



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th April 2016

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J L M Quinn),
Mr D M Anderson, Mr M R Coleman, Mr C G Corkish MBE, Mr D C Cretney,
Hon. T M Crookall, Mr R W Henderson, Mr J R Turner and Mr T P Wild,
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Order of the Day

1. Marriage and Civil Partnership (Amendment) Bill 2016 – Third Reading approved

Mr Cretney to move:

That the Marriage and Civil Partnership (Amendment) Bill 2016 be now read a third time.

The President: Hon. Members, we are all present today and we start with the Marriage and Civil Partnership (Amendment) Bill for Third Reading.

I call on the Hon. Member, Mr Cretney.

10 **Mr Cretney:** Yes, can I thank Hon. Members for their support of the Marriage and Civil Partnership (Amendment) Bill 2016 to date; and those who have not supported, for the civilised way in which they have discussed this matter.

The last time we considered the Bill, the Lord Bishop sought further information, which, because of its detail, I arranged to be circulated in my absence from the Island yesterday. I trust that assists, but if I may add that the information basically shows that there is a complete range of possibilities across the countries in question: some now only have marriage for both opposite and same-sex couples; some have legal arrangements other than marriage available to both opposite-sex and same-sex couples; and some have, or have had in the past, an alternative to marriage that is or was only open to same-sex couples. In other words, the fact that under the Bill the Isle of Man will have both marriage and civil partnership open to opposite-sex couples and same-sex couples – parallel systems, as they might be described – is really not unusual.

Another point worthy of Members' consideration is the matter of the French *Pacte Civile de Solidarité*. This creates a relationship between two people of either gender and of any orientation,

25 which permits them to order their affairs as they wish and which is simply a legal contract between
them and dissoluble upon notice. Apparently, 94% of the *pactes* in existence in 2012 were between
heterosexual couples, according to the journal *Libération*. I trust this information assists.

I do not intend to go through again the matters enclosed in the Bill, but simply to beg to move
that the Marriage and Civil Partnership (Amendment) Bill 2016 be now read a third time and do
pass.

30

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.
I beg to second.

35

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

40 Likewise, I do not want to rehearse my arguments against ... the reasons why I am voting against
this Bill; simply to put on record that I respect other people have different opinions than myself but I
will be voting against the Bill.

The President: The Lord Bishop.

45

The Lord Bishop: Thank you, Madam President.

I have said before there is much in this Bill that we have before us that is good, not least the
tidying-up of a number of useful changes to existing marriage law. It is also a welcome opportunity
to think of a way forward that will benefit the whole of society, including the LGBTI community and
those who do not share their views.

50

The Bill is not about equality of status. If that were the issue it would easily be solved, but it is
not. The problem we are faced with as legislators is the human body and the nature of sexuality, not
matters of legal draftsmanship or political ingenuity. Wouldn't it be convenient if, with Royal Assent,
we could abolish all difference and distinction in sexuality. But we cannot, and to pretend otherwise
cannot be honest. Whether we are in favour of the Bill, against it or confused by it, talking about
equality of status simply confuses things: it is spin.

55

What is being asked for here is what is called 'equality of nomenclature – calling one thing the
same as something else. In this Bill we are being asked to judge whether a legally binding
heterosexual relationship has the same familial characteristics as a legally binding homosexual
relationship. In other words, are both of them marriage?

60

Let me return briefly to beverages. In a cup of tea and a cup of coffee, almost all of what is in
each cup is the same: hot water. But if you asked me for the cup of coffee, Madam President, and I
were to give you the cup of tea instead on the basis that both are beverages – drinks, like Bovril or a
gin and tonic – you would be able to tell the difference, even though the different constituent
flavours might amount to no more than 1% or 2% of what is in the two cups of hot water. The Bill is
akin to a Cups of Tea Bill that would make it legal for cups of tea to be called cups of coffee for those
who wish to call their tea 'coffee' because they think that being called a cup of tea is not equal to
being called a cup of coffee.

65

In the same way, equality of nomenclature – calling one thing the same thing as something else –
does no honour or respect to either party. The word 'marriage' and the concept that underlies it is
not a generalist term, unlike the word 'beverage'; if it were, we would not need the Bill. 'Marriage' is
a specific term with a particular meaning, the very essence of which we have assumed we can
change.

70

I do not sit here with any intent to judge or condemn committed and loving same-sex
relationships, but I am certain that legally binding same-sex and heterosexual relationships cannot
both be marriage.

75

During the passage of the Civil Partnership Bill on 26th October 2010, I made the point that I supported the principles of justice in the Bill, and I added:

I hear many calls for freedom, but freedom is not the only value to be prized. This constant appeal to freedom and to 'my rights' over 'my space' and 'my life' is too often deaf to the appeal of the other person's freedom and rights and space and life. The appeal to freedom works in both directions, or it cannot work at all.
The problem, as I read it,

– I said in 2010 –

is that the Bill

– then before us, the Civil Partnership Bill –

is not even-handed in its dispensation of justice and it awards rights to a minority, while being content to allow those rights to be denied to others, when I think it could put them right. In addition, it attempts to force our understanding of marriage into a new philosophical framework.

80 Schedule 1 of that Civil Partnership Bill revealed that it was focused on gay rights to the exclusion of the rights of many others in long-term partnership. I commented that:

it masquerades as the justice issue, when it is manifestly unjust to some people and it is a carefully placed stepping stone towards the ultimate goal of redefining marriage as the union of two persons, regardless of their sex. I am not alone in wishing to defend the boundaries of marriage as, in the definition of the state, the union of one man with one woman voluntarily entered into for life to the exclusion of all others.

In 2010 I described the Civil Partnership Bill as:

an inherited camel, a horse designed by a committee. Its aims are good, insofar as they go, but that is a long way short of good enough.

And I noted that:

since 1999 France has had a much simpler and more satisfactory solution,

– referred to by the proposer –

the *Pacte Civil de Solidarité* – PACS – a contract between two adults, whether they are of the same sex or of the opposite sex for a shared life together.

85 I still believe that would have been a better solution.

We were in such a hurry to keep in step with the UK, having already got five years behind, that we rejected the French solution. The Civil Partnership Act, as it now is, has 107 sections, 15 schedules – schedule 5 alone has 13 parts and 71 subsections – and here we are, proposing to pass a Bill that will make these civil partnerships available to heterosexual couples on the basis of minor amendments, made *not* during the consultation phase *nor* during drafting but while the Bill was passing through the House of Keys, following the advice of Mr Peter Tatchell, who has waged this campaign for many years.

90 On 9th November 2010, Mr Lowey, moving the Second Reading, said this:

we said, 'Thank you, Mr Tatchell, for your advice, but no thanks.' It is not what we want, it is not what the Island wants and we declined it.

He went on:

We were not very popular with Mr Tatchell, although he did welcome the fact that we were at least moving in his direction.

95 I believe this is the worst part of the Bill and an aspect we will live to regret.

So, now we know from this list ... And, incidentally, this list was not sent to me. This is the first time I have seen this; my colleague to my right has just given me a copy of it. I have no idea why I have not had one. We know from the list that across many countries they practise heterosexual marriage and same-sex civil partnerships: they have both. I do not see any evidence here that there are two duplicate sets of both sets of relationships. I may be wrong, because I have only had a moment to look at the list. I see the same situation as essentially applies in the United Kingdom. So I wonder, looking at this list very briefly, why more countries have not taken Mr Tatchell's advice to follow the line of having two duplicate sets of relationships, since it is supposedly so 'far-sighted', in his words. Why not? Because, I believe, it would be a train crash waiting to happen.

100
105 I remain convinced that the way I suggested to the Chief Minister several years ago, after the establishment of Civil Partnerships, would have been the sensible way forward, transforming civil partnership weddings from little more than signing a piece of paper into proper acts of mutual and lifelong commitment.

110 With a heavy heart, Madam President, I will vote against this Bill, because my colleagues have not persuaded me otherwise and because I am convinced that this Bill is a very well-intentioned mistake.

The President: The Hon. Member, Mr Corkish.

115 **Mr Corkish:** Thank you, Madam President.

For the sake of regularity, and as I will be voting against, I just wish to say that I spoke and expressed my views at the First Reading particularly with reference to the term 'marriage'. I will also not repeat the views expressed then but, like Mr Anderson and my Lord Bishop, will be voting against the Bill, and whilst respecting other people's views will trust that my views and those of very many in this Island are respected also.

The President: The mover to reply.

125 **Mr Cretney:** Yes, can I first of all acknowledge that I respect each of the opinions and views which have been again placed before this Chamber today. I think early on the Bishop indicated that sometimes friends disagree, and that is what we are going to do today.

I am not sure whether I picked up correctly, and I apologise if I did not pick this up correctly, but there was a suggestion that we might wish to seek by Royal Assent to abolish all differences in sexuality. I just wonder why would we want to do that. I want to live in an inclusive society; I do not want to live in a same, same, same society. So that challenged me somewhat.

130 In terms of the amendments Mr Singer moved in the House of Keys, they were legitimately passed. That is a process which is entirely legitimate and I believe it adds to the legislation.

135 Finally, I do not know why the Lord Bishop did not receive the list. The list was emailed – *(Interjection by Mr Anderson)* You didn't receive it either? **(Mr Anderson:** No.) Well, I can only apologise for in particular Members I would want to have read the list not receiving it. I hope others have received it and I can only apologise to those Members who have not, and again I do not know why that happened.

I would move that the Marriage and Civil Partnership (Amendment) Bill 2016 be now read a third time and do pass.

140 **The President:** Hon. Members, the motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Coleman
Mr Cretney
Mr Crookall
Mr Henderson
Mr Turner
Mr Wild

AGAINST

Mr Anderson
Mr Corkish
The Lord Bishop

The President: With 6 votes cast in favour and 3 votes against, Hon. Members, the motion therefore carries.

**2. Equality Bill 2016 –
Consideration of clauses commenced and adjourned**

145 **The President:** We turn again to the Equality Bill, this time to start on consideration of clauses. I invite the learned Acting Attorney General to start with clauses 1 to 4.

The Acting Attorney General: Thank you, Madam President.

150 **The President:** If I get wrong the grouping that you want to take, please advise me.

The Acting Attorney General: Very grateful.

As you have mentioned, Madam President, I intend today to move certain clauses of the Bill for Hon. Members' consideration.

155 I have divided the Bill into groups of some of the clauses in moving them for your approval. The groups have a common theme and dealing with them in this way is intended to facilitate debate. However, as I have already mentioned, I should emphasise that in doing this there is absolutely no intention of rushing through the Bill, or curtailing debate in any way. It is simply for the convenience of Hon. Members, and I, with the assistance of the officers who are present today, will be happy to
160 address any points about particular clauses within a group that Members may wish to discuss.

Madam President, as discussed at the Second Reading of the Bill, the intention, if you are content, is take the clauses in what might be called 'bite-sized chunks' over three sittings of Council. Today, I propose to move the clauses up to the end of part 4 of the Bill, along with the associated schedules.

165 Exceptionally, however, I will also move clause 167, and therefore schedule 24, as if it formed one of the opening provisions. Clause 167 is a drafting device which simply keeps the glossary of defined terms in the associated schedule at the very back of the Bill for the convenience of readers. As such, it is intimately linked with clauses 3 and 4, which deal with the bulk of the defined terms in the Bill.

170 Madam President, I would also advise, for your information and that of Hon. Members, depending on our progress today of course, I envisage moving parts 5 to 8 of the Bill and the associated schedules at the next sitting, and part 9 to the end Bill in two weeks' time.

So, dealing then with clauses 1 to 4, and clause 167 and schedule 24, clauses 1 to 4 form part 1 of the Bill and they are the Bill's opening provisions.

175 Clause 1 gives the short title that the Bill will have if it is passed and becomes an Act.

Clause 2 provides for the Bill's commencement.

Clause 3 deals with the general interpretation of words and phrases that are used in the Bill.

Clause 4 provides additional interpretation in respect of maternity leave.

180 Clause 167 gives effect to the glossary contained in schedule 24. As I said a few moments ago, it is intimately connected with clauses 3 and 4.

Madam President, I beg to move that clauses 1 to 4, and clause 167, and with that schedule 24, stand part of the Bill.

185 **The President:** The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.
I beg to second and reserve my remarks.

190 **The President:** The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you.

With your permission, Madam President, I would like to move the amendments to clause 3 and schedule 24 in my name together.

195 Each of these amendments is to correct a technological glitch that occurred when the Bill was finalised in printing, which resulted in a broken internal reference in respect of the term 'relevant officer'.

I beg to move the amendments to clause 3 and schedule 24 standing in my name:

Amendment to clause 3

Page 31, for line 12 substitute —

«“relevant officer” has the meaning given in section 100(1);».

Amendment to schedule 24

Page 270, for the entry in the table relating to “relevant officer” substitute —

<i>“relevant officer”</i>	<i>Section 100(1)</i>	<i>The whole Act.</i>
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The President: Do we have a seconder for the amendment?

200 **Mr Crookall:** I beg to second, Madam President, and reserve my remarks.

The President: If no Member wishes to speak to the clauses, I will move them separately ... Well, I will move them in groups. I will take clauses 1 and 2 first, and then clause 3 because of the amendment.

205 Clauses 1 and 2, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

210 Clause 3. I put first the amendment standing in the name of Mr Cretney, which is set out on page 3 of your Order Paper. The first amendment, to clause 3 ... We will be jumping around quite a bit today to deal with these amendments. Those in favour of the amendment to clause 3, please say aye; against, no. The amendment carries.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

215 Clause 167 and schedule 24, and to that we have an amendment in the name of Mr Cretney – the amendment to the schedule. I put to you the amendment, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you clause 167 and schedule 24 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We now move on to clauses 5 to 13.

220 **The Acting Attorney General:** Yes, thank you, Madam President.

Division 1 of part 2 of the Bill consists of clauses 5 to 13. These clauses establish the key concepts of the Bill – that is, the nine grounds, or protected characteristics, on which discrimination *may* be unlawful under the Bill.

225 Although I will come to it in more detail later as we work our way through the Bill, I would just like to stress that not all differences in treatment, between a person with a certain protected characteristic and a person who does not share that protected characteristic, will actually amount to unlawful discrimination.

230 As I mentioned at First Reading, a significant proportion of the Bill deals with the circumstances where such differences of treatment are not unlawful discrimination, either because they are specified exceptions or where different treatment can be justified as a proportionate means of achieving a legitimate aim.

Clause 5 lists the protected characteristics as follows: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

235 The following eight clauses – that is, clauses 6 to 13 inclusive – then provide additional explanation, where necessary, of these protected characteristics. With the exception of pregnancy and maternity, for which it is considered that no further explanation is needed, each protected characteristic has an explanatory clause linked to it.

240 In addition to the additional information in these clauses, clause 7, which concerns the protected characteristic of disability, gives effect to schedule 1 of the Bill.

245 Schedule 1 contains supplementary provision about disability, including a number of powers to make detailed secondary legislation and guidance about what is or is not to be considered a disability for the purposes of the Bill. The matters covered by schedule 1 include: the meaning of ‘impairment’, ‘long-term effects’ and ‘substantial adverse effects’; the effect of medical treatment and certain medical conditions which are deemed to constitute a disability; and the position where a person has a progressive medical condition.

This schedule very closely mirrors schedule 1 to the Equality Act 2010 of Parliament. As with that Act, it is envisaged that a number of enabling powers contained in it will be used.

250 It is perhaps worth mentioning that it is recognised that labelling a person as disabled can be a sensitive issue, and it may be that some people will interpret the Bill as doing just that. However, whilst, to a degree, this is unavoidable, it is not the purpose or intention of the Bill. The Bill is about identifying conditions, either physical or mental, which have a detrimental effect on a person’s ability to go about their daily lives in a way that many of us take for granted, and ensuring that steps are taken, where practical and reasonable, to minimise the social effects of those conditions.

255 Madam President, the only other clause in this group which I think may benefit from some additional explanation is clause 11, concerning the protected characteristic of religion or belief. Hon. Members will have noted that its scope is much broader than the world’s major religions. This is intentional, because the Bill has to be compliant with article 9 of the European Convention on Human Rights and with the established case law in respect of the rights under that article. That case law gives ‘religion or belief’ a very wide meaning.

265 As in the European Convention, the terms ‘religion’ and ‘belief’ are not defined in the Bill, but the clause specifically includes a lack of religion or belief. The Bill does not make any judgements about any particular religion or belief or lack thereof; it simply establishes a level playing field from which to start. That is that in general people should be treated equally, regardless of what their religion or beliefs may be.

270 It is important, though, to draw a distinction between the right to hold religious or other beliefs, which is absolute, and the right to manifest those beliefs, which may, in appropriate circumstances, be restricted in accordance with paragraph 2 of article 9 of the European Convention. As such, as with the other protected characteristics, there are exceptions to this general rule, which are dealt with later in the Bill.

Finally, Madam President, the criteria for determining what constitutes a philosophical belief are those set out in the Bill's explanatory notes, namely:

it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.

Madam President, I beg to move that clauses 5 to 13 do stand part of the Bill.

275 **The President:** Are you, at this stage, also moving the schedule, sir?

The Acting Attorney General: I am sorry – and, separately, schedule 1, yes, Madam President, please.

280 **The President:** The Hon. Member, Mr Coleman.

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

The President: The Lord Bishop.

285

The Lord Bishop: Thank you, Madam President.

I will be supporting this group of clauses. There is only one comment that I think needs to be made and that is that the concept of religion or belief that underlies this Bill differs from the concepts of other characteristics. Concepts of religion and belief are seen in this Bill as 'non-innate' – essentially, opt-in characteristics – whereas many of the others, that some people might regard as acquired characteristics and therefore non-innate, are treated as though they are innate. I cannot see that there is an answer to this, other than the fact that there is, it seems to me, a philosophical problem that lies behind the whole nature of understanding the nature of religious conviction.

