

6. CONSIDERATION OF CLAUSES

**6.1. Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Bill 2020 –
Consideration of clauses commenced**

Mr Harmer to move.

The Speaker: We turn to the consideration of clauses of the Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Bill 2020. I call on Mr Harmer to move.

1640 **Mr Harmer:** Thank you, Mr Speaker, and I thank everyone in this House for the Second Reading and First Reading last week.

Turning to each of the clauses within the respective Parts of the Bill, with your permission, Mr Speaker, I wish to move clauses 1 and 2 together.

Clause 1 of the Bill provides for the short title of the Act, should the Bill be passed.

1645 Clause 2 provides for the commencement of the resulting Act by Appointed Day Order, by the Council of Ministers.

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

The Speaker: Mr Hooper.

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

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

1655 Clause 3, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

Clause 3 acts as an introduction to the subsequent clauses, which will all make changes to the Criminal Justice, Police and Courts Act 2007.

1660 I beg to move that clause 3 do stand part of the Bill.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1665 I beg to second and reserve my remarks.

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

Clause 4, Mr Harmer.

1670 **Mr Harmer:** Clause 4 repeals section 29 within the Act, as this no longer serves a purpose within the context of the changes being made.

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

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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

1680

Clause 5, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

1685 Clause 5 provides a new section 30, replacing the existing section 30 in its entirety with a more detailed provision.

The new section sets out the manner in which eligible criminal proceedings will be directed to take place either via a live audio or video link, provides the guidance and interpretation connected with this process, and makes various key exemptions to its use – for example, a jury trial may not take place via a live link.

1690 The particular safeguards around the use of the live link relate to such use being in the interests of justice and that the parties to the proceedings are provided with opportunity to make any representations, such as objections to use of the live link.

1695 There seems to be a desire to place on a statutory footing a wider range of proceedings, which was also raised in the sitting in relation to children and family hearings. This is a matter which the Department of Home Affairs is actively working with the Attorney General's Chambers to address properly by way of a legislative amendment to the Justice Reform Bill 2020, which would provide suitable provisions for this to take place. Whilst it might appear on the surface to be a simple matter to do so, this is not necessarily the case within the wider context of the Island's existing law, which is why the amendment being devised will be brought once fully
1700 formed and robust. This does not prevent children and family hearings from utilising the live links presently until such a time as the provisions are placed on a statutory footing.

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

The Speaker: Mr Hooper.

1705

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I call on Mr Shimmins to move amendment 1.

1710 **Mr Shimmins:** Thank you, Mr Speaker.

Hon. Members, this amendment underlines the principle of open justice, and open justice is a very important principle. Simply, people have more confidence in justice if it takes place in a public trial. A public trial counters conspiracy theories and concerns about establishment cabals. Open justice helps societal participation and preserves the free press and the independence of the media. If people read and hear about trials in the media, they are more likely to seek justice for their own tribulations.

1715 The use of video links in court proceedings is an understandable response to the pandemic, as video links can help courts to proceed whilst also managing infection risks. However, the key point is that expeditious courts should not contravene the principle of open justice. In the United Kingdom, similar safeguards were inserted into the UK Coronavirus Act 2020, in clause
1720 85.

Hon. Members, we must safeguard the open justice principle in the Isle of Man. It may be argued that it is unlikely that this would be compromised here, but we should not be complacent in any way. As such, I would encourage you to support this amendment.

1725 I have discussed the amendment with the Chief Registrar. He acknowledges that this is an important principle. The Chief Registrar also confirmed to me that the judiciary are committed to public hearings.

1730 There are some matters, as we have heard, including sensitive family hearings, where there are established protocols in place to safeguard individuals involved, I am not proposing any changes to these protective measures. I am also aware that there are some practical considerations.

1735 Hon. Members, there is a danger that we end up in a debate about how difficult it is to manage technology. We already had that debate on the Planning Committee, if you remember, during the summer. Those resisting change tend to overstate the technology challenges. The reality is that many countries around the world are, of course, facing similar issues. They simply deploy technology solutions to adapt and make the appropriate changes to regulations, so I do hope that we will not go down the technology deployment rabbit hole, as the amendment is worded 'may' rather than 'must'. 'May' means that our Deemsters will be able to take the appropriate action if they need to. They will, I am sure, take account of the circumstances to ensure that the important principle of open justice is maintained.

1740 Hon. Members this is a critical principle, and I hope that it will underline our commitment to an open justice system.

I beg to move the amendment standing in my name:

Amendment to clause 5

1. Page 11, after line 2 insert —

'(21) The court may, in giving a live video link direction under this section direct—

(a) that the proceedings are to be broadcast in the manner specified in the direction for the purpose of enabling members of the public to see and hear the proceedings;

(b) that a recording of the proceedings is to be made in the manner specified in the direction for the purpose of enabling the court to keep an audio-visual record of the proceedings.

(22) The court may, in giving a live audio link direction under this section direct—

(a) the proceedings are to be broadcast in the manner specified in the direction for the purpose of enabling members of the public to hear the proceedings;

(b) that a recording of the proceedings is to be made in the manner specified in the direction for the purpose of enabling the court to keep an audio record of the proceedings.

(23) A direction under subsection (21) and (22) may relate to the whole, or to part, of the proceedings concerned.'

1745 **The Speaker:** I call on the Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

I rise to second the amendment for Mr Shimmins and I would like to commend him for bringing this.

1750 The principle of open justice should not be dismissed lightly. Justice has to be seen to be done, and, as the Hon. Member said, reducing that facility for the public to access court hearings results in conspiracy theories and a suggestion that justice is not being served. I would urge Members to support it.

Thank you, Mr Speaker.

1755 **The Speaker:** Hon. Member for Arbory, Castletown and Malew, Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker.

1760 As has been noted by the Minister for Policy and Reform in his recent communications to Members, the courts have never been closed. Even during the emergency, where, everywhere else, society was forced to shut down, justice continued and the courts continued to function. They sat with social distancing and live links in place, but access to the physical courtroom for the public and for the press was not curtailed even during these times.

1765 The measures that we are looking at putting in place for live links are still only used at the discretion of the court. They fit into the wider-based mechanism by which justice takes place. Presently, in these times of concern around transmission of viruses, this is an important part, but still just one part of the wider process.

My reservations with the amendment are not in the spirit of it, in allowing an all-encompassing access to justice. It is instead a caution as to the actual substance of the amendment.

1770 Presently, the use of live links is a hybrid when individuals cannot or should not be brought before the court – for those who are potentially infected with coronavirus, those who might flee from custody, or those who are not able to travel to the Island, as an example.

1775 When I say ‘hybrid’, it is important to explain what this means. This is still very much a physical process, rather than a wholly video process. It is not an entirely virtual courtroom. All proceedings occur in a physical courtroom, even during the pandemic, and there is no intention or need to operate wholly by video proceedings, which I know was a concern in the UK when their legislation related to live links was enacted. The model on Island is for participants to appear by video link, rather than the whole matter being conducted virtually. All proceedings take place in a physical courtroom with – and this is an important part for Hon. Members – full access rights to the press and the public, as normal.

1780 I am advised the General Registry has also raised concerns in connection with the technological requirements that this amendment calls for. Presently, the live links take place on an embedded court system, which allows for a full audio recording of proceedings. These audio recordings are available, on application to the court, for participants or perhaps the press, depending on individual circumstances. The court cannot currently broadcast or produce audio-visual recordings of any proceedings, even if they desire to do so. It is likely that significant expenditure would be needed to facilitate any broadcasting. As I have just stated, as public and press are already to attend the court in person regardless, the expenditure required by this amendment would be surplus to requirements.

1790 There are other points that I might raise here about additional safeguards that arguably should be brought to this amendment, if it were to be accepted. It must be noted that safeguards were put in the UK regulations when they brought this through, in particular that care would need to be taken that such broadcast coverage was not maliciously or improperly replicated by those who have accessed it. These are matters covered in more detail within the UK provisions, on which I believe the amendment was based but without any safeguards.

1795 Hon. Members, I will not speak at length here, but suffice to say that we have in place a reliable, dedicated link with the Prison and a further separate link with Police Headquarters that are allowing for participation of individuals from custody.

1800 I agree that as a future direction of travel I would support virtual courts and other digital innovations, but today we are seeking simply to continue with the arrangements that have worked extremely well over the past six months. Other arrangements are made for witnesses as required, but the court is still a physical court and it remains open. As a result, this amendment is not needed and serves no useful purpose.

The Speaker: I call Mr Thomas.

1805 **Mr Thomas:** Just a very small point. The crucial thing for me is that I heard very clearly from the mover of this amendment the word ‘may’. There is a budget issue and there is a technology issue that have been raised, but the crucial purpose of the clause is that this is ‘may’.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

1815 I think the Hon. Member for Douglas Central has missed the point here. Whether the courts choose to exercise, if this amendment goes through, is entirely up to the court, absolutely. The challenge, though, is, if they do decide to broadcast something entirely virtually, there are no provisions being proposed by Mr Shimmins that will prevent somebody from taking an unauthorised recording of said broadcast and then utilising it for whatever purposes they see fit.

Those safeguards were explicitly built into the UK Bill. When they put this proposal through for entirely virtual courts, the UK very explicitly put in a whole schedule full of safeguards in respect of how they can be used.

1820 And so I think we have to be very careful. This amendment ... I think the principle behind it makes a lot of sense but I am very nervous about supporting what is essentially half the job.
Thank you, Mr Speaker.

Mr Thomas: Mr Speaker –

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The Speaker: I think you were just in the nick of time!

Mr Thomas: A simple question: could those safeguards be introduced in the Justice Reform Bill, which is coming very shortly? For instance, I have an email here from Ms Edge, who could not be with us today, who has been made promises in terms of summary courts in respect of amendments that will be in the Justice Reform Bill, so could the Hon. Member for Ramsey advise whether or not he believes they could be inserted through that provision?

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Mr Hooper: Thank you, Mr Speaker.

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I am not really in a position to make statements in that respect, but personally I do not see why it could not be, if entirely virtual courts were something the Isle of Man wanted to pursue. I am not convinced at this time that would be a good idea, but I am sure the Minister for Policy and Reform and the Minister for Home Affairs will take it under advisement.

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The Speaker: Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

As the Member moving the Justice Reform Bill, I can confirm I would be happy to work with the Member (**Mr Thomas:** Hear, hear.) to look at how we could progress this.

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The Speaker: Mr Shimmins to reply to the amendment.

Mr Shimmins: Thank you very much, Mr Speaker.

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May I thank all the Members who have spoken, for their constructive engagement towards the amendment? I very much welcome all the comments that were made. Perhaps if I just cover them in turn – firstly, thank you to Mrs Caine for seconding the amendment. Clearly, as an experienced journalist prior to joining us in this House, Mrs Caine fully understands the importance of open access to all our courts.

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Mr Cregeen, the Minister for Home Affairs – or the Minister for Justice in waiting, perhaps; I am not sure ... (**Mr Cregeen:** Home Affairs.) Home Affairs, okay – made some good points. I think he confirmed that, effectively, during the height of the crisis, and indeed perhaps going forward, the hybrid model has been operating in our courts. At no point have I suggested that we have been operating secret courts – let me be clear about that – but I guess what I am concerned about is if we bring forward this amending legislation we should also be looking forward to what may happen in the future, and we just do not know what circumstances we may be faced with going forward.

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The Minister said he would support digital courts in future, subject to the appropriate safeguards and procedures being put in place, and I think in that case the Minister should really be happy to support the amendment, because it is an amendment really in principle. The key thrust here is that (*Interjection and laughter*) the Deemster would clearly exercise sensible discretion, should they come across that scenario whereby the court is sitting not in a hybrid model, as suggested by Mr Cregeen, and I think what this amendment does is provide that option.

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1870 **Mr Cregeen:** Would you give way for a minute, please?

