved (c)	If Recommendations have not been complied with, why not and when will they be complied with? (d)
17/10/2014	20/10/2014	<i>1. Effective auditing [for receipt and implementation of NHS Alert Notices] be introduced by both the Department (in respect of all service areas) and the Department of Infrastructure (in respect of its Estates Department dealing with health authority facilities or equipment).</i>	Compliant (unable to comment of Dol compliance)	2015	Managerial / health & safety leads from the Mental Health Service hold regular, recorded meetings with the Estates Service representatives from the Department of Infrastructure. The Community Care Directorate has in place a system for the receipt, dissemination and recording of all actions taken in respect of alert notices.
18/04/2016	20/04/2016	<i>1. I would be recommending that Mental Health Services, including CRHTT, introduce as a matter of urgency a dynamic risk assessment document which should be updated at key stages of the process such as discharge from CRHTT, and at any stage when information indicating any change in risk level is received, and such document should record the balancing of the factors Mental Health Services staff have considered to reach the informed conclusion as to the way ahead.</i>	Partial Compliance	N/A	The current MHS Risk Assessment and Management planning processes do allow for such dynamic usage, however work is ongoing to further improve both training and documentation. Plans are in place to roll out the DICES Risk Assessment & Management System (a structured, accredited system specific to risk management in mental health) across the whole of the Mental Health Service during 2019. A plan is in place to train all registered health and social care professionals, to incorporate the DICES Brief Risk Assessment and Risk Management Plan into RiO alongside the introduction of several more detailed risk assessment tools covering all

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					age groups and a range of presentations.
13/06/2016	15/06/2016	<p><i>1. The Psychiatrist approving the discharge and the repeat prescription should prepare a legible note of the exact medication that has been given to the patient "to take out" (CITO') and what the repeat prescription is envisaged to be. Such along with a properly completed Discharge Summary (completed by the nursing staff at the inpatient mental health facility) should be faxed to the GP on the day of discharge and confirmation of the fax being successfully sent to the GP should be recorded in the RIO notes. I recommend that such change in procedure is implemented. Such enhanced communication can then be supplemented by the full discharge letter from the Psychiatrist being sent as soon as practicable thereafter, as is the procedure currently.</i></p>	Compliant	30/06/2016	N/A
02/07/2018	02/07/2018	<p><i>1. Steps are taken to improve record keeping in terms of documenting the content and implications of a suicide note as part of assessment of risk during a s.132 Assessment</i></p>	Partial Compliance	N/A	<p>Work is ongoing to improve record keeping and in particular the risk assessment / management structure within RiO. Plans are in place to roll out the DICES Risk Assessment & Management System (a structured, accredited system specific to risk management in mental health) across the whole of the Mental Health Service during 2019. A plan is in place to train all registered health and social care professionals, to incorporate the DICES Brief Risk Assessment and Risk Management Plan into RiO alongside the introduction of several more detailed risk assessment tools covering all age groups and a range of presentations.</p>

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		<p>2. <i>That staff should be reminded that any indication given by a family member as to the thoughts of self-harm that a service user had allegedly expressed to the family member must be properly recorded in the patient's records and the case escalated to the psychiatrist.</i></p>	Compliant	03/08/2018	N/A
20/11/2018	21/11/2018	<p>1. <i>I would recommend that changes are made such that intravenous heroin users referred to DAT are seen far more quickly than 4 weeks after a referral is made, with the waiting time being measured in days rather than weeks. I also do consider that the matter should be looked into as a matter of some expedition bearing in mind the inherent, serious and capricious dangers arising from intravenous heroin use.</i></p>	Partial Compliance	N/A	<p>The Drug and Alcohol Team (DAT) provide intervention at Step 3 of the Stepped Care Model (Strategic Plan for Mental Health & Wellbeing 2015); working in partnership with Step 2 provider Motiv8, who operate a 'walk-in' / self-referral service. The Drug & Alcohol Team (DAT) have a system in place for prioritising referrals and allocation of services whereby referrals deemed medium risk are seen within 4 weeks and those considered high risk are seen within 2 weeks. The model of delivery for substance misuse/addiction services is currently under formal review against a scheduled project plan and following consideration of stakeholder views and current best practice a revised service specification will be implemented. It is expected the business case and service specification will be delivered to the Director of Community Care in April 2019.</p>

With regard to Acute Services Directorate, please find below tabled information:

Recommendation	Date	Compliance	Date Achieved
The Department, considering the information that it gives to patients suffering from fractures particularly in terms of informing them clearly of the signs and symptoms of Deep Vein Thrombosis and also the fact that this condition is rare but if certain symptoms arise then they need to immediately seek hospital attention	16/01/2014	Compliant.	28/01/2014
That senior management at the hospital should review and improve the provision of cover for the CNS Haematology role or whatever post takes on the current workload of that post-holder as a matter of urgency.	16/10/2015	Compliant. CNS in post and cover post is available	2016
That the introduction of audited and secure electronic systems for intra and inter health service communication be prioritised and where in the interim paper records remain, particularly involving communication involving patient follow up or monitoring after hospital discharge, such systems include ensuring receipt of communication is checked and such can be audited.	16/10/2015	Compliant. Digital health Records are now the norm	2017
That further work is carried out to improve the method of timely production of hospital doctors' discharge letters to GPs in whatever format deemed appropriate	16/10/2015	Compliant Electronic Discharge Summaries now available on most Wards.	2018
Where patients who are discharged from hospital will be receiving on-going monitoring by the hospital, as part of the discharge process such patients should be given a specific and effective contact number to ring in the event that they have any concerns about their case or the monitoring that is meant to be taking place.	16/10/2015	Compliant.	2015
That secretarial support for senior doctors is further reviewed by the Department to identify areas of weakness and lack of resource.	16/10/2015	Compliant. Service reviewed in 2015	2015
The induction for locum medical physicians should explain the issue of acceptance of responsibility for clinical care devolves to the medical physician when a patient is seen by them in the Emergency Department.	16/10/2015	Compliant. Induction for locum physicians in place	2016

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The Sepsis Six and the Neutropenic Sepsis flowcharts should be explicitly referred to when induction takes place for new medical staff including locum doctors and agency nurses and refresher training on them provided to all relevant staff at appropriate intervals	16/10/2015	Compliant	2016
Ensure onward access to, and training in, the use of Toxbase for all nursing and clinical staff responsible for providing care to any person detained in hospital on suspicion of concealing controlled drugs internally	05/12/2016	Compliant.	30/03/17
Review the competence and training of nursing and clinical staff responsible for the care of any person detained in hospital on suspicion of concealing illegal drugs internally to: 1)recognise the toxidromes associated with common drugs of abuse 2)to treat on an emergency basis patients symptomatic of acute drug toxicity	05/12/2016 SC	Compliant.	30/03/17
Ensure that the common antidotes to such toxicity are located as close as practicable to the position of the detainee in such quantities as are likely to be necessary and such location is known by the relevant staff.	05/12/2016	Compliant	30/03/17
Consult with its experts employed within its Radiology Department regarding the recommendation of Dr Rupert Evans that the Management Guidelines for Persons Suspected of Having Controlled Drugs Concealed Internally should be amended to recognise the role of low dose CT without contrast imaging in respect of whether such imaging is available and accessible on the Isle of Man.	05/12/2016	Compliant	2/2/17
Require that its Radiology Department provides a formal report regarding abdominal X-ray or CT images taken of persons detained on suspicion of concealing controlled drugs internally within one working day of the image being captured.	05/12/2016	Compliant	28/02/17
A representative of Her Majesty's Attorney General, the Chief Constable, the Isle of Man Law Society and the Department of Health and Social Care shall meet and attempt to agree a practical method whereby those detained in hospital on suspicion of concealing drugs internally have effective access to legal services in a way that recognises the requirement for continuous observation of the detainee by officers of the Constabulary	05/12/2016	Compliant	08/02/17
A review be conducted into the resourcing of the Radiology department with a view to there being an allocation of greater financial resources to assist in recruiting and retention of sufficient consultant radiologists in the Isle of Man to allow	12/04/2017	Compliant	21/01/2018

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them to engage in uninterrupted reporting sessions and provide them with more manageable workloads.			
Highlight the need for OT staff at the hospital and staff in the memory clinic and the diabetic clinic to consider a patients fitness to drive in perhaps more detail than it is considered now	08/02/2018	Partially Compliant. Areas are compliant but Formal Policy under development	Anticipated Completion Date: June 2019
That a laminated checklist be distilled from the Multiple Pregnancy Guidelines containing the various steps specific to intra partum care and such be introduced for use by both Obstetric and Midwifery staff at all stages of labour and delivery of twins.	04/06/2018	Actions in Progress due to Care group Management Changes. Recommendations and action plan to be re-reviewed.	19/07/2018
That the systems in terms of recruitment of locums are reviewed to ensure that they are sufficiently robust so that intranet access to important policy documents is not just obtained but that there is an audit trail established so that a locum can be held to account that they have received such access and are able to utilise it.	04/06/2018	Compliant	01/08/2018
That consideration should be given to the introduction of a system at Nobles Hospital of informing locum doctors specific to the field of medicine in which they will work of any important differences between any discipline specific professional guidelines issued by the medical Royal Colleges or Faculties and those operative at Nobles Hospital	04/06/2018	Compliant	19/07/2018
That the standard of contemporaneous record keeping specific to intra partum care-planning and decision making within the Obstetrics and Midwifery team is regularly audited so as to ensure records are comprehensive, accurate and written in a timely fashion.	04/06/2018	Compliant	23/11/2017
That, subject to manufacturer's guidance on testing, there should be a standard procedure introduced for midwives to undertake, that in addition to routine daily checks, in the case of twins both CTG transducers are checked by the midwife (for instance by gently tapping them) to ensure that both transducers are working at the time that they are first attached to the mother and that such satisfactory testing is recorded in the notes	04/06/2018	Actions in Progress due to Care group Management Changes. Recommendations and action plan to be re-reviewed.	Expected date of completion 19/07/2019
That the obstetrics and gynaecology management continues to closely audit the recording of the application of the "Fresh eyes" principle to ensure it is being utilised where continuous CTG monitoring is occurring.	04/06/2018	Compliant	08/10/2018

That the Multiple Pregnancy Guidelines be amended to indicate that all delivery of twins should occur in the theatre on the labour ward	04/06/2018	Compliant	19/07/2018
That all new staff are made familiar with the method of making emergency calls including Code 2 and that instruction in this regard should be an early part of any induction training	04/06/2018	Compliant	02/07/2018
That the Department ensures that its corporate memory as to what went wrong in Max's case and the steps it has identified to better ensure that such does not happen again should not get forgotten or displaced because of shrinking budgets, cost cutting measures, the replacement of staff or through the simple effluxion of time.	04/06/2018	Actions including policy education and learning ongoing	No end date as the recommendations request a corporate memory in this case.

**2.5. Abortion Reform Act 2019 implementation –
Staff, budget, resources allocation**

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

What provision has been included in the Department of Health and Social Care budget for 2019-20 for the costs of implementation of the Abortion Reform Act 2019; what staff, budget and resources have been allocated in order to run the services required by the Act; what measures have been put in place to ensure the counselling required by the Act is in place; and what pathways are in place to support under 16s who may require access to the services set out by the Act?

The Minister for Health and Social Care (Mr Ashford): In relation to budget and resources being allocated to the Abortion Reform Act 2019 these will be contained within the relevant divisional budgets. DHSC is a demand-led operation where services are delivered based on day-to-day demand and such individual procedures provided do not have individual ring-fenced budgets, the services are instead delivered out of the wider divisional budgets under which they fall. As a new service it is impossible to predict what the actual costs of the service will be as there is no previous service provision upon which to base such predictions.