290

295 **The President:** The mover to reply.

The Acting Attorney General: Yes, thank you, Madam President.

I thank the Lord Bishop for his support of these clauses and for his comments with reference to the protected characteristic of religion and belief, but perhaps it might be worthwhile reminding Hon. Members of article 9 of the Convention, which goes some way to, in part, addressing some of the points which the Lord Bishop has made. Article 9 reads:

300

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

It goes on:

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

It is on that premise that this protected characteristic is brought forward in the Bill.

I beg to move, Madam President, that those clauses do stand part of the Bill.

305

The President: The motion is that clauses 5 to 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I am not clear, sir: do you want to move the schedule separately? Do you want to speak to the schedule any further?

310

The Acting Attorney General: No, Madam President.

The President: You would be happy to move it now.

315

The Acting Attorney General: ... *[Inaudible]* put separately to Members, Madam President.

The President: Right. I put to you schedule 1, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

320

We move on now to division 2 of the Bill and we will take clauses 14 to 17 separately, I understand.

The Acting Attorney General: Yes, please, Madam President.

The President: We will commence with clause 14.

325

The Acting Attorney General: Thank you, Madam President.

Clause 14 clause defines 'direct discrimination' for the purposes of the Bill. Direct discrimination occurs where the reason for a person being treated less favourably than another is one of the protected characteristics listed in clause 5.

330

The definition is broad enough to cover cases where the less favourable treatment is because of the victim's association with someone who has the protected characteristic, or because the victim is wrongly thought to have the protected characteristic. This does not apply, however, where the protected characteristic is marriage and civil partnership.

335

So, for example, a person may be subject to direct discrimination on the grounds of disability because they are the carer for a disabled person. And a person could be the subject of direct discrimination on the grounds of religion or belief because they are wrongly believed to be, for example, a Muslim.

340

In addition, where the protected characteristic is age, treatment which would be direct discrimination is not unlawful if it can be shown to be a proportionate means of achieving a legitimate aim – thus permitting, for example, favourable treatment of young people or the elderly in cases where that is regarded as socially beneficial.

345

Madam President, this clause also confirms that more favourable treatment of a disabled person is not unlawful. This provision is necessary to prevent a person who is not disabled making a claim of direct discrimination when reasonable adjustments which are made because of a person's disability result in that person being treated more favourably in some respect than people who are not disabled.

350

This clause also provides that, in respect of the provision of goods and services, less favourable treatment of a woman because she is breastfeeding constitutes direct discrimination on the grounds of sex, and it ensures that men are not able to claim rights that apply to women due to pregnancy and childbirth.

Madam Present, I beg to move that clause 14 stand part of the Bill.

The President: Hon. Member, Mr Coleman.

355

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

360 **The Acting Attorney General:** Thank you, Madam President.

Clause 15 deals with the circumstances under which it may be possible for a person to claim direct discrimination on the grounds that he or she has a combination of two of the protected characteristics. For example, in the UK it has been argued that older female television presenters may be treated less favourably than older male presenters.

365 Madam President, I beg to move that clause 15 stand part of the Bill.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

370

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

375 I just thought I would ask a question on this, because it is quite interesting. The example given about the female television presenter was quite widely publicised, but having worked in broadcasting, television and radio –

Mr Cretney: You've got a good face for radio!

380 **Mr Tuner:** I've got a perfect face for radio – thank you to my colleague.

I just wonder how this will work in terms of the talent scouting that goes on, where, for example, some broadcasters will seek to recruit new ... what they call 'talent' in the industry, whereas a good voice is required for radio. There may be actors – they may be looking for certain people. There may be applicants who have a strong accent, which would previously not be suitable in certain parts of the country. So, for example, on Scottish radio stations you hear Scottish accents, in Ireland you hear Irish accents, but you also hear Irish accents on British radio. It is usually down to whoever is doing the choosing to see who has the best demo reel, whether that be for television or radio. And are we now getting to the stage where they cannot then discriminate because of somebody's voice or whether they look good on the screen? Because that is how television traditionally works. And it is not just female television presenters who have been passed over – there have been some very good male television presenters who have been put out to grass by the likes of the BBC.

390 So I just wonder whether this will go a tad far and prevent people who are scheduling, or choosing people for media roles ... to actually neutralise everything, which I think will be a really sad day. The whole thing about your audience is whether your listeners are going to like the person who is on the wireless or on the screen. And if the audience does not like them, then are the audience guilty of discrimination? Because ... it happens.

The President: The mover to reply.

400 **The Acting Attorney General:** Yes, thank you, Madam President.

I thank the Hon. Member, Mr Turner, for his question.

The answer is quite simple, to the extent that if a role, such as a broadcaster on television, had genuine occupational requirements, such as the ability to speak in such a way that was clear and comprehensible to an audience, and someone was discounted because they could not do that, then of course that is not one of the protected characteristics under the Bill.

405 If, however, a person who could speak clearly, if that was one of the matters which was under consideration, and then they were not given the role because of any of the protected characteristics – which is the issue of age and so on, disability, gender reassignment, as in the list in the back of the Bill – then of course it would be contrary to the Act.

410 If it was a genuine occupational characteristic that they had to be presentable to the audience, then again, provided in reaching that conclusion the protected characteristics were protected, of course it would be not unreasonable for someone recruiting to that role to apply that test.
I hope that is of some assistance to you.

415 **Mr Turner:** Thank you.

The President: The motion is, Hon. Members, that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

420 **The Acting Attorney General:** Yes, thank you, Madam President.

Clause 16 deals with the issue of discrimination arising from a disability. As I mentioned at First Reading, essentially this is when there is discrimination related to a consequence of a person's disability rather than on the grounds of the disability itself.

425 However, two important conditions apply to this provision. First, treatment which would otherwise be discrimination under this clause is not unlawful if it can be shown to be a proportionate means of achieving a legitimate aim. Secondly, if a person does not know or could not be reasonably expected to know that someone has a disability, the person cannot be liable under this provision.

430 Madam President, I beg to move that clause 16 stand part of the Bill.

The President: Mr Coleman.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

435

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

440 I think it is important in the operation of this Bill that employers are given the correct guidance here, because there is no doubt there are a whole raft of jobs where those doing them are required to have all their faculties for the safety of others. For example, I think in previous Bills we have looked at the likes of airline cabin crew: they are responsible for being able to act quickly in emergency situations and deal with them. The same as other examples of employers, maybe, who are asking for people where it might require heavy lifting. Somebody has to make a judgement, and
445 not everybody is going to be suitable for every job, so it is a question of what guidance employers are going to get when dealing with this. The other example would be that if it did require heavy lifting, you would not expect employers, in their duty of care, to be assigning jobs to pregnant women or people who may be of an older age.

450 I would hope that this is not going to be a bit of a minefield for employers, where they are going to be wrapped up in all sorts of action – I suspect it will be – when people really ... As any employer, you want the right person for the job, who is going to be able to perform the functions. Somebody has to make that judgement. An aggrieved party could obviously use this, and the employer is then going to have a lot of hoops to jump through to try and prove their case.

455 So whilst I think the intention is that this is to ensure everybody has opportunity, there has to be some sense here, in that not everybody is entitled to every job that they may not be suitable for, no matter how much they may like to do it. I just hope that there will be sufficient guidance here, because I can see this is yet another problem that employers are going to have to face – particularly small businesses. The amount of bureaucracy that small businesses have to go through, they could fall foul of this very easily, when their intentions are good, and it seems that this is the ... It is a bit
460 like the EU bureaucracy sweeping in – officialdom, rather than realism.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

465 Just following on from the Hon. Member Mr Turner's comments, can the mover maybe assure me that there will not be much difference to the present legislation in this area, in that employers now have guidance to do with discrimination in this area? My understanding is that guidance is there at present. Maybe he could confirm that.

470 **The President:** Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

475 Just a simple question to the mover, the Hon. Acting Attorney General. To me, all this feels down to common sense and can be justified by a commonsense and practical view about why you do not take on an individual into a specific role. This is in no way meant to be humorous, but if you take a football manager looking for a goalkeeper, you probably would not take a one-armed goalkeeper on. I am sure that you can rationalise that in a commonsense and practical way within legislation. I just look for reassurance that that type of commonsense and practical approach prevails.

480 **The President:** The mover to reply.

The Acting Attorney General: Thank you, Madam President.

485 If I may deal with the point made by the Hon. Member, Mr Wild, first, because it will also roll over into my comments on the other points.

Mr Wild is right – common sense will prevail, and in fact the Bill is couched and designed to enable or to require people to make what are termed 'reasonable adjustments' in circumstances. So a person who cannot carry on a job to an acceptable standard, even where reasonable adjustments have been made ... then the employer does not discriminate, because he has taken what steps he can reasonably to make adjustments to enable him to employ that person. So common sense will rule the day. That is the purpose under the Bill, in any event.

490 Turning then to the Hon. Member, Mr Anderson, I think, as has been said in another place, the provisions of this Bill will develop the existing Disability Discrimination Act provisions and the regulations which have been made so far under that Act.

495 Turning to Mr Turner and the points he made, throughout the Bill there is reference to guidance and regulations being issued. In part, they will develop those already issued under the Discrimination Act, but there will be new guidance issued to people to help them with the very points which you have referred to, Mr Turner, in giving them the guidance they require in implementing this legislation.

500 It is a new Bill, it introduces new concepts, but many of them are already well and truly established in practice and under regulation on the Island at present.

I hope that assists Hon. Members and I beg to move that clause 16 do stand part of the Bill.

The President: We are voting for clause 16, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

505 Clause 17.

The Acting Attorney General: Thank you, Madam President.

510 Clause 17 provides that it is discrimination on the grounds of gender reassignment if an employer treats a transsexual person less favourably because of absences as part of their gender reassignment than other employees would be treated if they were absent due to sickness or other reasons.

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

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

515 **The President:** The motion is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Now we will take clauses 18 and 19 together?

The Acting Attorney General: Yes, please, Madam President.
520 Clauses 18 and 19 deal with discrimination on the grounds of pregnancy and maternity. Clause 18 concerns situations outside of work and clause 19 covers the situation in the workplace.

Under clause 18, a woman is protected from discrimination because of her pregnancy and is also protected from maternity discrimination, which includes treating her unfavourably because she is breastfeeding, for 26 weeks after giving birth.

525 Under clause 19, the period during which protection is provided is the period of the pregnancy and any maternity leave to which she is entitled, or, if she has no such entitlement, the period of two weeks beginning with the end of the pregnancy.

In order to avoid any overlap, discrimination under these clauses is excluded from also constituting direct discrimination on the grounds of sex for the purposes of the Bill.

530 Madam President, I beg to move that clauses 18 and 19 stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 18 and 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
535 Clause 20.

The Acting Attorney General: Thank you, Madam President.
Clause 20 defines 'indirect discrimination' for the purposes of the Bill. This is when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a relevant protected characteristic.
540

When a particular group is disadvantaged in this way, a person within that group is indirectly discriminated against if he or she is subjected to that disadvantage, unless the person applying the policy can justify it as a proportionate means of achieving a legitimate aim. Examples of cases where this might apply include those where operational requirements or health and safety require particular characteristics.
545

Madam President, I beg to move that clause 20 stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

550 **The President:** The motion is that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Now clauses 21 to 23.

The Acting Attorney General: Thank you, Madam President.
555 Clauses 21, 22 and 23 deal with the important concept of reasonable adjustments for disabled people.

Clause 21 defines what is meant by the duty to make reasonable adjustments for the purposes of the Bill and it lists the parts of the Bill which impose the duty and the schedules related to each of those parts which stipulate how the duty will apply.

560 The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage compared to non-disabled people: the first requirement covers changing the way things are done; the second requirement covers making changes to the built environment; and the third requirement covers providing auxiliary aids.

565 The clause confirms that where the first or third requirements involve the way in which information is provided, a reasonable step includes providing that information in an accessible format.

Under the second requirement, taking steps to avoid the disadvantage to disabled people includes removing, altering or providing a means of avoiding a physical feature – but this only has to be done when it would be reasonable to do so. Indeed, this is the point that should be stressed in
570 respect of the duty to make adjustments for disabled people: it is only a duty to make adjustments that are *reasonable*.

Unless there is express provision to the contrary, a person who is required to comply with the duty to make reasonable adjustments is not entitled to pass on any of the costs of complying with the duty to a disabled person.

575 However, as guidance that will be issued under the Bill will make clear, the cost of a potential adjustment is one of the factors that can be taken into account when considering whether or not the adjustment is reasonable.

Other factors include whether, in practice, the adjustment can actually be made; how effective it will be in reducing the disadvantages faced by disabled people; and the size of an organisation which
580 is considering an adjustment and the resources available to it.

Clause 22 establishes that a failure to comply with any of the three requirements under the duty to make reasonable adjustments constitutes discrimination against a disabled person to whom the duty is owed. The clause also provides that, apart from under this Bill, no other action can be taken for failure to comply with the duty.

585 Clause 23 confers a power on the Council of Ministers and relevant Departments to be able to make regulations about a range of issues relating to the reasonable adjustment duty, such as the circumstances in which a particular step will be regarded as reasonable.

Madam President, I beg to move that clauses 21, 22 and 23 stand part of the Bill.

590 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

The President: Hon. Member, Mr Anderson.

Mr Anderson: Yes, thank you, Madam President.

595 These words ‘reasonable adjustments’ – can the mover assure me then that reasonable adjustments will vary according to the size of the company, because the point that Mr Turner made previously, that it would be inappropriate for a small company, maybe involving two or three employees, to make significant changes, which would be quite costly, would be different than a larger employer who has a greater workforce and then proportionately the costs would be greater.

600 **The President:** The Lord Bishop.

The Lord Bishop: Madam President, since in subclause (12) there is reference to six schedules which we have not looked at yet, are we being asked to include those schedules in passing
605 clause 21?

The President: I think not at this stage.

The Acting Attorney General: No, Hon. Member.

610 **The President:** The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

615 This is a follow-through from our hon. colleague Mr Anderson’s point. If there was a smaller business operation, company, would a disabled individual have the right to actually finance that reasonable adjustment themselves?

The Acting Attorney General: Yes, thank you, Madam President.

I am sure, Hon. Members, the issue of whether adjustments in the future are reasonable or not will challenge the tribunal that is established under the Act from time to time, and it will clearly be a question which will apply in each individual case as to whether or not the tribunal considers that the person owning the property, for example, has done what is reasonable.

The size of the organisation is, as I have referred to, a matter which the tribunal will and must take into account. What I cannot do, as I am sure Hon. Members will appreciate, today, is put any criteria or parameters on what that size ought to be. Guidance will be issued, as I have said, but at the end of the day I am sure that the tribunal may well have cases to have to consider that issue.

In answer, Madam President, to the question posed by the Hon. Member, Mr Wild, I can see no reason whatsoever why a person cannot approach the person who has the duty to comply to offer financial assistance; and if they do so, that may again be a matter which the tribunal might take into account.

Thank you, Madam President. I beg to move that clauses 21, 22 and 23 do stand part of the Bill.

The President: The motion is that clauses 21, 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 24 and 25.

The Acting Attorney General: Thank you, Madam President.

Clause 24 provides that like must be compared with like in cases of direct, dual or indirect discrimination.

The treatment of the claimant must be compared with that of an actual or a hypothetical person, the comparator, who does not share the same protected characteristic as the claimant – or, in the case of dual discrimination, either of the protected characteristics in the combination – but who is, or is assumed to be, in not materially different circumstances to the claimant.

In cases of direct discrimination and dual discrimination, when the claimant is a disabled person those circumstances can include their respective abilities.

This clause also enables a civil partner who is treated less favourably than a married person in similar circumstances to bring a claim for sexual orientation discrimination.

Clause 25 confirms that in cases of direct discrimination and dual discrimination the fact the alleged perpetrator of the discrimination has the same protected characteristic as the alleged victim does not prevent a claim being made. For example, a gay man could still be guilty of discrimination against other gay men on the grounds of their sexual orientation.

Madam President, I beg to move that clauses 24 and 25 stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 24 and 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

The Acting Attorney General: Thank you, Madam President.

Clause 26 simply sets out what is meant by references to the different types of discrimination covered by the Bill.

I beg to move that it stand part of the Bill.

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 27 and 28.

The Acting Attorney General: Thank you, Madam President.

670 Clauses 27 and 28 deal with two additional types of conduct which are prohibited under the Bill.

The first, under clause 27, is harassment. The Bill splits this into three strands, but in each case it is unwanted conduct which has the purpose or effect of violating a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person. The conduct can be of a sexual nature or related to a relevant protected characteristic.

675 In determining the effect of the unwanted conduct it is necessary to balance competing rights on the facts of a particular case. For example, this could include taking into account the right to freedom of expression.

Clause 28 deals with victimisation. This is where a person suffers a detriment because they have asserted their rights under the Bill – for example, they have alleged that they have been subject to harassment – or they have, in good faith, supported another person in asserting their rights under the Bill.

680 However, a person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint.

Madam President, I beg to move that clauses 27 and 28 do stand part of the Bill.

685

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The Lord Bishop.

690 **The Lord Bishop:** Madam President, can I ask the mover what redress someone will have if accused under harassment or victimisation and it were easily proved that those were false allegations?

The President: The Hon. Member, Mr Turner.

695

Mr Turner: Thank you, Madam President.

We have got clause 27 defining harassment. We also have the Harassment Act, which defines harassment slightly differently. Could the Attorney maybe explain how the two differ and how the definitions are going to differ? Clearly, in the Harassment Act it is designed to deal with courses of conduct and I think there have to be two instances of behaviour under the Harassment Act, and yet we have a separate meaning here, defined differently, so I think they are almost in conflict with each other.

700

The President: The Hon. Member, Mr Coleman.