Mr Shimmins: Certainly.

1875 **Mr Cregeen:** Currently there is no provision in this Bill for virtual courts, and, as we have given an undertaking that we will look at this under the Justice Reform Bill, would he agree that is possibly a better avenue to go, rather than trying to put something that has not got safeguards in the Bill at the moment?

1880 **Mr Robertshaw:** Principally.

Mr Shimmins: I am grateful for the Minister's comments there. I take on board his suggestion. On balance, I see the merit of that, but I disagree because I think the amendment actually establishes the principle, and also bearing in mind the very kind comments made by Mrs Barber, responding to Mr Hooper, that it will be possible to introduce the necessary safeguards in the Justice Reform Bill, that, in my view, is the preferred chain of events here.

1885 What I am really pleased about is that there seems to be a consensus (**A Member:** Hear, hear.) that this is the right thing to do, and what we are now talking about is the most effective way of doing it. Broadly, I think it is good to set out your principles, which is what this does, and then – (*Interjection and laughter*) No, because actually there is a principle, and these are principles worth ... As I say and as Mr Thomas says, critically the word 'may' is important. So, we are not saying 'must', we are saying 'may'.

1890 What I heard, in response to Mr Hooper, was actually there are a number of ways of doing this. The Legislative Council will consider this debate that we have had today, and if there are potentially insertions which could be taken from a UK equivalent piece of legislation, the Legislative Council may decide that is definitely an option. (**A Member:** Hear, hear.) Alternatively, the Justice Reform Bill provides another option, I think, to provide the detail that some Members have been asking for.

1895 What I would say is, Hon. Members, we have been asked to progress this Bill expeditiously, and I would ask you to consider the amendment in that context. This is an amendment which I do not actually think anyone should object to, because the key word here is 'may', and it establishes a very important principle that should be dear to us all.

1900 On that basis, Mr Speaker, I am grateful for Members' consideration and I beg to move. Thank you.

1905 **The Speaker:** I call on Mr Harmer to respond to the debate on the clause.

Mr Harmer: Thank you, Mr Speaker.

1910 I am glad that we have just dispelled some of the myths around secret courts. There have not been secret courts. If we get back to the principle of what we were doing, we were allowing virtual links to the Prison and the Police for setting the dates of hearings and so forth.

But I am also glad that there is an undertaking to look at this issue in fullness. I think this is a separate issue about virtual court hearings in its fullness and in principle in the future.

With that, I beg to move.

1915 **The Speaker:** I put, first, amendment 1, in the name of Mr Shimmins. Those in favour of the amendment, please say aye; against, no. The noes have it. The noes have it.

Putting to you clause 5 without amendment, as printed: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Harmer.

1920 **Mr Harmer:** Thank you, Mr Speaker.

Clause 6 repeals existing section 3. Again, this is a present provision no longer required and is effectively replaced by wording contained within the new section 30.

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

1925

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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

Clause 7, Mr Harmer.

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Mr Harmer: Clause 7 amends the existing section 32 to align with other changes being made within new section 30.

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

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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

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Clause 8, Mr Harmer.

Mr Harmer: Clause 8 inserts a new section 32A that makes it clear that attending court virtually via a live or audio link fulfils any requirement placed upon a person to attend court, as if they had attended court and were physically present.

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This section also makes it explicitly clear that a participant who has attended from outside the Island using a live link and has made a statement on oath is subject to the Perjury Act 1952, section 1, containing the offence of perjury under Manx law.

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

1955

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1960

The Speaker: I put the question that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Harmer.

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Mr Harmer: Clause 9 amends the existing section 33 of the Criminal Justice, Police and Courts Act 2007 to align the language used to describe the live link, and clause 10 serves a similar purpose within section 35. With your permission, Mr Speaker, I wish to move clauses 9 and 10 together.

I beg to move that clauses 9 and 10 do stand part of the Bill.

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The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

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The Speaker: I put the question that clauses 9 and 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

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Mr Harmer: Clause 11 amends the existing section 38, which provides the interpretation of terms for Part 9 of the Criminal Justice, Police and Courts Act 2007, by inserting two new definitions for 'bail' and 'eligible criminal proceedings'. Such are referenced throughout the changes made to the sections within Part 9.

1985 Subsection (2) of section 38 is substituted with a detailed interpretation of what is meant by taking part in live-link proceedings, what is meant by 'a live video link' and 'a live audio link', and what is meant by 'eligible criminal proceedings' being conducted by live link.

Further amendments set out who those taking place in the proceedings are.

1990 Finally, amendments are made that make clear certain exceptions to the interpretation within subsections 2A and 2C concerning proceedings seen and heard in connection with an individual's eyesight or hearing, or the use of screens where a participant to the proceedings is being deliberately shielded from view.

I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

2000 **The Speaker:** I put the question 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 and the Schedule, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2005 Clause 12 introduces the new Schedule to be inserted into the Act, that sets out in detail the prohibitions and limitations on the use of live link, including the conditions which must be met in order that an audio or video live link might be used.

In addition, there is an exception for contempt proceedings which are to take place face to face, as is customary practice.

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

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The Speaker: Mr Hooper.

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

2015 **The Speaker:** Now, Minister, I just want to check that you are moving clause 12 and the Schedule.

Mr Harmer: Yes, and the Schedule.

2020 **The Speaker:** In which case, I put the question that clause 12 and the Schedule stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 13, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2025 Clause 13 introduces a new standalone provision that provides for the use of live audio and video links in connection with relevant tribunals, dependent upon circumstances and the interests of justice in doing so.

2030 The caveat concerning those with sight or hearing impediments had not been replicated in connection with tribunals. The Council of Ministers have agreed a Government amendment to strengthen the provision related to tribunals, to ensure that, for those individuals taking part in proceedings via a live link, pre-existing visual or audio impairment is considered when the blanket terms of 'seeing' and 'hearing' are talked about within those provisions.

2035 We should note that during the emergency proclamation, the Mental Health Tribunal, in accordance with the requirements of the relevant legislation, continued to meet, utilising the live links, ensuring that those who were most vulnerable continued to be protected.

2040 Subsection (4) provides further interpretation for this provision, and in particular defines the relevant tribunals, namely those found within Schedule 2 of the Tribunals Act 2006, along with the Advocates Disciplinary Tribunal and the Interception of Communications Tribunal. Thus, all tribunals constituted in the Isle of Man are subject to the provisions within the Bill.

I beg to move.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

2045 I beg to second and reserve my remarks.

The Speaker: I call on Mr Shimmins to move amendment 2.

Mr Shimmins: Thank you, Mr Speaker.

2050 Just before I move amendment 2, I would like to thank the Minister for taking on board the concerns I raised about those with impairments and their ability to take part in virtual tribunals. I also welcome the fact that he has confirmed a full list of all the tribunals which would be impacted by this legislation, which was also a request when we last looked at this Bill.

2055 In terms of the amendment, the Minister, when moving, talked about 'depending on circumstances', and that is again what I would like Hon. Members to consider. I shall not repeat all the remarks I made on my previous amendment, but I would suggest strongly that tribunals should be open, just as we, I think, all agreed that criminal and other trials should also be open. What is different, I believe, about this amendment, Hon. Members – and why I believe that you should vote in favour of the amendment, even if you did not vote in favour of the first amendment – is actually some tribunals had been conducted virtually, whereas I think we have heard that there were no trials. So, this circumstance is not something that potentially is concerned about the future of trials; we are doing tribunals virtually at the moment anyway.

2060 I would strongly suggest to Hon. Members, without repeating all the points that I made earlier, if you believe that things need to be done openly and transparently for the protection of everyone involved in these processes, to ensure that we get the best possible outcomes, then surely you should support this amendment, which again does include the word 'may'. So, please can we avoid lots of discussions about the technical issues, because we can always overcome technical issues – that is what other jurisdictions are able to do, so please support on that basis.

2065 Thank you, Hon. Members. I beg to move:

Amendment to clause 13

2. Page 15, after line 2, insert —

*'(7) A relevant tribunal may, in deciding to use a live video link in a hearing also decide—
(a) that the proceedings are to be broadcast in a manner specified by it for the purpose of enabling members of the public to see and hear the proceedings;*

(b) that a recording of the proceedings is to be made in the manner specified by it for the purpose of enabling it to keep an audiovisual record of the proceedings.

(8) A relevant tribunal may, in deciding to use a live audio link in a hearing also decide—

(a) the proceedings are to be broadcast in the manner specified by it for the purpose of enabling members of the public to hear the proceedings;

(b) that a recording of the proceedings is to be made in the manner specified by it for the purpose of enabling it to keep an audio record of the proceedings.

(9) A decision referred to in subsection (7) and (8) may relate to the whole, or to part, of the proceedings concerned.'

2070 **The Speaker:** Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

I beg to second.

2075 **The Speaker:** I call on Mr Cregeen to move amendment 3.

Mr Cregeen: Thank you, Mr Speaker.

2080 In reviewing the clause that is before the House today, the Hon. Member of Council raised an issue with us that the Minister for Policy and Reform has alluded to earlier. In clause 11, Members will recall that there is particular provision made in relation to using the live link ... who might have a pre-existing hearing or vision impairment in normal circumstances, with the specific condition and understanding that this is disregarded when we are talking about those parties being unable to hear and see proceedings via live links.

I beg to move the amendment standing in my name:

Amendment to clause 13

3. Page 15, after line 2 insert —

'(7) The following matters are to be disregarded for the purposes of subsections (5) and (6)—

(a) the extent (if any) to which a person is unable to—

(i) see by reason of any impairment of eyesight, or

(ii) hear by reason of any impairment of hearing;

(b) the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.'

2085 **The Speaker:** Mrs Barber.

Mrs Barber: I beg to second.

The Speaker: The floor is open for debate.

2090 **Mr Cregeen:** To the amendment?

The Speaker: Mr Cregeen, you really should have addressed your comments on the amendment when you were moving your own amendment, but with the leave of the House ... Is that agreed, Hon. Members? (**Members:** Agreed.) Mr Cregeen.

2095 **Mr Cregeen:** Thank you, Mr Speaker.

Just very briefly, similar concerns as were raised with the previous amendment. There is an item that I would like to try to tackle. The Hon. Member, Mr Shimmins, in moving his amendment, said he had heard that they were doing virtually ... The advice I have been given is

2100 that, as I understand it, currently there is no integrated audio-visual system in the tribunals. That is the advice that I have been given, and there would be significant investment required, even above what is in the courts.

Thank you, Mr Speaker, and thank you, Hon. Members.

2105 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I suppose it is just to reiterate the same points that were made moments ago, that you really should not be bringing primary legislation through that needs safeguards, without also bringing the safeguards through at the same time. (**A Member:** Hear, hear.) Trying to push the argument that we can rely on the other place to sort that out for us is a little bit thin, I would argue.

That is the only point I have to make, Mr Speaker.

2115 **The Speaker:** I call Mr Cregeen to respond to his amendment. No? Mr Shimmins, to respond to your amendment.

Mr Shimmins: Thank you, Mr Speaker.

I note the comments Mr Cregeen and Mr Hooper made. I shall not repeat the whole debate again, but I do believe that this situation is different because tribunals are more likely to be the Microsoft Teams system, which we are all very familiar with now. I guess the flipside of Mr Cregeen's remarks is if they are being used in this way, is it not a concern for us that these tribunals are not being broadcast, that they are not being open?

2120 I would suggest that other jurisdictions have found it relatively straightforward to overcome this without significant expenditure, so I think these concerns are overdone and I would urge Hon. Members to back the amendment, particularly as it is not compulsion, in terms of 'must', but says 'may', and the openness of our tribunals is really essential to make sure that they operate effectively for all the parties involved.

2130 **Mr Cregeen:** Mr Speaker, would the Member give way?

Mr Shimmins: I beg to move.