As the Hon. Member will be aware, the services provided under the Abortion Reform Act 2019 are statutory services and as such the Department has an obligation to provide the services as required. For absolute clarity no one will be turned away or not treated due to budgetary restraints.

Should there be cost pressures discovered once the service is under way the Hon. Member will be aware that Part 4 – Closing Provisions, Section 28 Expenditure of the Abortion Reform Act 2019 states:

Any expenses of the Department which are attributable to this Act shall be paid out of monies provided by Tynwald ...

Once we have certainty and data around the cost of provision of services in relation to the actual costs involved, then a specific business case, should it be required, would be submitted to Treasury for approval of additional funding for the Department in 2019-20.

855 The Department of Health and Social Care is working with the British Pregnancy Advisory Service (BPAS) to establish an appropriate abortion service pathway for women in the Isle of Man in accordance with the Abortion Reform Act 2019.

860 The Department is developing an Integrated Sexual Health Service (ISHS) and it is anticipated that medical abortion services will be a part of this service in the future. As this project is in the development stage, in the interim, the Department plan to deliver medical abortion services within Noble's Hospital with support from BPAS.

865 As per section 6 of the Act, the Department must issue guidelines for counselling. Counselling guidelines are currently being drafted and will be forwarded to the relevant Department meeting for approval. The Department will ensure appropriate counselling services are in place for the commencement of the Act.

870 Section 9 of the Act details the required consent of a parent or guardian or another person acting in loco parentis in relation to a woman who is below the age of 16. The relevant professional should be satisfied that the decision to consent to the termination is taken in good faith and in the best interests of the woman. The Department will ensure that as part of the service pathway, appropriate support is in place for patients under the age of 16 and for those women who are unable to give informed consent due to mental, medical or physical incapacity.

875 As well as complying with the Abortion Reform Act 2018, all abortion services commissioned or delivered by the department will comply with evidence based best practice standards published by the Royal College of Obstetricians and Gynaecologists. These require that the abortion provider ensures that all women are given full information about their pregnancy options, the choice of abortion methods, side effects, risks and complications, the range of emotions commonly experienced after abortion, and information about other services available (including sexually transmitted infection testing, contraceptive services and support services for women experiencing sexual coercion or domestic abuse), at their first appointment. The practitioner seeing the woman for the first appointment (usually a specialist nurse) should discuss all the above with the woman in a non-judgemental and supportive way and provide written, objective, evidence-guided information for the woman to take away before committing to the procedure. If a woman is uncertain about continuing to abortion, she should be given the opportunity for further discussion and decision support with the provider. Women who are certain of their decision to have an abortion should not be subjected to compulsory counselling. 885 Where a woman requires additional support or information, the practitioner would sign post or refer to the appropriate service. This could include, for example, social services, social security or housing.

890 A referral to mental health services is not part of the standard pathway and would only be indicated in exceptional circumstances.

In terms of post-abortion support, routine post procedure counselling is not required. The abortion service provider will offer post-procedure counselling for women who request it. Referral to mental health services will be available to any woman whose mental health is perceived to be at risk (either by the abortion service practitioner who has provided post-procedure counselling or by referral from other sources, e.g. GP, if the woman presented there).

**2.6. KM&T report –
Receipt by DHSC; action taken since**

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

When the KM&T report was received by his Department; and what action has been taken since?

895 **The Minister for Health and Social Care (Mr Ashford):** As per the Answer given on 18th September 2018 the KM&T report was received by the Department on 14th September 2018.

900 Following the receipt of a report, it was considered by the Department and a business case requesting transformational funding was developed to ensure the development of an action plan to address these significant issues.

On the 23rd November 2018, the DHSC received confirmation from Treasury that funding had been allocated to commission a transformational project to improve our operating theatres.

905 A procurement exercise is required, and a tender specification was then developed with the Attorney General's Chambers and agreement was reached on the specification in February 2019. The invitation to tender documents is currently in the process of being finalised.

(Please note that KM&T has gone into administration and is no longer trading).

EDUCATION, SPORT AND CULTURE

**2.7. Education bursaries and support to those in key stages 3 to 5 –
Provision**

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

How much the Department has provided in individual bursaries and how many key stage 3, 4 and 5 students have received support for (a) on-Island and (b) off-Island activities and in each case whether this related to sport, education or other, in each of the last five years?

910 **The Minister for Education, Sport and Culture (Mr Cregeen):** There is only one bursary that has operated during this time supporting students on Island at King William's College for education purposes. Applications for this were closed in 2012 and there are now no students receiving support.

The total amount paid out is £220,751.

A breakdown of the numbers of young people supported is shown below:

Year	Number of pupils supported
2018-19	0
2017-18	1
2016-17	2
2015-16	3
2014-15	5

**2.8. Home educated children –
Number who sat GCSEs in Island schools in last five years**

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

How many home educated children sat GCSE examinations at each of the Island's secondary schools and College in each of the last five years?

915 **The Minister for Education, Sport and Culture (Mr Cregeen):** The number of home educated children who sat GCSEs at the Island's secondary schools or UCM are:

Exam Centre	No. of children	Year
Ballakermeen	2	1 in 2018 1 in 2017
St Ninian's	0	
QE11	0	
Ramsey Grammar	0	
Castle Rushen	1	2017
UCM	Unknown	

**2.9. Home educated children –
Number who achieved GCSE English and Maths in last five years**

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

How many home educated children achieved English and Maths GCSE at C grade or above in each of the last five years?

920 **The Minister for Education, Sport and Culture (Mr Cregeen):** We do not have any records on the GCSE performance of home educated children, even though some may register to sit exams at our schools or UCM. The schools/UCM only have results data on students who are on the school/UCM roll. The results for children who are home educated would go to the child at their home address.

POST OFFICE

**2.10. New staff grading structure at Isle of Man Post Office –
Details**

The Hon. Member for Ramsey (Mr Hooper) to ask the Chairman of the Post Office:

Further to her Tynwald Answer of 18th September 2018, when she will provide the information that she stated should be available within six weeks of that date?

The Chairman of the Post Office (Ms Edge): In the written response provided last September, I stated:

I will endeavour to provide the information requested based on job weight in the next 6 weeks, **subject to** the successful implementation of a new Post Office role grade structure that is currently in progress.

925 The implementation of the new grade structure is nearing completion, but has not yet been completed. I will endeavour to provide the answer within the next six weeks subject to completion of final appeals from staff. For clarity, it is only possible to provide the 'pay' comparisons requested in respect of the 'basic contracted pay' exclusive of any contracted allowances, ad hoc payments, employer pension contributions etc.

Order of the Day

3. CONSIDERATION OF COUNCIL AMENDMENTS

3.1. Dormant Assets Bill 2018 – Council amendments considered

Mr Shimmins to move.

930 **The Speaker:** Item 3, consideration of Council amendments to the Dormant Assets Bill 2018 and I call on Mr Shimmins to move.

Mr Shimmins: Thank you, Mr Speaker.

935 During the Third Reading of this Bill I advised the House that an amendment would be brought forward in Legislative Council. The amendment proposed was to enable the charitable purposes listed in clause 25(7) to be aligned to those that will be contained within the Charities Registration and Regulation Bill 2018 when that Bill is enacted.

940 Hon. Members, the amendments to clause 25 that the Legislative Council has now approved provide that any person undertaking charitable purposes in the Island may receive dormant assets funding. Charitable purposes are for the time being aligned to the meaning given in the Charities Act 1962. Upon the enactment of the Charities Registration and Regulation Bill, the Treasury will bring forward an order to Tynwald under subsection (13) which will realign the meaning of charitable purposes to that given in the new charities legislation. Such an order will require the approval of Tynwald.

945 I would like to thank the Hon. Member, Mrs Poole-Wilson, for her support in moving the amendments to this clause in Legislative Council and to Council Members for their approval.

Mr Speaker, I beg to move that the Council amendments be agreed and the Bill do now pass.

The Speaker: Mr Peake.

950 **Mr Peake:** Thank you, Mr Speaker.
I beg to second.

955 **The Speaker:** I put the question that the Council amendments to the Dormant Assets Bill 2018 be agreed and the Bill do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

4. BILL FOR THIRD READING

4.1. Charities Registration and Regulation Bill 2018 – Third Reading approved

Mr Thomas to move:

That the Charities Registration and Regulation Bill 2018 be read a third time.

The Speaker: Item 4, Bill for Third Reading, the Charities Registration and Regulation Bill, in the hands of Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

960 In moving the Third Reading of the Bill I would like, once again, to stress the importance of the Bill to ensure that the Island has a modern system in place for the registration and the regulation of charities, including an important updating of the meaning of ‘charitable purpose’.

965 At this stage, I thank Hon. Members for your support and in particular Dr Allinson for seconding; Mr Harmer and Mr Hooper for amendments; and everybody who has contributed so actively to the discussion around this very important topic, particularly Mr Baker and Mr Deputy Speaker, Mr Robertshaw. I would also like to thank Michelle Norman; the Attorney General, John Quinn; and others in the office and in the community who have actually helped so much with this important piece of legislation.

970 Just before I move and as regards one of the amendments adopted to clause 46, namely the requirements to make regulations to exempt charities with a gross income not exceeding £5,000 from the requirement to register and thus from the requirements to which registered charities are subject, there is a considerable amount of work now to be done to ensure that the principle behind the amendment can be made to work within a regulatory framework which was designed for a particular set of circumstances. Unfortunately, the amendment as adopted by this Hon. House raises a number of matters which will need to be investigated and then addressed.

975 Firstly, an exempt charity cannot choose to register and indeed a charity must be removed from the register if it subsequently becomes exempt. This could result in a charity status changing from year to year as its income increases or decreases and it requires to be registered then removed from the register, and so on. This amendment, as approved, also takes no account of the fact that some charities may *prefer* to be on the register in order to benefit from the reputational benefit that comes from having their accounts and other information available on the public record. If the intention is that small charities should be able to opt in to the regulatory regime then this would have to be provided through a different mechanism rather than an exemption.

985 Secondly, is it appropriate that the sole criteria for determining whether a charity should be exempt is the level of its income, irrespective of the amount of funds on deposit in the bank or whether it owns land or other valuable assets? In a period of low interest rates they are still exempt from registration and therefore visibility to the regulator *and* to the public, charities with substantial sums of money or valuable assets, merely because their income comprised only interest rather than public donations. Such a charity could then dissipate its funds which could amount to tens, if not hundreds, of thousands of pounds without any scrutiny as to how those funds have been applied.

990 Thirdly, to what extent should the general principles of the Act apply to small charities? Should there be a requirement for a small charity to be notified to the Attorney General even if just so there is a record of its name, objects, annual income and contact details? Consideration would also have to be given as to how the requirement for substantial and genuine connection could be applied by the legislation to a small charity.

1000 At first sight it would seem inconsistent that application of the test would be determined by a charity’s income, particularly in the case of a charity whose income fluctuated around the registration threshold. Although an unregistered charity would not have to file annual accounts, good practice would dictate it should still have to prepare, at the very least, a statement showing the charity’s income, expenditure and account balances. Also it would be a rare instance where a charity soliciting funds from the public should not have a written constitution. Should a small charity be able to be included in the register of charity mergers? These are all issues which will need to be explored properly.

1005 Consultation on the overall landscape with ecclesiastical and small charities and another Charities Bill, I think, will have to be put back while we consider these issues; and I wish the other place upstairs find work to tackle some of the issues that need tackling and need addressing.