705

Mr Coleman: Thank you, Madam President.

Can I just ask the mover why the marriage and civil partnership protected characteristics are not included in part 5 of this? On page 33 you have 'Protected Characteristics', which go to (h); and here, in subsection (5), it goes to (g). So I wondered what the rationale was for omitting that.

710

The President: The mover to reply.

The Acting Attorney General: If I could just make a note of that, Madam President.

715

The President: Indeed.

The Acting Attorney General: Madam President, I have been looking to my officers, who have given me the simple answer but not the difficult one!

720 If I could deal with the Lord Bishop's point first, the redress of a person, who has proved or is able to establish false allegations of harassment or victimisation, would be under the Act itself to the

tribunal, and the tribunal can make financial awards for injury to feelings. So that is the answer to that issue.

725 With reference, then, Madam President, to the point made by Mr Turner, harassment in the context of the Equality Bill is an entirely different concept and separate from that under the other Act, and they do not need therefore to align. So harassment in the protected characteristics, which is what this Bill is aimed at, will be considered in the context of this Bill itself, and any redress again would be to the tribunal, which, as I have said, can make financial awards for injuries to feelings as a consequence of any proven harassment to them. So there is purposely no alignment in the two.

730 As far as why marriage and civil partnership is not included, if I could just refer to one of my officers, Madam President, with your leave ...

The President: Yes, indeed. Do you wish them to speak, or will they pass you a note?

The Acting Attorney General: ... *[Inaudible]* a note.

735 Madam President, marriage and civil partnership is omitted from the Equality Act 2010 of the UK, on which, as I have already mentioned, our Bill is based. The Equality Act 2010 of the UK consolidated and replaced existing rights, and there were not pre-existing rights in this area, which is why it has not been brought forward under this Bill. It is perhaps that that can be considered, but it was not considered in the context of bringing in our own legislation based on the UK.

740 I am going to say more, if I may, Madam President.

The President: Yes.

745 **The Acting Attorney General:** I am reading with reference to the Equality Act 2010 of the UK. It is from a guide with reference to that Act. It may help Hon. Members if I refer to this:

Section 26 of the Equality Act 2010 does not afford protection against harassment in relation to marriage and civil partnership or pregnancy and maternity. Whilst this may appear to be a curious omission, these grounds are not covered by European law and it seems that no correspondence to the government's consultation exercise pressed for change on this point. A complaint alleging harassment related to either of these protected characteristics could be framed as a direct discrimination under other provisions of the Act.

I hope that may be of some assistance to Hon. Members.

I beg to move.

750 **Mr Anderson:** I'm sure we're clear!

The President: The motion is that clauses 27 and 28 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 29, 30 and 31, introducing schedules 2 and 3.

755 **The Acting Attorney General:** Thank you, Madam President.

Clauses 29 to 31 form part 3 of the Bill, which, together with schedules 2 and 3, sets out the main provisions concerning how the Bill applies to services and public functions.

760 Clause 29 is introductory. It provides that this part of the Bill does not apply to the protected characteristic of age so far as it relates to persons under the age of 18, due to the wide range of circumstances under which there is different treatment for children.

Under clause 29, part 3 of the Bill also does not apply to the protected characteristic of marriage and civil partnership or to conduct which is covered by other parts of the Bill.

765 Madam President, clause 30 is the main provision of this part of the Bill, and under this clause service providers must not discriminate against or harass a person because of a protected characteristic, or victimise someone when providing services. The person is protected both when requesting a service and during the course of being provided with a service.

Under this clause it is also unlawful to discriminate against, harass or victimise a person when exercising a public function which does not involve the provision of a service. Examples of such public functions include law enforcement and revenue raising and collection.

770 In addition, this clause confirms that the duty to make reasonable adjustments for disabled persons applies to providing services and exercising public functions. A person is considered to have discriminated against a disabled person if he or she fails to comply with the duty to make reasonable adjustments.

775 Finally, the requirements of this clause apply, in relation to race and religion or belief, to any actions taken in connection with the grant of entry clearance to enter the Isle of Man, even if the act in question takes place outside the Isle of Man.

780 Clause 31 deals with the interpretation of part 3 of the Bill and gives effect to schedules 2 and 3. Schedule 2 deals with how the duty to make reasonable adjustments for disabled people applies in the context of providing services and exercising public functions. Schedule 3 provides exceptions to this part of the Bill.

785 Madam President, schedule 2 includes definitions of ‘substantial disadvantage’ and ‘physical features’ and it stipulates that the duty does not require fundamental changes to the nature of a service. As the duty is owed to disabled persons generally, it is an anticipatory duty. By that, I mean that service providers and people exercising public functions must think about the potential needs of disabled people and make appropriate reasonable adjustments.

790 This schedule also explains how the duty to make reasonable adjustments applies to operators of transport vehicles. It specifies that the duty applies in different ways to different types of vehicle and it confirms that a transport service provider is not required to make adjustments to the physical features of a vehicle, or to provide vehicles, except in specified circumstances. It includes a power for the Department of Infrastructure to make further provision in this area by regulation, if required in the future.

795 Madam President, the Hon. Members of Council will have seen that schedule 3, which sets out the exceptions to the requirements of part 3 of the Bill, is quite lengthy. This reinforces my earlier comment that the principle of equality is simple but the implementation of that principle in practice is rather less straightforward.

Schedule 3 consists of 37 paragraphs broken down into parts dealing with broad issues.

Part 1 of schedule 3 concerns constitutional matters and it establishes that the equality requirements in respect of services and public functions do not apply to the business of Tynwald and its Branches, to the making of legislation, or to exercising of judicial functions.

800 This ensures, for example, that Tynwald is not constrained in its decision-making and that legislation can make provision which is contrary to the general principle of equality of treatment without fear of challenge – providing, of course, that it is still compatible with the rights conferred by the European Convention on Human Rights.

805 Part 2 of schedule 3 contains a number of paragraphs which set out exceptions which are necessary for the proper operation of the Island’s schools in accordance with the Education Act 2001.

810 This part of schedule 3 excludes the establishment of schools from the services and public functions requirements of the Bill in relation to age, sex and religion or belief discrimination; it provides exceptions in relation to the curriculum and other matters in respect of age and religion or belief discrimination; and it confirms that although the duty to make reasonable adjustments for disabled people does extend to schools, it does not require the Department of Education and Children or the governing body of a school to alter or remove a physical feature of a school.

Part 3 of schedule 3 deals with health and care exceptions in relation to blood services, the health and safety of pregnant women and care within the family.

815 Part 4 deals with a number of exceptions relating to the operation of the Island’s immigration legislation.

Part 5 contains exceptions in relation to provision of insurance and other financial services, including an exemption for existing insurance policies.

820 Part 6 of schedule 3 contains two provisions concerning marriage. The first of these provisions confirms the right of clergy to refuse to be involved with marriages where a person has changed gender.

825 The second provision will doubtless be of interest to Members of the Council because it was inserted to take account of the Bill which is on today's Order Paper at Item 1. The power in this provision can, and there is every intention that it will, be used to make equivalent amendments to both this schedule and the main body of the Bill to those amendments which the Marriage (Same Sex Couples) Act 2013 made to the Equality Act 2010 in England. There is also, in fact, a similar power in the Marriage and Civil Partnership (Amendment) Bill which could be used to make such amendments. As such, there is absolutely no requirement for the Equality Bill to be passed before the Marriage and Civil Partnership Bill receives Royal Assent – whichever Bill becomes an Act first, 830 the necessary adjustments can be made once the second is enacted.

835 Madam President, part 7 of schedule 3 deals with a number of instances where it is appropriate to be able to provide separate services or single-sex services; it also allows for concessions based on a person's age and permits the provision of holidays to particular age groups and the restriction of certain services on the grounds of age.

840 Madam President, the single provision in part 8 of schedule 3 creates an exception in respect of content services within the meaning of the Communications Act 2003, which extends to the Island.

845 Part 9 of schedule 3 establishes certain exceptions relating to disabled persons using transport services.

850 Part 10 is supplementary and allows the Council of Ministers, with the approval of Tynwald, to add to, vary, or remove the exceptions set out in this schedule.

855 Madam President, I beg to move that clauses 29 to 31 and schedules 2 and 3 stand part of the Bill.

860 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

865 This proposed addition to schedule 3 is to protect those who have strongly held religious belief in providing goods or services and would be contrary to those strongly held convictions. This would only apply to an individual to supply such goods or services, and not, as stated in subparagraph (2), in a capacity as a partner or an officer or an employee of the body corporate as the performers of the public function.

870 I strongly endorse the equality principles of this Bill, Madam President, but we should preserve the rights of those who could be targets of the legislation for the wrong reasons, such as those who now find themselves in a minority – when, after all, it is minority groups that this legislation seeks to protect. I hope Hon. Members will give equal rights to such individuals.

875 I have become aware of an email, Madam President, sent to Hon. Members of Council from the Rainbow Association, taking an opposing view. I was not party to that email. I find that rather strange, as we are talking about equality here this morning.

880 I hope, in moving this, someone will second my new clause to this section.

I beg to move:

Amendment to schedule 3

Page 166, after line 35 insert —

«PART 6 – RELIGIOUS OBJECTION

22 No obligation on an individual to provide goods or services contrary to religion or belief

(1) Section 30 does not oblige an individual to provide goods or services if that provision would be contrary to the individual's strongly held religious convictions.

(2) Subparagraph (1) does not apply in the case of goods or services provided by an individual—
(a) in his or her capacity as a partner or an officer or employee of a body corporate; or
(b) in the performance of a public function.».

Renumber the succeeding parts and paragraphs of schedule 3 and consequentially adjust cross-references to them both within the schedule and elsewhere in the Bill.

The President: The Hon. Member, Mr Corkish.

865 **Mr Corkish:** I will gladly second the amendment, Madam President.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

870 These two clauses and the two schedules are clearly very much at the heart of what this Bill is about.

A great deal, lately, has been talked about an incident, a legal case in Northern Ireland recently, when a Mr Gareth Lee, who was a well-known gay activist, ordered a cake, worth £36.50, carrying the slogan 'Support Gay Marriage', which is the slogan, and including the logo also, of the Queer
875 Space pressure group. The District Judge declared in May last year that the company had breached political and sexual orientation discrimination laws when it said it would not take the order. The company was ordered to pay £500 in compensation to Mr Lee. Northern Ireland's fair commerce laws apply only in the province, but its sexual orientation regulations are similar to those that operate across the rest of the UK.

880 Mr Tatchell, who is regularly quoted in this place, said in an article in *The Guardian* that he had initially supported Mr Lee's claim and had applauded the verdict but, he added, 'I have changed my mind.'

Refusing to facilitate a message in support of same-sex marriage is not sexuality discrimination. It is discrimination against an idea, not against a person.

885 Mr Tatchell went on:

Much as I wish to defend the gay community, I also want to defend freedom of conscience, expression and religion.

As a result of the court ruling against the bakery, far-right agitators could force Muslim printers to publish cartoons of the Prophet Muhammad, or Jewish printers could be forced to reproduce holocaust-denial material. Will, for instance, he added, gay bakers have to accept orders for cakes including homophobic slurs?

890 I think there are serious problems attached to this as a result of the possibilities of abuse. The whole Bill is about common sense, and I think all of us agree that we want common sense. The problem is that as soon as you try to pin down common sense into something concrete and actual, you have to end up producing a monstrous Bill like this, and in the end, at part 10 of the third schedule, you put a clause in that says the Council of Ministers may by order amend the schedule. In
895 other words, the Council of Ministers can use common sense to fiddle around with it as you wish.

That is a serious problem, because what we are doing is we are taking common sense and then we are turning it into a matter of fine detail, and then we are saying, 'Oh, and, by the way, when we have some fine detail here we can change it as the circumstances go along.'

900 It really is quite worrying. I am entirely in favour of the principles that underlie this Bill but I am very, very uncertain indeed about this particular part of the Bill and the schedules attached to it.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

905 This smacks of déjà-vu somewhat. It must be almost 10 years ago we passed the Sexual Harassment Bill and that, on its progression through the House of Keys, received the ‘benefit’ of an amendment whereby it allowed employers with 10 folk or less, I think – or five or less – to legitimately discriminate on sexual harassment grounds, or words to that effect, as that Bill was going through, because it was felt it would have a detrimental effect on small employers and there would be cost implications and so on. That amendment actually carried in the Keys, although I was
910 at great pains to point out that what the Keys were actually doing was legitimising sexual harassment. It came to this place. Luckily, the Hon. Member Eddie Lowey picked it up and the Attorney General of the day gave a legal opinion on it and advised that it was just having that effect, and it had to go back to the Keys to be re-amended.

915 I feel that what is happening here today is exactly the same thing, in many ways. As strong as Members’ opinions may be, and personal views and so on, I think the principles of this Bill and what it is trying to achieve are something we should all be aspiring to.

920 I agree with the Lord Bishop, Eaghtyrane, that it has turned out to be a very complicated piece of legislation, with schedules and subsections and so on and so forth, nearly 200 clauses long at the end of the day, and it is a pity it could not be more simplistically put, and I support that, but what we are trying to do now is literally legitimising discrimination, as far as I am concerned.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

925 I too will be voting against this amendment, because what it actually allows is people with religious conviction to vote to actually deny people under the protected characteristic list ... So you could discriminate by race, age, anything.

930 We all *really* know what this amendment is about. It is not about race, it is not about religion; it is really about sexual orientation (**Mr Anderson:** No.) – it *is* about sexual orientation – and I do not believe that in this modern day and age and this world we live in there should be discrimination based upon sexual orientation, and I am also doubtful that the wording of the clause encompasses just about all of the other protected characteristics.

Thank you, Madam President.

935 **The President:** The mover to reply.

The Acting Attorney General: Madam President, could I just ask for your guidance: am I speaking to the amendment?

940 **The President:** You can speak to both.

The Acting Attorney General: Thank you very much.

945 **Mr Anderson:** Just a point of clarify, Madam President: can I reply to the points raised by Hon. Members?

The President: No, you cannot reply to an amendment.

950 **The Acting Attorney General:** Before addressing, Madam President, the proposed amendment itself, if I just can pick up on some of the comments made by the Lord Bishop referring to the Asher Bakery case. That case, just for the record, is actually now subject to appeal, and, just really to put it into context, the learned Attorney General for Northern Ireland, John Larkin QC, has intervened in those proceedings and there is a hearing on 9th May. His intervention is because of the issues of the compliance with the European Convention on Human Rights. I am not going to say the jury is out on

955 that, but I do not want to give the impression that the Lord Bishop's reference to a case is a final decision. It is not; it is still subject to appeal. I will come back to that in a moment, if I may.

With reference to the proposed amendment on an individual to provide goods or services contrary to religion or belief, as has been referred to, the purpose of this amendment is to enable a person who has strongly held religious convictions to be able to refuse to provide goods or services
 960 to anyone. This is therefore a very wide provision that enables a person who has strongly held religious beliefs, and so convictions, to opt out – what might be called a 'conscience clause'.

In extremis – and we have seen cases of this nature – it would enable a person asserting the right to refuse to offer bed and breakfast accommodation to people who are, say, a same-sex married couple, where the hotel proprietor, for example, had such strong religious objections to the very
 965 concept of same-sex marriage that he felt compelled or able to refuse to allow or offer board and lodgings to that particular couple. So, contrary to the context or the aspect of it being available to everyone, it certainly is not being available to that part of society and those who are a same-sex marriage or same-sex couple.

I could, Hon. Members, go on to perhaps find better examples, as the amendment is so general in its terms and so far reaching that it is designed to override any person's right not to be discriminated
 970 against on the grounds of any of the protected characteristics because of strong religious belief. So it is not just simply down to sex or sexual orientation; it could equally be extended to apply to other situations.

Hon. Members, it is, of course, a matter for you, and I ask: is this the type of equal society you
 975 believe the Island wants? It does not accord with Government policy in promoting the Equality Bill and in my being asked to present the Bill to Hon. Members. It is perhaps a step back in time to when, for example, different religious beliefs set one religion against another, when some religions were intolerant of those who did not share their beliefs. We have in recent times seen how the people in Ireland have learnt to live with one another's beliefs and to respect differing views and
 980 attitudes, so all people, regardless of their beliefs or non-beliefs, can live and let live.

We want a legislative structure which provides equality for all but still enables people with strong religious beliefs to opt out: is that the message Hon. Members wish to send, which could reflect simply a vocal minority who perhaps, regardless of the changed world, are not prepared to live and
 let live?

It is a matter for Hon. Members of Council. Could I suggest to you that the message should be
 985 that regardless of your religious beliefs or non-beliefs, society should respect the views of others and treat them no differently as far as their human rights are concerned. **(Mr Cretney: Hear, hear.)** The amendment undermines the entire principle of treating people equally, which is the very basis and the very reason for the Bill.

990 Madam President, I can do nothing better than to quote Lady Hale in the UK Supreme Court in the case of *Bull v Hall and Preddy*, which, oddly enough, is a bed and breakfast case. Lady Hale said:

To permit someone to discriminate on the ground that he did not believe that persons of homosexual orientation should be treated equally with persons of heterosexual orientation would be to create a class of people who were exempt from the discrimination legislation. We would not normally allow people to behave in a way which the law prohibits because they disagree with the law. But to allow discrimination against persons of homosexual orientation (or indeed heterosexual orientation) because of a belief, however sincerely held, and however based on the biblical text, would be to do just that.

I would urge Hon. Members to take that into account when considering this amendment, and to hopefully vote it down. **(Mr Cretney: Hear, hear.)**

Thank you, Hon. Members.

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The President: Hon. Members, I will put to you clauses 29 and 30 first, because there was not comment on them. Those in favour of clauses 29 and 30 –

The Lord Bishop: My comment was on clauses 29 and 30 – I beg your pardon – but never mind.

1000 **The President:** Sorry, your comment was on ...?

