

**Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Bill 2020 –  
Second Reading approved**

**The Speaker:** Minister to move Second Reading.

**Mr Harmer:** Thank you, Mr Speaker, and I thank Hon. Members for their support.

3110 The creation of the Courts, Tribunals and Local Authority Procedures and Miscellaneous  
Provisions Bill 2020 resulted from feedback received on the original draft Civil Contingencies Bill,  
which was circulated to all Tynwald Members on 19th June 2020. On reflection, it was  
considered that the original Bill as drafted was too broad as it replaced both the Emergency Act  
as well as dealing with other provisions and other topics, such as the business of courts,  
3115 Department of Health and Social Care facilities and provisions for local authorities, therefore the  
decision was taken to split the legislation.

By way of an update, the Cabinet Office has recently completed the civil contingencies public  
consultation, and a period of reflection and possible re-drafting ... following that we have  
re-drafted the Bill as we have now introduced into this House.

3120 Turning to the Bill before the House today, the fundamental purpose of this legislation is to  
ensure that the positive operational changes to the practices and protocols which resulted from  
the Island's response to the COVID pandemic, and which are now covered within the provisions,  
can stand ready to be used during another emergency alongside civil contingency provisions and  
the Public Health Act 1990 to enhance the Island's response and be used as part of business as  
usual functions to enhance service delivery.

3125 Broadly, the Bill will place the good practices, which were accelerated through the  
emergency period and were anticipated to have been provided for through the future primary  
legislation, onto a legal footing.

3130 More specifically, the Bill introduces amendments to the Criminal Justice, Police and Courts  
Act 2007 to provide for live audio and video links in various court proceedings. Secondly, it  
introduces amendments to the Police Powers and Procedures Act 1998 and the Criminal Law Act  
1981 in relation to provisions of bail. Thirdly, it provides for any decisions to be taken by the  
local authority under the relevant Emergency Powers Act 1936 Regulations to remain valid and  
lawful and that any decisions taken at a virtual meeting of a local authority and subsequently  
ratified was, and is, valid.

3135 Finally, it seeks to implement a legal framework for governance of decision-making, financial  
penalty and the ability of the Department of Social Care to move a person from a Department  
facility.

3140 During the Island's response to the COVID pandemic the Emergency Powers Act 1936 was  
used to make regulations in relation to a number of matters including: potentially infectious  
persons and directions; border restrictions and directions; face coverings; closure of businesses;  
and control of events and gatherings.

3145 The Public Health Act 1990 would provide for regulations to be made in the event of a future  
need. However, this Act does not currently provide for custody for an offence under such  
regulations or fixed penalties for such offences. The proposed amendments to the Act within  
this Bill provide for such enforcement.

Mr Speaker, I beg to move:

*That the Courts, Tribunals and Local Authorities Procedures, Miscellaneous Provisions Bill  
2020 be read for a second time.*

**The Speaker:** Chief Minister.

**The Chief Minister:** I beg to second.

3150

**The Speaker:** Mr Thomas.

3155 **Mr Thomas:** Thank you, Mr Speaker, and to the mover, to Council of Ministers and to all the staff involved for having begun to think very seriously about all of the issues around COVID-19 and arising from the legislative approach that was taken at high speed to deal with the very important issues that have been there for quite a number of months now.

3160 In terms of the structure of the Second Reading and my vote for the Second Reading, I just clearly wanted to put on record that it is absolutely necessary to have a Bill like this, a Miscellaneous Provisions Bill like this, to tidy up lots of things that we have done through emergency powers.

3165 It is also incredibly important to have the right Public Health Act in place so that we can respond to the public health crisis that we have survived, got through, flourished in, to an extent, and have a proper public health piece of legislation and arrangements building on the experience of COVID-19, like we did with the 2013-14 amendments to the Public Health Act that caused us to have section 51 in the Public Health Act now, and like we did back in 2007-8 when we put in place our first pandemic plan, which was revised through the next 12 or 15 years.

So the principle is right, and that is why Second Reading is absolutely appropriate today, in my humble opinion.

3170 However, we have to remember that the consultation – the public consultation for this Bill, the Civil Contingencies Bill and the public health amendments – has been here and there over the past four or five months, and we only had the final version of the Bill, as Members, a few days ago, which I now learn is not quite the final version because Government plans to move an amendment today. And as a Member of this House of our parliament I would very much like to have had the actual Bill that we are considering at clauses stage today – if Government has its way – out there for more expert opinion and analysis for longer than it has actually had.

3175 Moreover, the Order Paper for today's sitting did not even actually say that there was going to be a suspension of Standing Orders. Formerly Cabinet Office always used to give notice that they intended to move a motion to suspend Standing Orders to have Second Reading and then to have clauses and so on, we have done that in the past. But that is obviously not there so the public did not know that we were going to have this call today, except for working it out from the Legislative Council sitting.