2135 **The Speaker:** Unfortunately, the Hon. Member cannot give way if he does not have the floor, but you may have an opportunity yet. Mr Harmer to respond to the clause.

Mr Harmer: Thank you. I think that a lot of – Okay, I give way. (*Laughter*)

2140 **Mr Cregeen:** Thank you, Mr Speaker – he read my mind. I have just been advised, Hon. Members, that some of the tribunals have been taken over Teams – just for clarity.

Mr Shimmins: Thank you.

2145 **Mr Harmer:** Thank you. I think a lot of the arguments are the same. As was said before, the main issue is around safeguarding, because we would only be bringing part in. If you do not bring something dealing with all of the safeguarding, that could obviously be addressed in the next Bill. With that, I beg to move.

2150 **The Speaker:** Putting to Hon. Members first amendment 3 in the name of Mr Cregeen: those in favour, please say; against, no. The ayes have it. The ayes have it.

Putting next the amendment in the name of Mr Shimmins: those in favour, please say aye; against, no. The noes –

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

FOR

Mrs Caine
Mrs Christian
Mr Shimmins
Mr Thomas

AGAINST

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Hooper
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker

The Speaker: With 4 votes for and 18 against, the noes have it. The noes have it.

2155 Putting clause 13 as amended by Mr Cregeen: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, Mr Harmer.

Mr Harmer: Thank you.

2160 Clause 14 acts as an introduction to the subsequent clauses, which make changes to the Police Powers and Procedure Act 1998.

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

The Speaker: Mr Hooper.

2165

Mr Hooper: Thank you, Mr Speaker.

I beg to second.

The Speaker: I put the question, that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2170

Clause 15, Mr Harmer.

Mr Harmer: Thank you.

2175 Clause 15 amends section 20 of the Act with new provisions connected to the arrest of a person who has failed to surrender to custody, failed to attend a police station, or who is believed to have failed to comply with the conditions of their bail.

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

The Speaker: Mr Hooper.

2180

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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

2185 Clause 16, Mr Harmer.

Mr Harmer: Clause 16 amends section 50 of the Act by inserting a new reference to the new section 50A introduced by clause 17.

2190 I beg to move that clause 16 do stand part of the Bill.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

2195 I beg to second and reserve my remarks.

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

Clause 17, Mr Harmer.

2200 **Mr Harmer:** Clause 17 inserts a new section 50A in the Act relating to bail with conditions, that provides for this process to be undertaken by a police custody officer, where necessary. The subsections set out the purpose for these conditions along with the circumstances in which security might be needed.

2205 This section also provides for the bail to be conditional, either on attendance at a court of summary jurisdiction or a police station.

Access to the duty advocate at a police station is available to anyone who has voluntarily or involuntarily – i.e. they have been arrested – attended a police station to assist the Police with their inquiries. The provisions for this service are set out in the Duty Advocate (Police Custody) Scheme 1998, as amended, made under section 21 of the Legal Aid Act 1998.

2210 In practical terms, while the individual is still at the police station, they remain covered by the Duty Advocate Scheme provisions. At this stage, if the defendant wished to seek a review of the conditional bail conditions, they could do so with the advice and assistance of the duty advocate. Under most normal conditions, the custody sergeant would discuss the proposed bail conditions with the duty advocate, and at this stage consideration would be given by the duty advocate as to whether a review would be requested.

2215 In order to provide a further level of comfort, the Council of Ministers intends to bring a Government amendment to clause 17 which brings the new section 50A of the Police Powers and Procedures Act 1998 in line with similar provisions within the Criminal Justice, Police Powers and Other Amendments Act 2014, to provide for a process to review police bail conditions. This means that a senior officer can be requested to review the bail conditions set by the custody sergeant. If the accused is still not satisfied, they may make written representations to a justice of the peace for a review of their bail conditions.

2220 The Department of Home Affairs acknowledges that such an amendment provides an additional level of oversight in the event that an individual requests a review of the conditions attached to a grant of bail.

2225 I beg to move that clause 17 stand part of the Bill.

The Speaker: Mr Hooper.

2230 **Mr Hooper:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: I call on Mr Cregeen to move amendment 4.

2235 **Mr Cregeen:** Thank you, Mr Speaker.

Following the useful and thought-provoking discussion around this Bill earlier this month, we have considered carefully the matter of conditional bail and the safeguards in place to ensure that it is proportionately applied. On balance, I am satisfied that the Isle of Man Constabulary have been and are acting with due care in making proportional conditions for those subject to conditional bail.

2240

I am mindful that we are making permanent law here. Therefore, the amendment I bring here today adds a further safeguard of the right of the individual to bring the bail with conditions set by the custody sergeant ... to request that a more senior officer reviews these conditions, in addition to the review by the justice of the peace.

2245

Once again, Mr Speaker, I would like to thank you for your advice on this, and I beg to move the amendment to clause 17 be approved:

Amendment to clause 17

4. Page 16, for lines 16 to 19 substitute —

'(5) A defendant may —

(a) request a senior officer to review the conditions attached to bail and such an officer may confirm, revoke, add to or vary those conditions, and

(b) if dissatisfied with the decision of a senior officer referred to in paragraph (a), apply in writing to a justice of the peace for a review of such conditions, and the justice of the peace is to decide the matter after seeking the written views of the prosecution on the application.'

The Speaker: Hon. Member, Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

2250

I beg to second.

The Speaker: I call on Mrs Christian, Hon. Member for Douglas South.

Mrs Christian: Thank you, Mr Speaker.

2255

I beg to move that the House do resolve itself to a Committee of the Whole House under Standing Order 4.4A.

The Speaker: For the purposes of taking evidence.

2260

Mrs Christian: For the purpose of taking evidence.

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2265

I am seconding the motion that is before us in relation to a Committee of the House, because I thought it would be helpful to set out the context in this matter.

2270

I would like to again stress to Hon. Members that we have listened to the concerns of the Hon. Member for Douglas South. Even though, in practice, there is very little chance that a person given police conditional bail will be unable to access legal advice and assistance, we have considered how this issue may be addressed. We must also remember that these provisions have already been in place for some months and have been working fine, and there have been no complaints that we have been made aware of.

Both the Cabinet Office and Home Affairs are aware that there are potential concerns around conditional bail. For that reason, I can confirm to the House that we will carefully consider what

2275 amendments could be made and to which legislation. The Duty Advocate Scheme within police custody does an excellent job of ensuring that access to representation is open and fair.

Finally, I would like to remind Hon. Members that the purpose of bail is to ensure that an individual appears at court or a police station and that any witnesses are not intimidated or influenced. Giving the Police the powers to do this rather than appear before a court to have the conditions set, will ensure the system is as efficient and effective as possible and the value of the court time is preserved.

The Speaker: The motion being proposed and seconded is that the House resolve itself into Committee. Does anyone wish to speak to that motion? In which case, I will just put the question. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In Committee of the Whole House

The Speaker: Mrs Christian, the purpose is to take evidence, I understand. Would you be proposing that Ms Unsworth be heard?

Mrs Christian: Thank you, Mr Speaker.

I ask the House to recognise Ms Vicki Unsworth, who specialises in civil and commercial litigation, including regulatory and data protection, representing both local and international clients. Ms Unsworth has a strong reputation in personal injury and medical negligence work, as well as other civil litigation. Ms Unsworth is a member of the Isle of Man Law Society, but is here today in a private capacity. Ms Unsworth is a director of advocates Smith, Talbot, Unsworth Ltd, which practice specialises in legal aid work, including criminal.

May I welcome Ms Unsworth to today's session and thank her very much indeed for joining us here today. **(A Member: Hear, hear.)** I am sure we will all listen carefully to her contribution.

I would like to begin by asking a series of questions.

The Speaker: Sorry, can I just interrupt you at that point, before we move on to questions? Again, the motion would be that Ms Unsworth be heard by the House, and look for seconder.

Mr Harmer: I am happy to second.

The Speaker: Thank you. Is that agreed, Hon. Members? **(Members: Agreed.)** Thank you very much.

Please continue, Mrs Christian.

Mrs Christian: Thank you, Mr Speaker.

How is legal advice funded for those suspected of criminal offences?

Ms Unsworth: Currently, the system is if you are arrested and brought to the police station or you attend the police station voluntarily to assist the Police with their inquiries, you have free access to independent legal advice through the Police Duty Advocate Scheme. That means that, regardless of your wealth or your lack thereof, or the merits or lack thereof of the offence, you have access to legal advice as to what the process is at the police station, what the police powers and procedures are and what the facts and circumstances of the case against you are. Currently, that scheme applies through provision of a duty advocate who attends at the police station seven days a week, 24 hours a day, 52 weeks of the year, so the police station is covered at all times by a rota of advocates who practise criminal law.

The Speaker: Mrs Christian, this is somewhat like Question Time, inasmuch as Members need to catch my eye in order to ask questions. Also, traditionally, Members will take evidence seated; they do not stand to ask questions.

2325 Mrs Christian, your next question.

Mrs Christian: Thank you, and sorry, Mr Speaker.
In your experience, what happens at the police station when a duty advocate is needed?

2330 **Ms Unsworth:** Ordinarily, the custody sergeant will contact the duty advocate who is listed – if they are not available, a text message goes round the entire membership panel – and the duty advocate will attend to the defendant held at the police station. They will go through an interview process.

2335 If I take it forward to the parts that are relevant for this discussion, once the custody sergeant is in a position to either charge or bail the accused person, representations are made to the custody sergeant as to whether the charge is appropriate – those representations are made by the investigating officer – and also as to whether bail is appropriate, or whether the accused person should be held in custody to appear at the next court.

2340 Where bail is appropriate, the advocate, if they are present ... And of course it is worth bearing in mind that not all accused persons must use an advocate – many choose not to, for their own reasons – but when they are ready to charge, the advocate who may have been present during the interview stage may not be available at the charging situation. They may be engaged with another detained person, or in the length of time that has passed the duty advocate may have been released. So, at the point at which bail representations are made, you
2345 may have a duty advocate present to make representations as to bail and what those conditions should be, but you may not have an advocate present at that stage.

2350 The custody sergeant will consider those representations made, and in my experience the custody sergeant is very good and there is no complaint by me or anybody that I know of as to the movement of police bail conditions. Adding in the provision for a review by an inspector, that is already there in respect of many other decisions taken by the Police, and that is a welcome introduction into these provisions. However, regardless of those representations, the custody sergeant and their inspector, if they support those ... restrictions will be made and the accused person will be either bailed to appear at a court on a date, or they will be bound to return to the police station at some date in the future.

2355 At that point, there are no representations to a justice of the peace, as they are not present at the police station. The duty advocate, if they are present, may have other people waiting to be seen, if custody is busy – and, of late, custody has been very busy. Also, they may not have access to all of the information that a justice of the peace may need in order to reconsider those bail conditions and their appropriateness. Therefore, a system needs to be built in to allow that
2360 free and independent legal advice to continue beyond the police station.

The Speaker: Mr Robertshaw.

2365 **Mr Robertshaw:** Thank you, Mr Speaker.
My concern, reading the amendment before us in the name of the Minister, relates to that point where police bail is applied with conditions but without charge. Do you think that (b) satisfactorily covers the interests of the person placed on bail, where ...? It appears to me that this process is open-ended, time-wise. In other words, that police bail applied with conditions can go on without restrictions, in terms of time. Are you comfortable with that? It could run for
2370 a long time. Do you think that (b) is sufficient protection for the individual in those circumstances? I hope I have made that point clear.

The Speaker: Ms Unsworth.

2375 **Ms Unsworth:** Bail, currently, is without time restriction. Where the Police have an
investigation that they are undertaking, they may need a short amount of time for that
investigation or they need a long period of time to undertake that investigation. Currently, the
position is that the accused person would be bailed without conditions, save during COVID, but
2380 pre-COVID they would be bailed without conditions, to return to the police station at a point in
the future.

