



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 5th November 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);
Mrs C L Barber 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 and Ms J M Edge (Onchan);
Dr A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Secretary of the House.

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House of Keys

The House met at 10 a.m.

[MR SPEAKER *in the Chair*]

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

Members: 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 has been granted this morning to Mrs Beecroft.

1. Questions for Oral Answer

TREASURY

1.1. Final Expenditure Revenue Sharing Agreement (FERSA) – Progress

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

If he will provide a statement in respect of progress related to Final Expenditure Revenue Sharing Agreement (FERSA)?

The Speaker: We turn to Questions for Oral Answer and Question 1 is in the hands of the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

10

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Treasury Minister if he will provide a statement in respect of progress related to Final Expenditure Revenue Sharing Agreement (FERSA)?

15

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

The Minister for the Treasury (Mr Cannan): Mr Speaker, the Final Expenditure Revenue Sharing Agreement between the Isle of Man and the UK outlines the method of calculation of the Island's share of VAT and shared duties. In accordance with the agreement, the Isle of Man Government must undertake surveys every five years to determine as accurately as possible the amount of VAT that is generated by Island residents, businesses and Government.

The first survey period was 2013-14. The next survey period is 2018-19.

The surveys for 2018-19 have now been completed and the findings are in the process of being analysed and agreed with the UK.

The Speaker: Supplementary question, Mr Moorhouse.

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

When are negotiations expected to conclude, and is it possible the timetable could be affected by a change of government in the UK?

The Speaker: Treasury Minister.

The Minister: Mr Speaker, I outlined in my last Budget that I very much hoped and intended that negotiations would be concluded by the time of the next Budget in February 2020. And, in short, yes, there is a possibility that negotiations could be impacted and affected by events in the UK.

HOME AFFAIRS

1.2. Visiting cruise ships – Licensing laws

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Home Affairs:

What licensing laws apply to visiting cruise ships?

The Speaker: Question 2 and I call on the Hon. Member for Onchan, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

I would like to ask the Minister for Home Affairs what licensing laws apply to visiting cruise ships?

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

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

I do not normally like answering such short Questions but the simple answer is: no Manx licensing laws apply to cruise ships visiting the Isle of Man.

The Speaker: Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

I am sure the Minister is very aware of the Licensing Act 1995 with regard to liquor licensing, and also the Casino Act 1986 'Temporary' under section 12A, subsection (4) includes the Island's territorial waters, as does the liquor licensing.

55 Therefore, I am just wondering why they do not apply to visiting cruise ships when both of these Acts apply to the territorial waters?

The Speaker: Minister to reply.

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

My understanding was at the time we really did not have any cruise liners coming to the Island so they were not incorporated within the Act.

We have double checked with the Attorney General's office this week and I can reassure her from my answer, Mr Speaker, at present there are no licensing laws applying to cruise ships. Of course we are revisiting the whole Licensing Act at the moment and hopefully by the end of this year we will be submitting – well, early in the next year – consultation on the new Acts.

65 So maybe the Hon. Member, if she has an issue with regard to cruise liners, would like to make her points known at the time.

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

Dr Allinson: Thank you, Mr Speaker.

Would the Minister agree that there is a big difference between cruise liners and other passenger ferries that may be going backwards and forwards to the Island?

75

The Speaker: Minister to reply.

The Minister: Yes, Mr Speaker, I can confirm that.

The major difference with the licensing is that companies like the Isle of Man Steam Packet drop passengers off and then they take new passengers on. Cruise liners come into port and hopefully leave with the same passengers that they arrived with. *(Laughter)* So, in that case they do not fall under the Act.

The Speaker: Supplementary question, Ms Edge.

85

Ms Edge: Thank you, Mr Speaker.

It is quite clear in the Licensing Act it says 'a passenger vessel licence'. So I think that does apply to cruise ships because they are holding passengers. But I am quite happy to meet with the Minister with regard to this.

90 But the aim of this question – and I hope the Minister agrees with me – is to ensure that there is no loss of the economic benefit to any businesses on the Island. But, possibly, could I put a vessel out in the bay this weekend and have a drinks party on it or a casino on it? And you are telling me there would be no licensing law that would apply to me?

I think it is important, and anybody who has ever travelled on a cruise ship is very aware that if you go into other jurisdictions all of these facilities close down once you get into territorial waters.

95 So I hope the Minister will take on board that this does need looking at.

The Speaker: Minister.

100

The Minister: Mr Speaker, I am quite happy, as I say, to look at it while we are renewing the Act. But certainly cruise ships in the bay you would be picking up passengers *from* the Island and you would be bringing them back *to* the Island so they would fall underneath the present Act.

105 The complete difference with a cruise liner is they come from a different port, they do not leave their passengers on the Island and they take the same passengers back again. And, as I said before, Mr Speaker, that is why they do not fall under the present Act.

But I am quite happy to talk to the Hon. Member if she has concerns.

110 With regard to the local company that runs the shipping company in the Isle of Man, if they wanted to apply for a liquor licence within the three-mile limit of the Island they are quite entitled to do so. But they have chosen not to because they did not like the restrictions that were being put on.

The Speaker: Supplementary question, Ms Edge.

115 **Ms Edge:** Thank you, Mr Speaker.

From what the Minister has just said, people can apply for it: therefore, are the cruise ships applying for these licences when they are in our waters? To me there is no difference whether it is our own vessel travelling off the Island and back, these cruise ships are coming to the Island and they possibly are serving liquor and they are possibly doing gambling activities under the Casino Act. So therefore I would like the Minister to respond to that.