3180 Now I want to come to some substance because I am in a position where I am tempted to move some amendments today in the interest of better outcomes for the people of the Island and for our Island in its response to learn from what has happened – brilliantly in many cases, in most cases even – over the last six months to make sure we have proper legislation for the pandemic in the future, this one or even future ones.

3185 I think we do need a better Public Health Act. I do think we need to amend the Public Health Act. It is not just in terms of having fixed penalties and having custody sentences available, although I commend the officers and the politicians for listening and putting those in this version, after the issue that was raised at the Members' briefing, a few weeks ago. But, as I have been suggesting in Questions through August, September and in various other places, and principally taking into account the very helpful letter from the Attorney General on 27th May, which he sent to the Public Accounts Committee, and which is published as Annex 2 to one of their reports, we do need to think about how the Public Health Act can be used for border control, and to my mind, the Chief Minister very helpfully laid out options this morning and I for one would like the chance to draw up amendments in the light of those options that the Chief Minister laid out so that we can have the perfect Miscellaneous Provisions Bill, leading to the perfect Public Health Act, leading to the perfect Civil Contingencies Act, updating the Emergency Powers Act 1936. We have got the time to do that, we have plenty of time.

3195  
3200

We were told this morning the Public Health Act was sufficient in a way for border control: that was news, I had always thought it was not sufficient, but we were told this morning that it was sufficient. So it is in terms of border control, my amendments, it is in terms of Tynwald –

**The Chief Minister:** Point of order, please.

3205

**The Speaker:** It is a point of order or are you asking for the Member to give way on a point of debate?

**The Chief Minister:** I am just asking that something wrong has been stated, I am asking for the Member to withdraw.

3210

**The Speaker:** Well, they would be point of debate, but if the Hon. Member is happy to give way?

3215

**Mr Thomas:** I am pleased to give way, yes.

**The Chief Minister:** We are moving legislation together for April for the borders, at no time did I say it could all be done under the Public Health Act 1990, which is the inference that the Hon. Member gave to Members.

3220

**The Speaker:** Mr Thomas.

**Mr Thomas:** I do not believe I suggested that but I have talked merely about the border context.

3225

Anyhow, the Tynwald scrutiny process in the Public Health Act 1990 is quite unusual. Regulations can come to the sitting after the one immediately there, we need to look at that, and I would like to look at that in terms of an amendment, working with others.

The COVID information centre is something I put in my questioning in August and September. Good work was done below the legislative scrutiny process because of the way we did it in Cabinet Office, but I would like to think that the information centre is an important part of the test, test test; track, track, track system, and I would like to think that we can use a couple of weeks to make sure we have captured the best of that in terms of the Public Health Act.

3230

And with respect to myself and to all of us here, I would very much like to have all of the Isle of Man, all of the experts involved in actually thinking this through and going back to the excellent legislative process that used to be the norm but is becoming the exception. Because I think this is the fifth Bill we have now done on this basis, and I am a firm believer in the abilities and the capabilities of ourselves working collectively to perfect the legislation that Government, the AG's and the excellent officers bring to these Branches.

3235

I have also got possible issues with the local authority section because a strong case has been made for the need of local authority amendment. I am sure that is valid. I have not looked into it, but I would quite like other people to look into it. But the question that comes to my mind, which I floated in the Members briefing, is perhaps we are not damaging ourselves in other areas. The Council of Ministers itself has been chaired at a distance. Council of Ministers took place on a virtual basis, Tynwald took place on a virtual basis, the cost sharing arrangements were considered at a PSPA board that met on a virtual basis, and there might be all sorts of virtual meetings that have taken place over the crisis, and I would just like people who know much more about it than me to think through whether or not we need to make similar arrangements, if we really do need to make this arrangement for local authorities in respect of that, rather than setting up a precedent which would then be used against us for undermining the validity of some decisions that were made on a virtual basis.

3240

3245

3250

I was always taught that legislation should be technology neutral and I am sceptical about the need for this amendment, but I do not know, I am not an expert in this area. I just would like time to consider whether or not we are actually putting together a rod that will be used to beat our backs in other parts of the end of the process.

3255 In terms of the courts and tribunals, and also the bail part of it, I just have not had a chance  
to look at it. I understand it is much better than it was before. I have taken through pieces of  
legislation, working with Mr Speaker in a former life, and then more recently in terms of making  
up for errors that we made, because we were doing it relatively quickly in the normal procedure.  
3260 But I would very much like more people who are more versed in all these procedures to have  
more time to look at this and actually to have the chance to move amendments, if necessary,  
not just the ones that have been identified by Government to move today.