The Lord Bishop: Clauses 29 and 30, rather than on the –

The President: Okay. I will put them separately.

1005

The Lord Bishop: Sorry. I beg your pardon.

The President: Clause 29, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1010 Clause 30, Hon. Members: those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
Mr Turner
Mr Wild

AGAINST

Mr Anderson
The Lord Bishop

The President: With 7 votes in favour and 2 votes against, Hon. Members, the clause therefore carries.

Now moving to clause 31 and schedules 2 and 3, I will move schedule 3 first with the amendment, Hon. Members.

1015 We have, in the name of Mr Anderson, the amendment printed on pages 6 and 7 of our Order Paper. Those in favour of the amendment, please say aye; against, no. The noes have it. The noes have it. The amendment therefore fails to carry.

I now put to you clause 31 and schedules 2 and 3, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1020 We turn now to clause 32, Hon. Members.

The Acting Attorney General: Thank you, Madam President.

In moving to clause 32, we are now moving on to part 4 of the Bill, which consists of six clauses, from 32 to 37. This part, together with schedules 4 and 5, which are associated with it, concern the equality requirements in respect of the disposal and management of premises.

1025

Clause 32 is introductory and provides that this part of the Bill does not apply to the protected characteristics of age or marriage and civil partnership or to conduct which is covered by other parts of the Bill.

In addition, clause 32 provides that this part of the Bill does not apply to short-term letting, such as the TT Homestay Scheme.

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Madam President, I beg to move that clause 32 do stand part of the Bill.

The President: The Hon. Member, Mr Coleman.

1035 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 33, 34 and 35.

1040 **The Acting Attorney General:** Thank you, Madam President.

Clauses 33, 34 and 35 respectively deal with the general requirements not to discriminate in disposing of premises, in giving permission to dispose of premises and in the management of premises. Under the Bill, disposing of premises includes selling, letting and sub-letting them.

Madam President, I beg to move that clauses 33, 34 and 35 do stand part of the Bill.

1045

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 33, 34 and 35 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1050

Clauses 36 and 37, along with schedules 4 and 5.

The Acting Attorney General: Thank you, Madam President.

Clause 36 concerns how the duty to make reasonable adjustments for the sake of people applies to leasehold premises and the common parts of let premises.

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Clause 37 concerns the interpretation of part 4 of the Bill and also gives effect to schedules 4 and 5.

Schedule 4 expands on the duty under clause 36 to make reasonable adjustments for disabled people. In particular, the schedule establishes that in respect of let premises the duty does not generally include a requirement to remove or alter a physical feature of the premises.

1060

However, the physical features of the common parts of such premises do have to be considered in relation to disabled persons who are the tenants or other lawful occupiers of the premises. This requirement is only engaged if the person who is responsible for the common parts of the premises receives a request from a relevant disabled person to do so.

Before deciding whether any request to make a change to common parts of premises is reasonable, the responsible person must consult all other persons who would be affected by it. This would obviously include other occupiers of the premises who use the common parts.

1065

If it is decided that a requested adjustment would be reasonable, the responsible person and the disabled person must enter into a written agreement. This agreement must deal with the issue of the costs related to the adjustment, and in this particular case it is reasonable for the disabled person to be required to pay for the costs of the work to be undertaken.

1070

Regulations can be made under schedule 4 to supplement the provisions of the schedule. Such regulations are subject to Tynwald approval.

Schedule 5 sets out a number of exceptions to the requirement under part 4 of the Bill.

1075

Under this schedule, an owner-occupier who disposes of a property privately is not bound by the equality requirements under part 4, except that he or she must not discriminate on the grounds of race. In this exception, disposing of property privately means without using the services of an estate agent or publicly advertising the sale or let of a property. This could be through friends or word of mouth, for example.

1080

In addition, when an owner-occupier is disposing of property privately and another person's permission is required for the disposal of the property, that other person must not withhold permission on the grounds of a protected characteristic. However, such permission may be withheld on the grounds of sexual orientation or religion or belief of the person to whom the premises may be privately sold, let or sub-let.

1085

Schedule 5 also includes an exception to the duty to make reasonable adjustments for disabled people to leasehold premises which are or have been the only or main home of a person by whom they are let.

The schedule includes further exceptions in respect of small premises, which are defined in paragraph 3 of the schedule.

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With the approval of Tynwald, the Department of Environment, Food and Agriculture can by order amend the schedule after consulting with the Department of Infrastructure.

Madam President, I beg to move that clauses 36 and 37 and schedules 4 and 5 do stand part of the Bill.

1095 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

1100 Can I ask the mover, at this stage of this clause, whether, if a proprietor was letting out a property and had made substantial financial consideration to accommodate a disabled person, and he or she was letting a property alongside, he or she would be able to put a charge on for those extra costs that had been built in – maybe many thousands of pounds – to accommodate somebody in that position?

1105 **The President:** The mover to reply.

The Acting Attorney General: Thank you, Madam President.

1110 As I have referred to, the ability to call upon the disabled person to contribute to costs in this context is by agreement, and if the disabled person does not agree, then of course we will not be looking at an agreement which is made under the relevant schedule.

There is nothing to stop, in the context of this legislation – and I will use the expression loosely – ‘free collective bargaining’. So, in other words, if a landlord, or whatever, in asking for a rent of the premises, fixes a rent which might, from his point of view, compensate him for work that he has done historically, I cannot see any reason why that cannot be done.

1115 It is essentially if, in looking at people’s equal rights under the legislation, you are then looking at disabled people and then charging them, or proposing to charge them for works which are necessary to carry out, your duty under the Act, in this context it can only be done by agreement with the disabled person.

I hope that is of some assistance.

1120

The President: Hon. Members, the motion is that clauses 36 and 37 and schedules 4 and 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That is as far as it is intended we take the Bill today, Hon. Members.

3.Custody (Amendment) Bill 2016 – Second Reading approved

Mr Coleman to move:

That the Custody (Amendment) Bill 2016 be read a second time.

1125 **The President:** We move on to the next Item on our Order Paper, the Custody (Amendment) Bill 2016.

I call on the Hon. Member, Mr Coleman, to take Second Reading and clauses.

1130 **Mr Coleman:** Madam President, before I start can I just ask if you have received a letter from me about the sequencing of the clauses?

The President: Yes, I have, sir, thank you.

Mr Coleman: Fine, thank you.

1135 **The President:** Please proceed with the Second Reading.

Mr Coleman: Thank you, Madam President.

1140 In my First Reading speech a few weeks ago I outlined the reason for the Bill and its purpose. In principle this Bill is promoted to meet modern standards in terms of its enhanced security provision for the Prison; more solid legal powers to make and use custody rules; to clarify the role of the Independent Monitoring Board so that it can concentrate on looking out for the welfare of detainees; to enable the boards for the Prison and Cronk Sollysh and Parole Committee to regulate their own procedures rather than have those procedures regulated by means of custody rules; to expand legal provisions surrounding the testing of detainees for drugs; and to address one or two issues surrounding the early release of detainees from custody.

1145 In short, the Bill, as promoted, makes a number of amendments to legislation but does not introduce any new policy in relation to custody. Human rights are a factor in any legislation and the Department has been required, on the advice of Chambers, to seek further amendment of the Bill by this Council. This is regrettable, but the advice was received at such a late stage that the matter could not be addressed during the clauses stage in the House of Keys .

1150 Madam President, I beg to move that the Second Reading of this Bill be approved.

Mr Henderson: I beg to second, Eaghtyrane.

1155 **The President:** If no Member wishes to comment, the motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Custody (Amendment) Bill 2016 – Clauses considered

The President: We move to clauses. Clauses 1, 2, 3 and 4.

1160 **Mr Coleman:** Madam President, clauses 1 and 2 provide for the title and commencement by Appointed Day Order.

Clause 3 provides interpretation.

Clause 4 provides for the expiry of this Act after its promulgation and once all its provisions are in operation.

1165 Madam President, I beg to move that clauses 1 to 4 inclusive do stand part of the Bill.

Mr Henderson: Eaghtyrane, I beg to second.

The President: The motion is that clauses 1, 2, 3 and 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1170 Clause 5.

Mr Coleman: Madam President, clause 5 substitutes section 12(2) of the Custody Act 1995 so that persons under the age of 18 are required to be kept separate from those aged 18 years or over. This reflects the norms of international law in the treatment of children. Currently, the law refers to the age of 21, and then only to male detainees.

1175 I beg to move that clause 5 do stand part of the Bill.

The President: The Hon. Mr Henderson.

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

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The President: The motion is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

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Mr Coleman: Madam President, clause 6 amends the power to make custody rules in section 16 so the Department must make custody rules to provide for the healthcare arrangements entered into for detainees.

A new power is inserted so custody rules may also provide for certain types of person to be termed 'prisoner' and others 'detainee'.

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The clause also inserts subsection (4) into section 16 to enable the Department to give guidance or directions. This would enable the Department, for example, to guide the Parole Committee in the exercise of its functions.

The minor amendment to section 17(3) set out in subsection (2) of the clause relates to contracts; and subsection (3) of the clause repeals section 13(1)(b), which required the Department to appoint a medical officer, and consequentially repeals subsection (5) of section 22.

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Madam President, I beg to move that clause 6 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

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

The President: The motion is that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1205

Clause 7.

Mr Coleman: Madam President, clause 7 is about clarifying the powers and role of the Independent Monitoring Board in relation to the Prison, Cronk Sollysh and police and court cells.

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Substituted section 18 is broadly similar to the existing section 18 except in two matters. Firstly, it enables the Department to call an Independent Monitoring Board by whatever other title is appropriate. In practice, this would enable the body monitoring the detention of persons under the age of 18 to be given a title appropriate to the overall work of Cronk Sollysh.

Secondly, it no longer refers to cells in a court or police custody suites as these are covered by the new inserted section 18A. Section 18A expressly empowers the body established under section 18 to monitor the treatment of persons in police detention or being held in court cells.

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Madam President, I beg to move that clause 7 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

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

The President: The motion is that clause 7 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1225

Clause 8.

Mr Coleman: Madam President, clause 8 inserts a new section 18B to provide by custody rules for the Appointments Commission to recruit and appoint independent adjudicators. The person, or persons, appointed will be expected to deal with a wider range of disciplinary offences than are currently dealt with by the Independent Monitoring Board. Once the adjudicators are appointed, the

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Independent Monitoring Board will be released from its adjudication function and free to fulfil its role as a monitor of detention conditions and prisoner welfare.

1235 Madam President, subsection (1) of the clause was amended in the Keys by Mr Thomas MHK, by substituting the words 'terms and conditions' for the word 'tenure' in the inserted new section 18B(1)(a). This amendment was made so there would be no doubt that not only could an independent adjudicator be appointed but that terms and conditions could be provided for, to include terms of office and conditions of service, etc. Subsections (2) and (3) of the clause substitute references to the IMB and 21, so they refer to 'an adjudicator' and '18', respectively.

1240 The second amendment made by Mr Thomas in the Keys inserted a new subsection (4) into the clause providing that the appointing body in section 18B(1)(a) could be changed by Order made by the Department.

1245 The third amendment he made in the Keys was to insert a further subsection (5) into the clause, which then amends paragraph 13 of schedule 3 to the Legal Aid Act 1986 by substituting the references there in the manner stated on the Order Paper so they refer to 'independent adjudicator' instead of 'Board of Visitors'.

Madam President, I beg to move that clause 8, as amended in the Keys, do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1250 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1255 Clause 9 and schedule.

1260 **Mr Coleman:** Madam President, clause 9 and the schedule, which introduces new schedule 1A, are about modernising the law in relation to security in the Prison. As well as providing two lists of prohibited articles the schedule empowers the confiscation and disposal of prohibited articles or cash, and regulates the use of CCTV.

The provisions in the schedule concerning lists A and B make it an offence to cause any listed article to be in the prison or be removed from the prison without authorisation. List A concerns the most serious threats to security and therefore the penalties are more severe than for list B articles.

Paragraph 4 of the schedule empowers the Prison Governor to dispose of prohibited articles.

1265 Paragraph 5 deals with the seizure of cash held by a person who is not authorised to have it, or where the owners cannot be ascertained, and sets out how it may be handled or returned to its rightful owner. This paragraph is in part about intervening in illicit transactions that help finance money laundering or other criminal activity.

1270 Paragraph 6 deals with other offences such as taking photographs, or removing a restricted document without permission.

Lastly, paragraphs 8, 9 and 10 regulate the use of CCTV in prison and make provision in respect of the retention or destruction of information or records obtained as a result.

1275 Madam President, before Mr Crookall moves some amendments relating to paragraphs 8, 9 and 10 of the schedule, I formally beg to move that clause 9 and the associated schedule do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1280 **Mr Henderson:** I beg to second, Eaghtyrane, and reserve my remarks.

The President: The Hon. Member, Mr Crookall, to move the amendments numbered 4 and 5 on page 9 of your Order Paper.

Mr Crookall: Thank you, Madam President.

1285 I wish to move the amendments numbered 4, 5, 6 and 7 standing in my name. These amendments are required on the advice of the Attorney General's Chambers in order to comply with the determination of an issue with human rights implications in the UK Supreme Court.

The four amendments relate to the provisions in the schedule concerning the use of CCTV and similar other devices, and disclosure of information obtained through their use.

1290 What amendment 5 does is to remove paragraph 9(3)(a) and then immediately reinsert the paragraph as a separate paragraph 8A.

Amendment 4 inserts a preamble to paragraph 8 to explain the purpose of the subsequent provision enabling the installation and use of CCTV and similar devices and restrict their use so that the use of CCTV must be overt – that is, clear to all that CCTV is in operation. By way of explanation, and very briefly, Chambers have advised that there must be an explicit statement of purpose so that the law about CCTV provision is clear and persons may regulate their conduct accordingly. For those who may be interested, the Supreme Court judgment that the drafter in Chambers referred the Department to was *Beghal v Director of Public Prosecutions (Secretary of State for the Home Department and others intervening)*.

The two other amendments, 6 and 7, are consequential.

1300 Madam President, I beg to move the four amendments to the schedule standing in my name and numbered 4, 5, 6 and 7 on the Order Paper:

Amendments to schedule

Page 28, line 7 —

(a) at the beginning insert 'Where this is necessary for one or more of the purposes mentioned in paragraph 8A and proportionate in view of those purposes';

(b) after 'use' insert 'overtly'.

Page 28, after line 11 insert —

'CCTV: permissible purposes

8A. The purposes are —

(a) the interests of national security;

(b) the prevention, detection, investigation or prosecution of crime;

(c) the interests of public safety; 10 PP 2016/0069

(d) securing or maintaining security or good order and discipline in the relevant institution;

(e) the protection of health or morals.'

Page 28, for 'on one' in line 25 to 'morals; and' in line 33 substitute 'for one or more of the purposes mentioned in paragraph 8A; and'.

Page 29, lines 8 and 9, for 'on one or more of the grounds specified in paragraph 9(3)(a)' substitute 'for one or more of the purposes mentioned in paragraph 8A'.

Renumber accordingly.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

1305 I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1310 In the schedule, I just wondered, in the list of articles, why a transmitting device is not listed in there. It has got a mobile telephone, but there are many other devices, even the likes of walkie-talkies, and they are not mobile telephones.

1315 I just wondered, where it says 'sound-recording device', why they had not taken the opportunity to include transmitting devices which could be received outside the premises. So, for example, you could have a sound-transmitting device or even ... Well, a picture-transmitting device would be covered by a camera, of course, because the camera would provide the feed to the transmitting device; but, certainly in sound, it does not appear to be covered.

The President: The Hon. Member, Mr Coleman.

1320

Mr Coleman: Thank you, Madam President.

1325 I think you may remember that in some previous custody legislation we passed an amendment whereby we can actually jam signals – we were going to start to get devices into prison to jam all signals. These devices are normally smuggled into the Prison internally, and there is a chair that all incoming prisoners sit on which identifies anything metallic within their body. But now, if you go eBay, you can actually buy something ... That chair, by the way, is called the BOSS chair – it stands for the Body Orifice Scanning System. They are actually marketing a BOSS mobile phone, which is so small that even our BOSS chair will not pick it up. We are now at the point of looking at blocking signals, because the things just get in anyway.

1330

Mr Turner: Good luck with that.

Mr Coleman: Yes. But that actually impacts on the Communications Act as well, so that one is still going through.

1335 I hope that answers the question.

Mr Turner: It doesn't! (*Laughter*) It doesn't – or just not in the list.

The President: Hon. Members, the motion is that clause 9 and the schedule stand part of the Bill. 1340 To that we have four amendments, in the name of Mr Crookall, to the schedule.

I will take those amendments as a group, Hon. Members, first. Those in favour of the amendments, please say aye; against, no. The ayes have it. The ayes have it.

I will now take clause 9 and the schedule, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1345 Clause 10.

Mr Coleman: Madam President, clause 10 amends section 19A of the Act and extends the provisions relating to testing for drugs or alcohol so they include testing for tobacco and for the presence of psychoactive substances.

1350 The power to test for drugs, etc. remains important in relation to combating general threats to prison security and the health and well-being of detainees.

I beg to move that clause 10 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

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

The President: The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1360 Clause 11.

Mr Coleman: Madam President, clause 11 is about the early release of detainees.

1365 Subsection (1) empowers the Parole Committee to regulate its own procedures. In deference to the very important function the committee performs, apart from setting out some very basic procedural matters in custody rules and assisting the committee in whatever way is appropriate, the Department considers it proper for the committee to determine for itself how it will deal with parole matters before it.

Subsection (2) enables a person's parole to be revoked before he or she is released and for the matter to be revisited in the event a condition of their release, such as continued good behaviour, is breached.