By building in the provision for conditional bail to be granted, it gives protections in order
that the Police have sufficient time to undertake their investigation. The risk is if you put time
restraints on the Police in that respect, they will rush the investigation and not undertake a
thorough investigation and the matter will be put before a court prematurely or perhaps
2385 without the benefit of a full investigation. That incurs costs and could waste police time and
court time. So, by putting in protections by way of right on conditional bail at the police end, it
gives the Police the ability to thoroughly investigate – which they should – and when they have
got to the end of that investigation, they have the ability, armed with all of the information, to
make a decision as to whether a matter should be charged or not. That is important, to ensure
2390 that we are not wasting not only court time and money, but also, if a matter reaches the court
stage prematurely, legal costs start to be incurred, which could be wasted if the charge later has
to be dropped because the Police have missed or not taken the opportunity to undertake a
thorough investigation. So, it is important that the provision allows the Police sufficient time,
and I am not sure that, given the vast array of different offences, legislation really can be put in
2395 place to say how long that time should be.

If, during that period, however, the conditions on the accused person's bail are becoming too
restrictive – for example, they have a condition not to attend a certain part of Douglas because
that has a sufficient nexus with the offence or a complainant or a witness, and if, for work
purposes or for other personal reasons, that becomes too restrictive – having the review by a
2400 justice of the peace means they can make their application in writing to a justice of the peace in
order to have those conditions varied and reviewed, so that they are not overly restrictive on
the accused person, who remains innocent until proven guilty, but also ensuring that the Police
still have the ability to manage the risk of their investigation not being interfered with.

2405 **Mr Robertshaw:** So, you are satisfied that a justice of the peace can review the conditions
and the actions of the Police, in terms of are they pursuing that investigation in an appropriate
way?

2410 **Ms Unsworth:** No, you have conflated two issues, I am afraid. The justice of the peace can
check the conditions and can review them for their appropriateness and reasonableness in the
circumstances of the information known to the justice of the peace. What happens is you make
an application in writing to the summary court. The prosecution then, with the assistance of the
Police, put in a response in writing. The justice of the peace considers all of that information. So,
2415 if the investigation is moved along and there is further information known to the prosecution
that will be before the court – and when I use 'court' I am talking in the written sense; there is
no hearing held in this process – and the court then decides whether the bail conditions are
appropriate and reasonable. The court has no power to check that the Police are doing an
investigation and how they are doing it, or why they are doing it. That is entirely a matter for the
Police Force and for the Chief Constable.

2420 **Mr Robertshaw:** You do understand, though, my anxiety that there is an absolute
assumption that the police process is being carried out in an appropriate timescale? There
seems to be no opportunity to review that, and yet we are still imposing, upon the individual,
bail conditions.

2425 **Ms Unsworth:** Yes, and I understand your concern that it is a prohibitive position, but I am
not sure how you legislate for an offence that might only take weeks to be investigated, or a
very serious offence that might take years to be investigated – and there are some, particularly if
we are looking at historical sex-abuse cases or complex fraud or complex financial crime. Those
investigations can take a long time, but in order to preserve evidence, and for the Police to
2430 investigate, they may need to take steps to interview and charge somebody at an early stage. I
think we have to trust our Police Force. And do not forget there are powers built in, in separate
ways, for reviews of the Police Force, and complaints processes in place there if an accused
person was concerned ... [*Inaudible*] Also, if the matter does end up in a court system and the
Police have done a poor job and they have failed to investigate, in the court system, through the
2435 Criminal Procedures and Evidence Act, there are procedures built in for application to be made
to remove evidence from the court process, which protects the accused person.

So, I understand your concerns but I do not see a way of legislating for them.

Mr Robertshaw: Thank you, Mr Speaker.

2440

The Speaker: Mrs Christian.

Mrs Christian: Thank you, Mr Speaker.

How is bail dealt with at the police station?

2445

Ms Unsworth: Currently, the accused person will attend at the custody desk, and will either
be charged and bailed to attend at a court or they will not be charged and will be bailed for a
period of time for the Police to investigate. It is at that point that the representations are made
as to bail conditions and whether any are needed – in some cases, no bail conditions are
2450 required, other than the attendance – and, if there are bail conditions required, what they will
be. As I said earlier, there may or may not be an advocate present during those representations.

Mrs Christian: Fantastic. You mentioned earlier about different scenarios where bail
conditions might need to be reviewed. Can you just elaborate more on that?

2455

Ms Unsworth: I am sure none of you have been arrested and detained at a police station –
and nor have I; I will just say that clearly! When somebody is arrested and they come to the
police station, particularly for the first time in their life, it is a serious matter, or something that
they do not understand. Quite understandably, they are going to be highly emotional. They are
not necessarily going to follow what is going on. They do not know the process. It is not
2460 something that comes as second nature to them because they are going through it for the first
time. As we go through things for the first time, as humans, we are on a learning curve and we
do not necessarily understand what the process is. So, quite often, accused people at the police
station do not understand the process. Quite often, they do not take into their mindset what has
been said to them. They do not hear, and they do not recognise what the process is until much
2465 later down the line when they have got back to the comfort of their own home, they have
calmed down, the adrenalin has eased and they start mulling over what has happened. I think
we can all recognise those feelings perhaps in a different context.

Some defendants may have experience and they may be very well armed to make their own
representations as to the conditions being placed upon them by the custody sergeant at the
2470 time it is happening. Others may need time to process things and come to terms with what has
been said to them, and they may, when they get home, realise ‘Actually, that is going to be
difficult for me.’ That is one scenario where bail conditions may need to be reviewed.

Another scenario may be that life gets in the way, so if you are bailed with a condition that
2475 you cannot enter a particular place because of the nexus of the offence, and let’s say a few
weeks or a few months down the line your work or your personal circumstances require you to

2480 be in that place but you cannot be there because you have a bail condition not to be there, you may, at that point, need to review those bail conditions. That is why, as I understand it, there is this built-in provision for a justice of the peace to review the bail conditions, and that is proper; there has to be this review process.

2485 The concern that I have is there is no free legal advice for that process, so if you are not eligible for green form legal assistance, which is means tested, then you would have to pay for an advocate to assist you, or you would have to do it yourself, and that may be problematic for some people.

Mrs Christian: Thank you. How would a person access legal funding and advice?

2490 **Ms Unsworth:** The only way to access legal funding and advice for this process would be through the green form system, which is provided under legal aid. It is means tested, so you have to have a particular requirement in respect of your means, or be on eligible benefits in order to access free legal advice with the green form system. There is a proportion of the green form system where, if you are over a certain limit but under another limit, you can access green form legal advice with a small contribution; or, if you have too much by way of means, you have no access. In those circumstances, currently, under the wording of this legislation, you would have to pay to be represented by an advocate to assist you with this process, or you would have to try and do it yourself.

Mrs Christian: Thank you.

2500 **The Speaker:** How many more do you have before I bring in someone else?

Mrs Christian: Can you just explain: what is the cause of concern for you with regard to the proposed section 50A?

2505 **Ms Unsworth:** My cause for concern does come down to that lack of free and independent legal advice at the review stage. No concerns whatsoever about what is being proposed and why it is being proposed. That is all very positive and should go forward, but we need to ensure that these people have access to free and independent legal advice, and under the previous system, where they were bailed without conditions to a court and the court placed the conditions upon their bail, they had access to the Court Duty Advocate Scheme, which is free at the point of service regardless of your means. So, in removing the court from the process, which I have no objection to, you need to have this ability for people to access free and independent legal advice to assist them. That may be because they cannot afford legal advice but they are not eligible. It may be because they do not have the wherewithal or the ability to make written representations to the court – and that can be a scary and daunting process, particularly if you have difficulties with reading or writing, you may have difficulties with expressing yourself, you may have physical or mental health.

2510 There are many factors that need to be taken into account that do not come into play under the green form system. These people should be given access to free and independent legal advice, and this can be achieved very quickly and very easily by simply extending the Police Station Duty Advocate Scheme, which comes under section 21 of the Legal Aid Act – which is 1986, not 1998, I am afraid. It is, under that, just a simple amendment to extend that for the sole purpose of seeking a review of the bail conditions from a justice of the peace, then they have this access.

2525 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

2530 I am a little confused here because you have started off by saying that everyone who is at a police station is entitled to free and independent legal advice from the duty advocate; that applies to everybody who is at a police station. So, if they want to challenge their review conditions whilst in custody, before accepting the conditions, they will get a duty advocate offered to them. They do not have to take it – you have made that quite clear; people can refuse the duty advocate – but they do have that free and independent legal advice at that point.

2535 And in fact the Duty Advocate Schemes are quite clear that an advocate ‘shall’ attend and they ‘shall’ provide advice – there is no option here – so it was a little concerning when you mentioned that sometimes people cannot access a duty advocate for a variety of reasons. That would seem to be in complete contravention of the law. So, it is interesting to hear that actually the legal aid and Duty Advocate Scheme, as currently being managed by the Law Society, is not being managed in accordance with the law that requires that these advocates are required to accept these clients and required to provide them with advice. That is a little bit concerning to hear.

2540 What I would like to ask you is, in terms of that second-stage review that you have referenced ... I am assuming that the issue is only when people are bailed back to the police station, because if someone is bailed to appear in court they will receive court duty advocate assistance at that point. So, really you are talking about if someone has accepted conditions on a police to police bail and then subsequently changes their mind, so that subsequent ‘Actually, I have had my legal advice, I have gone to the Police, I have accepted my conditions following that legal advice and I have left; now I cannot get further duty advocate support to challenge those conditions.’ What are the circumstances if someone is bailed to court? They get a duty advocate in court. They then go away from that courtroom and decide, ‘Actually, I do not like these conditions anymore.’ Do they get a duty advocate the second time they go back to court to challenge those conditions, or are they subject to legal aid?

2555 **Ms Unsworth:** I will take the points in the order that you raise them. Your first issue is in relation to the Duty Advocate Scheme failing in its statutory duties. That is not the case. You have one duty advocate listed for the daytime, between 7 a.m. and 7 p.m., and then you have a duty advocate on duty from 7 p.m. to 7 a.m., plus a senior advocate who is called out if there are too many cases, conflicts or a grave offence that a junior advocate cannot deal with. The scheme is working. There is a duty advocate available 24/7. However, what sometimes happens is you might have five people sitting in police custody. The duty advocate may be with one person, and another person may be told, ‘You can see the duty advocate, they are available, but they are in an interview with another person and that is going to take two hours, so you are going to have to wait.’ At that point, that person may decide, ‘I am not waiting, I want to get out of here,’ and they may choose to proceed without a duty advocate. So, I am not saying a duty advocate fails to attend – a duty advocate will always attend – but if they are tied up dealing with somebody else, they cannot be in two places at once. The scheme works and it is working in accordance with statutory obligations.

2570 **Mr Hooper:** So, you are saying it is about the individual’s choice not to receive legal advice, when actually, in the situation you have outlined, where a person could theoretically – well, not theoretically, it does happen – accept bail conditions from the Police without having taken the legal advice, it will have been their choice to do so?

2575 **Ms Unsworth:** Yes, of course. (**Mr Hooper:** Okay.) So, that is the first issue.

2580 The second issue is historically what would happen is you would be bailed to appear at the next court. Usually, on a Friday, there would be a lot of people arrested and they would be bailed to appear at court on Saturday. Giving the Police the ability to put conditions on the bail means that Saturday courts should become few and far between and the bail to appear at court can be a longer period away. That is fine, provided that nothing happens in the interim period

where those bail conditions need to be reviewed; and if something happens in that intervening period where the bail conditions need to be reviewed, then there is, into the legislation, built a provision for a justice of the peace to review. When they get to court they see the court duty advocate, should they wish to do so, or they can have their own advocate, or they can represent themselves. Once the court takes over, they are listed as reissued by the court, so the minute they arrive at the court the police bail ends and they become subject to the court bail system. If they do not like the conditions that the court imposes, there is an appeal system built into summary courts and they can appeal to the High Court. So, they cannot then use the review, under this legislation, by a justice of the peace to review the bail conditions set by the court; there is a proper appeal mechanism built in.