120

The Speaker: Minister to reply.

125 **The Minister:** Mr Speaker, what I was saying was, if anybody wants to do 'cruise boozes' around the Island they could apply but they would be a local company operating out of one of the local ports.

Cruise liners do not operate out of any local ports on the Island and that is why they do not fall under the Act.

130 We have gone to great lengths this week with the Attorney General's office to have the Act completely scrutinised to make sure that what I am telling you today is absolutely spot on; and that information comes from the Attorney General's office, Mr Speaker.

135 **The Speaker:** The Minister has reminded me of the story of the Isle of Man Steam Packet vessel that was picking troops off the beach at Dunkirk. A soldier went down to the bar and asked for a beer and was told that he could have a beer but not until he got outside the three-mile limit! *(Laughter)*

Item 2, Questions for Written Answer and those will be circulated in the usual manner.

2. Questions for Written Answer

EDUCATION, SPORT AND CULTURE

2.1. Villa Gaiety complex – Bookings policy and details for last three years

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

What his Department's policy is in relation to the taking of bookings within the Villa Gaiety complex; for which dates and times bookings were held for the Royal Hall and Gaiety stage on each day in the last three years; what groups of customers have benefited from a reduction in booking rates; and how many bookings have been turned down in each of the last three years?

The Minister for Education, Sport and Culture (Mr Cregeen): As the Villa Gaiety complex is a publicly owned building anyone can book to use its facilities; however each potential booking needs to be assessed against certain criteria before it can be accepted.

The venue as a whole takes two types of bookings. There are ticketed events comprising private hire events or Department's organised events and there are non-ticketed events for example, conferences or social and community events.

Once the events enquiry has been received, the VillaGaiety management team assess the application on the basis of the following criteria:

- Dates available;
- Content of the event;
- Similar events booked on adjacent dates;
- Company profile;
- Previous and background research from other venues;
- Venue and event logistics including set up, transport, catering and technical to ensure it is deliverable within the venues ability and resources.

The VillaGaiety is currently experiencing the busiest programme that it has ever had which is of course great news for both the Department and our community but it has meant that we have had to review the programme of events to ensure that we have a varied programme that appeals to all the different audiences on the Island. This has led us to not booking too many of a particular type of act, for example tribute bands, so that we can accommodate some popular acts from top UK agents that are now seeing the Isle of Man as high calibre venue.

The VillaGaiety does not keep details of dates and times held for the Royal Hall and Gaiety stage. However we can confirm that for the 12 month period October 2018 to September 2019, the Villa Marina Royal Hall was occupied for 55.67% with the set up and running of events and shows based on 361 available days for bookings. For the same period at the Gaiety, the stage was occupied 65.5% of the year based on 363 available booking days. These percentages are calculated on occupied days that both the Gaiety and Villa stages were occupied for use i.e. set up, rehearsal, public events, tidy up post events and maintenance.

Customers who benefit from the one third reduction in room hire rates are Manx registered charities (who must provide their Manx registered charity number on the booking form), Government Departments, amateur drama/musical societies and community-based productions and events.

We do not keep records of how many events/shows that have been turned down, the most common reason for turn down is that the date requested is not available.

INFRASTRUCTURE

**2.2. 'Touch and go' aviation events –
Occurrence at Ronaldsway in past three years; service charge**

The Hon. Member for Douglas East (Mrs Barber) to ask the Minister for Infrastructure:

What is meant by the expression 'touch and go' in an aviation context; how many such events have occurred at Ronaldsway in the past three years and what records are kept of them; and what charge is levied for the service?

The Minister for Infrastructure (Mr Harmer): The expression 'touch and go' in an aviation context refers to a manoeuvre that involves an aircraft landing on a runway and immediately taking off again without coming to a stop in between.

175 'Touch and go' movements are recorded on the individual Daily ATC Movement Logs for IOM Airport but they are not recorded separately in the monthly/annual reports, which means that the required information cannot readily be obtained.

The charge for a 'touch and go' is 25% of a full landing fee, this being based on the maximum take-off weight of each individual aircraft.

MANX UTILITIES AUTHORITY

**2.3. MUA electricity accounts –
Customer credits and refunds**

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

How many customers have a credit on their electricity account; what the total amount of credit held by the Authority for customer credits is and how it is accounted for; how much interest has been credited on the Authority's bank account holding customer credits in each of the last three years; and how many customers have received a refund in each of the last three years?

180 **The Chairman of the Manx Utilities Authority (Dr Allinson):** The number of customers with credit balances on their electricity account, the total amount of credit held by the Authority, the number of customers receiving a refund and the total value of refunds over the last three years are as follows:

Date	Number of Customers	Number of Prepayment Customers	Total Amount of Credit	Value of Refunds During the Year	Number of Customers Refunded During the Year
31/03/2019	20,000	7,887	£4,405,248	£2,605,765	5,743
31/03/2018	20,016	7,827	£5,494,595	£2,164,083	5,645
31/03/2017	20,111	7,728	£6,736,793	£1,978,924	5,555

185 Credit balances arise on customer accounts for two main reasons. Firstly, prepayment customers have prepaid for their consumption and therefore generally have a credit balance on their account. A significant proportion of the number of customers with a credit balance therefore relates to prepayment customers and the total number of prepayment customers is

included above for information purposes. The above information has been extracted from financial information that is updated with prepayment billing information on a quarterly basis. 190 As such, the total credit balance is likely to be overstated for prepayment customers included in the total. A prepayment customer's meter will show the actual customer balance in real time.