1370 Another amendment inserts a new paragraph (6) in paragraph 13B of schedule 2 dealing with those released who have to be recalled to prison because of a breach of some condition of their parole. The proposed change will enable the Department to re-release a person if it is satisfied the reason for his or her recall no longer applies or justifies the person's continued detention.

Madam President, I beg to move that clause 11 do stand part of the Bill.

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The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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The President: The motion is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

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Mr Coleman: Madam President, clause 12 provides grounds for release of detainees in the event the prison was to become so overcrowded that the health of those persons, or the security and operation of the prison, was put at risk.

I beg to move that clause 12 do stand part of the Bill.

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The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1395

The President: The motion is that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

1400

Mr Coleman: Madam President, clause 13 will restrict the ability to pass an additional sentence of an extended licence period on persons unless they are sentenced to four years or more in prison. It is considered that if a matter is so serious that an extended sentence is called for then it must be serious enough to pass a longer sentence.

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

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The President: The Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1410

The President: The motion is that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Coleman: Madam President, clause 14 is a series of provisions designed to provide legal backing to the security staff already operating at the door of the court building.

1415 New sections 28A to 28E are inserted into the Criminal Justice, Police and Courts Act 2007 as part 8A and titled 'Court security officers'. The provisions not only deal with the appointment of security officers at court but empower them to search, restrain, remove or exclude any person in order to secure the general safety of others, or good order within the court building.

1420 Provisions also permit them to seize knives and other articles and for the Deemsters to make rules about their retention or return.

The last inserted section, section 28E, makes it an offence to assault a court security officer.

Madam President, I beg to move that clause 14 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1425

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1430

Clause 15.

Mr Coleman: Madam President, clause 15 amends the Prisoner Escorts Act 2008 as a consequence of earlier provisions about monitoring boards, and clarifies the list of premises a prisoner may be escorted to, or between.

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Before Mr Crookall moves some amendments in relation to this matter, I formally beg to move that clause 15 do stand part of the Bill.

The President: Hon. Member.

1440

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

1445

You are moving an amendment, sir. Page 9 of our Order Paper, the amendment to clause 15. Were you not briefed?

Mr Crookall: Thank you, Madam President.

1450

The three amendments in relation to this clause, numbered 1, 2 and 3 on the Order Paper, further amend section 1 of the Prisoner Escorts Act 2008 to enable the Department to specify, by order, further premises between which a detainee may be escorted. By doing this it would enable the Department to use contracted staff to escort detainees to premises, for example, where a public inquiry is being held.

1455

As indicated by the amendment numbered 3, where the Department makes an order it must be laid before Tynwald.

Madam President, I beg to move the three amendments numbered 1, 2 and 3 standing in my name:

Amendments to clause 15

Page 18, line 26 at the end insert —

'(da) any premises specified by the Department by order;'

Page 18, line 29 for 'or (d)' substitute ', (d) or (da)'.

3. Page 18, line 29 at the end insert —
'(c) after subsection (5) insert —
«(5A) An order under subsection (3)(da) shall be laid before Tynwald.».'.

Renumber accordingly.

The President: The Hon. Member, Mr Corkish.

1460 **Mr Corkish:** Thank you, Madam President.
I am happy to second the amendments in the name of Mr Crookall.

1465 **The President:** The motion is that clause 15 stand part of the Bill. To that we have the amendments in the name of the Hon. Member, Mr Crookall. I will now put the three amendments to clause 15 to you *en bloc*. Those in favour of those three amendments, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Bill this morning, Hon. Members.

4. Select Committee on the Highways (Amendment) Bill 2015 – Report received

Mr Turner to move:

That the Report of the Select Committee on the Highways (Amendment) Bill 2015 [PP No 2016/0071] be received.

1470 **The President:** We now turn to the next Item on our Order Paper, which is the Report of the Select Committee on the Highways (Amendment) Bill.
I call on the Hon. Member, Mr Turner.

1475 **Mr Turner:** Thank you, Madam President.
Members will, of course, have a copy of our Report before them. It came about because when the Bill appeared on the Order Paper for Legislative Council in December we received an email late the previous ... well, in the early hours of the morning, actually, from Mr Hamish Killip, who raised a number of issues with certain provisions in the Bill. Although at the late hour (**A Member:** Early!) – the early hour, depending which way you look at it – there was sufficient concern by Members of Council as to the points that were raised. It was unfortunate we did not have the information earlier.

1480 So, throwing caution to the wind, Mr Coleman moved that the Bill be sent to the Committee for further investigation. Myself, Mr Coleman, Mr Corkish and Mr Wild were elected to the Committee and I was elected Chairman. Mr Wild had leave of absence, so has not attended meetings and therefore is not a signatory to the Report.

1485 Following the email from Mr Hamish Killip, the Committee had two evidence sessions – one with Mr Killip, where he explained in detail the concerns he had with the Bill as written. Then we put those concerns to the Department of Infrastructure and their Highways Division, and included the Director of Highways. The *Hansard* transcripts are included as an annex to the Report.

1490 What Members will notice is that we have not come up with any recommendations in this Report; we have come up with a conclusion. It has been rather helpful that the Department, in consultation with the Attorney General's Chambers, have agreed with the conclusions we reached and have brought forward some amendments to the Bill which, if Hon. Members will receive our

Report – because that is all we are asking – we can then move, and the Committee would hope that the amendments that are being brought forward would be supported.

1495 It is a very short Report, Madam President. It is very self-explanatory and the amendments will be explained when we come to them, if Members choose to support them. So we would certainly, as a Committee, commend those amendments. We believe them to be workable and we will explain those as we come to the clauses.

1500 I beg to move that our Report of the Select Committee on the Highways (Amendment) Bill 2015 be received.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

1505 I beg to second. As a Member of the Committee and the Department, can I say that the Department is very happy with the findings of the Report.

The President: Are you seconding?

1510 **Mr Corkish:** I am seconding, sorry.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

1515 I would just like to congratulate the Committee on the work they have done. I think it is a pragmatic way forward. It seems very logical that if we make these moves on the orders going through it will be a lot more obvious to the general public that changes are being made to the definitive maps, and particularly the recommendation that they be advertised in the same way as a planning application on the site of the public right of way.

1520 I welcome the Report from the Committee.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

1525 Could I ask the Hon. Member if the complainant who generated this situation in the first place or in the main, if I can call him that ... are his concerns broadly addressed now, with what is going to hopefully happen?

The President: Does anyone else wish to speak?

1530 The mover to reply.

Mr Turner: Thank you, Madam President.

1535 Mr Killip, who sent us the email, brought up a number of *very* valid points. One was that we are changing the legislation when they have not actually completed changes they were meant to complete in the first place. So he said it was almost like putting the cart before the horse: why don't you tidy up what you are doing first and then move the legislation? He was also of the opinion that actually what they are wanting to do, they could do under the existing legislation.

1540 My understanding was that he is quite content with the finding of the Committee. I am not too sure, but I think there has been further dialogue with the Department and they have agreed to continue that. What we did discover is that there was a backlog in this work being undertaken by the Department anyway, so there were still loose ends that they should have tidied up. They did apologise for that. That, again, is reflected in the transcripts. Certain footpaths, for example, that Tynwald have extinguished and moved – because there is a process – had not actually been updated on the definitive maps.

1545 The final point to mention is it is vitally important that these maps are brought up to date, because people purchasing land are relying on those maps. Therefore, the Department needs to get on with it and make sure they are up to date, because it will prejudice people if they are not up to date.

1550 We think what we have come up with, everybody ... he says! I was just about to say everybody is satisfied, but time will tell. Fingers crossed! Everybody is satisfied, as far as we can be at the moment, with the process. So I hope that answers the question.

The President: Hon. Members, the motion is that the Report of the Select Committee on the Highways (Amendment) Bill 2015 be received.

1555 Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

5. Highways (Amendment) Bill 2015 – Second Reading approved

Mr Corkish to move:

That the Highways (Amendment) Bill 2015 be read a second time.

The President: We now move to the Highways (Amendment) Bill 2015 to take the Second Reading and clauses.

I call on the Hon. Member, Mr Corkish.

1560 **Mr Corkish:** Thank you, Madam President.

I move that the Highways (Amendment) Bill 2015 be read a second time.

Madam President, due to the referral of this Bill to the Committee, the First Reading debate was necessarily curtailed, so I can now, if I may, describe its principal effects in greater detail than would otherwise normally be the case.

1565

The President: Have we got this wrong, then? Did we not conclude the First Reading?

A Member: We did conclude, Madam President.

1570 **The President:** Yes, we did conclude the First Reading – I have it here.

Sorry, you did not say what you wanted to say, but we have actually voted on the First Reading. Carry on.

Mr Corkish: Understood, Madam President.

1575

The Bill, which is promoted on behalf of the Department of Infrastructure, is a wide-ranging affair with five key themes: first, the improvement of highways or their surroundings; second, dealing, in a broad sense, with the misuse of highways; third, the conferment of certain permissive powers on local authorities with respect to highways; fourth, the creation of an advance payment code relating to the making up of private streets; and finally, the better facilitation of highway amenities. I will now, if I may, deal with those themes in that order.

1580

As far as the first is concerned, the Bill empowers the Department of Infrastructure to improve highways in various ways. The first enables it to designate improvement lines for widening them and to require, by agreement or compulsorily, any land, including premises, lying between the improvement line and the highway.

1585 I may at this point assure Hon. Members that these powers are intended to be used only sparingly in the event that the Department considers the existing contours of a highway presently a material danger or a black spot to persons using it.

Second, the Bill enables the Department to improve access from a highway to any land abutting it, in a case where the Department is of the opinion that highway safety is in question.

1590 A right of appeal to the High Bailiff is conferred on an owner or occupier.

Third, in the interests of highway safety, the Department is empowered to require the corners of a proposed, but not an existing building, to be rounded or splayed off to remove what would otherwise be an obstruction to view.

1595 Finally, the Bill extends from footpaths to footways the Department's power by order to convert them into cycle-tracks or bridle-paths.

The Bill goes on to make provision of an environmental nature, enabling the Department to develop or redevelop any of its land surrounding a highway in the event that it considers doing so will improve its surroundings.

1600 Supplementary provision enables it to acquire land by agreement or compulsorily in order to mitigate the adverse effects of a highway on its surroundings. May I again assure Hon. Members that this power will be used only rarely.

With regard to the second theme, tackling certain misuse of highways, the Bill makes it an offence to erect a gate or style across a footpath or bridle-path without lawful authority. It clarifies and amplifies the power to install on highways equipment for detection of traffic or other offences.

1605 It empowers the Department to remove debris or objects causing an immediate danger on the side of, over or within a highway.

It additionally prohibits private owners of motor vehicles from misusing parking spaces to advertise the sale of their vehicles.

1610 It makes it generally an offence to mix or deposit cement, mortar, etc. on highways and re-enacts provision enabling the Department to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, etc.

1615 As to the third theme, the conferment of certain permissive powers on local authorities, it behoves me to advise Hon. Members that certain authorities, in their responses to the public consultation, have misunderstood the thrust of the powers, enabling them to undertake on a purely permissive basis the maintenance of bridle-paths, cycle-paths, cycle tracks or footpaths that are maintainable at the public expense. The powers do not, in fact, affect the Department's duty of maintenance. What they do, where there is disagreement about priorities between an authority and the Department, is enable the authority to act.

1620 The Bill goes on to enable an authority to approve the erection of gates or styles across footpaths or bridle-paths in connection with agriculture or forestry, and to authorise an authority expressly to erect flagpoles and the like for the display of decorations, but subject to the Department's approval.

1625 As far as the fourth theme is concerned, the creation of an advanced payments code, the provisions are unavoidably complex but may be summarised succinctly. In a nutshell, they provide, with appropriate safeguards, for the advanced funding by developers of the cost to the Department towards making up to its satisfaction of private streets abutting their developments.

1630 With regard to the final theme, the facilitation of highway amenities such as street cafés and kiosks, the Bill enacts new provisions, doing away with the bureaucratic duplication that exists at present. Given that a local authority exercises certain planning functions, it is no longer considered expedient to involve the Department in approving an amenity. Duplication of other consents is disappplied.

When an amenity is proposed for a trial period of no more than four weeks, the period in which responses may be made to the public advertisement of the proposal is reduced from 28 to seven days.

1635 Finally, the law is clarified by expressly authorising a local authority to charge rent for an amenity located on a highway of which it is the owner of the subsoil.

The Bill concludes by making a small miscellany of improvements to highway law. It enables the Department to acquire, by agreement, any land blighted by highway works. It clarifies the Department's powers with respect to the disposal of minerals in connection with its quarrying activities and it makes better provision for the road works code, being a code that applies to the opening up of highways by statutory undertakers.

1640

During the passage of the Bill in another place, a small number of amendments were carried. The first, which affected clause 5, substituted in the Highways Act 1986 a new section 4, the purpose of which is to amplify what may be provided in a road adoption agreement, being an agreement for the adoption of a private road as a highway maintainable at the public expense.

1645

The new section is aimed at minimising or even obligating the related cost to the public purse by enabling an agreement to impose conditions on the road becoming a highway, to provide for the bearing of construction and maintenance expenses, etc. and to include ancillary, consequential or incidental provision.

1650

The second amendment, which substituted a new clause 20, involved the replacement of section 92 of the 1986 Act with a series of new sections. Those sections spell out much more clearly the requirement to maintain the definitive maps and statements that, taken together, set out the rights of way on the Island.

1655

They also provide for the amendment of those documents and make provision, subject to appropriate safeguards, for their rectification. The reason for adding provision on rectification was recognition that there are some instances where a right of way is shown on a definitive map but the right exercisable on the ground is and always has been along a different line.

1660

May I assure Hon. Members that the rectification procedure was never intended to be available as a means of circumventing the procedures that apply to amending a right of way.

1665

If Council accepts the amendments to be moved by the Hon. Member, Mr Turner, they will incorporate safeguards equivalent to those for amending a right of way. So it will be made clear that the rectification procedure cannot be used to circumvent the necessary processes before an adjustment is made to a right of way or a definitive map.

1670

In the light of the amendments to be moved, the Department is of the opinion that the provision, as amended, will fully meet, in a practical way, the concerns about rectification expressed at Second Reading in another place and in Committee here.

1675

The third amendment, which affected clause 26, clarifies more profusely the carrying out of the Department's ancillary activities with respect to the quarry that it operates. As originally drafted, clause 26 empowered those activities for the purpose of any of the Department's functions, whereas more accurately it should have said, 'for the purpose of or in connection with any such functions'. The effect of the amendment is simply to clarify a situation that presently pertains.

1680

Mr Crookall: Could you clarify that? You said ...

1685

Mr Corkish: Sorry. Mr Crookall, not Mr Turner. I am (**A Member:** Deeply sorry!) obliged to you. Sorry, Madam President.

1690

The final amendment, which affected clause 28, made interpretive provision in consequence of the substitution of clause 20.

1695

All in all, the Department is sure that the Bill makes a material contribution to the improvement of highway law and in so doing promotes the public interest. As such, I commend the Bill to Hon. Members.

1700

Madam President, I beg to move that the Highways (Amendment) Bill 2015 be now read a second time.

1705

The President: The Hon. Member, Mr Crookall.

1710

Mr Crookall: Madam President, I beg to second and reserve my remarks.

The President: Hon. Member, Mr Turner.

Actually ... Yes, we will finish the Second Reading and then we will adjourn.

1690

Mr Turner: Thank you, Madam President. It is only a few points. Where is my list ...! *(Laughter)*

1695 The mover talked about reducing bureaucracy, and I cannot understand why – when we are dealing with the likes of approval of gates or styles on footpaths, which are distinctively the job of the Highways Division ... At the moment we have one authority dealing with it and now we are going to send it out to 24 authorities to all have their own systems of approving these. I just find it quite bizarre that, when we are trying to centralise as many of these functions as possible to make the process simpler, people now have to go via their local authority, many of which are not geared up for some of these processes.

1700 The same with cafés, kiosks and other such things on the highway. I would have thought that the highway authority is the right place to deal with those; they will have a common standard and make it simpler. But now to have these provisions put out to all the many local authorities, I just see as a bit pointless.

1705 I will just say, though, Madam President, that the provision for the quarries is a sensible one. The fact that they are unable to retail stone at the moment to certain persons is a problem. I understand that was unintentionally prohibited during another Act where something had been worded slightly wrongly and there was an objection from another quarry to say they cannot sell the stone despite being able to sell it previously. I think it is important that this is done so that persons can purchase stone from the quarry they choose to go and purchase stone from.

1710 Those are the comments at the moment. I just think that this seems to be at odds with the centralising of services, yet the DOI seem to be dishing things out, which will be a fragmented service. There will not be consistency, because there never is, and, even though they are going to issue guidance, there will be 24 different ways of interpreting it, and it will be a bit of a nonsense really.

1715 **The President:** The mover to reply.

Mr Corkish: Thank you, Madam President.

1720 I thank Mr Turner for his views and indeed opinion. Firstly his latter point: the item relating to quarries. The recycling and purchasing of stone is a good move indeed, and I thank him for his understanding of that.

With regard to the reducing of red tape, it is to allow local authorities to deal with it, if the Department for any reason cannot.

1725 Regarding cafés and kiosks on the highway, local authorities allow the Department of Infrastructure ... The enforcement proposal allows both approval and enforcement, for that to happen.

Again, as I say, the quarry: we certainly agree with it.

Reducing bureaucracy: we think it does. We have moved that local authorities take more responsibility on themselves and we think this is a move in the right direction.

1730 **The President:** The motion is that the Bill be read a second time, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

At that point we will adjourn until 2.30, Hon. Members.

*The Court adjourned at 1.03 p.m.
and resumed its sitting at 2.30 p.m.*

**Highways (Amendment) Bill 2015 –
Clauses considered**

The President: Fastyr mie, Hon. Members.

1735

Members: Fastyr mie Eaghtyrane.