Mr Hooper: Yes, apologies, the question I was really asking is when you are in the court bail system and you make an appeal, do you get duty advocate support to make that second appeal, or do you have to go through the legal aid process?

Ms Unsworth: You can get duty advocate assistance, or, depending on the nature of the offence and your legal means, you may have a legal aid certificate in place by that stage in any event, in which case your advocate will deal with it.

Coming to the police bail, which is where this is likely to be for a much longer period, firstly defendants do not *accept* the bail conditions. Bail conditions are *imposed* by the custody sergeant; they are *imposed* by the court. If you say to a police officer or to a court, 'I absolutely do not accept these bail conditions; I am not going to abide by them,' you are not going to be given bail. You are going to be held in custody, because if you are giving an indication that you are not going to abide, then they are not going to give you conditions for you to commit another offence by failure to comply, so –

Mr Hooper: Again, apologies, my understanding is slightly different. My understanding is the court will impose bail conditions, whereas, as a suspect, you have to accept police bail conditions, or you could say, 'I am not accepting these conditions. Hold me over in custody until I get my day in court.' So actually, in the circumstances we are talking about here and police bail, if I do not like those conditions, I am well within my rights to say, 'No, thank you, I would like to go to court instead and have the court deal with my bail conditions.'

The Speaker: Sorry, before I invite Ms Unsworth to respond to that, I will just say it is important that all Members and the witness are heard in due turn, rather than talking across each other.

Ms Unsworth, please.

Ms Unsworth: The custody sergeant imposes bail conditions. The advocate or the accused person can make representations as to what those conditions might look like, what would be reasonable, what would be unreasonable, but it is the decision of the custody sergeant, or the inspector on review, as to what those conditions will be. If the defendant says, 'Absolutely no way – I am not accepting those, I am not going to abide by them,' then it is incumbent upon the custody officer to hold him in custody, otherwise further offences may be committed and that would be against justice.

So, it is not an acceptance *per se* in the way that you are looking at it. They can say, 'Fine, I will take the bail,' in terms that they want to move forward, and then they may wish to make an immediate review application, or they may accept them and later need a review application, or they may accept them and never need to review. It is not an offer and acceptance in a contractual sense; it is an imposition by the custody officer. That is the system that is in place, and at that point, once they have left the police station, the Police Duty Advocate Scheme has ended for them.

2635 If they are brought back at a later date to be further interviewed in relation to the offence for which they were bailed, they will have access again to somebody, on the duty advocate system. You would not turn up at the police station, knock on the door and say, 'Hi, I'm on police bail. Could I please come in and have a chat with the custody officer? I'm not happy with my bail conditions and I want access to the duty advocate to review my bail.' It would be as part of an investigation process where they are being re-interviewed.

2640 So, the built-in mechanism for a review by a justice of the peace is what the legislation provides and is appropriate, and that is where it is lacking in terms of the ability to get legal advice. The duty advocate at the police station is not in a position necessarily – they may not have the technology with them, they may not have the time, they may not have all of the information available – to make the application for a review to the justice of the peace. For example, if somebody were to say to me, 'The custody sergeant has said on my bail I cannot leave the Isle of Man, but I have to go to a family wedding,' I am not going to make an application for review to the court until they have given me something to say, 'The family wedding is on this day, this is how I intend to travel, this is the date I would travel there, this is the date I would travel back.' Then I would give all of that information to the court, so that the court is properly armed with all the information it needs to consider the request for a review and a variation of bail conditions. At the police station, the duty advocate may not have access to that information. Or it may be that, several weeks or months down the line, something happens in their life and they need to change them because they are no longer appropriate. They do not have access, at that stage, to the police duty advocate, and that is where the concern is.

2655 **The Speaker:** Mr Cregeen.

Mr Cregeen: Thank you.

2660 Have any of these issues been raised over the last six months? Has it been an issue for anybody being given bail?

2665 **Ms Unsworth:** From the day the police bail conditions were introduced there have been ongoing discussions with the Legal Aid Authority as to how we can build in a funding mechanism for the Legal Aid Committee to fund people who need this assistance. We have not been able to do anything through the Legal Aid Committee because legislation needs to be changed in the form of that section 21 of the Legal Aid Act. There is currently no funding, so that is an issue firstly.

2670 Secondly, only from 29th September were accused people at police stations handed a very short note as to their ability to review bail conditions and how they go about that. I am not criticising the Police. I have absolute assurance that the Police, when they grant bail, have been telling accused people, 'You can do this by making a written application to the summary court.' No question over the Police's integrity in that respect, but if you are in a confused state because you have been arrested and you do not know what is going on, you may not necessarily recall that; you may not have the wherewithal to be able to use that method.

2675 **Mr Cregeen:** But is this not an issue, as you have just said, for the Legal Aid Act rather than this part of the Bill? From everything that you have said so far, it is about legal aid and funding, which is not part of this Bill, so is it not something that possibly needs to be referred outside this piece of legislation?

2680 **Ms Unsworth:** What this legislation is doing is putting on a permanent footing the police bail conditions and the review process – that is what is happening in this Bill – and in order to do that, it is appropriate and reasonable for the Members to consider how that is accessed and the ability of the members of the public, many of whom will be vulnerable, to access and utilise the

2685 mechanism being put in place. So, yes, in short, it could be looked at through a difference
amendment in a different piece of legislation at a different point in time, but during the period
whilst that is all going ahead there are vulnerable members of society who may not be able to
access a review of their bail conditions because there is nothing in place; whereas, actually
2690 sitting here today, you have the ability to make this short amendment to section 21 of the Legal
Aid Act to extend the Police Station Duty Advocate Scheme to simply include this section 50A as
part of the Police Station Duty Advocate Scheme for the purpose of a review to a justice of the
peace.

Mr Cregeen: But is it not the case that, as you have been discussing, currently legal aid is
2695 means tested?

Ms Unsworth: Yes.

Mr Cregeen: And there have not been any issues with bail at the moment? Nobody has had
2700 no representation when requested?

Ms Unsworth: I cannot answer that question. I do not represent every single person on the
Island, I am afraid.

2705 **Mr Cregeen:** But this must have been brought up through the Law Society.

Ms Unsworth: Yes.

Mr Cregeen: And have they raised this issue with anybody outside, are you aware?
2710

Ms Unsworth: Yes, with the Legal Aid Committee. We have been raising this since the bail
conditions were brought into play during COVID. We have raised our concerns, and I know some
advocates have assisted on a *pro bono* basis.

2715 **Mr Cregeen:** So, on the other point that you were making, about the individual who wished
to alter the terms of their agreed bail, is it not possible for them to attend the police station and
say, 'I have a wedding somewhere'? The advice I have been given is that they can go to the
station and ask for a review of those conditions. You may not get legal aid, but you could still go
there and they could review those conditions without a lawyer.

2720 **Ms Unsworth:** I am not aware of there being a process in place for them to go to the police
station and ask for a review –

Mr Cregeen: But they could do?
2725

Ms Unsworth: I am not aware of a provision for that, and if that were the case then I would
question why there is a review process built into the legislation. But the issue is over the access
to free and independent legal advice. Whether they are doing it themselves in writing to the
court or standing at a custody desk in a police station does not remove the concern that they do
2730 not have the access to free and independent legal advice to do that, because either way they are
left exposed.

The Speaker: I am conscious, Hon. Members, that there are only a couple of minutes left of
our sitting. I have three other Members wishing to ask questions, so I would just like an
2735 indication from the witness whether she is available at half past two, when the House resumes.

Ms Unsworth: Yes.

The Speaker: Thank you.
Mrs Barber.

2740

Mrs Barber: Thank you.

I just wanted to clarify ... I think you have indicated, but do you undertake legal aid work yourself?

2745

Ms Unsworth: I undertake civil legal aid; my firm undertakes criminal legal aid.

2750

Mrs Barber: Okay, just because I know that obviously within the House we do a lot about declaring pecuniary interest, and I just do not want you to fall into a trap in regard to that, so I do not know whether you would feel it necessary to declare a pecuniary interest against the firm in this matter.

2755

Ms Unsworth: My firm undertakes criminal legal aid work. If that means that there is a pecuniary interest, then yes, it would need to be declared. I personally do not deal with criminal legal aid.

Mrs Barber: I just wonder how many times you would envisage someone could request a review, therefore looking to access legal aid under the proposed amendment.

2760

Ms Unsworth: I cannot answer that question. Many people will be granted bail over the course of however long these provisions –

Mrs Barber: Sorry, I do not mean how many people; I mean one person requesting again and again.

2765

Ms Unsworth: There is no limitation built into this. It is not that you are limited to one review of your bail conditions, so presumably people could have multiple reviews. However, the position of somebody being on bail is for a short period of time, although there are risks that they could be on bail for a long period of time. The normal situation would be for a matter of weeks or months, and in that time they are unlikely to need multiple reviews of their bail. And if it is something that they know is a regular occurrence, then that could be dealt with at one application, as opposed to coming back every single week or every other week for the same thing to happen.

2770

2775

Mrs Barber: Would it not be for the police officers to advise the person, at the time that they are given those additional bail conditions, that obviously if they need a review at that point they should be seeking advice from a duty advocate?

2780

Ms Unsworth: The Police, firstly, are not there to advise anybody; they are there to do a job as part of the criminal justice system. They do notify them that there is a review process in place, and from 29th October they will hand to every person granted police bail a short note, which is about five lines long, that says, 'If you are not happy with your police bail, this is how you can have it reviewed by a justice of the peace, and this is the process.'

2785

Mrs Barber: I think when I said 'advise' I meant like you would advise someone of their rights – it is a nuance in terms of the meaning of the word – rather than giving advice *per se*.

2790 **Ms Unsworth:** Yes, so the Police would do that, but as I have said, it is not necessarily there in the moment that the review is necessary, and if in the moment they wanted a review of what the custody officer has said, the Minister has put forward a proposal for it to go to an inspector for a review. So, there is that review process built in now, but that is different to getting the justice of the peace to look at it.

2795 **The Speaker:** Hon. Members, the clock has defeated us at this point. I am conscious that there is a presentation in the Barrool Suite regarding COVID testing, so they will be hoping that Members will be able to attend that.

With that, this sitting is suspended until 2.30, when we will continue in Committee. Thank you.

*The House adjourned at 1 p.m.
and resumed its sitting at 2.30 p.m.*

**Courts, Tribunals and Local Authority Procedures and Miscellaneous Provisions Bill 2020 –
Consideration of clauses concluded**

The Speaker: Fastyr mie, good afternoon, Hon. Members.

2800 **Members:** Good afternoon, Mr Speaker.

The Speaker: Now, on my list I have Mrs Barber, but that is past, (*Laughter*) and I have been promised by Mr Thomas that he would like to ask just one question, so Mr Thomas.

2805 **Mr Thomas:** Thank you very much, Mr Speaker.

2810 Just a very brief question, I think you started to say that you were speaking not for yourself, if you had had longer or for any other reason would you have been able to speak for the Law Society? Are the opinions that you have very helpfully given us today and the facts that you have given us today, would they be shared by more advocates and with the Law Society here that have joined in with you?

2815 **Ms Unsworth:** So far as I can speak for the advocates that I have spoken to, the criminal bar is very much in favour of the bail conditions being in place by the Police, that goes without question. Certainly the criminal bar and the members that I have spoken to are very much in favour of extending the Police Station Duty Advocate Scheme in order to ensure there is free and independent legal advice available to those who wish to utilise the review option as set out in the legislation.