Secondly, credit balances arise as Manx Utilities offers direct debit payment for electricity to allow customers to spread their quarterly invoices evenly over the course of the year. This involves agreeing a fixed monthly automatic payment amount that can help customers to 195 budget for their costs and makes the process of paying their invoices easier. The monthly direct debit amount is set based on an estimate of a customer's annual usage and are reviewed and adjusted by Manx Utilities staff, either periodically or where large credit or debit balances are identified. The total value of credit balances was increasing in recent years and so Manx Utilities has made changes to its processes to reduce the value of credits. The results of this can be seen 200 by the increased value of refunds and the reduction in the total value of credits.

Customer credit balances are accounted in the same manner for other amounts owed by Manx Utilities. Similarly, customer debit balances are accounted for in the same manner as for other amounts owed to Manx Utilities.

Customer credit balances are not held in segregated bank accounts and therefore no interest 205 has been credited to the Authority's bank account holding customer credits.

Order of the Day

3. BILL FOR FIRST READING

3.1. Registration of Business Names (Amendment) Bill 2019

The Speaker: Item 3, Bills for First Reading and I call on the Secretary.

The Secretary: Bill for First Reading: Registration of Business Names (Amendment) Bill 2019 – Member in charge, Mr Cannan.

4. CONSIDERATION OF COUNCIL AMENDMENTS

4.1. Communications Bill 2018 – Council amendments considered

Mr Malarkey to move.

210 **The Speaker:** Item 4, Consideration of Council Amendments. I call on the Hon. Member for Douglas South, Mr Malarkey to move.

Mr Malarkey: Thank you, Mr Speaker.

215 I start by thanking you for circulating the email yesterday to try and clarify what seems to be quite a complicated issue in front of us this morning, as to whether we are pressing a green button or red button, and how you would do it.

I also understand that we are going to do items 2 and 4 together, so I am going to start with that, Mr Speaker, as advised by yourself.

220 Before I start, and when I finish, I will emphasise that these are the recommendations of the Commission, of the board which I am relating now to the House. These are not my personal views they are that of the board and of the Commission.

Mr Speaker, the Commission has no objection to the majority of the amendments made in the Legislative Council. However, the Commission does not agree with the proposed amendment that puts in place a sunset clause in respect of political chairmanship.

225 Hon. Members, the Commission has consistently stated it is not opposed to change. I realise that there is an appetite for change. It is ready to implement any changes that are in the best interests of the Manx consumers and the industry as a whole.

230 The Commission asks Hon. Members to allow the appropriate time to consider any changes to its structure and the effect it might have, in an orderly and evidence-led manner and present the options to Tynwald for consideration.

The Commission believes that the proposed amendment skips straight to the answer of ‘no political Chair’ without anybody coming out with an alternative, but does not give any consideration of what the most appropriate governance structure should be, beyond stating that a new Chair will be appointed by the Appointments Commission.

235 While there is clearly some agreement amongst some regulated entities and associated lobby groups on the removal of the political Chair of the Commission, there is no evidence to suggest that there would be a consensus on the future structure of the Commission. To make any changes without exploring all available models for the future governance of the Commission

240 creates a risk that the most vocal groups could influence their industry's regulator in a way that is not in the best interests of consumers or the wider industry.

In Council, the Attorney General outlined that there is no structure universally acknowledged as best practice for National Regulatory Authorities, each jurisdiction adopts an approach that best suits its circumstances. There are three broad categories of governance structures: firstly, political, with a politician or senior civil servant as the chair of the board; second, organisations with an independent chair; and finally, organisations solely under executive management that do not have a board in a traditional sense.

250 We cannot overlook the fact that telecommunications is a key economic input that underpins strategically important sectors of the Island's economy. Without a properly functioning telecommunications market the Isle of Man would not be as attractive a prospect to sectors such as e-gaming and finance. The Commission is seeking to work with Government to pursue the ambitious aims in the Government's National Telecommunications Strategy, one of which is a recommendation that the Commission review its process and structures.

255 While there is an opportunity for change in the forthcoming consultation I would ask that Hon. Members take a long-term view and let the outcome of the consultation and the impact assessment guide them as to what is the most appropriate structure for the Commission.

It is acknowledged that one of the arguments for change put forward is that there is a risk of political influence on decisions made by the Commission. However, it should be pointed out in response to this that there is no evidence there has ever been any improper influence on the Commission's decisions.

260 Furthermore, there are sufficient safeguards in place that should provide sufficient protection until the consultation process on the structure of the Commission that was agreed in the National Telecommunications Strategy has been completed. The Commission operates on a one-member, one-vote basis and the Chair does not have a veto on any decisions made.

265 It is incumbent on the Commission to make its decisions in a transparent and objective manner. To that end the Commission publicly consults on key regulatory issues and as part of this process must show due regard to the impacts of the decision it intends to take. As such, there is no reason to prejudge the outcome of the consultation and we can allow time to consider all of the options in this very important decision.

270 I ask Members to allow the Commission to complete the process it has promised to undertake, in line with the National Telecoms Strategy, and give all stakeholders the opportunity to comment on all the options given in a formal evidence based way.

275 So I would ask, Members, that you agree with the Commission by pressing the green button this morning, which will agree that you allow the Commission to go and have the consultation, come back with some solutions and then have it debated in Tynwald when there are some other options on the table, and not just to suddenly come up today with a sunset clause and removing the political chair.