The President: Now, we come to the Highways (Amendment) Bill, clauses stage.

1740 Sorry, I am just reading notes that have been presented to me – and I have to apologise, I seem to have lost the pen! (**Mr Corkish:** Not guilty!) Thank you – oh, I am inundated now! Thank you very much.

I think the Hon. Member wishes to take the clauses in some groupings, but we will start off with clauses 1 and 2.

1745 **Mr Corkish:** Thank you, Madam President. Very few groupings.

Clauses 1 and 2 of the Highways (Amendment) Bill 2015 give the Bill its short title and provide that it will come into operation on one or more days appointed by the Department of Infrastructure.

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

1750 **Mr Crookall:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is 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.

1755

Mr Corkish: Thank you, Madam President.

Clause 3 briefly introduces the amendments made by the rest of the clause in part 2.

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

1760 **Mr Henderson:** I beg to second, Eaghtyrane.

The President: The motion is that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1765 Now, Hon. Members, you will see that amendments have been printed on our Order Paper but you will also have received a hard copy this morning, which differs in a minor way from the Order Paper. I would ask you, when considering the amendments, to look at the hard copy which we have received this morning.

We come to clause 4.

1770 **Mr Corkish:** Thank you, Madam President.

Clause 4 makes new provision catering for the maintenance, at the public expense, of cycle tracks in addition to cycle-paths which are already covered in the Act. The difference between a cycle track and a cycle-path is that the former is part of an all-purpose highway containing a carriageway, whereas the latter is a freestanding highway in its own right.

1775 The clause concludes by empowering local authorities to undertake, on a purely permissive basis, the maintenance of bridal paths, cycle-paths, cycle tracks and footpaths that are maintainable by the Department of Infrastructure, but without affecting the Department of Infrastructure's duty of maintenance. Consequently, a local authority will be able to act in a case where the DOI considers it expedient to do so.

1780 Mr Crookall is moving an amendment that makes no substantive alteration, simply corrects drafting mistakes.

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

The President: Hon. Member, Mr Henderson.

1785 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

1790 **Mr Crookall:** Thank you, Madam President.

This amendment makes no substantive alteration to the thrust of the provision that it replaces, being a provision that amends section 3 of the Act. Due to a drafting oversight, the original clause based its amendment on a form of section 3 that was outdated.

The replacement provision is simply re-cast to bite on the section as it presently is.

1795 Madam President, I beg to move the amendment standing in my name:

Amendment to clause 4

Page 9 leave out everything from the beginning of line 18 to the end of line 20 on page 10 and substitute —

‘(1) Section 3 is amended as follows.

(2) In subsection (2)—

(a) for paragraph (ja) substitute —

«(ja) a bridle-path created by a public path order or an order under section 91A;»;

(b) after paragraph (k) insert —

«(ka) any cycle track or cycle-path, whether coming into existence before or after the commencement of this Act;».

(3) After subsection (4) insert —

«(4A) Without prejudice to the duty of the Department under subsection (1), a local authority may, within its area, undertake the maintenance of a bridle-path, cycle-path, cycle track or footpath that is a highway maintainable by the Department and, if it does, the Department may provide that the whole or part of the expenditure incurred by the local authority in doing so is to be defrayed by the Department.».’.

The President: Hon. Member, Mr Coleman

Mr Coleman: I beg to second, Madam President, and reserve my remarks.

1800 **The President:** If no-one wishes to speak, I put the amendment to you, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1805 We move now to clause 6 as printed – if I have got this marked correctly? Wait a minute, the Keys have done something ... Right, maybe I have misread that.

Okay, clause 5 then.

Mr Corkish: Thank you, Madam President.

1810 Clause 5 as originally drafted limited itself to substituting in section 4 of the Act a new subsection (3), the purpose of which was merely to express in a better way the thrust of the subsection, namely to confer power on the DOI to require that a developer provide security under a road adoption agreement for the performance of his or her obligations under the agreement.

Mr Houghton moved in another place a departmental amendment substituting a new clause 5. The amendment of Mr Houghton’s self-explanatory speaking note is set out in annex 1.

1815 Madam President, I beg to move that clause 5 do stand part of the Bill.

The President: Right, I see now where my confusion came from: I had marked that this had been amended. It has been amended, and the amended version is printed in your Order Paper on page 11.

1820 So that is clause 5, in the amended version. The Hon. Member, Mr Henderson.

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

1825 **The President:** The motion is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 6.

1830 **Mr Corkish:** Madam President, provision of an environmental nature is made, enabling the DOI to develop or redevelop any of its land surrounding a highway, in the event that it considers doing so will improve its surroundings.

Supplementary provision is made in clause 18, enabling the DOI to acquire land by agreement or compulsorily in order to mitigate the adverse effects of highways on its surroundings, but it is envisaged that this power will be used only rarely.

1835 An example of development made involves a change of use from residential use to a landscaped amenity hidden from the highway by trees.

Madam President, I beg to move that clause 6 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

1840

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

1845 **The President:** The motion is 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 Corkish: Thank you.

1850 Clause 7: the DOI is empowered to designate improvement lines for the widening of highways and by virtue of clause 18 to acquire by agreement or compulsorily any land including premises lying between an improvement line and a highway.

Again, these powers are intended to be used only sparingly, in the event that the Department of Infrastructure considers that the existing contours of a highway present a material danger, a black spot, to persons using it.

1855 It will be an offence with a maximum fine of £50,000 to erect and retain a new building or to make a permanent excavation between an improvement line and the centre line of a highway, without the DOI's consent.

The provisions reflect virtually verbatim corresponding provisions that have been long and uncontroversially in force in Great Britain for many, many years.

1860 Madam President, I beg to move that clause 7 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

1865 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8.

1870 **Mr Corkish:** Thank you, Madam President.

The principal change made by this clause is to enable the DOI, in the interest of highway safety, to require the corners of a proposed but not an existing building to be rounded or splayed off, if it considers that the view at the corners would otherwise be obstructed.

Madam President, I beg to move that clause 8 do stand part of the Bill.

1875

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1880

The President: The motion is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

1885

Mr Corkish: Thank you, Madam President.

Clause 9: clarification and amplification is made of the power to install equipment in highways for the detection of traffic or other offences. Whereas previously the power of installation was vested in the DOI alone, it is now also exercisable by the Chief Constable.

Madam President, I beg to move that clause 9 do stand part of the Bill.

1890

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1895

The President: The motion is 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.

1900

Mr Corkish: Madam President, clause 10: it is made an offence to erect a gate or stile across a footpath or bridle-path without lawful authority.

Madam President, I beg to move that clause 10 do stand part of the Bill.

The President: The Hon. Member.

1905

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

1910

The President: The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Corkish: Clause 11, thank you, Madam President.

This clause addresses the matter of debris or other objects left to cause an immediate danger at the side of or over or within a highway. The Department is empowered to remove them.

1915

Madam President, I beg to move that clause 11 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1920

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

1925

Mr Corkish: Thank you, Madam President.

Clause 12: provision is made that has the effect of additionally prohibiting private owners of motor vehicles from misusing parking spaces to advertise the sale of their vehicles. At present, section 55A, which the clause amends, applies only to the misuse of parking spaces by commercial vehicles advertised for sale.

1930

Madam President, I beg to move that clause 12 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1935

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1940

Clause 13.

Mr Corkish: Thank you.

Clause 13 inserts four new sections.

1945

Section 55B empowers a local authority to approve the erection of a gate or stile on a footpath or bridle-path in connection with the use of the surrounding land for agriculture or forestry purposes.

Under section 55C a duty of maintenance is placed on an owner, backed up by reserve powers being conferred on the local authority to act and recover its expenses.

Section 55D gives express authority to local authorities with the approval of the DOI to erect flagpoles, pylons or other structures for the display of decorations.

1950

And to protect drains, sewers and the surface of highways, section 55E makes it an offence, subject to certain exceptions, to mix or deposit cement mortar, etc. on highways.

Madam President, I beg to move that clause 13 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

1955

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

1960

Mr Turner: Thank you, Madam President.

As I raised at the Second Reading, I do think this delegation – or what appears to be a delegation – to local authorities is a bit nonsensical really.

1965

Surely, with some of these authorities being part time, and even having part-time clerks, these functions should be carried out by the Department, as the highway agency. Are the powers in particular 13 completely delegated to the local authority? It does say the person may with the approval of the local authority erect a gate, stile, or similar structure.

1970

To me, it is not clear whether the Department still retains that power as well, or whether it here is completely delegating that power to the local authority. If so, would he not consider that is a bit short-sighted and really, the Department should consider dealing with these matters and then it is uniform across the Island?

We are only 30-odd miles by 12, and to have this fragmented down into all these other authorities just seems a bit ridiculous.

The President: The mover to reply.

1975

Mr Corkish: Thank you, Madam President.

I thank Mr Turner for his observations which he made earlier in the Second Reading. I did mention then about the thoughts of the Department regarding local authorities, and surely this action gives some additional power and responsibility to local authorities for their own areas.

1980

Delegation to local authorities ... The functions should be carried out by the Department – no. Powers are not being abdicated. The Department still has a duty to deal with them. Power is given to the local authorities to deal with, if the Department of Infrastructure did not have the time or resources.

1985

A Member: So busy!

The President: The motion is, Hon. Members, that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

1990

Mr Corkish: Thank you, Madam President.

Power is taken to relegate to subordinate legislation the roadworks code, which applies to the opening up of highways by undertakers.

1995

In this way, any desirable amendments of the code will not need to await, perhaps for several years, a suitable primary legislative vehicle becoming available, but will be able to be effected much sooner in regulations, subject to Tynwald approval.

So what will happen will be the transposing of what is presently schedule 4 to the Act, subject to fine tuning, into regulations, thereby facilitating the incorporation of any later desired amendments much more swiftly.

2000

Madam President, I beg to move that clause 14 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2005

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

2010

Mr Turner: Thank you, Madam President.

I mentioned at an early Reading of this about the standards of works that are going on in the road.

2015

I am delighted to announce, after my Question in the other place about the Glen Darragh road, it was dug up again last week, which I think must be the 13th or 14th hole that has been dug in that new road! And again, it has been put down in not the best form, so I hope that the regulations that come in will, as I have said before, ensure that standards are met and that the Department will ensure that these regulations do include the provision that when they undertake these works, the standards are to the right standard, or they have to go back and re-do it.

2020

The example I gave was, after hundreds of thousands of pounds' worth of work by the Department, it has been dug up numerous times in a very short period. It is just not acceptable to have it put down in such a poor method. So I hope that these regulations, when they come, that this enables, will ensure that.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

2025 I thank Mr Turner again for pointing out the importance of the Glen Darragh road, and the 13th or 14th hole. (*Interjections*) He has made these observations before. In the Chamber today is the Director of Highways and members of the Department. I am sure they have taken on board and will do their utmost to keep the fabric of the road – the Glen Darragh road and others – in the very best condition.

2030 Madam President, I beg to move.

Mr Turner: It is the standards of putting it back! (*Interjections*)

The President: The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; 2035 against, no. The ayes have it. The ayes have it.
Clause 15.

Mr Corkish: Clause 15, thank you, Madam President.

2040 Consequent upon the repeal of the Highway Act 1927 by part 3, provision is re-enacted, enabling the DOI to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, papers or other articles.

The back-up power in the 1927 Act has never actually been made use of. It is simply there in case nuisances etc. on highways ever arise in the future, none of which are presently foreseeable.

Madam President, I beg to move that clause 15 do stand part of the Bill.

2045

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

2050

The President: The motion is that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

2055 **Mr Corkish:** Thank you, Madam President.

Clause 16: the DOI is empowered to improve access to any land from a highway in the event that it considers additional works to be needed. The DOI's reasonable expenses may be recovered from the owner or occupier of the land. Notice of the proposed works must be served on the owner or occupier, who may appeal within 28 days to the High Bailiff by virtue of an amendment made to schedule 5 by clause 33.

2060

Madam President, I beg to move that clause 16 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2065 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 17.

2070

Mr Corkish: Thank you, Madam President.

This clause substitutes a new section 78, which now contains supplementary provision with respect to the provision of highway amenities such as cafés, kiosks etc. Where they are proposed for

2075 a trial period of no more than four weeks, the period in which responses may be made to the public advertisement of the proposal is now reduced from 28 to seven days.

The law is clarified expressly authorising a local authority to charge rent for an amenity located on a highway of which it is the owner of the subsoil. Where a licence authorising an amenity is issued, legislative duplication is avoided by removing the need to obtain other consents for matters authorised by the licence. At the request of the DOI's Planning Division the power to authorise an amenity is now devolved entirely on local authorities, given that they exercise certain planning functions.

In amplification, the devolution of authorising power on local authorities alone was requested by DOI's Planning Division before the transfer of functions to DEFA.

2085 Madam President, I beg to move that clause 17 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2090 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 18.

2095 **Mr Corkish:** Thank you, Madam President.

In addition to the circumstances described in paragraphs 7 and 9 that I mentioned earlier, DOI is empowered to acquire by agreement any land blighted by highway works.

2100 Madam President, I beg to move that clause 18 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

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

2105 **The President:** The motion is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 19.

2110 **Mr Corkish:** Clause 19, thank you.

A new provision is made extending from footpaths to footways DOI's power by order to convert them into cycle tracks or bridle paths. Schedule 2 to the Road Traffic Regulation Act 1985 is applied as to the procedure for making such orders.

2115 Footpaths are freestanding highways in their own right, whereas footways are pavements that are part of all-purpose highways, being highways that contain a carriageway for the use of vehicles.

Madam President, I beg to move that clause 19 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2120 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2125 Clause 20.

Mr Corkish: Thank you, Madam President.

Clause 20: this clause is the subject of the Committee report and, as already stated, I will be supporting the amendments in the name of Mr Tuner and Mr Crookall.

2130 Madam President, I beg to move that clause 20 be part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

2135 I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.

2140 This amendment simply substitutes the correct spelling of certain highways referred to in section 92B(1).

I beg to move the amendment standing in my name:

Amendment to clause 20

In the amendment made by the Keys to that clause, in the inserted section 92B(1) —

(a) for “foot path” substitute «footpath»;

(b) for “bridle path” substitute «bridle-path»; and

(c) for “cycle way” substitute «cycle-path»,

wherever occurring.

Mr Coleman: I beg to second, Madam President.

2145 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

As Members know from this morning, this amendment has come out of the Committee’s report, which the mover, Mr Corkish, was a member of. So it will be brief – I will not take up much time in recapping all the matters. What they will do is apply to rectification of rights –

2150

The President: Can I be clear which part you are now moving?

Mr Turner: This is the ...

2155

The President: You are moving the new clause?

Mr Turner: Yes, to do with –

2160 **The President:** We have not yet finished amending the old clause.

Mr Turner: I thought it was clause 20.

The President: Yes it is, but you have amendments to clause 20 as printed, as I read it.

2165

Mr Coleman: Section 30. *(Interjection by Mr Turner)* It is a new section 30, now.

Mr Turner: Is it?

2170 **The President:** It seems, Hon. Members, that our movers and our seconders and our proposers of amendments need to get together to clarify who is doing what.

Mr Turner: I thought it was straightforward. *(Interjection by Mr Coleman)*

2175 **The President:** We have in your name three amendments ... sorry, amendment numbers 3, 4, 5 and 6. Number 6 is the new clause. Are you speaking to all of them together?

Mr Turner: I was hoping to.

2180 **The President:** Right. Carry on.

Mr Turner: I will just re-cap where I was up to.

2185 I will start then by ... Hon. Members have the amendments to clause 20, first of all, which are listed on the sheet we were provided with this morning, as long as Hon. Members are clear which sheet I am referring to. I will just move that first ... or shall I do it all in one go, including the new clause?

The President: It is entirely up to you. You have tabled them together, they can be moved together.

2190

Mr Turner: Okay, so what we are moving here is: it will apply to the rectification of the rights of way. The same procedure is applied to the diversion of rights of way in general. In short, the same procedure for both publicising a draft order and notifying interested parties of it will obtain ... provision is made for displaying notices as near as possible on the site. It is the same statutory procedure for considering objections that will have effect. An order, if made, will be subject to Tynwald approval, which is listed in the amendment sheet that Members have.

2195

There are a few blank looking faces, Madam President –

The President: Perhaps if I can help with some guidance.

2200

Clause 20, as printed, has been redefined by the Keys and the wording of clause 20 is now as set out in our Order Paper, from page 12 on to page 15 or so – page 16, right.

So the amendments now being dealt with by Mr Turner are amending that clause as set out in our Order Paper, not on the Green Bill. So are we clear that the amendment number 3 deals with section 92A as printed on page 14 of your Order Paper? Okay.

2205

The second one is on the same page, amendment number 4, right? And at the end of it on page 15, amendment number 5, as printed on this sheet you have been given today, introduces a new element on page 15 before 92B.

I think we are all clear.

2210

Mr Turner: Okay. I beg to move the amendments in my name:

Amendments to clause 20

In the inserted section 92A(2) after “relevant event,” insert “by order”.

In the inserted section 92A(3) —

(a) for “any amendment” substitute “any order amending”; and

(b) for everything following “the Department must” substitute “take the steps specified in Schedule 3, subject to subsection (4)”.

At the end of the inserted section 92A add —

“(6) An order under subsection (2) must not come into operation unless approved by Tynwald.”.

New clause

On page 37, after line 39 insert —

“30 Schedule 3 amended – orders stopping up and diverting highways and public paths etc and amending definitive maps

Schedule 3 is amended as follows.

For the heading to the Schedule substitute —

«orders stopping up and diverting highways and public paths, etc., and amending definitive maps».

In Part 1 of the Schedule—

(a) in the Table at the end of paragraph 2 add the following entry —

«4. Any order authorising the amendment or rectification of a definitive map.

(a) Any local authority in whose district any land affected by the amendment or rectification is situated.