1010 And with that, Mr Speaker, I move the Charities Registration and Regulation Bill now be read a third time.

The Speaker: Dr Allinson.

1015 **Dr Allinson:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the question that the Charities Registration and Regulation Bill 2018 be read for third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Procedural –
Question 1.8. held over until next sitting**

1020 **The Speaker:** Before we move on to Consideration of Clauses, Hon. Members, I have asked the Clerk to look at the reasons why the Minister for Education's written response of information to assist Members with Question 8 has not reached you. There appears to be an IT issue: the email was sent out at about four o'clock yesterday afternoon but it has not made it into any of our inboxes. This is an IT issue with somewhere between the Government IT system and the Clerk of Tynwald's Office.

1025 As a result of that, I would propose to hold Question 8 over until next week and put it on next week's Order Paper so that an Answer can be given at that time. I hope that that is satisfactory.

5. CONSIDERATION OF CLAUSES

**5.1. Council of Ministers (Amendment) Bill 2019 –
Clauses considered**

Mr Malarkey to move.

The Speaker: We then move to Item 5, Consideration of Clauses, Council of Ministers (Amendment) Bill 2019, and I call on Mr Malarkey to move.

1030 **Mr Malarkey:** Thank you, Mr Speaker.

Before moving the clauses of the Council of Ministers (Amendment) Bill 2019, I wish to thank Hon. Members for their support through the Second Reading in permitting the Bill to be moved by the Hon. Member for Ramsey, Dr Allinson, in my absence.

1035 Mr Speaker, clauses 1 and 2 of this very short Bill provide that the title of the Act is the Council of Ministers (Amendment) Act 2019 and the Act will come into effect automatically at the beginning of the month following the sitting at which Royal Assent is announced.

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

The Speaker: Dr Allinson.

1040 **Dr Allinson:** I beg to second.

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

1045 Clause 3.

Mr Malarkey: Clause 3 is the final clause, Mr Speaker.

Clause 3 introduces two new sections into the Council of Ministers Act 1990, section 6.

1050 New section 6A states that the constitutional principle of the rule of law continues to exist; and subsection (2) places the responsibility for upholding and supporting the principle of the Council of Ministers; note, Hon. Members, that this is *a* responsibility and not *the* responsibility. The Lieutenant Governor will also retain a responsibility in this area. Nevertheless, Hon. Members, this does represent an important step in the Island's continuous constitutional development.

1055 New section 6B places a duty on the Council of Ministers as a body and also on each individual Minister to uphold, support and indeed defend the continued independence of the judiciary. Subsection (3) makes it clear of the separation of powers. As a Minister and as a member of the Council of Ministers I, and my ministerial colleagues, have no right to any greater influence on the outcome of any particular court case than I or anyone else would have as an ordinary member of the public.

1060 Subsection (4) spells out some matters concerning which I and my colleagues at the Council of Ministers have a special regard.

Subsection (5) defines 'the judiciary' for the purpose of this Act.

1065 Moving on, Hon. Members, at the Second Reading the Hon. Member for Ramsey, Mr Hooper, asked how the provision related to the judicial independence in section 6B would affect the possible future liaison with the proposed Justice Minister. I am grateful to Mr Hooper for his question and we will be writing to the Chair of the Constitutional and Legal Affairs and Justice Committee to understand how she feels such a role might work in practice in the future. Through working together we may better understand some of the issues which may need to be addressed in relation to appropriate liaison and any dialogue moving forward with Tynwald's motion last month.

1070 Mr Speaker, I beg to move that clause 3 stand part of the Bill.

The Speaker: Dr Allinson.

1075

Dr Allinson: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1080 **The Speaker:** I put the question that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

5.2. Town and Country Planning (Amendment) Bill 2019 – Clauses considered

Mr Thomas to move.

The Speaker: We move on then, Hon. Members, to the Town and Country Planning (Amendment) Bill 2019 and I call on Mr Thomas to move.

1085 **Mr Thomas:** Thank you, Mr Speaker.

Before moving on –

The Speaker: Sorry, my apologies.

Whilst it is your Bill, Mr Thomas, because the Long Title is an issue with regard to amendment 10, it seems most sensible to take that first. Is that okay with you?

1090

Mr Thomas: Thank you for writing to me to that effect yesterday evening. I am quite happy; if you want to do it now you can do it now or you can do it later and we can come back to the Long Title later. It is your choice, Mr Speaker. You are in charge of the proceedings.

1095

The Speaker: I think because the Long Title change is linked to amendments 10 and 11, it makes sense to do it at the start. So if I could actually start with Mr Baker to move his proposed amendment to the Long Title.

Mr Baker: Thank you, Mr Speaker.

1100

I rise to move my proposed amendment to the Long Title, as requested.

Just to explain the rationale for this proposed amendment, as Mr Speaker has said, this does relate to amendments 10 and 11, which we will come on to in due course.

1105

Amendments 10 and 11 bring increased transparency around the planning decisions that are made by the Council of Ministers. There are various provisions to enable the Council of Ministers to make planning decisions and when we turn to amendment 10 and 11 you will see that I will explain that there is no requirement currently for Council of Ministers to do anything other than lay their decision before Tynwald.

1110

Amendments 10 and 11 address that and enhance the requirements on Council of Ministers, specifically with regard to any independent inspector's report which has been made in connection with that particular planning application. So those amendments will require such independent inspector's reports to be laid before Tynwald, which clearly enhances the transparency around that decision-making. In order for those amendments to carry, the drafter, who is present here today, advised that it would be necessary to make an amendment to the Long Title and hence the rationale for the amendment that is set out at amendment 1.

1115

Mr Speaker, I beg to move:

Amendment to Long Title

1. On line 5 of page 9, after 'Ministers;', insert «to require that any independent inspector's report relevant to such a referral be laid before Tynwald;».

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1120

The Speaker: Does any Member wish to speak? In which case we will go straight to the vote that Mr Baker's amendment number 1 to the Long Title be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

With apologies, Mr Thomas, clauses 1 and 2.

1125

Mr Thomas: There will be no need now to draw your attention to this. *(Laughter)* Although I was going to suggest that we looked at it with 10, then we could talk about the substance.

1130

Clauses 1 and 2 are, together, the short title, the commencement provisions and the provision for any necessary transition measures should they be required, in addition to those already explicitly provided for in the text of the Bill.

Clause 1 gives the Bill its short title.

Clause 2(1) enables the Council of Ministers, by order, to introduce different parts of the Bill on different dates and for different purposes. Clause 2(2) also provides for an order made under

1135 subsection (1) to make such consequential, incidental, supplemental, transitional and saving provisions as the Council of Ministers considers necessary or expedient.

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

The Speaker: Mr Boot.

1140 **Mr Boot:** I beg to second and reserve my remarks.

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

Clause 3, Mr Thomas.

1145

Mr Thomas: Thank you, Mr Speaker.

Clause 3 sets out that the Bill amends the Town and Country Planning Act 1999 only, by means of the clauses which follow.

1150 Clause 3 gives the scope of the Bill, which is to amend the Town and Country Planning Act 1999 only. No other statute is amended by the Bill as it stands.

Mr Speaker, I beg to move that clause 3 stand as part of the Bill.

The Speaker: Mr Boot.

1155 **Mr Boot:** I beg to second and reserve my remarks.

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

Mr Thomas, I understand clause 5.

1160

Mr Thomas: I would like to move clause 5, Mr Speaker. Clauses 4, 6, 7 and 8 are consequent on the success of clause 5 and so I would like to move clause 5 first, as you mentioned.

1165 Clause 5 of the Bill creates the power for the Council of Ministers, by order, to issue a national policy directive. In so doing, this clause also sets out: a need for consultation before such national policy directive is issued; and the ability to specify a validity period, or sunset as some might call it, for a national policy directive; and the power for the Council of Ministers to make regulations pertaining to the making of national policy directives; and that national policy directives must give reasons for the policy; and a duty for the Council of Ministers to have a newly-made national policy directive published in an appropriate manner, ensuring that any
1170 who might be affected by it are informed; and clearly states that, in the event of any inconsistency between a national policy directive and the matters already contained in section 10(4) of the Town and Country Planning Act 1999 that in such instance, the national policy directive shall prevail.

1175 As will be noted later in the Bill, clause 44 is amended to state that a national policy directive would require Tynwald approval.

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

The Speaker: Mr Boot.

1180 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: I call on Mr Baker to move amendments 3, 4, 5, 7 and 8, please.

Mr Baker: Thank you very much, Mr Speaker.

1185 I will start with amendment 3, but before I dive into the detail on these various amendments I just want to set the context for Hon. Members.

1190 At Second Reading I expressed concerns about the potential impact and the risk of unintended consequences arising from the proposed Bill, primarily around the new concept of national policy directives. I did not have an issue with the principle of using national policy directives which are designed in this Bill to make the planning system more flexible and responsive as the Island's needs change. However, as the Bill was drafted I was concerned about the potential risks that introduction of such national policy directives would bring and the potentially adverse consequences they could have for the Island's future.

1195 I have no reason to suggest there were any ulterior motives around them being brought in, but I did feel that as drafted the risks were quite significant. Accordingly, I brought a series of amendments to refine the Bill and these are the first tranche that I am going to run through and these are primarily around the national policy directive provisions. These have been brought after detailed discussions with the hon. mover, the Minister for Policy and Reform, and the drafter, for which I thank both of them for their assistance.

1200 Hon. Members, these amendments provide a package of changes. In that sense it is useful bringing these amendments together. This package of changes improve, amongst other things, the transparency and robustness of the national policy directives. They enhance the consultation that is required and clarify the Tynwald approval processes around national policy directives.

1205 Turning to the amendments in turn, amendment 3 replaces the provision whereby Council of Ministers was required to consult such persons as it thinks fit with the requirement to conduct a public consultation and have regard to the responses to the consultation. Clearly, Hon. Members, that is a much stronger consultation process and requires notice to be taken of the results that come from the consultation. I did feel that the consultation process, whilst it existed, was very limited and potentially open to abuse. So that is the rationale for amendment 3:

Amendment to clause 5

3. On line 24 of page 10, for "consult such persons as it thinks fit", substitute «conduct a public consultation and have regard to the responses to the consultation».

In terms of amendment 4, this replaces the text set out on lines 25 to 27 of page 10 in which the national policy directives essentially had no explicit defined life. So they could have a period specified in the order under which they are issued, or if there was no period specified then the national policy directive would remain in place until revoked.

1215 I was concerned about the risk of national policy directives accumulating and essentially being forgotten and left on the statute book and the potential implications in future years that that may lead to some unintended consequences that had not been envisaged by the initiators of the national policy directive. So what amendment 4 does is it defines that the maximum length of time for a national policy directive is five years but it retains that flexibility to have a shorter period should that be wished when introducing a national policy directive.

1220 So essentially it time-limits the policy directive and avoids the risk of this accumulation and then falling into, effectively, redundancy but potentially being utilised at a later date to justify a planning decision which may be inappropriate.

Amendment to clause 5

4. On lines 25 to 27 of page 10, for "the period specified in the order under which it is issued or, if no period is specified, until revoked", substitute — «a period of 5 years or for such shorter period as may be specified in the order under which it is issued».

1225 Amendment 5, Hon. Members, significantly enhances the requirements around the national
policy directive. In effect, the national policy directive could be introduced as drafted simply
with reasons being stated for the national policy directive and I felt that that was not sufficiently
strong or clear enough and under my amendments a much clearer rationale is required. So the
national policy directive has to be for a strategic and defined purpose. It also must have reasons,
1230 as the hon. mover had drafted in the Bill; the reasons for the policy need to be set out in the
directive.