280 This is not the right direction to be going in. This is not the way we should be doing politics. We should allow the Commission to do its job which is what we have them there to do, and we should listen to their recommendations once they have gathered all the evidence, and we could actually have an open discussion on evidence-based procedure.

I beg to move that you accept the new changes to clauses 2 and 4. (*Interjections*) It is part 1 and part 4 –

285 **The Speaker:** I was hoping what you would do is move the motion in its totality at this point having introduced everything?

Mr Malarkey: Well, I have not introduced the other clauses, Mr Speaker, but I was going to do the other clauses separately. Yes? So we are moving –

290 **The Speaker:** Okay, so you are going to do it separately. That is not a problem. We will deal firstly, then, with 1 and 4.

Mr Malarkey: With 1 and 4 together, because 1 cannot move without 4, sir.

295 **The Speaker:** I had anticipated that we would do the debate as a whole but that is fine, we can do the debate just on this, that is not a problem.

Mr Malarkey: Well, if you want to do the debate as a whole –

300 **The Speaker:** No, no, I am happy either way. Let's continue on that basis, that is not a problem, Minister. *(Interjection by Mr Malarkey)*

So the motion you have moved is that the House disagrees with amendments 1 and 4?
(Mr Malarkey: Yes.)

I need a seconder to that motion. Dr Allinson.

305 **Dr Allinson:** Thank you, Mr Speaker. Happy to second.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

310 I will be voting against the Minister on these two amendments and I would just like to explain why, because I welcome the fact that the Legislative Council have scrutinised this legislation. And I also believe firmly in independent media and a free press.

I absolutely accept the assurances that the Minister has provided in terms of there is no evidence that there has been political interference. But for me, these amendments actually remove any scintilla of doubt that would be remaining that there would be political interference.

315 I am also aware there has been a consultation on this already and the Minister has asked us to take a long-term view. It does feel like we have been discussing this for quite some time already, so I think we are probably taking a long-term view. And I note that the amendment actually talks about: 'Not later than the third anniversary of the coming into operation of this section ...'. So that feels to me like quite a long term for the change to come into effect.

So I do not think that this is a knee jerk or an improper way. I think we have had a Bill that has been brought forward; there has been a debate; there have been further proposals put forward. It does not feel to me there is anything improper about this.

325 I accept that there is perhaps a difference of opinion on this, so I just wanted to explain why I would vote against the Minister on this occasion.

Thank you.

The Speaker: Hon. Member for Ramsey, Mr Hooper.

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

I am not going to rehash all the arguments that were made the last time this was debated here in this House. I do not think it is going to add anything if I do that.

335 I do challenge the Chairman's assertion that there is no internationally accepted standard for regulatory bodies being independent from political interference. I think it is quite clear that there is. The last consultation that was done asked this question and there were a number of responses in that consultation that stated as much, that it was unusual we had a political chairman of a regulator on the Isle of Man.

340 I think those consultation responses are still available on the Comms Commission website. It is quite clear that even the big players in industry who deal across international markets found that our unique setup was pretty much that – unique. It is very unusual in the

telecommunications space – in fact in any regulatory space – to have political interference in a regulator.

Equally, it is inappropriate and I think very unusual to have a regulator having the ability to undertake its own forms of political interference. We saw that in the Manx Radio debate with the Chairman of the Communications Commission tabling amendments to a motion regarding public service broadcasting, and that itself felt a little bit inappropriate.

I do not see this amendment that has been tabled by Council as actually providing any issues that does not stop the Communications Commission from consulting. It does not stop them from deciding what the best new, appropriate structure would be. The only thing it actually says is that the new Chairman shall not be a Member of Tynwald; that is it. And because it is three years, I think there is plenty of time. If it turns out throughout the consultation process that might not be the right solution – I cannot envisage any circumstance in which that would not be the right solution – but if that does come out of the consultation process they have got three years to table a very short amending Bill to change the law. It does not seem like a big problem to me.

One question I would like an answer to, actually, is the wording of the disagreement. So, under Standing Orders if this House disagrees with a Council amendment we can either just flat out disagree, which is what is being proposed, or we can disagree and ask for a conference and say, 'Let's try and find a resolution to this'.

Now, I am concerned that if this House does disagree with this amendment we are introducing hugely avoidable delays and we end up playing parliamentary ping-pong between us and Legislative Council. (*Interjection*) If they decide to stand their ground, my understanding is that it will be 15 months before this Bill can come back to this House for the Minister to attempt to take it through as a Keys-only Bill, which would require 17 votes. I am not convinced the Minister has 17 votes in this House to override this particular issue.

So my question really would be: is the Minister willing to risk causing this Bill becoming completely dead in the water over a point of principle that inevitably ... He has already said they are open to changing the structure, they are willing to consult, they are willing to do what actually both Branches of Tynwald, I think, broadly think is probably the right thing to do at some point in the near future.

So that is my question: why no conference? Why is he not trying to find a way of resolving this impasse rather than risking a minimum of a 15-month delay before this can become a Keys-only Bill? And perhaps an even longer delay if he cannot get the numbers in this House to force the Bill through.

It seems like a very risky strategy that does not seem to be based in any form of evidence. I would like a very good explanation from the Chairman of the Communications Commission as to why he thinks this issue is his die-in-the-ditch issue in respect of communications regulation?