With that, Mr Speaker, I will be voting for the Second Reading, but I put on record that this  
Member for one feels as if this House, the people we represent, the experts out there are being  
diminished in some sense by this rush. And I take the point that we need to have something in  
3265 place by 26th December for border control, but let's be more respectful of the expertise that  
surrounds us as we make up our minds whether to rush today.

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

3270 **Mr Shimmins:** Thank you, Mr Speaker.

I would like to associate myself with many of the remarks made by my hon. friend, Mr  
Thomas, just there.

Turning to the Bill, a few specific queries from me. In terms of clause 5(17), and this is what I  
would describe as the capability issue, the capability of witnesses or other participants in  
3275 proceedings. Under section (v) it talks about:

whether the person will be able to take part in the proceedings effectively if that person takes part in accordance  
with the direction.

I guess a lot is hinging on the word 'effectively' there for me, and that can cover a whole  
gamut of situations. Automatically you think about people perhaps with hearing difficulties or  
people who have got impaired eyesight, but they could also have other physical conditions  
which make it difficult for them to be effective in that important ... We must remember court  
3280 proceedings are critically important for the people that are participating in it, you want to  
ensure that people are able to give their best. I am also concerned about people with mental  
illnesses perhaps, which might not be immediately apparent, or people who have a language  
barrier, perhaps English is not their first language.

So my question for the Minister on that, and I guess the wider issue of capability using a  
remote system, is does that need to be considered further? Does the language need to be more  
3285 expansive and inclusive to take account of all the different potential situations that people might  
have which might not enable them to participate effectively? And I am sure there are many  
more that other people can think about.

One thing that I was looking for in this Bill, Hon. Members, was a strong commitment to the  
right of the public and the right of the media to attend any court proceedings, and secret court  
proceedings where you have secure video links may be expeditious in a crisis, but also they have  
some sinister connotations, I think, in our democracy. So I would be very interested in the  
Minister's view guidance on this, can he point to me where this is contained in the Bill? Because  
I would like a clause which specifically says that the public and the media will have access to  
3295 these court hearings, particularly if they are going to be held remotely.

I do recall a debate that we had earlier this year about how these proceedings needed to be  
secure. We had a debate about planning, if I remember, a similar use of technology, and there  
was a whole issue about would you make sure it was secure. So if it is going to be secure how  
will the media and how will the public participate in that? And I guess, as we are guardians of  
3300 our democracy, I would suggest that that feels kind of important to me.

Moving swiftly on, clause 13 talks about the different types of tribunals. On Sunday evening I  
was trying to rack my brains of all the different tribunals that we have got here, and I thought I

had found one that was not contained in terms of the equality tribunal, but then I realised that it is now the Employment and Equality Tribunal, then I thought there may well be others. I think some people are talking about potentially licensing tribunals, other things like that. It would be helpful if we could have a claim list of all the tribunals that this relates to or a statement from the Minister which says actually there are no tribunals here on the Isle of Man which this does not cover, just so that I have got some comfort that collectively we will not have forgotten one of the many tribunals that we have here.

Moving on to clause 23, and this is the local authority ratification clause. I would ask the Minister for the legal advice on this, can he share this with me? Because, like many Members of this Hon. House, I attend local authority meetings so I think it is important that local and national politicians work closely together. I attended a number of these electronically during the lockdown process, either by Zoom, Teams or Skype and these were properly constituted quorate meetings, with an agenda and minutes were issued afterwards, and I am really struggling to understand why they would not be legal meetings because again, I understood that our law was technology neutral. So if this clause is to remain I think it is very important we understand and see the legal advice that actually confirms we must have it because the danger, as my hon. friend very eloquently articulated, is if we do not cover everything then the one that we have forgotten about, actually, there is then a legal challenge because that was not included in this Bill then it was not legally quorate. And if that is the case they would need to add in another clause before the other meetings that we need to sort out.

So there is just a few queries from me, I think I probably will have more listening to other people's questions and the responses. And again, I think it is really important in terms of the process that we move forward expeditiously. What I would suggest that means is that we move forward quickly, because we cannot afford to delay unnecessarily. I understand that there is a degree of urgency. But I think it is inappropriate for us to move to clauses stage at this particular point in time because I do not think Members will have a chance to listen to other people's questions and also receive the responses from the Minister and his assembled team here as to the points that we have raised, and trying to all on one day, for me, I think we might regret it.

I would absolutely be happy to come back for more sittings to do this properly at a future date. I am absolutely keen to do that. I am keen to work with the Minister and his team to do that. Personally, I think we could probably have done this last month (*Laughter*) if we had shortened the recess. I am flexible but I think actually coming here and saying, 'You must do all this in one day' actually feels inflexible, and I would suggest that is perhaps a misguided way. There is a danger that becomes the *modus operandi* and I do not want to see that happen because the danger of doing that and really ratcheting up why this must be done really quickly is that when there is something that genuinely is an absolute thing that must be done, you lose the co-operation of people if it happens all the time.