In addition, my amendment introduces the requirement for the anticipated impact and
consequences of the national policy directive to be assessed and to be clarified and laid out in
the national policy directive. So again bringing greater transparency and clarity to the reasons it
has been introduced.

1235 Then part (d) requires the justification for the policy within the national policy directive
having greater weight than the other elements which it impacts within the planning framework.
So the national policy directive will be at the top level of the hierarchy within the planning
system, but in order to justify that, it has to be very clear as to why it is being given that status,
because that will impact future planning decisions.

1240 So that concludes amendment 5:

Amendment to clause 5

5. For lines 31 and 32 of page 10, substitute —

«(5) A national policy directive shall —

(a) be for a strategic and defined purpose;

(b) include reasons for the policy set out in the directive;

*(c) include a statement of the anticipated impact and consequences of the policy set out in
the directive; and*

*(d) for the purposes of section 10(4) (determination of planning applications), include
justification for the policy set out in the directive having greater weight than the matters
referred to in paragraphs (a), (b) or (c) of that subsection.».*

I think, Mr Speaker, you said amendment 7 as well?

The Speaker: Amendments 7 and 8.

1245 **Mr Baker:** Amendments 7 and 8 —

The Speaker: While you are on your feet, Mr Baker.

Mr Baker: — at this stage? Thank you very much.

1250

The Speaker: Let's get our money's worth!

Mr Baker: Okay. Well, helpfully, amendment 7 links to amendment 5 in the sense that I have
talked about the justification for the national policy directive having greater weight than the
1255 other matters referred to, and amendment 7 makes it explicit that 'the Department shall give
greater weight to the relevant provisions of the national policy directives'.

The previous wording, as drafted by the hon. mover, was that 'the relevant provisions of the
national policy directive shall prevail'. And what that meant, Hon. Members, and you may recall
me highlighting this in the Second Reading, was that the national policy directive would
1260 completely override all of the considerations within the planning framework. As I explained, the
development plan which consists of the strategic plan and the area plan and the various local
plans, is a sophisticated mechanism whereby planning decisions are evaluated and the various

different considerations are properly evaluated and balanced. What that gives is a balanced decision and it should lead to the right planning outcome if the process is followed diligently.

1265 As drafted, the national policy directive would have completely overridden every other consideration no matter how adverse those considerations were. So that was of great concern to me and I raised this amendment to make it clear that, whilst the national policy directive will have greater weight in a planning consideration, it does not completely override every other consideration. That is far more appropriate in my view and will lead to the balanced decisions
1270 which the planning system is striving to achieve, but equally will weight the national policy directive most significantly which obviously is what the introduction of the concept of the national policy directive is designed to do.

So I felt that the wording, as amended, made the concept far more acceptable and put it into a more balanced planning framework.

1275 So that is amendment number 7.

Amendment to clause 5

7. On lines 5, 6 and 7 of page 11, for 'the relevant provisions of the national policy directive shall prevail', substitute —

« for the purposes of that subsection, the Department shall give greater weight to the relevant provisions of the national policy directive».

Finally at this stage, amendment 8, Mr Speaker. This is an additional requirement, and what amendment 8 does is require the Cabinet Office to prepare a report on the whole topic of national policy directives. It is a periodic report and it will essentially review during that period that the national policy directives have been introduced and/or have expired, and will also look
1280 at the impact and the consequences of the national policy directive, and will also make an explicit link to any changes to the development plan that have occurred in that period.

So, Hon. Members, what that does is put a review process around the use of national policy directives. It significantly improves the transparency around them, it ensures that there is an accountability process which brings back to Tynwald the national policy directives that have
1285 been implemented and it makes it clear what effect those have had.

Now, I understand that there is an amendment to my amendment 8, which Mr Cregeen is going to move —

The Speaker: But he has not yet.

1290

Mr Baker: But he has not yet, okay, so I will not talk about it and I will not indicate that I am content (*Laughter*) with the amendment at this stage. (**The Speaker:** Neatly done.)

The final part of my amendment 8 allows the Council of Ministers to enhance the requirements around national policy directives but not to undermine the requirements that are
1295 set out in paragraphs (a) to (d) of subsection (5). So, essentially, it allows the national policy directive framework to be flexible but not to be dismantled by any Council of Ministers in the future which may wish to deviate from the principles that we are bringing forward here.

So with that, Mr Speaker, I beg to move.

Amendment to clause 5

8. After line 7 of page 11, insert —

«(8) The Cabinet Office shall prepare a report to be laid before Tynwald on the second anniversary of this section coming into operation and every second anniversary thereafter.

(9) The report referred to in subsection (8) shall include —

(a) a copy of every national policy directive which has been issued or has expired —

(i) in the case of the first report, since the coming into operation of this section;

(ii) in the case of every subsequent report, since the date of the last report;

(b) where a development plan has been prepared or revised subsequent to a national policy directive, the recommendation of the Cabinet Office under section 2(2B);

(c) an assessment by the Minister of Policy and Reform setting out whether the Minister considers the impact and consequences of the policy were correctly anticipated.

(10) The Council of Ministers may, by order, amend subsection (5) but may not omit any of paragraphs (a) to (d) of that subsection as originally enacted.».

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I beg to second amendments 3, 4, 5, 7 and 8 and reserve my remarks.

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The Speaker: You cannot reserve your remarks in respect of seconding an amendment, so if you wish to say anything, now is the time.

Mr Hooper: I will briefly, then, Mr Speaker.

1310

I think these amendments are very sensible: widening the scope of any consultation that is required seems quite a sensible way forward. Imposing time limits on the national policy directives again seems very straightforward; so does bringing in more detail and specificity around what the national policy directives are required to do.

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The three-yearly/two-yearly half-term report about the whole process I think is quite a sensible suggestion as well. And lastly, moving away from an automatic overriding of the whole strategic plan process towards simply making sure that national directives give greater weight to things being considered – again, all of this seems to be very a sensible amendment to the Bill.

Thank you, Mr Speaker.

1320

The Speaker: Standing Order 4.7(4A) permits a Member to move without notice an amendment to an amendment with the leave of the House. Is the House content to give leave to Mr Cregeen to move the amendment that has been circulated? (**Members:** Agreed.) Thank you.

Mr Cregeen to move.

Mr Cregeen: Thank you, Mr Speaker.

1325

The amendment I wish to move has been circulated: 'in the inserted subsection (8), for 'second', in both places, substitute 'third'; and in inserted subsection (9)(c) 'the Minister for Policy and Reform setting out whether the Minister considers' substitute 'Cabinet Office as to whether'.

I beg to move:

Amendment to amendment 8 to clause 5

(a) in the inserted subsection (8), for 'second', in both places, substitute «third»; and

(b) in the inserted subsection (9)(c), for 'Minister of Policy and Reform setting out whether the Minister considers', substitute «Cabinet Office as to whether, ».

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Mr Harmer: I beg to second.

The Speaker: Thank you, Mr Harmer, for seconding that.

I then call on Mr Shimmins to move amendments number 6 and 9 standing in his name.

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Mr Shimmins: Thank you, Mr Speaker.

I rise to move amendments number 6 and 9 together as they are mutually dependent, adding more rigour to section 2A(6).

Effective communication is important for any policy to be successful. Specifically, this amendment ensures that any national policy directive is widely publicised. It is in everyone's interest that this is the case. The provision is similar to that contained in other Acts of Tynwald.

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There should not be that many national policy directives so any costs will be minimal.

I beg to move the amendments standing in my name:

Amendments to clause 5

6. *On lines 2 and 3 of page 11, omit 'in a manner the Council considers will bring it to the attention of those likely to be affected by it'.*

9. *After line 7 of page 11, (and after the amendment moved by Mr Baker at that point, if successful) insert —*

«(x) For the purposes of subsection (6), 'publication' means —

(a) publication —

(i) in one or more newspapers published and circulating within the Island; and

(ii) on a website maintained or approved for the purpose by the Cabinet Office and in respect of which reasonable steps have been taken to inform the public of how it may be accessed; and

(b) if appropriate, taking other reasonable steps to bring the purport of the national policy directive to the attention of the public or of persons likely to be affected by it.».

The precise numbering of the subsection is dependent on the success or failure of Mr Baker's amendment.

The Speaker: Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

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I beg to second Mr Shimmins' amendments.

The Speaker: Now, the floor is open for debate.

Mr Robertshaw.

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Mr Robertshaw: Thank you, Mr Speaker.

I refer to the amendment in Mr Baker's name, number 8, and effectively the amendment to that in the name of Mr Cregeen, the Member for Arbory, Castletown and Malew.

I am just a bit anxious about this second anniversary and then referring to the third anniversary. I just need clarity on this one, that if a planning application is approved under the heading of a national policy directive that then lasts for four years, is it possible for the process captured in amendment 8 to, as it were, lasso that down to the ground and in some way interfere with it, and thus undermine the confidence in that original planning decision that was agreed under the national policy directive?

1355

I hope that is clear. So, in other words there might be the argument that it should actually be a four-year review rather than three years, unless I have misunderstood the implications in amendment 8 and the subsequent amendment to the amendment.

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Thank you, Mr Speaker.

The Speaker: Mr Hooper, to speak to Mr Shimmins' amendments or Mr Cregeen's amendment?

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Mr Hooper: Yes, simply to Mr Shimmins' amendments, actually.

I completely understand where the Hon. Member is coming from. The question I have for him is in respect of amendment number 9: it mandates that the publication must be in an Isle of Man newspaper, circulated. I would just like to have an understanding of how this will interact with

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the requirements. I think there are proposed changes to the Legislation Act that mentions an 'electronic gazette'.

1375 Basically, I just want to understand if he has future-proofed this amendment. So if newspapers were to cease being circulated in paper form for whatever reason, actually does this still work? That is my question.

Thank you.

The Speaker: Mr Baker.

1380 **Mr Baker:** Yes, speaking to Mr Cregeen's amendment, which I am very comfortable with – the three-year timeline and the drafted amendment around the Cabinet Office rather than the Minister for Policy and Reform. And hopefully the principle that the amended amendment speaks to is very much a review of the principle of national policy directives, it is not anything to do with individual applications.

1385

A Member: Right, that is fine.

Mr Baker: Thank you, Mr Speaker.

1390 **The Speaker:** Okay, we will move to winding up and first I call on Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

1395 Just to respond to Mr Hooper's question. The amendment has been drafted with the intention that, should newspapers cease to exist, it will be replaced by the electronic form of communication. The intention is to ensure that any national policy directive is widely promulgated across the Island.

The Speaker: Mr Cregeen to respond to your amendment? (**Mr Cregeen:** No.)
Mr Baker.

1400

Mr Baker: Thank you, Mr Speaker.

1405 Just to summarise to say that I think the package of measures that these amendments bring significantly strengthen the framework around national policy directives. I think they reduce the risk that they may bring but yet still preserve the intended benefits that a more flexible and responsive planning system can deliver.

The Speaker: Mr Thomas, to respond to the debate on the clause.

Mr Thomas: Thank you very much, Mr Speaker.

1410 I want to thank both movers of the non-Government amendments for their intense, extensive and helpful engagement with officers and politicians as they were drafting all these amendments. I think they are all helpful and I am pleased to support them as amended by Minister Cregeen on behalf of Government.