Thank you, Mr Speaker.

A Member: Hear, hear.

The Speaker: Hon. Member for Douglas North, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Just pulling it back a bit, I think one of the important things to focus on is what the Commission themselves are saying. So not even the Chairman of the Commission here today, but the Commission themselves. What the Commission are saying is that their view has been the same the whole way along, that they need to look at the models, they need to decide what they want to do going forward and they are saying do not rush the fences on that.

Now, while I can understand what Mr Hooper is saying and he says you can bring forward an amending Bill if for whatever reason it changes, but what you are doing by passing this today, Mr Speaker, is you are giving an indication already to the Communications Commission of where

this House believes they should be prior to them actually having completed their review. And I think that we should not be doing that at this point in time.

395 The Commission may well come back after all the reviews and decide that there should not be a political chair and that there need to be changes. I believe that can be done via the secondary legislation rather than amendment to primary anyway. But I think it is important that we let them get on with the business in hand and let them review the processes.

400 I also want to just briefly speak about something that the Hon. Member for Ramsey, Mr Hooper has just mentioned about parliamentary ping-pong. I think it is important that we remember, Mr Speaker, this is not the first time that a form of this amendment has been discussed here by the elected House. This is now the *second* time.

405 I have got to say, Mr Speaker, if the House today rejected these two amendments from Council, but then Council – and this would be the *second* time of the elected House doing so, or something similar to – if the then unelected Chamber decided to try and hold up an important piece of legislation ...

Well, the Hon. Member Ramsey has actually mentioned the phrase ‘die in a ditch’ which is very popular politically. I would use the words ‘constitutional crisis’ which are very popular as well because you would then have the unelected Chamber (**Mr Malarkey:** Yes.) trying to overturn something that this elected House has not voted on once, but has voted on twice. And I think that would actually start setting a very dangerous parliamentary precedent, Mr Speaker.

So, yes, there is the ability for the unelected House to do that and it is enshrined there; but I think personally, if they are sensible, that is a battle they would not pick.

415 **The Speaker:** Mr Baker – just in time.

Mr Baker: Thank you, Mr Speaker.

I was perhaps expecting a few more people to speak.

420 I have reflected on this and in a couple of conversations this morning, and just listening to the debate, which I think is where one should conclude. Mr Hooper said it is unusual and it may be unusual but that does not make it wrong. Lots of things in the Isle of Man are unusual.

This Hon. House – and the Hon. Court of Tynwald – has the power to do what it thinks is right and in the best interests of the Island. So the fact that something is unusual and that other people do not do it does not make it wrong for me.

425 Reference to political inference, but there was an acknowledgment that actually there is no evidence of any political interference; and an argument that says, ‘We’ll, pass the law, do the consultation, and if the consultation gives something else then unpass the law again’, which is what Mr Hooper said – to me is not the right way around it. So I am struggling with that.

430 The other thing, just stepping right back from the discussion, what is being proposed in this amendment is to say that Tynwald Members cannot do this role. Well, Tynwald Members are elected by the people. If we do not have a Tynwald Member doing it we have an unelected person doing that. Is this a retired civil servant? Is this an industry expert? Who knows? But it certainly is not anybody who has got a mandate from the people.

435 So, looking around at other situations we have got other bodies around Government where there are challenges because there is not political accountability for their performance. I am not going to particularly mention any at this point, because this is a debate about the Communications Commission, but there are bodies where we have challenges and issues because there is not a level of political accountability. Whereas here, with the Chairman being a Tynwald Member there is political accountability – there is the ability to ask questions in this Hon. House and elsewhere.

440 So, actually, I do not quite get the extent of the concern. It is almost as though having a Tynwald Member is a problem. Well, yes, but these are people that have been elected by the people so our duty is to the people of the Island.

445 I think this is a complex mix, but actually I think are a lot of reasons why the *status quo* could be okay. But there is a process that the Hon. Minister has outlined, where the Communications Commissioner is going to review it. So, for me, I am going to give the benefit of doubt to the Communications Commission and let them take their time to actually review the situation and then let's see where we end up.

Thank you, Mr Speaker.

450

The Speaker: Hon. Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

455 Just a very brief point and the Clerk I am sure will jump up if I am incorrect. But the 15 months that has been mentioned by the Hon. Member for Ramsey begins when the Keys refer the Bill to the Legislative Council; so it is not 15 months from now, it is 15 months from March 2019. So, basically, Keys is looking at the opportunity if we go that way to come back between June and December 2020.

460

The Speaker: Mover to reply.

Mr Malarkey: Thank you, Mr Speaker.

This debate is always a bit of a hot potato. We have had it several times.

465 I would like to thank those who have made their comments – Mr Shimmins, I know your views have been quite firm on this, but the point is once you allow this to happen, there is not much point in carrying on and looking into it. The Commission's hands will be tied and the decision will be made for them.

470 Why do we have a Commission in that state then, if we are going to start taking the responsibilities? They are asking for time to look at the alternatives and to see if there are better alternatives to having a political chair. Clearly, as I said at the beginning, these are their words and this is what they want to do. I think we should actually respect that, Mr Speaker.

475 Mr Hooper, on a couple of points. Can I firstly say that the debate on Manx Radio was a parliamentary debate and I made it quite clear at the time I was not speaking on behalf of the Commission. Just because I was the Chair of the Commission I was quite entitled in my opinion, that the procedure that was being handled that day was totally wrong. So to start throwing the fact that I am Chair of the Commission and then I am not allowed to have a parliamentary debate in another place, I think is totally wrong, Mr Speaker. So I will carry on defending myself on that one. It had absolutely nothing to do with the fact that I was the Chair, it was me using nearly 12 years' experience in this place and another place that I thought the way things were being handled was incorrect.