So I would urge the Minister perhaps just to take those comments on board. Certainly not interpret them as anything other than being supportive, as I say, I am happy to come back on numerous other occasions to go through this, but I think we need to do it in the proper, correct diligent way.

Thank you.

**The Speaker:** Hon. Member for Douglas South, Mrs Christian.

**Mrs Christian:** Firstly I would like to thank Minister Harmer for his initial response to my email regarding Part 5 section 27.

I also have some concerns regarding this Bill, in particular Part 3 – Bail. This Part is very positive, and it has been in use throughout the COVID-19 Pandemic. However, I would like to raise a concern with respect to the appeal mechanism of the defendant accessing legal aid. It is my understanding that prior to the Police having the power to grant bail with conditions, the situation was simply the Police would grant unconditional bail or, if that was not deemed to be

3355 appropriate, the defendant would be held in custody to appear before the next available court,  
where conditional bail could be applied for. At that court appearance the defendant would have  
access to free independent legal advice, regardless of their financial means by virtue of the Court  
Duty Advocate Scheme. This is deemed to be a basic human right and one that the Isle of Man  
has long since put in place. My question is would the Minister consider an amendment to allow  
3360 for section 21 of the Legal Aid Act 1986, which relates to the Duty Advocate Scheme, to be  
extended to cover police conditional bail appeals, as currently this Bill does not allow for  
automatic and non-means-tested legal advice for a defendant if granted conditional bail by the  
Police?

This Bill could be taking automatic free legal advice away from people because it is means  
3365 tested and in the worst-case scenario there could be a situation where a defendant is not  
financially eligible or they are self-employed and do not have immediate access to all of their  
financial documents, then they would not have access to free legal advice, and would either  
have to pay for the same or worse, navigate the appeal process themselves. Furthermore the  
appeal process is written and this could discriminate against people who cannot read or write, or  
3370 who have learning difficulties.

I also have concerns in the miscellaneous provisions, the concerns are in interpretation. I am  
going to briefly just go over some of them, there are more. I believe in section 24(d) 'O's  
representative' should be drafted to encompass all those who the Department would consider  
able to be a representative, such as family members, recipient of EPOA/receivership, advocate  
3375 etc.

Section 24(e):

'P' means a person authorised by the Department;

I would like to ask the Minister what qualifications will P need to make a potentially difficult  
decision? Will there be a specific grade of civil servant?

Section 26 makes no provision for an appeal process against the decision to remove 'O' from  
3380 a departmental facility. This means 'O' is not afforded the right to challenge the decision without  
having to resort to a Petition of Doleance, which could take months. What greatly concerns me,  
Minister, is if 'O' is removed from a departmental facility and the court then decides they should  
not have been, irreparable damage could have been caused or worse they could lose their life,  
particularly in terms of mental health decisions.

3385 Section 27, the costs should be set by regulation in order that Members of Tynwald can be  
given the opportunity to properly scrutinise the calculation of the average daily cost for the  
facility and set an appropriate occupational fee.

Minister, my overarching concern is that it is our duty to protect vulnerable members of  
society, particularly those with mental health issues, and who also may have alcohol and drug  
3390 dependencies. I am also duly concerned that this Bill will impose unknown financial penalties on  
patients when a Department concludes they need to be moved.

Will the Minister agree that there is more work to be done and additional clarity required  
during the clauses stage?

Thank you.

3395

**Mr Thomas:** Hear, hear.

**The Speaker:** Before I call on the Member for Douglas East, I think on behalf of the House I  
would like to congratulate the Hon. Member on her maiden speech. (**Members:** Hear, hear.)

3400 Now, Hon. Member for Douglas East, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker, what an excellent contribution it was as well.

I also want to associate myself with comments made by other previous Members as well who have done their best in a very short period of time to start drilling into the Bill.

3405 I have not had that time. I feel uncomfortable. It has been changing until very recently. Mr Speaker, there are very good reasons why we have the process in this House to go through the various processes and the readings of Bills, because Members need time, as the Hon. Member for Middle has mentioned, we need to go out and talk to other people and listen and have them know what is in the Bill and we have not had any of that. And although I am the first  
3410 to recognise the degree of urgency that exists, and as mentioned by the Minister, I want to come at this from a slightly different angle, and it is a sense of being somewhat concerned by the conduct of the Chief Minister and a Member of the Council of Ministers.