1415 The Legislation Act 2015 which might bring in an electronic gazette is completely integrated into the publication regime. Subsection (8) is simply a periodic review of directives, as Mr Baker says, it does not impact in any way on permissions made under the law and planning policy inside law. So it is just a review of the impact, the consequences, whether the intentions basically of the national policy directive are being fulfilled and making early suggestions about whether the national policy directive needs to be incorporated into the law or perhaps extended or whatever. It is just that sort of periodic review.

1420 So we now come to the main point of national policy directives. The main point of national policy directives is that we need a transparent and robust but flexible and responsive process –

to borrow four words from the Chair of the Planning Committee, the Hon. Member for Ayre and Michael. I think each of these amendments helps to make each of those things achievable.

1425 National policy directives are absolutely crucial. It is the right of any Government to take to Tynwald national policy directives in the area of planning to achieve in planning terms legally, lawfully what it wants to do. And we have got a mechanism now. These amendments actually strengthen the robustness in legal terms, I understand, and are very helpful amendments.

1430 With that, Mr Speaker, I beg to move clause 5 as amended and hope everybody will support this unanimously to show everyone the intent that we are now in control of the planning system. The strategic plan is excellent and now we are in control of it through having national policy directives.

1435 **The Speaker:** Now, Hon. Members, given the nature of the debate I intend to take these 'by package' if you like. So I put to you first amendments number 6 and 9 in the name of Mr Shimmins. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Taking next the amendment to amendment 8 in the name of Mr Cregeen. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1440 Then taking amendments 3, 4, 5, 7 and 8 together, unless anyone objects? Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you that clause 5, as amended, stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 4, 6, 7 and 8, Mr Thomas.

1445 **Mr Thomas:** Thank you, Mr Speaker.

With your permission I will move them all together.

1450 Clause 4 makes amendments to section 2 of the Town and Country Planning Act 1999. Clause 4 inserts reference to a national policy directive into section 2(2A) of the Town and Country Planning Act 1999, which is the section dealing with times where a development plan is prepared or revised, and giving direction for the Cabinet Office, as the preparer or reviser of a development plan, to have regard to a national policy directive and also at that time to recommend to the Council of Ministers whether the directive should remain or is revoked.

1455 Clause 6 has several components to it. I shall list these in the order in which they appear in the Bill. This clause inserts a mention of national policy directives into section 5 of the Town and Country Planning Act 1999 – the same section of the Act which deals with validity of plans; and it substitutes and updates the existing sub-section (2) with new subsections (2) to (4) and in so doing, extends the protection already given to the public in relation to, for example, a development plan, by allowing persons aggrieved by a newly made national policy directive, to apply to the High Court for a review of the validity of the process by which the directive was made. This is to recognise the importance a national policy directive is intended to have, and to ensure that our community is afforded an opportunity to appeal a directive should they be aggrieved.

1460 Clauses 7 and 8 both insert references to national policy directives into appropriate parts of the Town and Country Planning Act 1999. Clause 7 inserts a reference to national policy directives into section 10(4) of the Act, which section deals with the matters to which regard must be had when determining of applications for planning permission. Clause 8 inserts a definition of national policy directive into section 45(1) of the Act, which deals with matters of interpretation.

1470 Mr Speaker, I beg to move that clauses 4, 6, 7 and 8 stand as part of the Bill.

The Speaker: Mr Boot.

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

1475 **The Speaker:** Amendment 2 to clause 4 in the name of Mr Baker.

Mr Baker: Thank you, Mr Speaker.

1480 The amendment to clause 4 puts a requirement for the Council of Ministers to explain why the recommendation for the national policy directives either remaining or being revoked is included within the requirements. So previously, within clause 4 there was a requirement simply to make a recommendation. This requires Council of Ministers to also justify that recommendation. So for either the national policy directive to remain or for it to be revoked, clearly it is bringing greater transparency and accountability.

1485 For those reasons, I feel that it is an enhancement to the provisions of the Bill and, with that, I beg to move:

Amendment to clause 4

2. On line 13 of page 10, after 'shall', insert «provide reasons and».

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second.

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The Speaker: No Member wishes to speak? Mr Thomas, do you wish to speak to the amendment in summing up?

Mr Thomas: To sum up, yes.

1495 Just a very small point. I think it is that, 'The Cabinet Office shall provide reasons to the Council of Ministers,' it is not actually Council of Ministers itself providing reasons – unless I am wrong. But we will fully support this amendment and I beg to move.

1500 **The Speaker:** I put to you first amendment 2 to clause 4 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then putting it as a package, clauses 4, 6, 7 and 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Thomas.

1505 **Mr Thomas:** Thank you, Mr Speaker.

Clause 9 creates the power for a development procedure order to make provision for the amendment, upon application to do so, of a valid planning approval. This amendment must be for minor alterations only, not ones which are transformative.

1510 In addition, where a development procedure order makes such provision this clause specifies that it may also make provision for the procedures for applying for and determining an application for a minor amendment, and also the matter of fees.

The clause does not prevent other things being included in such development procedure orders, such as definitions for terms and related matters.

Mr Speaker, I beg to move that clause 9 stand part of the Bill.

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The Speaker: Mr Boot.

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

1520 **The Speaker:** I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

1525 Clause 10 deals with referrals of applications for planning approval to the Council of Ministers for determination.

It amends section 11 of the Town and Country Planning Act 1999 and substitutes existing section 11(1) to clarify that, as is currently the position, the Council of Ministers may direct that certain applications are referred to it but also that the Department must refer certain applications to the Council and the Council may direct that it will determine such an application.

1530 This clause also makes reference to the term 'general importance to the Island', which is further dealt with in clause 17 which obviously follows.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Boot.

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

The Speaker: I call on Mr Baker to move amendments number 10 and 11.

1540 **Mr Baker:** Thank you, Mr Speaker.

These are the two amendments to which I referred when moving amendment 1 to the Long Title.

1545 Amendment 10 is a simple minor stylistic change reflecting the change in drafting practice since the original Bill was drafted and introduced in 1999. Amendment 11 is the more substantive amendment and what it requires is for the Council of Ministers to also inform Tynwald of not only their decision in any planning matter which they are determining, but also to provide any relevant independent inspector's report.

1550 Clearly, that provides greater transparency around decision making and I think it is an enhancement of the process. At present and as drafted, the Council of Ministers would simply have to make the decision and inform Tynwald of that, so I believe that this amendment significantly enhances the provision of the Bill.

With that, I beg to move:

Amendments to clause 10

10. On line 31 of page 12, make the first line subsection (1).

11. After line 17 of page 13, insert —

«(2) In section 11(2)(a), after 'the decision of the Council of Ministers', insert «and any relevant independent inspector's report».».

The Speaker: Mr Hooper.

1555 **Mr Hooper:** Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Shimmins, amendment 12.

1560 **Mr Shimmins:** Thank you, Mr Speaker.

1565 I rise to move amendment 12 which relates to the introduction of a community infrastructure levy or a CIL, as it is known. CILs were consulted on in the action plan consultation which ran between October 2017 and January 2018, and positive responses were seen in response to questions 45 to 48 on that consultation. This reflects that there is now consensus inside and outside Government that introducing a community infrastructure levy is the sensible course of action. It has worked well elsewhere, ensuring that developers contribute towards infrastructure

1570 provision. In the United Kingdom, CILs have been in place for many years and have been tried and tested. The amounts can vary depending on development site circumstances and this more flexible approach can also enable more marginal developments to proceed. Hon. Members may recall that the Department of Infrastructure consultation response requested that 'may' be replaced with a 'shall'. This is what the tabled amendment does.

So I hope that you will concur that this is the way to go and we can proceed to progress the details of a community infrastructure levy.

I beg to move the amendment standing in my name:

Amendment to clause 11

12. On line 24 of page 13, for 'may', substitute «shall».

1575 **The Speaker:** Hon. Members, I am sure that others of you, like me, have been duped into thinking that Mr Shimmins' amendment is actually an amendment to clause 10, because that is what it says on the Order Paper; it is in fact an amendment to clause 11.

1580 Once realised – and I am grateful to my colleague, Mr Thomas for giving me the nod that that was the case – I wanted to let the Hon. Member finish so he did not have to repeat his whole remarks again when he came to move it in clause 11; but just hold that thought, I suppose is what I need to say to Hon. Members at this point.

At the moment I have clause 10 on the table along with amendments 10 and 11 in the name of Mr Baker and I call on any Member who wishes to speak to any of those.

Mr Robertshaw.

1585 **Mr Robertshaw:** Thank you, Mr Speaker.

Speaking to clause 11, Mr Shimmins' amendment – (**Several Members:** Ten!) (**The Speaker:** Amendment 10.) I am completely confused now. (*Interjections*) We are not dealing with Mr Shimmins' now?

1590 **The Speaker:** No, because it relates to the next clause.

Mr Robertshaw: I beg your pardon.

1595 **The Speaker:** We are closing the book on clause 10 then.

Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

1600 I think a corrected version was circulated, but obviously a limited circulation so apologies to that. Okay. Thank you very much for rescuing the situation. We are talking, limiting it to clause 10 here.

1605 Basically both Mr Baker's amendments are very sensible. Why wouldn't Council of Ministers want to publish to Tynwald, and thereby the general public, the independent inspector's report on the very rare occasions when issues of general importance are considered by the Council of Ministers?

1610 Obviously the Council of Ministers considers other types of planning applications in different ways and the nuances here need to be considered and read very carefully by future readers of *Hansard*, but there is no reason why both amendments 10 and 11 should not be approved. I hope the Hon. House will approve them and therefore the independent inspector's reports for issues of genuine importance will be published to Tynwald.

The Speaker: I put to the House first amendments 10 and 11 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1615 Clause 10 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 11 and 12, Mr Thomas.

Mr Thomas: Thank you.

1620 Clause 11 is a lengthy one, which inserts a new section 13A into the Town and Country Planning Act 1999.

This new section creates the power for the Council of Ministers, by regulations, to raise a levy, termed the community infrastructure levy, subject to the concurrence of the Treasury.

The clause provides for the Council of Ministers to delegate its functions pertinent to this levy, and set conditions around such delegation.

1625 The new section specifies a non-exhaustive list of matters for which those regulations may provide. For example, the regulations may make provision for the procedures to be followed by the Council of Ministers in proposing to begin charging CIL, such as consultation. Under section 44 of the Town and Country Planning Act any such regulations require approval from Tynwald.

1630 Clause 12 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition for the community infrastructure levy. The amendment to clause 12 would omit the full phrase 'community infrastructure levy'.

Mr Speaker, I beg to move that clauses 11 and 12 stand part of the Bill.

The Speaker: Mr Boot.

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

1640 **The Speaker:** For the purposes of the record and *Hansard*, Mr Shimmins, having given his reasons for moving amendment 12 to clause 11, I would just like you to formally move it and future readers of *Hansard* will be referred upwards in their reading for your comments.

Mr Shimmins: Thank you, Mr Speaker.

I will not repeat what I said earlier. I beg to move the amendment standing in my name. [See line 1433]

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The Speaker: Thank you very much.

I call on Mrs Caine to second.

Mrs Caine: Thank you, Mr Speaker.

1650 Sometimes there is a feeling that the planning process is not as open and transparent as it could be and that economic factors are given greater prominence, but this amendment will go some way to counter that negativity. It requires that a consultative body is set up. A consultative body will be able – (*Interjections*)

Are we on CIL? (**The Speaker:** CIL.) Sorry, I beg to second!

1655

The Speaker: Thank you very much!

I am just trying to understand some semaphore from another part of the room there. Can I call on Mr Baker to move amendment 13 to clause 12, please?

1660 **Mr Baker:** Thank you, Mr Speaker.

Hopefully a bit more straightforward, this! This is a simple stylistic change reflecting the change in drafting practice exactly as amendment 10.