480

So let's move on from that.

485 Mr Hooper also says it is quite unique us having the political head. Well, I have seen some of the figures that are already coming in from some of the consultations. There were some shown to me this week. Believe me, we are not unique being the only place with a political chair, there are other jurisdictions that do have political chairs.

490 And if you allow the Commission to do their job that evidence will come out in due course because this is what the Commission wants to do. They want to go out and find what is fact and what is fiction, and come back with some facts, so that you can make your own decision at a later date with help and guidance after they have done their research. And, if this gets held up, you are not allowing them to do their research.

Mr Hooper: If the Hon. Minister would give way just for one moment, if that is all right?

Mr Malarkey: Not particularly, no; you have had your say, Mr Hooper.

495 This debate has gone on long enough. I think Mr Ashford has summed it up absolutely perfectly. If today I am successful and we go along and we press the green button, we reject the Legislative Council's proposals, that will be twice this elected House have rejected it.

Now, who are the elected people around here? *We* are. Who are the ones who go knocking on doors day in, day out before an election to get elected to get into this Hon. House? *We* are.
500 The people in here.

So I am hoping that if we are successful today there will be a clear message sent up to the Legislative Council that this is the will of the House of Keys and you should respect it. And if they do not respect it I would find it very, very hard to have respect for them; (*Interjections*) because this Bill cannot afford to be held up.

505 You heard at the presentation about the telecommunications the other day that the Bill actually ties in with the work, the national telecoms strategy, that is going on at the moment.

So I beg you folks, please press your green button and please accept the recommendations of the Commission and let's please send a clear message to Legislative Council that this is the will of this House.

510 Thank you. I beg to move, Mr Speaker.

The Speaker: The question is that amendments 1 and 4 in the marshalled list be disagreed with. Those in favour, please say aye; against, no.

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

FOR

Mr Ashford
Dr Allinson
Mr Baker
Mr Boot
Mr Cannan
Mrs Corlett
Mr Cregeen
Ms Edge
Mr Harmer
Mr Malarkey
Mr Quayle
Mr Skelly
Mr Thomas

AGAINST

Mr Moorhouse
Mrs Barber
Mrs Caine
Mr Callister
Mr Hooper
Mr Peake
Mr Perkins
Mr Robertshaw
Mr Shimmins
Mr Speaker

515 **The Speaker:** There are 13 for, 10 against. The ayes have it. The ayes have it. Minister, amendment 2.

Mr Malarkey: Thank you, Mr Speaker.

Amendment 2 to clause 3, 'Interpretation'.

520 This amendment from the Council, for Mrs Sharpe, amends the definition of 'public service broadcaster' in order to allow for a change in the future for two or more licence holders to be specified as public service broadcasters. This introduces some necessary flexibility into the Bill. The Commission raises no objections to this amendment

I beg to move.

525 **Mr Cannan:** I beg to second and reserve my remarks.

The Speaker: Thank you, Mr Cannan.

I put the question that amendment number 2 be *agreed* to. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

530 Minister, are you taking 3, 5 and 8 together?

Mr Malarkey: I am indeed, Mr Speaker – 3, 5 and 8.

These amendments remove the specific requirement for Council of Ministers to consult in these cases, due to the fact that the amendment in Legislative Council to clause 152 introduced a general duty for Council of Ministers to consult licence holders and/or any other such person it considers appropriate when making regulations or orders under the Bill.

It introduces a consistent approach and the Commission has no objection to these amendments. (*Interjections*)

I beg to move 3, 5 and 8.

Dr Allinson: I am trying to beat the Treasury Minister, and I beg to second.

The Speaker: I put the motion that amendments 3, 5 and 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendment 6, Minister.

The Speaker: Amendment 6, clause 74, 'Universal Service Order'. This amendment has the same effect as the previous amendments in removing specific duty for the Council of Ministers to consult in this case as a general duty is introduced by the amendment at clause 152.

The Commission has no objection to this amendment.

I beg to move.

The Speaker: Dr Allinson.

Dr Allinson: I beg to second and reserve my remarks.

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

Amendment 7, Mr Malarkey.

Mr Malarkey: Amendment 7 to clause 81, 'Procedure for issuing determinations'.

This amendment introduced by Legislative Council merely adds 'confirming' to ensure that the sentence is clear so that it can be read as 'the Commission must publish a further notice ... *confirming* the identification of a market'. The Commission has no objection to this amendment.

The Speaker: Dr Allinson.

Dr Allinson: I beg to second and reserve my remarks.

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

And, finally, amendment 9, Mr Malarkey.

Mr Malarkey: Yes, Mr Speaker, finally, amendment 9 to clause 152, Statutory Documents. This amendment ensures that the Council of Ministers is required to consult before passing any order or regulations which puts Council of Ministers in the same position as the Communications Commission in requiring a consultation process and ensuring consistency of the approach.

The Commission has no objection to this amendment made by the Legislative Council.

I beg to move.

The Speaker: Dr Allinson.

Dr Allinson: Thank you very much.

I beg to second.

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

That concludes Consideration of Council Amendments; and amendments 1 and 4 – the Bill returns to Legislative Council.