In the last Question this morning, raised perfectly validly, a perfectly reasonable question by the Hon. Member for Douglas Central, Mr Thomas, it was examining a particular point  
3415 concerning legislation mechanisms related to the border framework. The Chief Minister's comment was that he felt he somehow possessed a relationship with the people of the Isle of Man where the right things had to be done, and he was the custodian of that. I must remind the Chief Minister that every single Member of this House considers them a serious custodian of that responsibility, but then to dismiss it in the way that he did, accusing the Hon. Member of  
3420 playing games, frankly, angered me, because that is not a way to behave and it is certainly not a way to carry the support and goodwill of this House, because we all care hugely about this matter. And then the Hon. Member for Ramsey joined in the discussion and suggested that Members were trying to bog things down. This will not do, this really will not do. I was uncomfortable in the first place that I had not got clear indications in the Order Paper that this  
3425 would be happening today, and I think we should have had that.

Then we had an issue from the Chief Minister about the learned Attorney General this and the learned Attorney General that, and that we need to be following the advice. I do not remember those points being made earlier on and in other issues that the learned Attorney's advice was presented before Members. That did not happen at earlier stages of the COVID crisis.  
3430 So I put it, Mr Speaker, to the Chief Minister that a greater degree of respect needs to be applied by the Chief Minister and the Council of Ministers towards this Hon. House with regard to us all caring hugely about the process that we are going through and I, like other Members, have no intentions to unnecessarily stall the process, and as the Member for Middle has said, I am happy to do everything I possibly can.

3435 But this Hon. House must be given a reasonable chance to digest this important Bill before us, Mr Speaker. I am disappointed – and it is the Chief Minister's favourite phrase really, 'disappointment': well, let me return it with a little bit of extra velocity – that he must not disrespect this Hon. House.

Thank you, Mr Speaker.

3440

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

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

3445 It has been quite interesting hearing some of the comments made so far, and I would like to address a couple of them from my own perspective, just to make sure that we are all on the same page here.

3450 There has been some reference made to some very specific clauses in here so Mr Shimmins, the Hon. Member for Middle, talked about in the bail process and the live links process can members of the public still participate? There is a specific requirement actually in this Bill that says the jury cannot participate by a live link, so the jury are required to be physically present in the courtroom, which means the courtroom will be there and open to the public, which is exactly what has been happening throughout the lockdown period anyway. So there is no provision in here that I can see that takes away the public's ability to engage. I asked a very similar question myself when I saw these provisions, my specific question was how do the public



3455 take part in these proceedings and the response I got back was, quite entertainingly, 'Well, the public do not take part in proceedings at court; they are simply present and available', but I think the Bill as drafted covers off that point.

3460 There is a question as well around local authority meetings. If you look back at the Emergency Regulations that were passed and are currently in force, there is a statement in those regulations that specifies that a local authority may decide to ratify a decision at a meeting, so following a virtual meeting they may decide to ratify, not that they are required to. My reading of the clause in this Bill is exactly the same. It simply says that a local authority may decide to ratify and if they do that is absolutely fine. The reason you need that obviously is because the regulations are falling away, the regulations will no longer exist after the end of December and  
3465 so if a local authority wishes to ratify a decision there needs to be a process in place or a legal back up that says if you do that that is absolutely fine, do not worry about it.

Some of the comments that have been made, I think, do raise some interesting questions, but the one that I really want to touch on is the contribution from the Hon. Member for Douglas Central when he talks about the breadth of the Public Health Act, and whether we should be  
3470 making more substantial amendments in this Bill. Having read back through the Attorney General's letter that was submitted to the Public Accounts Committee, it seems that the weakness of the Public Health Act, or the key weakness, is that it cannot make social or economic regulation, which actually we should not be doing under Public Health anyway. So if we are not looking to do those things under the Public Health Act I struggle to see the argument  
3475 for more substantial amendments. I think the Member said that we should wait until we have the perfect Public Health Act and the perfect amendment Act. My real worry here is that this is time and again what I have seen from the Hon. Member over the years: that perfect is very often the enemy of good, (A Member: True.) and we wait and we wait and we wait, and we do not actually take any  
3480 action, because what we are doing is not perfect. Whereas actually I see this Bill as a mop-up Bill, it is about putting very specific provisions into law; it is not about solving all our problems, it is certainly not about rewriting some of the emergency powers. It is simply saying these are some provisions that we have already got in place that we approved during the emergency, can we have them more permanently.

3485 **Mr Thomas:** Will the Member give way, just briefly?

**Mr Hooper:** No, I am okay thanks, Mr Thomas.

I just do not see the argument for looking to make more substantial amendments to other  
3490 Acts. I would like this Bill to be as small and as concise as possible and not suddenly become all things to all people, and that is my real worry here. It is that some of the arguments that we have made are about specific clauses and issues and I think they need to be addressed, but that particular argument that says let's take a step back and try and expand the reach of this Bill and make it do more things than it is originally intended to do, I think is potentially a very dangerous  
3495 road to go down, so I would caution Hon. Members against taking that particular perspective.