(b) Any statutory undertakers having apparatus under, in, upon or over any land affected by the amendment or rectification.

(c) The owner, lessee and occupier of any land affected by the amendment or rectification.»;

(b) after paragraph 3 insert —

«3A. Where the proposed order provides for the amendment or rectification of a right of way on a definitive map, the Department shall, not later than the date on which the notice under paragraph 2 is published or first published, cause a copy of it to be displayed in a prominent position as near as possible to the ends of so much of the right of way as is the subject of the amendment or rectification.»;

(c) in paragraph 4 for “2 or 3” substitute «2, 3 or 3A»;

(d) in paragraph 8 after “public path order,” insert «or an order amending or rectifying a definitive map in respect of a right of way,»; and

(e) in paragraph 10(2) after paragraph (c) insert —

«(d) a definitive map and statement is amended or rectified in respect of a right of way in pursuance of the order;».”.

The President: Do we have a seconder for those amendments? Mr Crookall.

Mr Crookall: I beg to second, Madam President.

2215 **The President:** Right, we have the amendments before us. Does anybody wish to speak to the clause, the amendments or the new clause ...?

In that case, I will first of all put the amendments to you, Hon. Members. The first one is the amendment in the name of Mr Crookall, numbered 2 on the sheet you have been circulated today; it is minor changes to foot path, bridle path and cycle ways. Those in favour, please say aye; against, 2220 no. The ayes have it. The ayes have it.

Now I will put to you the amendments in the name of Mr Turner. Those in favour of amendments 3, 4, 5 and 6, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2225 We now can take clauses 21, 22 and 23 together, thank you.

Mr Corkish: Thank you, Madam President.

And can I thank you for your guidance and clarity in the former.

2230 **The President:** I am not sure it was clarity in the end, but ... !

Mr Corkish: A lot more to some of us.

The President: I had plotted it through!

2235

Mr Corkish: Thank you.

Clauses 21 to 23 relate to what is now described as 'the private street works code', namely the provisions of sections 94 to 98 of the Act.

2240 The code addresses a situation in which an unadopted road has been or is made or opened up to the public by any person other than the DOI, but is not made up to DOI's satisfaction. In such a situation, DOI is empowered to do any works or making up and to claim from adjoining frontages its expenses in doing so.

The clause makes no substantive amendment of the code. It merely expresses certain provisions in a better way.

2245 Madam President, I beg to move that clauses 21, 22 and 23 be adopted part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

2250 I beg to second and reserve my remarks.

The President: The motion is that clauses 21, 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 24 and 25.

2255

Mr Corkish: Thank you, Madam President.

Clause 24 inserts a series of new sections containing what is described as 'the advanced payments code'. The code supplements the law with respect of the making up of private streets.

2260 Before a new building is erected adjoining a private street, sections 98A and 98C require that, subject to certain exemptions prescribed in section 98B, a sum likely to be required to meet the cost of the street works must be paid to the Department by the owner of the building land or a security given for it. It is for the Department to decide the form that a security should take.

If, in the event, too much is given, sections 98C and 98D provide for refunds to be made to the owner for the time being.

2265 Once a payment has been made or a security given, section 98E provides that the liability of the owner for the time being is taken as having been discharged to the extent of the sum paid or secured. If not enough has been paid, the Department may recover the balance to the extent authorised by the private street works code. If, on completion of the street works, too much is found to have been given, the balance will be paid under that code to the owner for the time being.

2270 If an owner gives notice that he or she does not intend to proceed with the erection of the building in question, section 98F provides for the repayment of any sum paid or the release of any security given.

Section 98G prescribes that certain matters are to be charges on land, whereas section 98H caters for interest to be paid on sums arising under section 98A.

2275 Clause 25 substitutes a new section 99, containing interpretive provision for the purposes of the private street works code and the advance payments code. Due to the complexity of the codes, power is taken to amend them by regulations, subject to Tynwald approval.

Madam President, I beg to move that clauses 24 and 25 do stand part of the Bill.

2280 **The President:** The Hon. Member, Mr Henderson.

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

2285 **The President:** The motion is that clauses 24 and 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 26.

2290 **Mr Corkish:** Madam President, clause 26: for the avoidance of doubt, this clause amends section 106A by expressly providing that the Department may continue to dispose, by retail sale or otherwise, of any minerals worked or got by it or arising as part of its ancillary activities. As those ancillary activities are not necessarily for the purpose of any of the functions of the Department, but are rather in connection with them, a departmental amendment to that effect was carried in another place.

2295 Madam President, I beg to move that clause 26 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2300 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

2305 **Mr Turner:** Can I just place on record, Madam President, I welcome this clause, having been around in the Department at the time when this dispute appeared. It did leave quite a lot of dissatisfaction with customers of the quarry. Some of the smaller customers, in particular, who wished to purchase the type of stone that the Department quarry ... that was not really available elsewhere and it was creating, effectively, almost monopolies in the private sector, so I think it is important that this is there.

2310 Can the Member just confirm – he did say it puts beyond doubt – again that there will still be the ability for privateers to go and purchase quantities of stone, gravel etc. from the Department's quarries?

2315 **The President:** The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Turner for his understanding and acknowledgment of what this clause brings, and also eager to confirm that privateers can carry on as before. This clause will have no effect on that.

Madam President, I beg to move.

2320 **The President:** The motion is that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 27.

2325 **Mr Corkish:** Thank you, Madam President.
Clause 27 makes new provision by prescribing fines for offences under clauses 7 and 14.
I beg to move that clause 27 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2330 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

2335 **The President:** The motion is that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
28.

Mr Corkish: Madam President, clause 28: the definition of 'statutory undertaker' is redefined so as to extend to operators of sewerage and sewage systems.
2340 An amendment was carried in another place substituting two definitions.
Madam President, I beg to move that clause 28 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2345 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 28 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
2350 Clause 29.

Mr Corkish: Thank you, Madam President.
Clause 29: consequent upon clause 7, this clause begins by prescribing the procedure to be followed before designation of an improvement line – for example, as to consultation and consideration of objections. It then prescribes what must be done on designation before setting out the action to be taken on revocation of an improvement line or part of it.
2355 Madam President, I beg to move that clause 29 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

2360 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
2365 Now, we have the introduction of a new clause and we will deal with that now. (*Interjection by the Clerk*) Sorry, we did deal with it in your other amendments. Right, I am sorry.
We come then to clauses 30, 31 and 32.

2370 **Mr Corkish:** Thank you, Madam President.
Clauses 30 to 32: clauses 30 and 31 amend schedule 4, the road works code. The reference in the schedule to what constitutes reinstatement or making good is amended so as to enable DOI to impose other requirements on undertakers in any given case, preponderantly when it considers that lesser requirements will suffice.
2375 Provision is also made for the giving of directions by DOI as to the timing of undertakers' works and for the issue of DOI of a code of practice.
Consequent upon clause 14, clause 32 provides for the eventual repeal of schedule 4.
Madam President, I beg to move that clauses 30, 31 and 32 do stand part of the Bill.

2380 **The President:** The Hon. Member, Mr Henderson.

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

2385 **The President:** The motion is that clauses 30, 31 and 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 33.

Mr Corkish: Thank you, Madam President.

2390 Clause 33: consequent upon clause 16, this clause modifies the procedural provisions of schedule 5 so that may apply where DOI notifies an owner or occupier of land adjoining a highway that it proposes to execute works improving the access from the highway to the land. What schedule 5 as modified will do is enable the person to appeal within 28 days to the High Bailiff for the quashing or otherwise of the notice on certain prescribed grounds.

2395 Madam President, I beg to move that clause 33 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

2400 I beg to second and reserve my remarks.

The President: The motion is that clause 33 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

2405

Mr Corkish: Thank you, Madam President.

Clause 34: the Highway Act 1927, which is redundant, is repealed.

I beg to move that clause 34 do stand part of the Bill.

2410 **The President:** The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

2415 **The President:** The motion is that clause 34 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Highways (Amendment) Bill 2015 –
Standing Order 4.3(2) suspended to take Third Reading**

The President: Now, I understand that you wish to suspend Standing Orders?

Mr Corkish: Please, if I may.

2420 I beg to move, Madam President, that Standing Order 4.3(2) be suspended so that the Third Reading may now take place – and subject to that, be read for a third time.

The President: Is it seconded?

2425 **The Lord Bishop:** Seconded.

The President: The Lord Bishop has seconded.

Is it agreed, Hon. Members? No? We will take a vote on it, then.

2430 **Mr Corkish:** Sorry, Madam President, can I just ask, was I not mistaken that Mr Turner was in agreement with this being read a third time, in relation to the Bill being held up by virtue of it going to Committee?

The President: He is obviously not, today. If he wants to –

2435 **Mr Turner:** I do not think so.

Mr Cretney: That was yesterday!

2440 **Mr Crookall:** That was this morning!

Mr Corkish: If I am mistaken, I am mistaken – sorry.

Mr Turner: I do not remember saying that.

2445 **The President:** Right, we will take a vote on it.

Voting resulted as follows:

FOR

Mr Anderson
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
The Lord Bishop
Mr Wild

AGAINST

Mr Turner

The Clerk: With 8 in favour, 1 against.

The President: In that case, Hon. Members, we shall proceed.

**Highways (Amendment) Bill 2015 –
Third Reading approved**

2450 **Mr Corkish:** Thank you, Madam President, and apologies to Mr Turner, if I misunderstood or misheard. *(Interjection)*

Madam President, I wish to thank Hon. Members for the support that they have given to this Bill during its Second Reading and at the clauses stage.

2455 If I may summarise the key purposes of the Bill, they are fivefold: first, the improvement of highways or their surroundings; second, the dealing, in a broad sense, of the misuse of highways; third, the conferment of certain permissive powers on local authorities with respect to highways; fourth, the creation of an advance payments code relating to the making up of private streets; and finally, the better facilitation of highway amenities.

2460 As Hon. Members may agree we have had today a full and wide-ranging debate on the Second Reading and the clauses stage, so wide-ranging and so fresh in our minds that it would be tiresome to me and for the Council to reiterate my responses to queries raised.

Madam President, I beg to move that the Highways (Amendment) Bill 2015 be read a third time and be sent to another place. *(Laughter)*

2465 **The President:** Do we have a seconder?

Mr Crookall: I beg to second, Madam President, and reserve my remarks.

A Member: A better place. (*Interjection by Mr Corkish*)

2470

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

2475 There is a lot in this Bill which I support; and there are a few things that I am very sceptical about, given the Department's track record, and its forerunners, DHPP and DoT.

2480 I would like to just comment briefly. One of the provisions in here is prevention of obstructions and rounding off corners and things with new builds. The Member made much play on the fact that this would not be affecting existing buildings, but I noticed – and it was remiss of me, we had whizzed past it and I was going to mention it. He made much play about this being as I said, new builds, not existing; but then there is a clause in here which says:

The Department may serve a notice, together with a plan showing the land to which the notice relates –
(a) on the occupier of the land, requiring him or her to alter or remove a wall, other than a wall forming part of the structure of a permanent building, a bank, a fence, a hoarding ...

And off it goes. It kind of implies that might be an existing wall or structure, not forming part of the building.

2485 So, as this was in the section where the mover made great play of saying it is to do with the *future*, can he assure us this is not some sort of backdoor method of the Department using these provisions to now start getting people to demolish walls and things that they have already got? I think it is important that if we are bringing these provisions in, there is no underlying hidden gems in here, or that the Department will then wheel round and go, 'Well of course you have passed the legislation'. At the Reading stage we were told that this was to do with things that have not yet been built.

2490 As we have discussed in detail today, there are some quite good, sensible provisions in here. At this Third Reading, I think to delegate some of these powers out to numerous local authorities is a backward step. I think we are just giving things out for the sake of it.

2495 One of the Members is shaking his head, and it might be alright for the bigger authorities but some of them are tiny, and are only a couple of miles wide, and here we are giving powers out that they may not be able to exercise in a timely manner.

2500 I think the Department should have the resources to deal with these sorts of things particularly if it is to do with quite simple applications of putting gates on paths – that should not be overly burdensome on the Department. (*Interjection*) I think that is something they need to look at particularly to see how it works and to see whether local authorities are capable of exercising those functions in a timely manner.

I will support the Third Reading; I do not recall saying I would agree to suspend Standing Orders, it has to be exceptional for that. We have made quite a few amendments today and even we managed to get ourselves in a bit of a knot over it earlier on, and I think that we should have –

2505 **A Member:** Speak for yourself!

2510 **Mr Turner:** Well, most of us did, some of us found it quite straightforward. (**Mr Cretney:** Hear, hear.) I think we should have maybe done the Third Reading at the next sitting – but I will not oppose the Third Reading and we will hopefully then send it on its way to the other place for their consideration of our amendments.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

2515 I again thank Mr Turner for his opinions – they are opinions that I respect. Again, I apologise if I misread his views on the Third Reading taking place today.

Going back to the rounding of corners on *new* buildings: I did add that it would be a very rare occasion for an existing building that that would happen, and it is incumbent upon the Department of Infrastructure that road safety is paramount.

2520 If I can illuminate further, rounding off the splay of new buildings, there are two different issues: one is new buildings; two ... (*Interjection*) Yes, sorry I cannot read everything that has been provided to me, but I am just going back to what I have already said. There is no hidden agenda, and I went on to say it is incumbent upon the Department to improve, where possible, road safety for road users and indeed for pedestrians and non-road users as well. The Department as usual is happy to discuss further if any more clarification is needed by Mr Turner.

2525 Back to the local authorities, we have already amplified this too, I think. It gives the powers to the local authorities but the Department retains the responsibility which I think we explained earlier this morning; and it is to help speed up certain times when perhaps the Department has not got the resources to do it, Madam President.

2530 **The President:** The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. The motion therefore carries, and it will be returned to the other place, with the suitable renumbering of clauses and so on.

A Member: Oh, yes we can do that.

6. Local Government and Building Control (Amendment) Bill 2016 – First Reading approved

Mr Corkish to move:

That the Local Government and Building Control (Amendment) Bill 2016 be read a first time.

2535 **The President:** We now come to Item 6, Hon. Members, the Local Government and Building Control (Amendment) Bill 2016, First Reading.

I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

2540 I am pleased to promote this short Bill on behalf of the Department of Infrastructure.

This legislation seeks to amend several enactments in relation to local government and building control and provides for the introduction of fixed penalties in connection with certain statutory notices and following contravention of certain byelaws.

2545 The Bill is also intended to address a number of issues raised by a report of the Council of Ministers on the Environment and Infrastructure Policy. Under that Report there was a requirement to –

Work in partnership with local authorities to improve the management and control of unsightly and dilapidated properties that have a negative impact on our communities.

Specifically, the proposals are aimed at enhancing the management and control of land and buildings that have a detrimental impact on the appearance of local communities.

2550 The Bill provides for an increase to £5,000 in the maximum fine that can be imposed by the courts for failing to comply with a statutory notice to carry out improvements to a building or on land. As well as increasing court fines, the Bill also provides for the introduction of fixed penalties, to

be issued by authorised officers of local authorities, in such cases where an owner or occupier has not complied with a statutory notice requesting improvement works to be undertaken.

2555 Additional powers will also mean that owners and occupiers not only have to remedy the original problem, but also take action to ensure their building or land is properly maintained to avoid the issue recurring.

2560 The Bill has been the subject of extensive consultation with interested parties and the proposals of interest have received the overwhelming support from the majority of those persons and organisations who responded to the consultation document.

Mr Turner: It would do!

2565 **Mr Corkish:** It should be noted that two amendments to the Bill have been passed by the other place. The first amendment allows the Department of Environment, Food and Agriculture to give guidance on the meaning of the expression of dilapidated, and local authorities must have regard to such guidance when exercising their functions under section 24 of the Building Control Act 1991.

2570 The second amendment amends the Rating and Valuation Act 1953. The amendment requires owners to pay rates where an order under section 22, or a notice requiring work under section 24(1)(a) or (b)(i) of the Building Control Act 1991 applies. This will help to prevent buildings from becoming ruinous and/or dangerous in the first place, as there will be no incentive for owners to allow their properties to get into such a condition that they are able to avoid paying rates by seeking a zero rating.

Having outlined the broad principles of the Bill I hope that Hon. Members will now give it their full support.

2575 Madam President, I beg to move that the Local Government and Building Control (Amendment) Bill 2016 be read for a first time.

The President: The Hon. Member, Mr Henderson.

2580 **Mr Henderson:** I beg to second, Eaghtyrane, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

2585 I think it is hardly surprising that we are told that the majority of those who responded are in favour – because it is that sort of Bill, and if people are particularly interested they are going to respond.

2590 But I think we have to be very careful here, because we are taking so much money out of the pockets of people ... a lot of people cannot afford to be spending money on their properties at the moment and what we have to make sure is we do not get to the stage where we are forcing them to start taking action – when Government is the biggest culprit of the lot!

I would hope that when this goes through, the first writ is served on whoever owns the Summerland site! If ever there is an eyesore at the end of Douglas Promenade, then that is it!

2595 So I think we have got to make sure that if we are going to jump on the little man then we practise what we preach here, and Government too are bound by some of the provisions that are in here for unsightly properties and land.

2600 I think it is well known that when people do spend a little bit of money on their property and bring them up to scratch, the rest of the area follows – and we have seen Government leading by example by doing a bit of work on North Quay, for example, and then slowly property owners enhance their properties. I think we have got to make sure that it is not all stick and we do have carrot as well.

I believe it is certain issues in constituencies that have triggered this, but one of the biggest culprits of dilapidated sites and land is Government themselves, so I hope that we are not going to

2605 have scores of officials going round penalising private landowners when they need to get their own house in order first.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

2610 Just to make the observation that as a director of a heritage trust, which is also responsible or takes an overview of a community within a regeneration area, I welcome this legislation wholeheartedly. What we have found is that you have spent a substantial amount on regeneration, you do some very good heritage work and there is perhaps a property – or two or three properties – that completely detract from the heritage site, owned by individuals who do not even live on the
2615 Island who bought the properties as an investment and are just letting them fall into ruin.