5. BILL FOR SECOND READING

5.1. Income Tax Bill 2019 – Second Reading approved

Mr Cannan to move:

That the Income Tax Bill 2019 be read a second time.

590 **The Speaker:** Item 5, Bill for Second Reading, Income Tax Bill 2019 and I call on Mr Cannan to move.

Mr Cannan: Mr Speaker, Hon. Members, this short Bill confirms two temporary taxation orders and also makes an amendment to the Income Tax Act 1970.

595 Before I provide you with an outline of the Bill I would like to remind you of the temporary taxation order process. A temporary taxation order is used by the Treasury to amend and introduce primary Income Tax legislation. It is mainly used to react quickly to international changes or to introduce measures for the Budget. The order has the same power as primary statute and has immediate effect once approved by Tynwald. However, it will cease to have effect within 12 months of the day on which it was approved by Tynwald unless this House reads
600 a Bill confirming the order for a second time.

The first of the orders confirmed by this Bill fulfils a commitment made to the European Union in December 2017, to introduce legislation by December 2018 to address concerns about the lack of a requirement for companies in certain business sectors to have adequate substance in the Island. Although this began as a high-level commitment to satisfy the EU, it is important to
605 note that the OECD Forum on Harmful Tax Practices has now extended its remit to also review substance in low or only nominal tax jurisdictions. This has therefore quickly become an international standard.

To grow and support a strong and diverse economy, the Island must continue to be respected internationally as a well-regulated, transparent and co-operative jurisdiction. It is therefore
610 essential that the Island fulfils the commitments made in 2017 in order to prevent being blacklisted by the European Union and to meet the OECD standard.

The second of the orders confirmed by this Bill addresses the tax treatment of damages awarded by the High Court for future pecuniary loss in respect of personal injury where those damages are awarded in the form of periodical payments. This order amended the Income Tax
615 Act 1970 in order to remove periodical payments from liability to Income Tax when paid to specific individuals.

Finally, Mr Speaker, the Bill amends the 1970 Act to enable Treasury to make regulations for the recovery of foreign taxes. Article 27 of the United Kingdom and Isle of Man Double Taxation Agreement deals with the assistance in collection of taxes. This article is reciprocal and requires
620 each jurisdiction to assist the other in the collection of outstanding tax. However, legislation is required before we can actually assist in the collection of tax.

I beg to move the Second Reading.

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

625 **Mr Shimmins:** Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Mr Baker.

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

Just a question, really. I would be grateful for the Treasury Minister's clarification regarding the new arrangements in clause 3 where the Island is incurring expenditure and putting resources in which are estimated at around £200,000, according to the Treasury Minister's explanatory mechanism, in order to collect taxes for other jurisdictions.

635 Clearly we have a role, and relationships with other jurisdictions, but it looks here as though the Isle of Man taxpayer is effectively funding tax collection on behalf of other jurisdictions.

I would just like the Treasury Minister to provide a little bit more detail and background as to why we are doing that.

Thank you.

640

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

Mr Cannan: Thank you, Mr Speaker.

645 Yes, I thank the Hon. Member, Mr Baker, for his question and actually I did take time to study that in slightly more detail. What I can actually inform him and the Hon. House is that an amount of £200,000 has been allocated for this year's Budget. It was contained within the Budget, but it is for additional compliance support related to economic *substance* within the Income Tax Division and it is not allocated for the collection of foreign debt.

So just to make that point clear; but I do thank him for raising that issue.

650

The Speaker: I put the question that the Income Tax Bill 2019 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

6. CONSIDERATION OF CLAUSES

6.1. Public Sector Pensions (Amendment) Bill 2019 – Clauses considered

Mr Thomas to move.

The Speaker: We turn to Consideration of Clauses of the Public Sector Pensions (Amendment) Bill 2019, and I call on the Hon. Member for Douglas Central, Mr Thomas to move.

655

Mr Thomas: Thank you, Mr Speaker.

I would like to move clauses 1 and 2 together as they are introductory; however, I am happy to have them voted on separately, Mr Speaker, with your permission. (**The Speaker:** Agreed.)

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

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

665 I beg to move that clause 1 and clause 2 stand part of the Bill.

The Speaker: Mr Cannan.

Mr Cannan: I beg to second.

670

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.

675

Mr Thomas: Thank you, Mr Speaker.

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

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

680

The Speaker: Mr Cannan.

Mr Cannan: I beg to second.

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

Clause 4, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

690 Clause 4 repeals section 3(2)(a) of the Public Sector Pensions Act 2011. Section 3 sets out the specific public servants to which the Public Sector Pensions Act 2011 applies.

The amending clause as drafted revokes the section that states that the consent:

... [of the] (a) judges of the High Court (within the meaning of section 3(1) of the High Court Act 1991);
(b) the Attorney General and Her Majesty's Solicitor General for the Island;

– is required for the making of a superannuation scheme in respect of those persons. With the repeal of this provision such consent will not be required.

695 Mr Speaker, Hon. Members, Mr Harmer has tabled an amendment the effect of which is to insert a saving clause for the current members of the judiciary identified in the High Court Act 1991 and revoke the current clause for those individuals who are appointed to such posts once the Bill has been enacted.

Mr Speaker, I would like to confirm that I propose to support the amendment.

700

The Speaker: Mr Cannan.

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

The Speaker: Mr Harmer.