Thank you, Mr Speaker.

**A Member:** Hear, hear.

3500 **The Speaker:** Hon. Member for Onchan, Ms Edge.

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

I just really have been brought to my feet listening to the Hon. Member for Middle with regard to tribunals and the listings and which ones are included. I know in the presentation I did  
3505 ask about the Children and Families Division and how that would be covered, I have not actually had a response to that, and I do have concerns. Having only had this briefly, I cannot see any

reference to a direction hearing for Children and Families. I am aware that during COVID they did operate different processes for Children and Families and they did an administrator process, which left some families without opportunity. I do feel that if we are doing this with regard to tribunals, any tribunal has to be covered.

3510

Obviously the Mental Health Tribunal, I know it does not sit that often, but if it does is that included in here? These are people that lack capacity, are they getting protected and looked after? If a tribunal comes forward what is the process in place for them?

But I think it is important that ... none of us want to delay any legislation. In the four years I am not sure the Council of Ministers has delivered as much as we would have liked, and we certainly do not want to hold anything else up, but I do feel that as all of us, Hon. Members, we have to make sure this is right and that it does cover every tribunal process or Children and Families process where it is a court hearing but it is not a criminal hearing, and I think this is specifically written very much around criminal hearings, whereas we do have others and I would just like the Minister to comment on that.

3515

3520

Personally, I think I echo what other Members have said today that to go to the third stage of this Bill would not be appropriate. We need to have that time to consider the Bill properly.

Thank you, Mr Speaker.

3525

**The Speaker:** I call on the Hon. Member for Douglas North, Mr Ashford.

**Mr Ashford:** Thank you, Mr Speaker.

The first point I would like to make is that we do need to accept how tight the timescales are around this. That there are an awful lot of things around the borders, around the control of people in terms of what they can and cannot do that potentially fall away if this Bill does not receive Royal Assent on time, so we do need to be very cognisant of that.

3530

I rise to my feet just to address a couple of points that have been made so far at Second Reading, Mr Speaker. Mr Hooper mentioned about the local authorities, and he was very eloquent and gave very good reasons as to why that clause remains in, because as he rightly said, the Hon. Member for Ramsey, if we do not continue with those provisions, then there is a question mark over the legality of some of the things that happen, particularly outside the annual general meetings that local authorities are required to call.

3535

But I want to particularly address a point I think Mr Shimmins, the Hon. Member for Middle made, which is when he said about our legislation being technologically neutral. The point I would like to make is in relation to the Local Government Act 1985, Schedule 1, section 4(1) states that on calling a meeting of a local authority:

3540

Meetings of a local authority shall be held at such place,

So not places:

... at such place, either within or without its area, as it may direct.

Now, maybe this is just me, but that reads as people attending a physical place for the meeting, not it being held virtually with people in multiple places dialling in. I think that is one of the things that certainly when the regulation was originally brought through, that was one of the things that was looking to address and give clarity to. And, of course, the key point with the local authority provisions is that in most cases they expire come the local authority elections in May next year. So it is a very short period of time, because we made clear that we wanted to postpone the local authority elections to next year, it is ensuring that anything that has been done over the period is still lawful up until that point, particularly where many local authorities have just decided to continue appointments that were already in place that otherwise would have had to be ratified at their annual meeting under the legislation.

3545

3550

Turning to Part 5 of the Bill, Mr Speaker, because I know there have been some conversations around this and the discharge of patients and the ability for the Department to discharge. This has come about again, it was one of the emergency regulations that was there, and I think it is a sensible thing to have, a lot of jurisdictions have a provision like this. Unfortunately, you do get occasions where people are quite content to be in the hospital environment and do not wish to leave, for various reasons. We have had those instances on-Island, I am aware of one case where it took over 12 months to get someone out of a hospital bed that we actually required. The key point, though, is that clause 25(1) requires that due regard be given to the opinion and the opinions sought of those who undertake the care and treatment which would, of course, be medically trained staff. It also requires that it can only be undertaken if it will not cause undue risk or harm to the individual, which will, of course, require medical input in order to prove that. So if the person in charge of the care turns round and effectively says that an undue risk or harm would happen to the person, should they be discharged, then effectively the discharge falls because the Department cannot satisfy itself that there would be undue harm if the medical practitioner treating that person is saying that person is not fit for discharge, so people will only be discharged if they are medically fit to do so. If they are medically fit to go home that they will already have been medically assessed as such, and that will be done by medical practitioners who are in charge of that person's care. So the medical assessment will have already taken place. If they are not medically assessed as fit for discharge, then we cannot use the provisions anyway, as the Department still has a duty of care and the person in charge of their care is saying that they are not medically fit for discharge. The Bill does not override medical negligence or duty of care to the patients, and I think that is a fundamental point.