So it has got my full support.

The President: The Hon. Member, Mr Cretney.

2620 **Mr Cretney:** Yes, could I ask the mover to perhaps elaborate a little bit for *Hansard*?

It seems to me that the problem in the past was interpretation of a definition of detrimental amenities in the area, and that there was some question that the local authorities had a difficulty sometimes in determining what actually that constituted. How does this Bill improve that, please?

2625 Can I say also that I certainly support the ‘stick’ element about rates being required, whereas in the past as was moved in the House of Keys, I certainly think that is something which should be welcomed because it will hopefully encourage developers to move on and get on with their development.

In relation to the Summerland site –

2630 **Mr Turner:** It is an eyesore!

Mr Cretney: – which was removed in my period of time as the Minister for Tourism and Leisure, so it was prior to 2006 that it was taken down, and I still believe it was the right thing to do, because the building itself was an eyesore.

2635 What remains is an eyesore, I certainly agree with you –

Mr Turner: It is worse now.

2640 **Mr Cretney:** – but it is a little bit more complicated than the Hon. Member indicated, inasmuch as there are adjacent landowner issues which would require to be resolved.

I will say no more than that; and I support the Bill.

The President: The Hon. Member, Mr Anderson.

2645 **Mr Anderson:** Thank you, Madam President.

I, too, welcome some of the provisions that the Hon. Member has outlined in his introductory remarks.

2650 Can he just confirm for my interpretation that the amendment, I think, that was moved – or the new clause put in in another place – does mean that ruinous buildings will have to pay rates in the future now, or is that dependent upon that local authority making that determination?

We have all got properties in our areas that have been left fallow, shall I say, for years and they make the whole area a bit of an eyesore. If there is this incentive for owners to do the buildings up, or to sell them – which would be even better – to other people that might be able to make more use of them, this provision would be more welcomed. (**Mr Cretney:** Hear hear.)

2655 I look for confirmation of that from the mover.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

2660 Mr Turner was first in the queue. This can be summed up by being an overall pride in the community and this relates, I think, very much to regeneration of our towns and villages. And properties certainly around Douglas, when I was a Member of the other place, I remember lovely streets being let down by one particular building in a terrace. (**Mr Turner:** The promenade.)

2665 The number of times that I and others, no doubt, have tried to move something in that respect and we were referred to Section 14 of the Local Authority Bill, or whatever – it had no effect whatsoever. And I felt so sorry for these people who were living alongside, keeping their own houses in good order and being let down in all manner of ways by houses falling into absolute ruin.

The Summerland site, I think Mr Cretney has helped out a little there – it was a rockface problem, of course, which is one of the major problems why that site has been so long ... lamentable though it is. But the observation is well noted.

2670 I also note what Mr Turner said about it only needs one building, or one rotten egg that can set a lot more problems going, and you can have one nice building which certainly helps others to do something with their properties as well. So I think in the main this is a Bill which affects us all; and pride in the community in general.

2675 Mr Wild, can I thank him for his support and also understanding of what this Bill is trying to do in relation to what I have just said.

Mr Cretney, in general, welcomes this. He needed a definition of detrimental – I do not think I can elaborate on that apart from saying detrimental is subjective, and it will mean different things to different people and to different authorities, and one person may construe it as detrimental and one person may say it is not.

2680

A Member: That is why it has failed in the past.

2685 **Mr Corkish:** Well, you may say it has failed, this is going some way towards eradicating this and addressing it, which I have found in the recent past to be sadly lacking in what we try to do; and especially now when regeneration movements are being made, this can only help the situation.

2690 Mr Anderson gives a general welcome. I can come back and confirm what he is looking for, but what I am saying in my introduction is that it would help to prevent buildings from becoming ruinous. So I think what we are saying here is that there is an incentive, Mr Anderson, to obviate ruinous buildings; *and* that they are able to avoid paying rates by seeking a zero-rating. So that all helps, I think, but I will certainly seek clarification on that for you to be absolutely sure.

Madam President, I beg to move.

The President: Hon. Members, the motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

7. Road Traffic Legislation (Amendment) Bill 2016 – First Reading approved

Mr Corkish to move:

That the Road Traffic Legislation (Amendment) Bill 2016 be read a first time.

2695 **The President:** Item 7, the Road Traffic Legislation (Amendment) Bill 2016. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President. I think we should be offered gin and tonic after all this! I will just have some water. (*Interjection*)

2700 The Road Traffic Legislation (Amendment) Bill 2016, I beg now be read for a first time.

Madam President, the Bill is a far-reaching affair which affects the law on road traffic and drivers in various ways. Of the Bill's principal provisions, the most weighty are those set out in part 2, dealing as they do with the amendment of the Road Traffic Act 1985.

2705 This part has five key themes: first, to deal with the unsafe or irresponsible driving, whether it be drug-driving, using a motor vehicle for the purposes of crime or driving a vehicle on footways – that is to say, pavements; second, to lessen the overload on the courts by providing for the enforcement of fines compensation or vehicle duty through the seizure of motor vehicles; third, to improve the law relating to the construction and use of vehicles, for example, their use by disabled persons; fourth, to make extensive and material amendments to the law on driving licences and disqualification; and finally to facilitate the detection of crime, for example by providing on the one
2710 hand for the use of the Motor Insurers' Database, and by extending on the other the information-gathering powers of both the Police and the authorised vehicle examiners of the Department of Infrastructure.

I will now deal with those themes in that order.

2715 Madam President, as far as the first is concerned, this part further addresses drug-driving, by enabling a constable to administer a preliminary drug test which will be used to test not only for drugs in general but specifically for controlled drugs above specified limits, the use of which when driving or attempting to drive, is now made an offence. A 'controlled drug' is one classified as A, B or C for the purposes of the Misuse of Drugs Act 1976.

2720 As to using vehicles for the purposes of crime, a further deterrent is prescribed, empowering the courts to disqualify offenders.

The opportunity is then taken to clarify the law on using vehicles on footways, which as I have previously explained is the legislative term for pavements. At present it is an offence to 'drive' on them, but the reference solely to driving begs a question whether it also embraces 'riding' – for
2725 example, does one ride or drive a pedal cycle? A debateable point, but clearly one does not 'drive' a skateboard; one rides it.

Against this background, Hon. Members may agree that the law should be certain. At first glance, the public interest would appear best served if the use of vehicles on pavements were generally prohibited, yet there is a strong case for exemptions – for example, by permitting pedal cyclists to
2730 use clearly demarcated areas on wider pavements, particular where using the adjoining carriageways would be hazardous. So power is taken to provide by order for exemptions of this kind.

All in all, the Department is satisfied that the right balance has been struck, and in this respect, I would like, if I may, to assure Council that the present exemption for mobility scooters will not be affected.

2735 As regards the second theme, lessening the overload on the courts, this part goes on to provide for the seizure of motor vehicles in cases where the courts have imposed fines or ordered the payment of compensation, and where either remain unpaid. The powers of seizure are also extended to the non-payment of vehicle duty. If the fines, compensation or duty then remain
2740 outstanding, the vehicles may be disposed of and proceeds used for or towards payment. What the provisions do is provide a means of enforcement without further recourse to the courts.

With respect to the third theme, the construction and use of vehicles, provision is made for their better testing and inspection under the related regulations, confirming of power to make such regulations as to the use of vehicles by disabled persons, a draft of the regulations having been
2745 circulated for public comment.

The facilitation of amendments to the law on the carriage of dangerous goods and the enabling of authorised vehicle examiners to prohibit the driving of unfit public passenger vehicles, all of which we consider to serve the better the public interest.

The fourth theme, improvements to the law on drivers' licences and disqualification, begins by embracing three new and important proposals with respect to applications for licences. First,

2750 besides having to declare relevant disabilities as at present, applicants are required to declare prospective relevant disabilities, being ones which by virtue of their intermittent or progressive nature or otherwise may become relevant disabilities in the course of time. Second, applications to renew licences to drive large passenger or heavy goods vehicles must be accompanied by a certificate from a medical practitioner that the applicant is still fit to drive them. Third, applicants for the licence who are aged 75 or over must have passed a prescribed eye-sight test.

2755 For its part, the Department is required to include in a licence the driving conditions to which the holder is subject in a case where the Department is satisfied that the person in question is suffering from a disability presenting a danger to the public, if the conditions are not complied with; and to revoke the licence of a driver who, suspected of driving with defective eye-sight, fails the eye-sight test.

2760 As a deterrent to unsafe driving, a series of new offences is then prescribed, namely: making a false declaration to obtain a licence; driving a motor vehicle contrary to any limitation or condition included in a licence; contravening the prescribed restrictions relating to learner drivers; and failing to return forthwith to the Department when required to do so a revoked licence or one requiring amendment.

2765 Finally, in the light of the Glasgow bin lorry tragedy, where the driver's failure to declare that he was liable to fall unconscious at the wheel led to the deaths of several people, and whereas at present in the Island the law was found inadequate to bring a prosecution, the offence of making a false declaration is made triable either way, in lesser cases, summarily where the maximum fine of £5,000 and in graver cases on indictment, with penalties of 14 years' custody or an unlimited fine or both.

2770 Madam President, as far as disqualification is concerned, the interests of road safety have given rise to a provision reducing, from 12 or over to six or over, the number of penalty points leading to the disqualification of a provisional or newly qualified driver, or to the revocation of his or her licence, as the case may be.

2775 As to the final theme, the detection of crime, this part implements two new proposals: first, it effectively requires insurers to notify the Great Britain Motor Insurers' Bureau of policy particulars, so that they may be recorded in its database; and second, it caters for the use of the database by the Department, the Police and local authorities, in accordance with regulations to be approved by Tynwald. In this way, owners of motor vehicles will be easily and swiftly identified, and information, for example about insurance or non-insurance, just as easily ascertained.

2780 Lastly, the circumstance in which the furnishing of information as required, for example, in the case of accidents, is extended.

2785 We turn now to the rest of the Bill, which makes amendments mostly of a lesser nature, to the Road Traffic Regulation Act 1985 and the Local Government (Miscellaneous Provisions) Act 1984. The amendments of the Road Traffic Regulation Act effected by part 3 include: greater penalties for speeding, particularly in residential or roadworks areas or school zones; the regulation of the entry into the Island and the use in it of overseas caravans, their entry being at present dependent on a gentleman's agreement with the Isle of Man Steam Packet Company; the removal of the bureaucratic procedures involved, on the one hand, in extending the validity of temporary notices regulating traffic, and on the other in temporarily relocating the school crossings; the extension of the circumstances in which emergency traffic signs may be used, for example, when blasting operations are taking place at a quarry, making it an offence on the one hand to deface traffic signs or other street furniture, and on the other to misuse a disabled person's badge; and finally, to prescribe the small number of fixed penalty offences, almost all relating to parking, being offences in keeping with the Road Traffic Regulation (Fixed Penalty Offences) Order 2013.

2795 The amendments of the Local Government (Miscellaneous Provisions) Act almost entirely affect part 1, which deals with the removal and disposal of abandoned or illegally parked vehicles affected by part 4 of the Bill, and they include: an increase, broadly in line with inflation of the maximum fine on conviction of failing to remove an illegally parked vehicle when required by a constable to do so; power to remove from a road or public place any vehicle that is in such a condition that its presence

there makes it offensive to the public, but only after 28 days have elapsed, and only after 14 days' grace is given, by notice affixed to the vehicle.

2805 And finally to prescribe procedural provisions relating to detention, release and disposal of vehicles under the Act, being provisions that for consistency are broadly in line with those for the enforcement of fines which I have previously addressed.

Madam President, overall, I am convinced that this Bill will make material contribution to the law on road traffic and drivers, and as such I commend it to Council.

2810 Madam President, I beg to move that the Road Traffic Legislation (Amendment) Bill 2016 be now read a first time.

The President: Hon. Member, Mr Henderson.

2815 **Mr Henderson:** Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

2820 **Mr Turner:** Thank you, Madam President.

I wonder if the mover could explain why this Bill has been introduced in to this place first.

Speaking to colleagues from the other place, they are very concerned about the content of it, and I just wonder what the motives were for the Department or the Council of Ministers choosing to do so.

2825 Some of the provisions in here have been hanging around for quite a while, and I think some of them are quite draconian, in the way they will no doubt operate. So at this point, obviously we will go through it. One way of course to test it would be if it all went through suspension of Standing Orders and all three Readings were done today, it would go to the other place, and then be tested.

2830 I wonder whether it is because the pending dissolution before the election, but maybe the mover could explain exactly why they have opted to bring this Bill forward under this process, as I would like to know the motives of the Department.

The President: The Hon. Member, Mr Cretney.

2835 **Mr Cretney:** Just on one specific point about ... it is described in the proposed legislation as 'overseas caravans'. I just wonder how overseas caravans are differentiated from those which exist in some numbers on the Island. You only have to go round any housing estate, and you will find caravans in them, and I just wonder. There were representations made in the past that local owners who owned those felt that they were being restricted because, I think, the policy previously was that the Department of Infrastructure were to allow caravans in only for motorsport events.

2840 I hope that is not still the case in this Bill, (*Interjection by Mr Anderson*) because it is not clear. Obviously, it would be subject to order which would be put before Tynwald, but the Department must have some idea what they are thinking about in that regard. I would just like the Member to clarify that somewhat.

2845 **The President:** The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I would be very grateful if the mover could explain what the reasoning is behind not having regular tests of motor vehicles, such as they have in the United Kingdom.

2850

A Member: MOT.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

2855 Very supportive of this particular chunk of legislation. I did participate in the consultation on its inception, especially with the issues on abandoned vehicles which have blighted my former constituency no end, from time to time, and as with dilapidated properties at that time, there was quite often a lot of arm throwing up in the air by officials when you wanted the issue addressed. So I think this bolsters it up really well.

2860 I do not think it is as draconian as it could be in certain circumstances, Eaghtyrane, given the standard of driving at times on the Isle of Man, especially with one clause, which the Hon. Member read out, which was trying to address with increased fines. I would ask that his Department – who I know are listening – address issues such as the increasing and dangerous practice now of shooting red lights and to examine ways of how other countries deal with this. I really do feel we need that implemented here. How there have not been more crashes and fatalities, I just do not know, especially when the lights are changing to amber, Eaghtyrane. Somebody will chance it and then two more will follow through. A classic example is Broadway at a quarter to nine in the morning, when traffic is coming down Victoria Road onto Broadway. You get six or seven cars shooting a red light following, chasing the orange.

2870 Roundabout behaviour: I was always taught to drive whereby if I was actually on the roundabout, I did have the right of way, no matter what direction other traffic was coming. However, that rule seems to have changed now, and again there are some very dangerous practices being produced with regard to that – near misses and crashes that I have seen before. I really do think you need to bring something else forward to address this increasing problem.

2875 It was not so prevalent a few years ago, but it is more and more, lately, as people become more aggressive in their driving practices.

So I will leave it at that, Eaghtyrane.

The President: The mover to reply.

2880

Mr Corkish: Thank you, Madam President.

Mr Turner: he has doubts on the introduction of the Bill in this place. Of course, this Chamber is entitled and able to introduce Bills, as has been seen already today. It also gives life to the Bill before the General Election, where if it was introduced in a different place, to be honest, it would be lost.

2885 There are two former Members – two former Ministers – of the Department here, and ex-Members of the Department who will know that there has been a long gestation period for this Bill. (**Mr Turner:** For a reason.) It is high time.

And I would jump to Mr Henderson's comments that this Bill perhaps does not go far enough, despite some Members thinking it is, in their words, draconian.

2890 Mr Cretney mentions overseas caravans, different from Island-based, and this provision will allow caravans to travel to campsites by the best designated route. This is something which appeals to me greatly, because I was the person who introduced this in another place, looking ahead, because at some point we could be overrun with caravans and all the problems that could come; on the other hand we could invite caravans here to designated camps and make money out of them. But anyway, that is another part, Madam President.

2895 So the overseas caravans are different from the Island-based and residents' caravans are yet to be addressed, when regulations are put out to public consultation.

2900 My Lord Bishop: why no MOT, was the phrase I think that was missing from that. A consultation three or four years ago, that was brought to the House and there are 75% of people who were then against the introduction of those proposals. (**A Member:** Turkeys!) I remember it well. Nevertheless, that is the reason, in honesty, Bishop.

2905 Again, going back to Mr Henderson, I welcome his remarks, which in his own words, he said 'bolstered up' regulations for best practice on our roads. In fact he was looking for increased fines and I too can join with him in agreeing that some of the driving practice on the Isle of Man is dreadful. In fact, in some I find it getting worse and worse. I could – I will not, for the sake of

2910 *Hansard* – define the breed of driver that I think are most at cause here, (**Two Members:** Go on!) but I have been cut up so many times – more so than ever before – people chasing deadlines, getting to work early, looking for a parking space perhaps. Mr Henderson mentions a particular spot, Broadway, and I mentioned this very fact to the Department, and I am very glad to say that whilst what I wanted was not totally introduced, they did bring forward a halt sign from the Victoria Road end, so that drivers coming down Victoria Road can see the traffic mounting up. Because I have been cut up so many times, the traffic has been brought to a standstill.

2915 So yes, the Bill could go further, could be more draconian. However, it is introduced in the best light of prescribing better conditions or better legislation for road traffic here on-Island, the roads of which are becoming more and more crammed with motor cars – and fast motor cars.

So Madam President, with that, I beg to move.

2920 **The President:** The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of our Order Paper today, Hon. Members. Council will now adjourn until Tuesday, 3rd May in this Chamber.

Thank you.

The Council adjourned at 3.57 p.m.