Amendment to clause 12

13. On lines 24 and 25 of page 15, omit "(Community Infrastructure Levy)".

The Speaker: Thank you.
Mr Hooper.

1665

Mr Hooper: Thank you, Mr Speaker. I beg to second amendment 13.

While I am on my feet, I am not really sure why the necessity is to move the 'may have an infrastructure levy' to a 'shall'. I do not quite picture why that is so important. I think putting it down now that we shall have one without actually seeing what the regulations might look like and what things are going to happen and whether we have actually had a proper conversation about whether or not we do want to have a community infrastructure levy at a policy level, I think is a bit too far. I would much rather have that conversation about whether we actually think it is a good idea and then bring one in.

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Personally, I think it could be quite beneficial for the Isle of Man, but I would be hesitant just to putting that down in law as a definite, 'Yes, this is 100% happening,' at this quite early stage.

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The Speaker: Mr Cregeen, Hon. Member for Arbory, Castletown and Malew.

Mr Cregeen: Thank you, Mr Speaker.

I think this is a positive move, bringing the community infrastructure levy in. It is something that I have been looking for for many years. I think over the years when you have had large housing developments everybody else has had to pick up the tab and I think it should be a great improvement for communities to have this levy put in place.

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The Speaker: Mr Boot.

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Mr Boot: Thank you, Mr Speaker.

I am speaking to Mr Shimmins' amendment.

Like Mr Hooper, I am somewhat perturbed that we are moving from 'may' to 'shall' without exploring in more detail how we are going to prosecute the CIL. We still have section 13 and we have not exploited that to its fullest amount. I fully support the CIL in concept but I think tying our hands in this way is perhaps a step too far.

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The Speaker: Mr Robertshaw.

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Mr Robertshaw: Thank you.

I am on my feet for a few moments, Mr Speaker, because both the Member for Ramsey and the Member for Peel and Glenfaba have stolen my thunder.

Like them, I am comfortable with the concept of a community infrastructure levy, but to make it an absolute is not correct. Also we would not want it crashing into section 13 in ways that perhaps we cannot at this stage predict.

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So I very much will be staying with the word 'may' and not supporting Mr Shimmins' amendment.

Thank you, Mr Speaker.

1705

The Speaker: Mr Peake.

Mr Peake: Mr Speaker, I will be supporting Mr Shimmins' amendment because I do think that does offer leadership around the word 'shall'. We would then actually have to get something done. It would be a great opportunity to actually do something, take some action and actually get something done. So I will be supporting the amendment.

1710

Thank you.

1715 **The Speaker:** Before we start summing up, obviously Mr Thomas and Mr Shimmins will have the right to speak when summing up.

In which case, I will call on Mr Baker first. Do you wish to say anything in summing up? Then I will call on Mr Shimmins to sum up to your amendment.

1720 **Mr Shimmins:** Thank you very much, Mr Speaker and I am grateful for the comments made by Mr Hooper, Mr Cregeen and Mr Robertshaw.

All of those comments said they are fully supportive, they are comfortable, they really think it is a great principle and that is actually what we have been told by the general public who answered these questions in some detail – questions 45, 46, 47 and 48. They gave support for the introduction of the community infrastructure levy.

1725 We have heard that Government Departments are very supportive – so the Department of Infrastructure’s consultation response said, ‘Actually, let’s get on with this. Let’s change it to “shall”.’ If you look at the wording, the drafting of this Bill, there are two pages about community infrastructure levies. I think that indicates the general consensus within Government that this is the right way to go.

1730 Why should we do this? Why should we not prevaricate further and say ‘may’? Because actually it is important that we send a message to developers that this will be a more flexible approach. Hon. Members, this will help us develop the Island. This will enable some more marginal sites in our towns with a flexible community infrastructure levy to get built out. It will also ensure that on all developments, appropriate contribution is made by developers to the infrastructure.

1735 I have heard talk about section 13. Section 13 is actually contained in this clause as well; provision is made for that. Section 13 has some merits but actually it is a very restrictive approach and this is a much better, more progressive way to go on community structural areas. So I would urge you, let’s make a decision, let’s make a commitment, let’s get on with it, let’s develop this Island. Community infrastructure levies are the way to go.

1740 Thank you.

The Speaker: Mr Thomas to respond to the debate on the clause.

1745 **Mr Thomas:** Thank you very much, Mr Speaker.

The proposal in this Bill was for ‘may’ for two reasons. The first one was we did not in any way want to pre-empt Treasury’s decision, because a community infrastructure levy has to have Treasury concurrence and it seems wrong to pre-empt Treasury’s decision with Treasury concurrence. And secondly, it seemed wrong at the time, in principle, to not have the consultation and not have the decision about exactly what it looks like – a community infrastructure levy – who pays it, what it is used for; which is an important debate and consideration we have got to have during 2019.

1750 But, as Mr Shimmins has noticed, the consultation in principle supported this very much and also, although he did not mention it, the action plan for the reform of the planning system in May 2018, which Government brought upstairs for information in May 2018, actually talked about introducing a community infrastructure levy in 2020; in fact by the end of 2020.

1755 So what I am going to say is I am happy myself to vote ‘shall’ introduce a community infrastructure levy, but now I do not want to be accused in the future of having taken Treasury’s concurrence for granted, because it still has to have Treasury concurrence.

1760 Everybody listening out there, we have still got a lot of discussion about community infrastructure levies, we have got lots of regulations, or at least one regulation covering many issues, that needs to be made. We will be launching shortly a consideration of what it will be used for, how it compliments section 13 agreements: one is probably more specific; one is more general. It is potentially very valuable for brownfield sites, which is why I know Mr Shimmins is so passionate about it. **(Mr Shimmins: Hear, hear.)**

1765

So with that, Hon. Members, I beg to move the clause and personally I will be voting for the clause as amended by Mr Shimmins.

The Speaker: So putting to you first, Hon. Members, the amendment 13 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you next amendment 12 in the name of Mr Shimmins. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Miss Bettison
Mr Boot
Mrs Caine
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quayle
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Mr Callister
Mr Hooper
Mr Malarkey
Mr Robertshaw

The Speaker: With 18 for, and 4 against. The ayes have it. The ayes have it.

Putting to you clause 11, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you clause 12, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 13 and 14, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Clause 13 is consequent on the success of clause 14.

Clause 13 inserts a new Part 4A into the Town and Country Planning Act 1999. This new Part puts the constitution of the Planning Committee on a statutory footing within the Act for the first time.

Definitions are created for the Planning Committee, and also for the old Planning Committee, so that there is no doubt as to the meanings of what is being stated.

Clause 13 sets out powers for the Council of Ministers to make a constitution order for the Planning Committee, including things like terms of office, procedure and the like.

In order to avoid any possible doubt, provision is made in this clause to state that existing powers to delegate under the Interpretation Act 2015 and the Government Departments Act 1987 are not affected and that the old Planning Committee is taken to be the new one, for smooth administrative function.

Transitional arrangements are also provided for in this clause.

Clause 14 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of 'planning authority' and 'planning committee'.

Mr Speaker I beg to move that clauses 13 and 14 stand part of the Bill.

The Speaker: Mr Boot.

1800 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 13 and 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 15. Mr Thomas.

1805

Mr Thomas: Thank you, Mr Speaker.

Clause 15 amends section 40 of the Town and Country Planning Act 1999. This clause replaces the existing duty to form an advisory body and replaces it with an ability to do so.

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

1810

The Speaker: Mr Boot.

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

1815

The Speaker: We turn to amendment 14 in the name of Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

This amendment covers the involvement of outside organisations in planning, and section 40 has been the subject of debate recently and over the last 20 years or so. Why is this? Well, let me just remind you what the original Act says. It says:

1820

The Council of Ministers shall in accordance with regulations establish a body ("the consultative body") for the purpose of obtaining the views of organisations in the Island appearing to the Council of Ministers to be concerned with any of the following matters —

- (a) the environment,
- (b) the economy of the Island, or
- (c) the planning of development.

The second section says:

(2) The Cabinet Office must consult the consultative body on all matters on which it appears to the Cabinet Office that its advice would be desirable, and in exercising its functions under this Act shall have regard to any advice given by the said body, whether pursuant to such consultations or otherwise.

It goes on a bit after that, but you get the gist.

Successive administrations have unfortunately not set up this consultative body and this is why it keeps getting debated. You may recall I mentioned earlier the public consultation on the planning system between October 2017 and January 2018. This was a wide-ranging consultation with 55 questions for the public to answer, but there was no mention of section 40 and the planning consultative body. It kind of begs the question why was this this change not covered in the consultation which had 55 questions? And, in the absence of any consultation, why has this change been brought forward by the Cabinet Office? We did not really hear an explanation from the Minister for Policy and Reform when he moved this clause.

1825

1830

Moving this change seems contrary to accepted practice where we consult on legislative changes and I query whether there is any public mandate for this change in the absence of any consultation and responses and, as such, how can it be proposed in this way today?

I have heard Ministers say they feel that the consultative body would be a waste of time and money and it would be unnecessary bureaucracy. That is their view. My view is that it is important that environmental factors are considered alongside the economic and planning considerations which were contained in the original 1999 Bill. Many people agree with me and they do not feel that the additional cost is material and, actually, a planning consultative body

1835

1840 could well resolve issues ahead of them arising, which would in reality save a lot of time and money for everyone and a clearer direction and consensus will speed things up reducing bureaucracy, which sometimes is levied at our planning system.

1845 The Minister's proposed wording of the new section 40 changes 'shall' establish the consultative body to 'may'. So after 20 years of not complying with this legislation the Bill proposes to water down the commitment to 'may ... establish a body'. Does anyone think that this will happen, given the context which we are all aware of? I respectfully submit that it is highly unlikely that a planning consultative body will be set up given the lack of action over the last 20 years when it was a requirement of the Town and Country Planning Act. (**A Member:** Good point.)

1850 Arguably, it would be more transparent for the Minister just to remove this section altogether. If there is no intention to set up the body, then just take it out. But of course there is no mandate for this. There has been no public consultation on this change.

1855 The amendment I am proposing replaces 'shall' with 'is required to'. This wording is unambiguous. It recognises the advantages that a consultative body will provide, balancing all the key factors, and honours a long-standing obligation under the Town and Country Planning Act. This wording is slightly unusual but it is contained within a number of other Isle of Man Acts.

Thornton's Legislative Drafting guide, which I am advised is the Attorney General's Chambers' drafting bible states that:

In some contexts where an obligation is intended, is required to ... may be preferable to shall

1860 Hon. Members, this really boils down to whether you feel we have an obligation or not. I believe we have an obligation to the previous Act and to our environment to set up a consultative body to help us look at these issues in the round alongside, as the Act says, economic and planning considerations.

1865 Now, if you feel you do not have any obligation to our environment or to consult with the public on changes of this nature then you should not support my amendment. However, I hope that you will recognise the value this body will add and the strong feeling held about this by many people on the Island that we should consider environmental considerations alongside other factors, including economic issues, and that the lack of consultation is a serious failing with this Bill. If you concur with either of these points, or both of them, then please support the amendment standing in my name.

I beg to move.

Amendment to clause 12

14. On lines 25 and 27 of page 18, for 'may' in both places, substitute «is required to».

1870 **The Speaker:** Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

1875 There is a perception that the planning process is not as open and transparent as it could be and that economic factors are given greater prominence in some decision-making. That is a perception. This amendment will go some way to counter that negativity. It requires that a consultative body is set up.

A consultative body will be able to ensure environmental considerations are given due weight in planning decision-making. That seems an entirely positive step forward that is surely a welcome enhancement of the system.