It has also been mentioned about doleance, but that is not the only route if someone objects to this because, Mr Speaker, the NHS complaints process is still there. They can still utilise the complaints process that is in place, which the Department then has to respond to. But also if people are not medically fit to go home and we are looking to discharge them from the hospital environment, Mr Speaker, then the provisions of the Social Services Act 2011 kick in, sections 7 and 8 and that provides that if we are discharging into the community, an assessment must be undertaken and actually contains the right of appeal, should the patient or their representative be unhappy with the assessment that comes back. So the only time in reality this provision could actually be used is where you have someone who is assessed by the people supervising their care as medically fit for discharge, but refuses to go, despite being medically certified to be able to do so. And, as I have said, there have been several cases of that in the past. The Department is not going to remove someone who is medically unfit from its premises because it would open itself up to never-ending legal claims, should it attempt to do so, so it has to take into account the views of the medical practitioner when doing so.

Thank you, Mr Speaker.

**The Speaker:** I call on the mover to reply.

**Mr Harmer:** Thank you, Mr Speaker. Thank you to my seconder, and I would like to thank all the Members for their contributions today. I would also like to thank all those who have engaged through the process, back when the consultation was put, in mid-August, and during the consultation period, and also with the Members' presentation.

As has been highlighted, and I need to stress this, this is not usual and I would never want this to be usual. I would never want to ask for Members' permission to go through in this speed; but the key issue here is around the fact that we are not in a usual situation. The pandemic is, sadly, growing across the world. Just across the water, situations are basically very grim. We perhaps are in a slightly more fortunate position; nevertheless, the actual reason why we are here, the reason why we are actually in this House today, is clear, and it is to enable best practice of what has happened over the six or seven months in terms of what we have learnt in dealing with all of these things.

3605 So I would like to just remind Members that none of these procedures are new things; they are in fact what is actually happening right now, in terms of courts, in terms of bail and so forth. It really addresses those five areas, so let us take each of those areas in turn.

3610 Firstly, the ability of courts being able to do live links: the key issue here is that justice has to be served and has to be seen to be served – that is the acid test to these proceedings. In many instances, there are many of them around routine events – for example, if a court date has to be set or so forth, or if there needs to be expert witnesses or, in some respects, for the protection of witnesses – those are key things – and rather than, in a coronavirus situation, allowing unnecessary trips. But it also applies, and it was something that was going to be taken through the Justice Bill. So it is something that was going to be done that was not in place when the emergency started and needs to be in place, so the acid test of all this is: was it there when the emergency started? Is it something we actually needed in normal day-to-day life? Yes. And therefore do we need to proceed with it? Absolutely, yes, we do.

3615 So the first issue is around having live links and so forth in court.

3620 The second issue is around bail and this is really one of the situations, such as over weekends, for example, not getting the courts to have to sit, but to actually allow bail conditions to be exercised over weekends and so forth when they are not sitting. It does not actually stop the existing process at all. It is as an addition; the defendant can still ask for a court hearing.

So we need to understand why this has come about and what the purpose is of its coming about.

3625 The second issue – which I think the Minister for Health eloquently dealt with – is around hospitals and regarding, obviously, patient care. I think the Minister for Health actually addressed perfectly well in that it is the care of the individual that is absolutely paramount in this and there is a complaints procedure around that.

3630 In terms of public health – and this is the meat of what we are discussing today – if we do not take this through today, there will be no penalties or fines that we can attribute. Now, the borders ... We can make regulations, but we will not be able to execute fines or any of those sorts of things. So the issues that we have talked about, with welders and so forth, that would not apply. It falls on 26th December. We need to have Royal Assent for the December Tynwald, which is 15th December. If we do not get that, we are no longer in control. In essence, yes, in one sense you could ask for more sittings, but the key issue is that this will not go to ... We would be sitting on the 27th; even if we went through with haste on that time line, you are probably not talking until about 3rd November. You are talking about LegCo and possibly other sittings, so we are no longer in control of the process.

3640 It will then be up to the MoJ, whether they have got the resources to fast track, and my understanding is that that is going to be incredibly difficult. So if we do not proceed today, then that very much makes that a risk and therefore all the good work that we have done so far potentially is put at risk. I understand the caution, I understand the desire to further scrutinise, but I want to make Members absolutely clear of why we are here today.

3645 The first issue is that these are not procedures and things that are being dreamt up and are new or we are going to; these are things that are in place right here today and are actually working in courts, regarding bail conditions and so forth.

3650 So turning to each Member in turn, and I am going to ... I know the Hon. Member for Douglas South has been congratulated, but I would like to echo those congratulations. I thought it was an excellent speech which was well considered and detailed, and by that mark, there is nothing that cannot be achieved. I think it was an excellent speech and I would like to thank her for it.