705

710 **Mr Harmer:** Mr Speaker, this amendment seeks to repeal section 3(2)(a) of the Public Sector Pensions Act 2011 as set out in the current draft Bill; but in addition also inserts a new saving provision in respect of existing members of judicial schemes. This amendment seeks to preserve this section of the Act which sets out that the consent of the judges of the High Court, within the meaning of section 3(1) of the High Court Act 1991, the Attorney General and the Solicitor General for the Island is required, for the making of the superannuation scheme in respect of

those persons. However, this amendment only applies to those who currently hold those positions.

715 With the repeal of provision 3(2)(a) such consent will not be required in respect of those individuals who are subsequently appointed to those positions in future. Therefore, this amendment inserts a saving provision in respect of those individuals who are appointed as a Judge of the High Court, within the meaning of section 3(1) of the High Court Act 1991, the Attorney General or the Solicitor General for the Island immediately before repeal of section 3(2)(a), and therefore their consent will still be required to amend their pension arrangements.

720 I beg to move the amendment to clause 4.

For page 8, lines 1-3 (the existing clause 4) substitute the following new clause —

«NC1 Consent to making schemes: section 3 amended and section 3A inserted

(1) Section 3(2)(a) (application) is repealed.

(2) After section 3 insert —

«3A Saving provision for existing members of judicial schemes

Despite the repeal of section 3(2)(a) (which required the consent of a person mentioned in section 3(1)(a) or (b) for schemes), the consent of a person mentioned in section 3(1)(a) or (b) (as appropriate) is required to amend a scheme where —

(a) the scheme was in existence immediately before the repeal of section 3(2)(a);

(b) at that time the person was a member of the scheme; and

(c) the amendment would adversely affect the rights of the person in question under the scheme.»».

The Speaker: Mr Ashford.

Mr Ashford: I beg to second and reserve my remarks, Mr Speaker.

725 **The Speaker:** Whilst there has been no debate, would Mr Thomas care to reply to the amendment?

Mr Thomas: As I said, I support the amendment, Mr Speaker and Hon. Members.

730 It is important that the will of the House of Keys is established in respect of this important matter; then this important matter can go to the Legislative Council and the Bill can make progress to becoming an Act. That will enable us to put in place the judicial scheme, as negotiated in the last few years, to bring this matter to a close and make a substantial contribution to public sector pension reform; but also, and absolutely fundamentally, respect the independence of the judiciary which is now enshrined in statute in this Island.

735 And quite importantly – very importantly, of absolutely paramount importance – is judicial independence in this.

The Speaker: I put first the amendment in the name of Mr Harmer. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

740 I put forward clause 4, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

745 Clause 5 amends section 4 of the Public Sector Pensions Act 2011. Section 4 provides the definitions of a number of the terms used within the Public Sector Pensions Act 2011.

Clause 5 amends section 4 to clarify the definition of ‘scheme’ to include superannuation provisions originally made by order or regulations before the Public Sector Pensions Act 2011

750 was in operation – such as Police Pension Regulations or Teachers’ Superannuation Order, which are treated as a scheme validly made under the 2011 Act.

This amendment enables the PSPA to make amending regulations and orders as well as schemes.

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

755 **The Speaker:** Mr Cannan.

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

760 **The Speaker:** I put the question that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 6, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

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

765 Section 6 sets out the specific functions of the new Public Sector Pensions Authority. The key roles are to manage, administer and maintain Public Sector Pension Schemes for which it is responsible, and so in accordance with the legislation that underpins those schemes.

770 Section 6(1)(c) sets out that the final decision on the approval of new or amending of existing schemes lies with Tynwald. However, it is considered that section 6(1)(c) is now superfluous given that the procedure for the making of the schemes’ orders and regulations is set out in detail in section 15 of the Public Sector Pensions Act 2011.

I am aware that clause 7 seeks to amend section 15 of the Act. However, whether or not clause 7 is approved, the omission of section 6(1)(c) is still considered to be appropriate.

775 Clause 6, firstly, omits section 6(1)(c). Clause 6 also inserts into section 6 of the Public Sector Pensions Act 2011, a new subsection (1A) and ties in with clause 5. This amendment clarifies that the Public Sector Pensions Authority is able to amend existing schemes which are treated as schemes made under the Public Sector Pensions Act 2011, but were originally made by orders or regulations, and therefore enables the PSPA to make amending orders or regulations rather than schemes.

780 I beg to move that clause 6 stand part of the Bill.

The Speaker: Mr Cannan.

Mr Cannan: Beg to second.

785 **The Speaker:** I put the question that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 7, Mr Thomas.

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

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

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

800 Clause 7 revises section 15 to provide a Tynwald procedure which is dependent upon the nature of the amendment with new schemes, orders or regulations; and those amendments that introduce substantial changes to the benefits and structures of schemes made under the Act

being subject to the affirmative procedure. However, those amendments that are considered to be administrative in nature would fall under the negative procedure.

805 I would like to assure Hon. Members that this amendment is not seeking to put in place a procedure that can be utilised to introduce any form of change by stealth, as was discussed in the helpful debate at the Second Reading. This amendment is seeking to reduce the burden upon Tynwald time in respect of changes to schemes which are purely administrative in nature.

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

The Speaker: Mr Cannan.

810

Mr Cannan: I beg to second.

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

815 Hon. Members, that concludes the consideration of the clauses of the Public Sector Pensions (Amendment) Bill 2019 and indeed the business of the House today. I commend you on your efficiency.

The House then stands adjourned until 10 o'clock on 12th November in our own Chamber.

The House adjourned at 10.53 a.m.