1880 If it is a concern that this will be over overly bureaucratic and slow things down, then I do not agree. It surely should be able to be constituted in such a way by the Department. The Hon. Minister said it should be a smooth administrative function, an essential part to feed in on environmental concerns, and it would be a very sad day if the thought of extra bureaucracy

1885 prevented a consultative body being established to do the job that it was always envisaged would be an enhancement of our planning system.

I would also urge Members to support the amendment today, which I am happy to second.
Thank you.

1890 **The Speaker:** Now, the floor is open.
Mr Baker.

Mr Baker: Thank you Mr Speaker. A very interesting one, this.
Listening to the impassioned words of the Hon. Member for Middle and support from Mrs Caine, I interpreted this as being an Environment Committee. So I read what actually section 1895 40 says, park the 'may' or 'shall' because that is all that has been debated here, but the requirement is – or the opportunity, I am not prejudging – to establish a body:

the consultative body ...

– *the* being singular –

for the purpose of obtaining the views of organisations ...

– plural –

in the Island appearing to the Council of Ministers ...

– two interesting adjectives there –

to be concerned with any of the following matters –

(a) the environment

(b) the economy ...

(c) the planning of development.

1900 That is a mighty strange organisation to me that is going to get its arms around all those things. And this consultative body would either have to be, or could be, consulted on *all* matters which the Cabinet Office thinks its advice would be desirable. Lots of judgement in there. What are all those matters? Would its advice be desirable? Maybe it would be undesirable.

and in exercising its functions under this Act shall have regard to any advice given by the said body ...

– *shall have regard to any advice given by the said body* –

whether pursuant to such consultations or otherwise.

1905 Crikey, what a remit! Who would not want to be on that Committee? (*Interjection*) It is the recipe for mayhem – if you could even get the people in the room together to agree on anything because you have got people wanting to put their input in on the environment, those who want to put their input in on the economy, and those who just want to put their input in on the planning.

1910 I cannot see this working. Maybe that is why it has not been set up – who knows? It is certainly 19 or 20 years since the requirement to put this in which has, as the Hon. Member, Mr Shimmins says, been effectively ignored.

There is specific reference in (3)(a) that:

... the Cabinet Office must –

(a) designate voluntary organisations in the Island appearing to the Cabinet Office to be concerned with the environment;

1915 Well, I wish them luck with telling all those other environment organisations that they do not appear to be concerned with the environment, because they have to include all those who appear to be concerned with the environment. They are going to have a cast of thousands here!
And then:

... the Cabinet Office must —

(b) require the relevant Department, in exercising any functions under this Act which are specified in the order, to have regard to any representations which are made,

Not just valid ones, they could be invalid representations, they have still got to have regard to them —

in such circumstances as are so specified, by organisations so designated.

1920 Hon. Members, I cannot see this working; I really cannot. I do not know what is going to achieve; it does not exist currently. What we do have is a very complex, sophisticated planning framework which, when the planning framework and the planning process are followed properly, I believe it works well.

1925 The Minister, in the Bill, has not taken out this strange beast he has just reverted to more of an 'optional' wording. If we accept Mr Shimmins' amendment then we are saying this *has* to be set up and it has to be set up in the way that the 1999 Act says.

For those who say there is no public consultation, I cannot accept that. We have all lived and breathed the consultation around the Area Plan for the East, which has been ongoing ever since those of us who were elected newly in 2016 it has been going on pretty much all that time.

1930 We have just agreed, Hon. Members, to include a requirement on our national policy directives for there to be proper public consultation. There is the ability for people to make representations on planning applications and potentially, subject to conditions, to have the right to appeal planning decisions. Within the strategic plan, as I talked about at Second Reading, there is a huge raft of policies and principles in there which do cover all of the aspects of environment, of the economy of housing, of transport, etc. And there are widespread inputs to the planning process from various Departments. So within the Department for Environment, Food and Agriculture there is lots of expertise which submits representations on planning applications, whether it be to do with biodiversity, fisheries, wildlife, trees, etc.

1935 The environment is an area which Hon. Members are highlighting is lacking input, but I stand by my opening remarks that this Committee would also include those advocating on the economy and generally on planning issues.

I cannot see this working, Hon. Members, and I do not think it is sensible for us to impose the requirement for something that is not likely to be effective to have to continue with it. And therefore I will not be supporting the amendment.

1945 Thank you, Mr Speaker.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker. This is quite an interesting one.

1950 Previous consultations that have been done around this did not indicate any level of support for changing the situation in legislation. The previous consultation actually just made reference to concerns people had raised about this particular change and did not mention at all that anyone was supportive, which is unusual seeing as the rest of the consultation document was quite explicit where there had even been a modicum of support for the proposals.

1955 So I am struggling to see the rationale for this, especially as when the Minister moved the clause he did not provide us with any real explanation as to where this was coming from, simply the effects of the clause rather than the policy rationale behind it.

1960 If you look back over the numerous consultations that have happened around planning over the years and improving and reforming the planning system, the key message that keeps coming through is that we need to improve engagement. We need to improve the way we consult with people, we need to make sure that we are meeting the Island's current and future needs and that has to be done through a process of consultation. And this part of the Act that is in place already is not something that will be imposed as a new requirement. This is the law as it stands; the Government just is not following it.

1965 There seems to be a view that this would be quite beneficial if Government actually followed the law for a change. It is a bit of an unusual situation where we have a Government saying, 'Well, we do not really want to follow the law so, instead, we are going to change the law because we think it is too difficult to engage properly with key stakeholders'.

1970 Mr Baker made a lot of comments in his speech about individual applications. Now, I might be wrong here but my understanding is that this organisation is for Cabinet Office to consult with. And Cabinet Office not being the body that deals with individual applications, this body would have nothing to do with individual applications. So park all of those comments to one side because they are totally irrelevant as to what we are discussing here: this is about planning policy not planning applications.

1975 Flicking back through some of the previous things that have been done on planning: there was a Select Committee a little while ago – 2016, I think it was, chaired by none other than the Hon. Member for Douglas East himself – looking into potential reforms to the planning system – (**Mr Thomas:** Central.) sorry, Douglas Central – things that could be made to make the system better. One of their recommendations in that report was to introduce:

... a mechanism to allow for the adaptation or re-interpretation of policies, ... which may include consultation with a body established under Section 40 of the [*Town and Country Planning*] 1999 Act

1980 So it is clear that in the Committee that Mr Thomas himself chaired he saw value in having a Committee of this nature.

1985 The previous Minister for the Environment, Mr Gawne, also made clear statements to Tynwald that such a body would be established to assist in any ongoing planning reviews. It has just never happened. But it seems to be a consistent message that not only do the wider public feel that a consultative body of this nature is going to be of benefit, but actually a succession of Government Ministers and Select Committees have all come up with the same conclusion that actually this kind of body seems to make sense, it seems to be the right thing to do and actually would be workable and would provide benefit, otherwise at some point somebody in the past throughout all these previous reviews and reiterations would have recommended we get rid of it.

1990 This is the first time as far as I can see that anyone is recommending making this an optional body, and even then we are not talking about not doing it. My understanding is it is still the aim of the Cabinet Office to possibly bring this in at some point in the future.

1995 Everyone is still talking about, 'We are going to do this anyway', so it does not make any sense at all to say, 'Well, let's make it optional'. Actually, we have got an Act, we have got something that has been in law for quite some time and I really am struggling to wrap my head around why we have a series of recommendations over the years saying we should make use of the body like this and it has just never been done.

2000 So to my mind, the right thing to do is to say we have a law that generally everyone thinks is the right law. So instead of changing the law, because Government finds it difficult to deal with something as complex as this, just get on with it and just do it properly.

2005 So to that end, Mr Speaker, I will be supporting Mr Shimmins' amendment to this clause and if it should fail I will be voting against the original clause to change the wording as it stands. Thank you.

The Speaker: Mr Boot.

Mr Boot: Thank you, Mr Speaker.

2010 Mr Shimmins, Hon. Member for Middle, castigated me some time ago for not forming a section 40 body and in fact I was almost accused of a dereliction of duty. Then it transpired that it was not a DEFA function but actually a Cabinet Office function, when I looked into this more thoroughly. It has been there for 20 years and successive administrations have never brought it in and I think there is a rationale behind that.

2015 I think Mr Baker articulated that very well from a planning perspective. It is all very well talking about public consultation, and somehow the environment gets dragged into this when in fact it was a more collegiate approach in terms of the body that was going to be formed. But let's look at the planning process as it stands at the moment from an operational perspective.

2020 We have many tests, checks and balances and during the planning process prior to a decision being made we engage with many people and many bodies, individuals and organisations. That is how it should be and they are all taken into consideration when decisions are made. If I look at the number of organisations that we interact with, as a Department, let alone other Departments, who would sit on this body with the wide-ranging remit that is suggested?

2025 I know from our perspective just dealing with some of the environmental bodies, they come in with very differing opinions and very different approaches. I believe that would impose an unnecessary layer of consultative bureaucracy in a process that is well established. I am not sure of any other jurisdiction where they have another body other than the Planning Committee that considers matters in the round. I think that this would be a very difficult thing to administer.

I mean, okay, we have got an idea of what it might advise on: when would it advise? Would it be purely on policy? Would it be on operational matters? Would it be on individual applications?

2030 I am not convinced that there is a good rationale for such a body being formed. Consequently, I think the option that we have that has been consulted on, where we leave 'may' in – because never say no – there might be a situation in the future when such a body might be useful. But certainly at the moment from my perspective, operationally, I do not see it.

2035 We have just gone through a consultation process and there was no appetite to remove this, but at the same time I did not really see any appetite to change the emphasis not to make it a statutory requirement. So I am going to oppose the amendment by Mr Shimmins and I think we should keep some flexibility and leave the word as 'may' rather than 'required to'.

Thank you, Mr Speaker.

2040 **The Speaker:** Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2045 I just rise to my feet because actually technically when you look at the clause it talks about, 'require the relevant Department in exercising functions under this Act,' so it impacts all functions under this Act. So it impacts, as I read it, not just the Cabinet Office but across the board.

The Speaker: Mr Peake.

2050 **Mr Peake:** Thank you, Mr Speaker.

2055 I think it is quite interesting to see how we can try and change what we actually want to do now by what has not been done in the past. It is quite disappointing to hear that we are trying to make things easy because we have never actually done it. I think the principles were actually laid out a number of years ago and it is a great shame that there has not been any perhaps effort in understanding what it should be, what we should be actually delivering.

So I do commend Mr Shimmins for bringing this forward now. I think it is just a small point but I think it is an important point and something actually, that if you have a clear vision, you could work together to achieve that. That is what we should be doing.

So I will support this amendment.

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The Speaker: I call Mr Shimmins to reply to the debate around his amendment.

Mr Shimmins: Thank you very much, Mr Speaker.

I am grateful for everyone who has engaged on this amendment.

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I am grateful for the remarks made by Mr Peake in terms of just because something is difficult does not mean that we should shy away from it, because it will bring benefits.

If I look at the main remarks which were made by Mr Baker, Mr Hooper and Mr Boot, there was some commonality, so rather than go through each one perhaps if I can look at the issues that were raised.

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I guess the first issue was, 'Is it a recipe for mayhem?' were the words that Mr Baker used. Absolutely not, in my view. Mr Hooper very helpfully clarified that this is about policy, it is not about individual planning applications and I would ask you really to disregard those comments made by Mr Baker.