3655 I will now turn to each Member in turn. Firstly, if I may, to the Hon. Member for Douglas Central, Mr Thomas, who talked about civil contingencies: one of the issues is that that is part of the problem. This is not the Civil Contingencies Bill. That is a Bill that is to come, and I anticipated that that would need a lot more scrutiny. There was no particular need to get that in by December, so that is why that whole element of the Bill has been removed from today.

3660 Today is about all those practical procedures that are already happening, that are in place already in our society today – allowing those to be established going forward. I would just emphasise that again. This is not a Bill where we are changing the law so radically, doing something new. These bail conditions are here right now, and they are working effectively, fortunately to say, in a much more normal environment. We essentially have been very fortunate to have this normal environment, but with those provisions that were not there in March. That was some of the reasoning why we had to have the Emergency Powers Act.

3665 So there is a question there whether we want to go back to the Emergency Powers Act. The only thing I would really want to caution is that sometimes it is words within a speech that can be very dangerous, and some of those words were, ‘plenty of time, plenty of time’. I would argue that there is not plenty of time. If we want this route to succeed, we do need to proceed, we do need to take that effect, and we do need to get to a result.

3670 In terms of the questions regarding public health, there were two Written Questions where we actually did say ... and, as the Member knows, the outcome of the work on public health is this Bill. But as my hon. friend, the Member for Ramsey alluded to, we are not trying to cover all the things that could be covered and could be fixed by this Bill. That is absolutely not what we are trying to do here. We are not trying to have perfection here at all. What we are trying to do is make sure that the Island can carry on as we have done, as we have all battled together. We have all fought together. We have all come together.

3675 This is why the Bill has taken this route. It has not been a joy of mine to take it at this speed, but basically everybody has been working flat out to deliver this Bill today, to take on board all of those points.

3680 So I would caution about trying to add things that were never anticipated for the Bill. Let us just drill it down to the simple fact of live links in courts; allowing people to have bail at weekends without involving the courts again; allowing where there is need for beds in hospitals; and allowing local authorities ... because the comment was made, ‘Well with local authorities, why do we need it?’ Again, my hon. friend alluded to it and made the point, there were positions that, as you know, in May, the transition from one and the term ends for chairmen and so forth. Those positions need to continue. The results, the decisions made by those boards, need to be ratified. They need to be without any legal challenge, and that is why that provision is there. That is why it is needed.

Should the provision fall today, and we do not move forward, then the legal status of those local authority meetings and so forth is put at risk. That is why moving forward. It extends what the continuing regulations are doing today.

3690 In answer to the question, it is absolutely needed. It is not threatening. I am slightly concerned, there is a sense of what these are trying to achieve. They are very plain and clear of what all of these provisions are trying to achieve. The local authority provision is simply to ratify – it is as simple as that – to ratify those decisions that were made by the boards and to allow them to be ratified at a future meeting.

3695 The next Member I would like to just thank is Mr Shimmins, for his comments. Again, I want to emphasise how we must not lose control of the process, which we absolutely could do at this point.

3700 In terms of some of the specific points, again, if I turn to the question of legal aid that was raised by the Hon. Member for Douglas South, yes, that is something that would still be available and there will still be ability to proceed on that basis, in terms of that.

In terms of the tribunals, as the Member for Middle talked about, there is a list of tribunals. We can obviously provide that. The tribunals are covered.

3705 I think the Hon. Member for Onchan raised the point about the children’s families. Those are not already covered, but they already have the ability for live links, so they are not actually impacted by this Bill.

Again, I would like to thank the Minister for his comments.

3710 I would also like to address the comments from Douglas East, from Mr Robertshaw. One of the comments was: why was it not on the Order Paper? We had intended to get all of the suspensions of Standing Orders on the Order Paper. Unfortunately, that was not possible, so I sent out an email immediately to explain that we were looking to do all of the readings today. We also made it very clear from the outset that that was the full intention so that we could achieve the December timeline. (**Mr Robertshaw:** Disrespectful.) So I made it clear, because again we are in unusual times.

3715 I would like to thank so Mr Hooper made a comment about the public and around juries. The comment also about courts is that justice must be seen to be done and has to be done, so that is absolutely clear.

I just want to make sure that I have actually answered all the questions, if I may. I have hopefully covered them, but if I have not, I will come back to Members.

3720 But I wanted to just highlight and be absolutely clear – I think I have addressed all the questions that I have – that, again, this is not something radical or something new that we are doing today. We are merely continuing the things that we have already been doing. If we do not move forward today, and I understand that some Members want to go at a slower pace, there is a danger that we will not meet that December Tynwald, and obviously we need to bear that in mind.

3725 So with that, Mr Speaker, I beg to move.

**The Speaker:** I put the question that the Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Bill 2020 be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.