2820 If I may, Mr Cregeen raised that he had been advised that you could attend at the police station to ask for a review. Over the lunchbreak I spoke with the Police and they said that is not an option. However, if somebody is represented by an advocate, the advocate could send an email to the Police to make a minor change, such as if somebody's address had changed by way of a bail address, or something of that nature, but they could not seek a review of their bail conditions as issued by the Police.

2825 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I was just going to rise to move that we resolve the Committee back into the full House and then crack on with clauses.

2830

A Member: Hear, hear.

The Speaker: Mr Harmer.

Mr Harmer: I will second that.

2835

The Speaker: The question is that business be resumed. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The House moved out of Committee and business was resumed.

The Speaker: We pick up then at the point where we left off.

2840

I am going to give Mrs Christian the opportunity to make her contribution and then Mr Robertshaw had also indicated ... no, okay.
Mrs Christian.

Mrs Christian: I thank you, Mr Speaker, I will be very brief.

2845

I am very pleased this House got to hear the evidence brought today by Ms Unsworth and thank her for her time. We have heard evidence today that there is potential lack of free and independent legal advice to those who wish to review bail, even though there may be a limited number of people wishing to do so and therefore consideration needs to be given to amending the Legal Aid Act in order to extend to the Police Duty Advocate Scheme for this purpose.

2850

My hon. colleague, Mr Cregeen, said last week in the other place that people do not know what it is like to be an MHK until they are really here; I completely agree with that statement. *(Laughter)* Being here means many things and we have to make decisions that affect the good people of this Island. We are all aware the provisions of this Bill need to be in place prior to the end of the Continuation Regulations on 26th December and it is fair to say a lot is riding on this Bill that will affect a lot of people if these provisions are not there.

2855

Following conversations with the Minister and Members of his Department, I am in the hope now that we have all heard evidence that this can be addressed in other legislation. I therefore do not move to seek an adjournment of the clause and thank the House for hearing the evidence for future proofing our legal aid system.

Thank you, Mr Speaker.

2860

The Speaker: In which case, I will call on Mr Cregeen if he wishes to say anything in response to the debate on the amendment.

Mr Cregeen: Thank you, Mr Speaker.

2865

I would like to thank Hon. Members for their comments. I will go away and check with the Constabulary on the advice that was given, but the advice I had been given at the time, Mr Speaker, was that they could attend so I will get clarification on that.

Thank you, Hon. Members.

2870

The Speaker: Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

Just to confirm I will be looking to put something in place, if it is either an order or a change to legal aid, to look at this issue, so thank you.

2875

The Speaker: I put then the question firstly that amendment 4, in the name of Mr Cregeen, be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

2880 Clause 17 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I am sure that the House would wish me to thank Ms Unsworth for coming in today and giving evidence. (**Members:** Hear, hear.)

We turn then to clause 18, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

2885 Clause 18 amends section 52, which relates to the power of arrest with regard to failure to answer police bail, by adding a new subsection that provides that where a person is released on police bail, and is believed to have failed to comply, they can be arrested without warrant.

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

2890 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

2895 **The Speaker:** I put the question 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, Mr Harmer.

2900 **Mr Harmer:** Clause 19 acts as an introduction to the remaining clause within this Part of the Bill which makes changes to the Criminal Law Act 1981.

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

The Speaker: Mr Hooper.

2905 **Mr Hooper:** Thank you, Mr Speaker. I beg to second.

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

Clause 20, Mr Harmer.

2910

Mr Harmer: Clause 20 amends section 5 of the Act by making several minor amendments to ensure that the language used in this section reads correctly in context with the other amendments being considered regarding bail.

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

2915

The Speaker: Mr Hooper.

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

2920 **The Speaker:** I put the question that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Mr Harmer.

Mr Harmer: Clause 21 provides the definition of certain terms used within Part 4 of the Bill.

2925

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

The Speaker: Mr Hooper.

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

2930

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

Clause 22, Mr Harmer.

2935

Mr Harmer: Clause 22 makes provision in respect of local authority meetings.

Despite the expiry of the Emergency Powers (Coronavirus) (Local Departmental) Regulations 2020, any acts or omissions under those Regulations remain valid and lawful. This clause also provides for the continuation of certain appointments until May 2021, if necessary, and for such appointments to continue on the terms on which they were made.

2940

I beg to move that clause 22 do stand part of the Bill.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

2945

The Speaker: I put the question that clause 22 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23, Mr Harmer.

2950

Mr Harmer: Clause 23 makes provision that any decision taken at a virtual meeting of a local authority and subsequently ratified was, and is, valid.

This clause encompasses decisions made before the Regulations came into force, where the local authority determines that there is a need to put these on a secure legal footing.

2955

The current Local Government Act 1985 sets out an implication, in Schedule 1, that meetings of local authorities should happen in a physical place, face-to-face, therefore the provision within the Bill serves to cover those decisions which were made before the Regulations came into force where the local authorities determine that there is a need to put these on a secure legal footing.

I beg to move that clause 23 do stand part of the Bill.

2960

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

2965

The Speaker: I put the question that clause 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24, Mr Harmer.

Mr Harmer: Thank you.

2970

I now move on to the clauses which form Part 5 of the Bill and which deal with miscellaneous provisions, specifically Division 1, Departmental Facilities.

Clause 24 provides the definition of certain terms used within this part of the Bill.

2975

The Council of Ministers intends to bring a Government amendment to clause 24 which will provide for clarity the definition of 'O's representative' in relation to Part 5, Division 1, of the Bill, setting out that the representative has a clear and intentional connection with the individual, such as power of attorney, court appointment, involvement in care and treatment, and as such the DHSC is satisfied that the person holds the position of representative of the individual. This

brings such definition in line with similar provision within the current National Health and Care Service Act 2016.

2980 I beg to move that clause 24 stand part of the Bill.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

2985

The Speaker: I call on Mr Ashford to move amendment 5.

Mr Ashford: Thank you, Mr Speaker.

2990 The purpose of this amendment is to clarify and provide a greater degree of certainty and assurance as to whom a person's representative is or might be in the context and for the purposes of clauses 26, Vacation procedure and 27, Occupation fee of this Bill. Essentially to ensure an individual's interests can be considered with fairness, this amendment will redefine who might be considered as their representative. By doing so, this puts on a statutory basis those persons who fall within the definition of a representative and thus who is (a) to be
2995 informed before an individual is to be removed from a Department facility in accordance with clause 25 application of this Part and (b) where appropriate, to be afforded such time as is reasonable in the circumstances to remove the individual from the facility.

The amendment is worded in such a way that it captures the recognised definition of a patient or service users' representative, as included in the National Health Services Act 2016.

3000 Mr Speaker, I beg to move the amendment standing in my name.

Amendment to clause 24:

5. Page 19, for lines 5 and 6 substitute —

“(d) “O’s representative” means any of the following—

(a) a donee of a power of attorney;

(b) a person appointed by the court to represent the interests of O;

(c) any person involved in the care and treatment of O (whether professionally or otherwise and whether or not for remuneration);

(d) any person whom the Department is satisfied holds themselves out (with or without the express or implied consent of O) as O’s representative.”

The Speaker: Thank you.

Mrs Corlett, Hon. Member for Douglas Central.

3005 **Mrs Corlett:** Mr Speaker, I beg to second.

The Speaker: Thank you.

Mr Robertshaw.

3010 **Mr Robertshaw:** Thank you, Mr Speaker.

I wonder if the Minister would be kind enough to talk through 5(d) in his amendment:

(d) any person whom the Department is satisfied holds themselves out (with or without ...

– is the thing I am after there –

... the express or implied consent of O) ...

Could you talk to that please? Thank you.

3015 **The Speaker:** I call on Mr Ashford to respond to his amendment.

Mr Ashford: Yes, thank you, Mr Speaker.

It is one I was actually anticipating coming up in fact! *(Laughter)* If there was going to be one part of the amendment. This was also anticipated in the National Health Services Act 2016 in the fact that there may be occasions where the patient is not in a position to be able to give their immediate expressed consent. So if you have got a family member who is concerned that you have got someone, for instance, who is due to be maybe vacated out into a residential home but due to medication that person is on or the situation they are currently are in hospital they are safe to discharge, but they are not able to actually turn round and indicate that person is representative of them. It is to have that ability that if you have got a close family member like a son, daughter and so on, they can indicate to the Department they can act on that person's behalf, as long as the Department is satisfied that they have the right to do so.

So the Department must be satisfied in this amendment that that person is acting as their representative and has the ability to do so. If we do not have that then you are going down the rabbit hole of having to ensure you have to have powers of attorney and everything else in place, so it is just to cover off all the options, Mr Speaker.

Mr Robertshaw: Would he give way?

3035 **Mr Ashford:** I certainly will give way, as always, to the Hon. Member.

Mr Robertshaw: Thank you. Just in time, thank technology, Mr Speaker.

So great care will be taken, will it not, in allocating that sort of authority on behalf of O in the sense that even in families there are sometimes tensions and could you just clarify that?

3040 **Mr Ashford:** Happy to, Mr Speaker. Certainly the one thing that DHSC does not want to do is get involved in family relationships and family arguments. It must be absolutely clear that that person is acting as the representative of O. If you have got two family members who are both saying very different things – and it does happen – about a patient, it is not for DHSC in those circumstances to decide who is acting and who is not acting; that is a matter the family would have to decide or the patient themselves, and if they are not in a position to do so, potentially a court would have to.

3050 **Mr Robertshaw:** Thank you very much.

The Speaker: I call on Mr Harmer to respond to the debate on the clause.

Mr Harmer: Thank you, I think it has been eloquently answered.

3055 **The Speaker:** Putting to you first the amendment in the name of Mr Ashford, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25, Mr Harmer.

3060 **Mr Harmer:** Thank you, Mr Speaker.

Clause 25 provides the Department of Health and Social Care with a legal basis to remove a person from one of their facilities that is used for, or in connection with, the provision of health or care services.

3065 I must reiterate that no individual is going to be requested to vacate a DHSC facility, be that a hospital bed, a nursing or residential home or a community house, without a formal assessment

that they are clinically fit for discharge or have no assessed need to be in such a facility, and without an appropriate care plan for such a discharge, where needed.

The power to do so under this clause is limited by, and subject to, strict checks and balances.

3070 Thus, the person that is duly authorised by the Department to move the person must one, have taken and considered the advice of the healthcare professionals involved in the care and treatment of that person; and two, having done so, must be satisfied that one of the following applies: that (a) it is no longer necessary for that person to remain at the facility and he or she can be removed from the facility without undue risk to their health or wellbeing; or (b) the
3075 facility being occupied is needed for someone else who requires care or treatment and, again, that the person can be removed without undue risk to their health or wellbeing.

For good governance subsection (2) provides a statutory duty as to the records that must be kept where a person has been removed in accordance with this part of the Bill.

3080 Thus, the person duly authorised by the Department, will be required to retain a written record of the advice received from the healthcare professionals involved in the person's care and detailing the reasons why the authorised person decided that the person can be removed from the facility.

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

3085 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

3090 **The Speaker:** I put the question that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

3095 Clause 26 puts on a statutory footing the procedure that the Department must follow before it removes, in accordance with clause 25, a person. Firstly and in accordance with subsection (1), before a person is removed they, or their representative, must be informed of the decision. Secondly, taking into account the circumstances at that time, after being informed of the decision the person must then be given enough time, to vacate or, where appropriate, the Department must afford the person's representative the time that they need to remove the
3100 patient.

Subsection (3) makes it clear that the Department will have a duty, where it is practical, to ensure the person is moved to another departmental facility and if it is not practical, to make sure the person has an appropriate care package in place prior to their removal. Subsection (2) will provide the Department with the ability to take such steps as are necessary to remove a
3105 person in circumstances where they or their representatives refuses, and subsection (6) allows the Department to call upon a constable for such purposes.