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Mr Hooper also pointed out today that this is about engaging key stakeholders and it is really important, as we look to plan and develop our Island that that engagement actually happens. Yes, there will be a divergence of views; as Mr Baker said, they are never going to agree. 'You have got to cast the thousands,' I think was the phrase he used. I absolutely suggest that should not be the case.

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This was touched on again by Mr Boot who said, 'We have got so many organisations. How will you manage that kind of diversity of views across these different organisations?' I think that is a very doable thing. If we look, and I have just written down, how you could represent wide views; so Manx National Heritage could sit on this consultative body. They already look at our historic buildings and heritage; that is one of their statutory functions. So of course you would involve them. I would suggest that the Chamber of Commerce may have a role because they are the largest representative group for our economy. If we look at local authorities they have a clear view on various planning issues, so perhaps one of the larger local authorities which could rotate. You would have representatives from each sector. Of course you would not have hundreds or thousands of people. I mean that is a nonsense that someone would suggest that, Hon. Members.

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You would also look to involve the construction sector because they have got a key role in this as well, because development needs to be economically viable, so they can explain. But only by having engagement and having discussion do you get workable policy. Choosing to ignore these things is not a constructive way forward.

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So please, let's not obfuscate the issue. There are lots of organisations, even in the environmental sphere, which is not what this is all about. There was a suggestion from Mr Baker it was an environmental committee. I made it very clear, Hon. Members, that we would consider ... as the Act says, environment issues are point (a), but (b) the economy of the Island and (c) planning of development.

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In the environmental sector there is one umbrella organisation, the Manx Wildlife Trust. They would be an ideal candidate to sit on this consultative body, I would suggest. So please let's not confuse the issue. Let's see the value that this committee, this consultative body would provide. It would help the Cabinet Office formulate policy; it would not be mayhem! It would be supportive.

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Mr Boot highlighted that in section 40 the consultative body is not the responsibility of DEFA, it is the Cabinet Office. I thank him for clarifying that and I wish to apologise if he felt that I castigated him. It was more borne out of frustration following the removal of interested party status from the Island-wide environmental bodies; the recent change that DEFA did make, which

has inflamed this issue as people look to see, 'Well, how can we engage? How will our views be taken on board?' This is part of a trend that people are seeing.

2110 So what I would suggest, Hon. Members, is this provides an opportunity to say this is not a trend, this is actually a constructive, sensible body that takes on board everybody's views. I do believe it will be a collegiate and a responsible organisation and I would remind Hon. Members the Act has said, 'Set up this consultative body,' since 1999; we have not done that. This is an opportunity to ensure that we now step up to our obligations and engage with other people in

2115 the planning process – important stakeholders who will add value to the planning of our Island.

Thank you.

The Speaker: I call on Mr Thomas to reply to the debate on the clause.

2120 **Mr Thomas:** Thank you, Mr Speaker.

Just a few factual points. There was a consultation on this Bill. Bullet point 5 was about this section 40 committee and the responses, as reported, were that *some* respondents commented that at present the statutory obligation to have a consultative body under section 40 was not being observed. Caution was expressed by some, particularly organisations involved with

2125 heritage and conservation, about accepting this failure and changing the legal position by transforming the statutory obligation into an option.

An alternative was proposed by one person to have Manx National Heritage, Manx Wildlife Trust, Director of Public Health etc. as a statutory consultee. So there is an alternative, but the main point is, though it was asserted, there was not any consultation about this point and there

2130 clearly was.

The second point I wanted to bring to people's attention is the debates that happened in the 1990s at the Second Reading, at clauses stage, when this section 40 was going through. It was pretty uncontroversial and at the time there were two major issues.

The first one was the body that existed at that time ADCO, as it was called, was felt not to be representative. Basically, there were lots of bodies like Manx National Heritage, Manx Wildlife Trust and lots of other bodies probably, who did not feel that the established section 40 committee in its previous guise, ADCO, was actually representative of them. So therefore this was a compromise to deal with a transition out of making it a statutory consultee, because anybody ends up having a life and a view of its own which is not necessarily of the organisations

2135 that represent it.

The second point was that some rather grand aspirations for this body have been alleged which were not in the legislators' minds according to *Hansard* when this body was proposed. So this body was never proposed as being anything to do with the planning application and decision-making process; it was never proposed as anything to do with the strategic plan, development plan process. It was proposed as a body that could be consulted on regulations and orders, bringing people together.

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I remind this Hon. House that that is what we do, we do have stakeholder engagement and we do get in touch with all of the bodies about regulations and about national policy directives; and I remind this Hon. House that in 1999 when this Act was put together we did not actually have the Council of Ministers policy on consultations and we did not have the new refined policy on stakeholder engagement and early intervention with people about legislation and regulations. That all came after 1999. So there was a whole bunch of legislation in the 1990s that set up this type of body and I suggest to this Hon. House that in actual fact it has been replaced by the new Government policies and the new public servant policies of actively engaging early about regulations and orders and policies emerging from major policy shifts with stakeholders around the community.

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The other piece of development in the last 20 years that I want to remind people about is the 2015 decision of the other place upstairs to make a bonfire of committees. It was actually me who took that motion to Tynwald and what we said was we needed to have an investigation of

2160 all of the public money that was being spent on these types of bodies, to review the purpose, to review the status of the law, to actually see what bodies we needed and what bodies we did not need, in the light of the fact that Tynwald processes developed substantially, with scrutiny committees, policy review committees, in the light of the fact that consultation and stakeholder engagement had developed substantially.

2165 We are just about to conclude that work – Cabinet Office Members know that – and we have a whole bunch of bodies that currently do exist in statute that we are raising questions about whether they need to continue to exist, given everything that has gone on around them during the last 20 or so years. In that era we set up the Education Council, the Health Services Consultative Committee, the Police Consultative Forum. There are lots of bodies that were set
2170 up and in each of your Departments questions have been asked and raised about those various bodies. Those questions and points that have been made are relevant here.

In closing, absolutely, we need to engage everybody on national policy directives. Absolutely, we need to engage people at an early stage on community infrastructure levy. Absolutely, we need to use all of the means available to us to engage with the Chamber of Commerce, the
2175 Construction Forum, environmental groups, heritage groups, to make sure that we get the best policy and the best law to help us make the best policy decisions.

Absolutely, this body is not involved in planning applications. We have a separate process for that. Absolutely, it is not involved in the Area Plan for the East process and subsequent statutory
2180 bodies. It could have a role, I accept, in terms of these things but do we need it? Should we not learn from our predecessors in the 1990s and subsequently about how there are alternative ways of doing this?

With that, Mr Speaker, Hon. Members, I beg to move that Mr Shimmins' helpful amendment – because it has brought to light some of these issues – is rejected and that the motion unamended is supported. And ... that is that. *(Laughter)*

2185 **The Speaker:** Putting to Hon. Members first, amendment number 14 in the name of Mr Shimmins: those in favour, please say aye; those against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Miss Bettison
Mrs Caine
Mr Hooper
Mr Peake
Mr Shimmins

AGAINST

Dr Allinson
Mr Ashford
Mr Baker
Mr Boot
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Moorhouse
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: With 5 for, and 17 against. The noes have it. The noes have it.

2190 That clause 15, as written, stand part of the Bill: those in favour, please say aye; against, no. The ayes have it.

Voting on clause 15, as printed.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mr Boot
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Moorhouse
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Miss Bettison
Mrs Caine
Mr Hooper
Mr Peake
Mr Shimmins

The Speaker: With 17 for and 5 against. The ayes have it. The ayes have it.
Clauses 16 and 17, Mr Thomas.

2195 **Mr Thomas:** Thank you, Mr Speaker.

With your permission, I intend to move clauses 16 and 17 together.

Clause 16 amends section 45 of the Town and Country Planning Act 1999 by inserting a definition of the term 'general importance'. The amendment would remove the words 'general importance' which fits better with the format of the 1999 Act.

2200 Clause 17 amends the Town and Country Planning Act 1999 by inserting a new section 45A 'General importance'. The new section 45A sets out a test to determine if a matter in an application for planning approval *is* of general importance. It is a cumulative test – and it has lots of 'ands' in it.

2205 Additionally, the power is granted in this clause to the Council of Ministers to issue guidance about the meanings of terms pertinent to the new section 45A(1). These may be revised from time to time and any such guidance must be documented and published in an appropriate and available manner.

2210 Clause 17 also allows for the Council of Ministers to make an order to amend section 45A(1) and to make further provision, or amend or repeal existing, about considerations within that subsection (1).

Mr Speaker I beg to move that clauses 16 and 17 stand part of the Bill.

The Speaker: Mr Boot.

2215 **Mr Boot:** I beg to second and reserve my remarks.

The Speaker: Now, amendment 15 to clause 16 in the name of Mr Baker, please.

Mr Baker: Thank you, Mr Speaker.

2220 This again is another one of the minor stylistic changes as seen in the two previous amendments 10 and 13, reflecting changes in drafting since the original Bill was enacted

Whilst I am on my feet if I may, Mr Speaker, I would just to clarify the point made by the hon. mover about the clauses being cumulative within section 17 because when I first saw the Bill I was quite concerned until I understood that those clauses were cumulative, and that if they

2225 were not it would potentially mean a huge raft of planning applications going to Council of Ministers. That is not the case because they are cumulative considerations.

So I am happy to support the clause on that basis.

Amendment to clause 16

15. On lines 31 and 32 of page 18, omit '(general importance)'.

The Speaker: Mr Hooper.

2230 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second the amendment.

The Speaker: I call on Mr Thomas to reply.

2235 **Mr Thomas:** An eminently sensible amendment and I beg to move.

The Speaker: Thank you very much.

Putting, then, the sensible amendment in the name of Mr Baker first. *(Laughter)* Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2240 Clauses 16 and 17 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, Mr Thomas, clause 18.

Mr Thomas: Thank you, Mr Speaker.

2245 Clause 18 makes consequential amendments to section 44 of the Town and Country Planning Act 1999 which sets out the Tynwald procedure relevant to orders and regulations under the Act, so as to include references to the new Orders provided for in the Bill.

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

2250 **The Speaker:** Mr Boot.

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

The Speaker: Amendments 16 and 17 in the name of Mr Baker.

2255 **Mr Baker:** Thank you, Mr Speaker.

Amendment 16, just the cross-reference to ensure that any changes to the national policy directive requirements need to be approved by Tynwald Court. The need for that amendment reflects the more comprehensive requirements around national policy directives which result from my earlier amendments.

2260 Amendment 17 makes specific requirements for each national policy directive to be laid before Tynwald and then to be approved by Tynwald Court before they come into operation, which clearly ensures there is proper and appropriate scrutiny around this important matter. Thank you, Mr Speaker.

Amendments to clause 18

16. In line 15 of page 20, for '2A', substitute «2A(10)».

17. After line 19 of page 20, insert —
«(c) after subsection (3), insert —

(4) An order under section 2A(1) may not come into operation unless a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.».

2265 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second both amendments 16 and 17.

2270 **The Speaker:** Thank you very much.
If no other Member wishes to speak, Mr Thomas to reply.

Mr Thomas: Thank you very much, Mr Speaker.
I support the amendments. This gives the *gravitas*, the seriousness to this whole issue. We are changing planning law and it is right that Tynwald considers it properly.
I beg to move.

The Speaker: Putting first amendments number 16 and 17 in the name of Mr Baker. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
2280 Putting clause 18, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Town and Country Planning (Amendment) Bill 2019 clauses stage, and indeed the business on the Order Paper.

Hon. Members, we now stand adjourned until 2nd April, 10 o'clock in our own Chamber.

The House adjourned at 12.27 p.m.