In respect of the right of appeal, there is no measure within the Bill that overrides the local complaint resolution process for health services or similar for social care services, and should a resolution not be agreed, a petition of doleance could be raised. There remains existing
3110 provisions within section 8 of the Social Services Act 2011 for the assessment of an individual's need for care and access to services, within this process there is legal provision for the right to make representation to the DHSC in respect of such an assessment.

It should be stressed that using these powers would very much be an action of last resort.

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

3115 **The Speaker:** Mr Hooper.

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

3120 **The Speaker:** I put the question that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 27, Mr Harmer.

3125 **Mr Harmer:** Clause 27 of the Bill makes provision to allow the Department to: (a) charge a person a daily occupation fee in circumstances where they a person, without good reason, refuses to vacate; or (b) in circumstances where it is a representative of that person obstructing the removal, charge the representative instead, as an alternative to charging the person in occupation.

3130 Subsection (3) limits the daily occupation fee that the Department can charge to the average daily cost for each occupant of the facility, and of: (a) the maintenance of the facility and its staff; and (b) the maintenance and treatment of the occupants of the facility.

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

3135 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

3140 **The Speaker:** I put the question that clause 27 stand part of the Bill, those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 28, Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

Now turning to Division 2, Public Health.

3145 Clause 28 amends the Public Health Act 1990. The subsections amend sections 51C and 51F of the Act to provide that a penalty of three months' custody and fixed penalty notices may be enforced for a breach of the Health Protection Regulations.

Within the current Public Health Act, section 51F(5) provides that the Health Protection Regulations may create offences punishable on summary conviction with a fine not exceeding four times level five on a standard scale up to £40,000.

3150 As has been seen over recent weeks, the ability to enforce directions made under the current Emergency Powers 1936 Regulations has maintained the low infection rate of the virus on the Island and enabled arrests, charges, custody, court appearances via live links and subsequent sentencing of individuals who have breached such.

3155 The Public Health Directorate within the Cabinet Office, together with the Attorney General's Chambers, are drafting regulations under the current Public Health Act 1990 for all the necessary measures for the Island's continued response to the global pandemic, including entry restrictions which will be subject to consideration by the Council of Ministers and will be submitted to the December 2020 sitting of Tynwald.

With that, I beg to move that clause 28 stand part of the Bill.

3160 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker. I beg to second and reserve my remarks.

3165 **The Speaker:** Thank you.
I call on Mr Thomas to move amendments 6 and 7.

Mr Thomas: Thank you, Mr Speaker.

3170 Firstly, the Minister's call for expeditious treatment of the Bill is key. Of course, the fact that the existing Public Health Act 1990 enforcement regime will not be supplemented by the

potential for custody or fixed penalties unless the amendments proposed in the Bill before you are brought into force subsequent to Royal Assent is very important. I welcome the Public Health Act amendments here before us today and I will be supporting the call for Third Reading on that basis, clearly.

3175 I thank the Minister and Council for giving Members four working days before the amendment deadline last Monday to draft amendments. In particular, I thank senior officers from the current and former COVID-19 response team, the Public Health Director, as well as a senior legal drafter for a series of very helpful meetings and email exchanges in those four days. I also welcome the Keeling that was very kindly produced by the legal drafters to help us
3180 understand the small amendments that are before you today in the context of section 51 of the Public Health Act 1990.

But, Mr Speaker, I hope the mover and this House will treat the amendments I have put before you in the spirit of what I have just said because they were worked up very quickly to help evolve the Public Health Act 1990 today, and I think probably in coming months and years.

3185 Two things were established in these meetings to aid my understanding and the House's understanding, I hope. One is that the COVID-19 Information Centre ambition, which I outlined in the Second Reading, has been realised using regular arrangements and powers, so that is not an issue. And secondly I believe all of the existing regulations made under the Emergency Powers can, it seems, be made under the Public Health Act, as the Minister has just confirmed
3190 and as the Chief Minister helpfully announced back on 13th October, and isn't that great news?

I also welcome the Chief Minister's announcement this morning that workshops for Tynwald Members about the Borders Framework will be arranged because that is absolutely excellent news to involve us more in this process.

3195 Thirdly, although I have no indication of what Ministers intend to advise Members and how they intend to vote, I hope Council and Keys will support at least some of the conservative amendments that are before you today in my name which go some way – and this is the crucial thing – to replicating procedures which were used during the COVID-19 emergency in respect of regulations. Like Minister Harmer, I hope that the Bill can go forward quickly now to maximise the chance of Royal Assent before 26th December.

3200 If the amendments fail they could come back in one of the other Bills, as I have outlined, which are promised as the arrangements and law for Public Health Protection are perfected.

My amendment 6, sub-clauses (2) and (3) give the collective group of Ministers, the Council of Ministers, rather than the Minister for the Cabinet Office, the power to make regulations to deal with the emergency, just as they had that power to recommend these same regulations to
3205 His Excellency the Lieutenant Governor during the emergency. The alternative is that the power rests solely with the one person who is the Cabinet Office Minister, although I acknowledge the Cabinet Office Minister, the Chief Minister, is likely to have consulted lots of other people, including in the departmental meeting. I also note, however, that powers could be delegated from the Cabinet Office, I think that was the point that the Minister for Policy and Reform was
3210 making in his email yesterday evening.

So in summary, surely it is better for the Council of Ministers to exercise these powers which involve so many professionals and politicians from across Government in a cross-Government joined-up way, rather than just the Minister of the Cabinet Office arranging for that sort of co-operation. That would be too much of a responsibility for just one person, given the nature of
3215 the emergency that we are facing.

Moving on to subparagraph (4), I remind Hon. Members of the *ad hoc* structure created for the emergency, which changed during the early part of the emergency especially. The power to create a Public Health Protection Body – and I stress it is a power, it is a 'may'; it is not 'shall', it does not look like anything described – the power is a way to make this structure to manage the
3220 public health emergency more transparent and better. Nothing is changed in the Public Health Act by the insertion of this clause, but Council of Ministers would have the chance, they would have the power to come back to Tynwald with a structure, in line with the pandemic plan

perhaps or their experience and their learning from the emergency experience. But basically they have the power to come back with an order to make it.

3225 One protection for the sense in which I propose this amendment is the fact that it is a 'may', but the second one is that the clause instruction to the drafter was to make it look like the section in the Town and Country Planning Act, which was amended successfully in this House recently, whereby the actual body is created in the law but its structures are set up in orders that would have to come back to the other place.

3230 Subparagraph (5) is two small amendments noted quickly and proposed in good faith. Does the Isle of Man have 'international travel' or, as a Crown Dependency, and in line with the description of ourselves in the context of the Borders Framework should perhaps 'international travel' not be substituted by 'travel across borders'? I think I note from the email from the Minister of Policy and Reform yesterday evening that international travel might mirror the 2005
3235 World Health Organization convention language or something like that, but wouldn't it be best to actually present that in terms of travel across the borders and our Borders Framework rather than pretending that we have international travel out of the Island across?

Also, added in the health of others, if only to make the debating point that when we look after our community we are looking after our own health but also the health of the others. I
3240 would hope that Keys would consider these changes and any further consideration or refinement can be undertaken by our legislative expert colleagues in another place or thereafter. Nobody has suggested to me in the last few days that these amendments which were proposed by an expert are in any sense or respect stupid or flawed, or yet at least, and so I hope they are on the table in good faith.

3245 Mr Speaker, in the light of the fact that subparagraphs (2), (3), (4) and (5) are slightly different, I hope that having moved them all together you will let them be voted on separately. **(The Speaker: Yes.)** Thank you.

Amendment 7 is grouped together because it is about the Tynwald approval process and it is an attempt to mimic more or less the Tynwald approval process that was used successfully
3250 during the emergency under the Emergency Powers Act. It differs really only in one way which is under the proposal before you there is no right for Tynwald Court to amend the regulations, as was first used by Ms Edge, I think, and then Mr Hooper used it and several of us used it later during the emergency for the Emergency Powers Regulations.

I believe my proposal is conservative, but Legislative Council could usefully consider whether
3255 the Public Health Act 1990 in respect of a public health emergency should be amended to give Tynwald Court the amending power it has in the 1936 Emergency Powers Act. I included 14 days for the action in Tynwald, after discussion with officers, as it seemed reasonable; a week longer than the seven days in the Emergency Powers Act and a fortnight or so shorter than the normal Tynwald procedure although significantly shorter than the current Tynwald procedure in the
3260 Public Health Act 1990 at the moment, which can be the following Tynwald.

Subparagraph (7) deals with the consequences of an amendment failing or falling in Tynwald. It is a conservative replication of what appears in more general legislation in the specific context of amendable regulations made under the Public Health Act 1990. The amendment is properly
3265 drafted, I am assured, and surely nobody can object to its inclusion. It states that if an amendment fails or falls the existing arrangements provided for in law are preserved.

I beg to move the amendments standing in my name:

Amendments to clause 28:

6. Page 20, after line 23 insert —

"(2) In the following provisions, for "Cabinet Office" substitute "Council of Ministers" —

(a) section 51B(1);

(b) section 51C(1);

(c) section 51D(1);

(d) section 51G(7);

- (e) section 51H(6);*
- (f) section 51L(3) and (4);*
- (g) section 51M(2) and (10);*
- (h) section 51N(1);*
- (i) section 51(O)(1)(b), (c) and (d);*
- (j) section 51PA;*
- (k) section 51Q(1).*

(3) In section 51I(6) for “Department” substitute “Council of Ministers”.

(4) After section 51A (infection or contamination), insert —

“51AA The Public Health Protection Body

(1) The Council of Ministers may, by order (“the constitution order”), constitute a body (the “the Public Health Protection Body”) to carry out any of the functions under this Act to which subsection (5) applies.

(2) The constitution order may in particular provide for —

(a) the constitution of the body and its sub-bodies;

(b) the terms of office of members;

(c) termination of membership;

(d) proceedings and procedure;

(e) without limiting paragraph (d) —

(i) the appointment of a chairpersons;

(ii) voting procedures; and

(iii) the quorum of the body and sub-bodies; and

(f) such transitional arrangements as the Council of Ministers considers necessary or expedient. (3) The Council of Ministers shall appoint the members of the body.

(4) Schedule 2 to the Government Departments Act 1987 applies to the body as it applies to a Department and accordingly references in that Schedule to a Department shall be read as including a reference to the PHPB.

(5) This subsection applies to any function —

(a) performed by the PHPB and specified in the constitution order;

(b) which the Council of Ministers authorises the PHPB to exercise under section 3 of the Government Departments Act 1987; or

(c) which is transferred to the body by an order under Schedule 2 to the Government Departments Act 1987.

(6) The Council of Ministers shall arrange for the publication of an authorisation referred to in subsection (5)(b) in a manner the Council considers will bring it to the attention of those likely to be affected by it.”

(5) In section 51B (health protection regulations: international travel etc) —

(a) in the heading, for “international travel etc” substitute “travel across borders”;

(b) in subsection (2) (g) after “health” insert “ or the health of others”.

Re-number following subsections accordingly

7. Page 20, after line 35 insert —

*“(6) In section 51Q (Tynwald control: regulations and orders), for subsection (5) substitute —
“(5) A public document to which subsection (3) applies ceases to have effect at the end of the period of 14 days beginning with the day on which it is made unless, before that time, Tynwald has approved it.*

(5A) If Tynwald is not due to sit during the period referred to in subsection (5) the President of Tynwald must summon Tynwald to meet on a day specified by the President within that period. (5B) Where it is not reasonably practicable for Tynwald to sit within the period referred to in subsection (5A), the President of Tynwald must summon Tynwald to sit on the earliest day it is capable of sitting thereafter.

(5C) Where subsection (5B) applies, a public document shall continue in operation pending its approval (or otherwise) by Tynwald.”

(7) After subsection (7), insert –

“(8) If a public document to which this section applies ceases to have effect as a result of Tynwald’s failing to approve it, any Manx legislation amended or repealed by the document is revived on the passing of the resolution.”

The Speaker: Mr Shimmins.

3270 **Mr Shimmins:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

3275 If I can speak to number (4), the Public Health Protection Body, which I intend to support, but I draw attention to the fact that it may very well be necessary to consider in greater detail what the body may look like, in terms that as actually proposed in this amendment it could have quite avert political control, which would be a matter of concern. That will, I think, require deliberation and I would invite the mover to comment.

3280

The Speaker: No other Member wishes to speak; I will call on Mr Thomas to respond to Mr Robertshaw’s comment.

Mr Thomas: Thank you very much, Mr Speaker.

3285 It is a very pertinent comment. I too have concerns about what it would look like, and that is why it is drafted in this way. It is ‘may’ set up this body, and everything would need to be considered in consultation. I am sure the order could come back when it is needed and I am sure the Public Health Directorate, the Council of Ministers and all the other professionals involved would contribute to a consultation on exactly how this body would be constituted, if it is needed at all.

3290

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

Mr Harmer: Thank you, Mr Speaker.

3295 I shall start on amendment 7, and I would agree with the mover on amendment 7 regarding coming back to Tynwald and so forth, I see that as a positive addition so I am content with the second of the two.

3300 Now, regarding amendment 6, and maybe it is just a case of ... I know the mover was talking about looking at public health more in general than in detail, well maybe that is the best opportunity for that.

3305 I think Mr Robertshaw alluded to the main issue as regarding the political nature of such a body. In particular, it is important that we do not lock ourselves into an overall legislative process as part of one specific response. In this instance, our response to a global pandemic, which may then impact or undermine the important work, routine work, and the sizeable routine work in relation to communicable disease control undertaken by the Public Health Directorate and others across Government.

3310 The amendment as drafted obviously does not go into the detail on the role or information on the proposed board, but health protection is only one of the domains of public health professional practice, and no argument has been made as to why only it would require political oversight and/or control.

Health protection comprises far more than response to pandemics, the emergency planning role for which, in any event, sits with the Department of Home Affairs, or even the control of

3315 communicable diseases. It includes responses to all biological, chemical, radiation, nuclear and environmental hazards, covered jointly with Environmental Health and DEFA as appropriate and wider health programmes, including vaccination, immunisation and screening for conditions such as cancer, prenatal or new-born anomalies.

3320 The work is delivered within a framework of professional governance and accountability. While public and environmental health functions should be subject to overview and scrutiny, including accountability to Tynwald, the Health Protection Board appears to envisage a role in day-to-day management, which would not be appropriate and so cannot be supported as written.

3325 Obviously, as I said, the Member talked about maybe amendments in the future for other Bills, but I think the time for this is not now. What we do not want to do is create a political board that would have undue influence when there is already a structure and already a process that goes into Tynwald. *(Interjection by Mr Thomas)*

The Speaker: Yes, I think the Hon. Member has given way rather than finished.

Mr Thomas: Thank you.

3330 Just to clarify, it is a body, not a board for the deliberate purposes, and I just want him to understand, to make sure I appreciate it, just to know which way to vote myself. *(Laughter)*

3335 Basically, I think Council of Ministers supports subparagraphs (2) and (3) in changing it to Council of Ministers from Cabinet Office, because the Minister did not cover that in his speech. It is only the one on the Public Health Protection Body that you do not support.

Mr Harmer: I think at the moment, because I have not had, and you said you had not had enough time, I have not had enough time to adjudicate on that, so, unfortunately, I am going to have to... *(Interjection and laughter)* I treated amendment 6 as one piece and also that the Public Health Body was one piece, but I am happy with amendment 7.

3340 Thank you, Mr Speaker.

The Speaker: Right.

Hon. Members, as was requested, I am content that the amendments are sufficiently discrete and separable and that they do not hang on each other so that they can be voted on separately.

3345 I will turn to them each in part, and I refer Hon. Members to the Order Paper on page iii which has them set out. Perhaps confusingly, we start in recommendation 6 with part (2), which starts after page 20, line 23 insert – and replaces for ‘Cabinet Office’ substitute ‘Council of Ministers’. Are we all on the same page? **(Members: Yes.)** Good. Those in favour, please say aye; against, no. The ayes have it.

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

FOR

Mrs Barber
Mrs Caine
Mrs Corlett
Mr Peake
Mr Robertshaw
Mr Shimmins
Mr Speaker
Mr Thomas

AGAINST

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mr Boot
Mr Callister
Mr Cannan
Mrs Christian
Mr Cregeen
Mr Harmer
Mr Hooper
Mr Perkins
Mr Quayle

Mr Skelly

3350

The Speaker: Now, Hon. Members, 8 for, 14 against, that amendment therefore fails.

Turning to 6(3), for 'Department' substitute 'Council of Ministers' in 51I(6), those in favour, please say aye; against, no. The noes have it. The noes have it.

3355

Part (4), Public Health Protection Body, those in favour, please say aye; against, no. The noes have it. The noes have it.

And paragraph (5) over the page, health protection regulations: international travel, those in favour, please say aye; against, no. The noes have it. The noes have it.

Turning then to amendment 7, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3360

So, Hon. Members, that brings us to the fact that the only successful amendment was amendment 7, so I put to you clause 28, as amended by amendment 7: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now I call on Mr Thomas to move the new Division, amendment 8.

3365

Mr Thomas: Thank you, Mr Speaker.

Council of Ministers has quite properly dealt with the local authority meeting issue in its legislative proposal. The best way forward for all other meetings would have been, and still is, eventually to review every piece of legislation in respect of the holding of virtual meetings. But in the interim, the proposal before you today is a pragmatic and could be a helpful legislative response in the future if any law involving meetings that normally were held physically but has been or might be held virtually if any problems arise.

3370

Specifically, this insertion in the Interpretation Act 2015, and indeed my remarks today, in fact, could be helpful to anyone who needs to construe the law in any situation in the future.

The amendment before you merely states that a meeting includes a virtual meeting unless the legislative context provides otherwise. No specific legislative provision in respect of meetings is changed as such, but if this amendment is approved there would be a potentially useful definition in place, as there is for things like numbers, genders etc. in that same piece of overarching legislation.

3375

I note that the Minister for Policy and Reform has written in his email last night, 'With regard to the application of the clause in a wider context to other meetings taking place with the use of technology, this is not a matter for primary legislation, but rather a matter of process and procedure within that setting, such as meetings of the Council of Ministers, parliamentary sittings, or operational group meetings across Government and in the private sector.' Who can disagree with that? But this amendment will not be detrimental to that, it will not change that, and in fact can only be helpful. So I hope this House will support the small insertion of potentially a helpful piece of interpretation in the Interpretation Act. I move:

3380

3385

New Division

8. Page 20, after Division 2 – PUBLIC HEALTH, insert the following new Division –

“DIVISION 3 – INTERPRETATION

29 Amendment of the Interpretation Act 2015

(1) The Interpretation Act 2015 is amended as follows.

(2) In the Schedule (defined terms), at the appropriate place insert –

““meeting” includes, unless the context otherwise requires, a virtual as well as a physical meeting.””

Re-number following Divisions and clauses accordingly.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

3390 I rise to second my hon. friend's amendment. I think it is a practical amendment. I think it modernises the Interpretation Act and I think actually it enables people just to get on with things when perhaps they are concerned about this issue just because of the way the world has changed. Ultimately, if people who are convening meetings decide actually they must have a physical meeting well clearly they can build that into their governance arrangements for
3395 whatever body that they are looking at.

So I think it is a very sensible amendment, and I hope Hon. Members will support it.
Thank you.

The Speaker: No Member wishes to speak. I will put the question that the new Division, that
3400 is amendment 8, be approved ... Mr Harmer.

Mr Harmer: Yes.

The Chief Minister: No! *(Laughter)*

3405 **Mr Harmer:** I wanted to speak to that.

The Speaker: Well, I did try and indicate that everyone had an opportunity.

Mr Harmer: Apologies, it was quicker than I expected, that was all.

3410

The Speaker: Well, it is your big chance, Mr Harmer. *(Laughter)*

A Member: Not again!

3415 **Mr Harmer:** I understand the hon. mover's intent in this, and I understand what is behind it, but there are a number of issues, which I will come on to.

With regard to the application, it is in the wider context of other meetings taking place virtually or remotely, for example, Teams or Zoom, obviously that is a matter not for primary legislation, but a matter of process and procedures within the setting, such as Council of
3420 Ministers, parliamentary sittings or operational group meetings across Government and in the private sector. However, anything in the Interpretation Act 2015 is subject to express contrary intention. So any enactment referring to 'meeting' which references 'in person' would have a contrary intention and the definition would not bite.

The difficulty is that the draft amendment which deploys an 'unless the context otherwise requires' device, which is unhelpful and unclear. For example, a number of Manx enactments use phrases which are not a specific contrary intention but leave it unclear whether the circumstances require 'personal presence' – e.g. 'attendance at', Police Act 1993; 'not being present', Agricultural Marketing Act (No 2) 1948; 'fails to attend', Churchwardens Act 2013; 'absence of', Advocates Act 1995. In each of those cases, the reader would have to try to work
3430 out whether the definition bit or was displaced because of the context. This naturally runs the risk of varying interpretations of the same provision and different interpretations being given to different provisions in the same Act.

So, in essence, it would cause incredible confusion.

3435 **Mr Shimmins:** No, it wouldn't! *(Laughter)*

The Speaker: This is not going to turn into a Punch and Judy show on my watch! *(Laughter)*

Mr Robertshaw: It is behind you!

3440

The Speaker: If no other Member wishes to speak, I will call on the mover to reply – this is amendment 8 in principle.

Mr Thomas: Thank you very much.

3445 I am delighted that the legislative drafting team has actually got such a comprehensive list of the reference to meetings so there is an alternative approach and I am slightly disappointed that we could not come forward with the alternative approach, which was actually going through all of the pieces of legislation that is confusing.

3450 We had all of the extraordinary meetings of Tynwald which were called by the President in the usual manner in 1919, because that is when the law was written. We have had lots of examples there of other places where there is a slightly confusing thing. That is the first point I want to make.

3455 There is perfect way, there is a better way of doing it and in four days and perhaps 15 minutes that the legal drafter – because he is working on some, very professionally, all at once, had to do it – there is a better way and I hope this is helpful.

3460 The second point is I think I actually summarised the speech that the hon. mover made and it might be confusing, it might be helpful, we do not know in which situation this will arise. If the amendment was deliberately drafted in a bad way to help a mover of an amendment, which I do not think it was, but that could have been implied from what the mover said, because I did not give instructions about how to draft it exactly. I just gave the intention of what was required, which was to put something there that could be referred to by somebody when they were construing the law, I would be disappointed.

So with that, I move the amendment and I hope this House will actually support it.

3465 **The Speaker:** I put the question that amendment 8, that is the new Division 3, be approved in principle. Those in favour, please say aye; against, no. The noes have it.

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

FOR

Mrs Barber
Mrs Caine
Mr Peake
Mr Shimmins
Mr Thomas

AGAINST

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

The Speaker: With 5 votes for, 17 against, the noes have it. The noes have it. Clause 29, Mr Harmer to move.

3470 **Mr Harmer:** Thank you.

Clause 29 provides the Council of Ministers with a general regulation making power for the purpose of giving full effect to the Act.

I beg to move that clause 29 do stand part of the Bill.

3475 **Mr Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

3480 **The Speaker:** I put the question that clause 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
I call on Mr Harmer to move suspension of Standing Orders.

Mr Harmer: And also the Schedule or have we already done...?

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The Speaker: The Schedule was done in conjunction with clause 12, if you recall, Minister.

Mr Harmer: Thank you for that.