

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

The President: Mr Attorney, Second Reading.

The Attorney General: Thank you, Mr President, and I thank Hon. Members for their support for the suspension of Standing Orders.

790 The creation of the Courts, Tribunals and Local Authority Procedures, and Miscellaneous
Provisions Bill 2020 is as a direct result of feedback received on the original draft Civil
Contingencies Bill circulated to all Members in the summer. The feedback resulted in the
drafting of two pieces of primary legislation: one to place the good practices accelerated during
the emergency period and anticipated to have been provided for through future primary
795 legislation onto a permanent legal footing; and one to deal with the broader matters of civil
contingency.

The fundamental purpose of this Bill is to ensure that the positive operational changes to the
practices and protocols which resulted from the Island's response to the global pandemic, and
which are now contained within the provisions of the Bill, can, firstly, be used as part of the
800 Government's business-as-usual functions to enhance service delivery; and secondly, stand
ready to be used during another emergency alongside civil contingencies provisions and the
Public Health Act 1990 to enhance the Island's response.

More specifically, the Bill introduces amendments to the Criminal Justice, Police and Courts
Act 2007 to provide for live audio and video links in various court proceedings; introduces
805 amendments to the Police Powers and Procedures Act 1998 and the Criminal Law Act 1981 in
relation to the provision of bail; provides for any decisions taken by a local authority under the
relevant Emergency Powers Act 1936 regulations to remain valid and lawful and that any
decision taken at a virtual meeting of a local authority and subsequently ratified was, and is,
valid; and seeks to implement a legal framework, governance of decision-making, financial
810 penalty and the ability for the Department of Health and Social Care to move a person from a
departmental facility.

In relation to the clauses that amend the Public Health Act 1990, the Act provides for
regulations to be made in the event of a future need – an upsurge in positive coronavirus cases,
a future pandemic of another origin or a future civil contingency situation that threatens the
815 public health of our nation – for example, measures including potentially infectious persons and
directions; border restrictions and directions; face coverings; closure of businesses; control of
events and gatherings. Indeed the Public Health Directorate within the Cabinet Office is drafting
such regulations at this time, in case of need.

It ought to be noted that the Act does not provide for emergency measures related to social
820 matters, provision of services, economic matters and maintenance of the Island's infrastructure.

The Public Health Act currently provides that health protection regulations may create
offences punishable on summary conviction with a fine up to £40,000.

There is, in fact, an express prohibition in the Act on regulations providing for a sentence of
custody. The proposed amendments to the Act within this Bill alter this prohibition by providing
825 for enforcement of a penalty of three months' custody and fixed penalty notices for a breach of
health protection regulations.

The provision which amends section 51Q of the Act will provide for an extended Tynwald
procedure in respect of certain regulations under Part 2A of the Act.

Should the Branches of Tynwald support this Bill, it will come into operation on the day that
830 Royal Assent is announced in Tynwald, through an Appointed Day Order.

Mr President, I beg to move:

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

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: Miss August-Hanson.

Miss August-Hanson: Thank you very much, and thank you for providing some additional clarity, Mr Attorney General, at Second Reading.

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Just a couple of questions: you say that there is no understanding of where evictions sit presently. That seems to be the only element, I suppose, of all of this pick-up that we are missing here, and we do not really have any understanding of how that is going to move forward.

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I spent some time with the Cabinet Office actually talking to civil servants who have been 'landed' with it, as opposed to them having happily taken it on board. I think it has gone around a number of different Departments, and it has been a bit of an adoption, as opposed to something that perhaps they have a great deal of expertise in.

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What I would like to know is: there were a number of concerns that were raised by Members regarding evictions on the balance between the landlord protections and tenant protections following evictions, and what had to be done over the course of COVID-19. So I suppose what I am trying to understand is whether or not there is any need for anything; if anything has been discussed at all about that; and whether or not there was any conversation about potentially putting any continuation into this piece of legislation, with it falling on 26th December this year.

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Also, we talked quite a bit about the Public Health (Amendment) Bill that is on the way. Do we have an indication or a timeframe as to when that might be coming along?

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The same in terms of mental capacity legislation. I am aware that something has actually been drafted, but we have gone back to principles and public consultation, so when is mental capacity actually predicted on the line at the moment?

Yes, I think that will probably do for the time being. Thank you, Mr President.

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The President: Thank you. Mr Mercer.

Mr Mercer: Thank you, Mr President.

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I do have a quick question about Part 5, the bed-blocking. I have a response from Minister Harmer that this would allow DHSC to move a patient to a better facility and a care plan *has to be provided*; but I think what I heard from the learned Attorney General earlier was that a formal assessment and care plan provided *were needed*, so I would like some clarity on that point, please.

Thank you, Mr President.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

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I am grateful to my colleague, Miss August-Hanson, for raising the protection from evictions regulations.

My particular concern is the way those regulations were originally drafted, there was a provision and – I am just trying to find them – I think from memory, it was regulation 6 that said that when, at the end of the emergency period, any arrears of rent would have to be repaid, it would be possible to take into account the reason why arrears had accrued, i.e. because of the emergency; but if the regulations as an entirety fall away, then that provision that should be before a court in subsequent eviction proceedings would also fall away. Has that been considered further?

885 I know it was a matter that was raised in Tynwald. I know it is a question that has been raised a few times. Has that matter been considered and what provision is going to be made, to hold that provision if needed, so that individuals who are subject to eviction still have that protection in law?

The President: Thank you.
May I invite the Attorney to reply.

890 **The Attorney General:** Mr President, I thank Hon. Members for their questions. I will do my best to answer them.

The point with reference to evictions is a matter on which we have no instructions. With your permission, I am looking at the officers here. It was raised. Concerns have been raised. It is with the Cabinet Office, and I believe that we have no instructions to take steps to replace the provisions which currently will expire on 26th December. So it has been considered and there is no policy to do anything with that.

895 In answer to Miss August-Hanson, I will be very honest and frank with you: I have not got any idea as to the timetable for the public health amendment legislation. I am aware of the commitment from the Minister that this would be brought forward, but certainly I can say for the record that instructions have not as yet been received.

900 Again with reference to the Mental Capacity Bill, as I sit here, I have no indication as to the likely timetable on that. We are awaiting instructions to take it forward. The only assurance I can give you is that it is a work in progress.

905 Bed-blocking, Mr Mercer: there is in the Bill a procedure in clause 7 on the vacation procedure to be followed, and if you agree, I would suggest that we go through that in some detail when we come to the clauses stage. Certainly, as I have said to the Hon. Mrs Maska, there is and has been appropriate concern which was addressed in the Keys with reference to appropriate representation of the patient who might be subject to being removed from a facility, and certainly that is something that needs to be dealt with very cautiously, so if we can deal with it that way.

910 I take the point that Mrs Poole-Wilson makes with reference to eviction, but I can only again make the point that we have no instructions, as a matter of policy, to take any steps in that regard. But I can say it is a matter that is being referred to and considered by the Cabinet Office.

915 Thank you, Mr President.

The President: Hon. Members, I put to the Council the question that the Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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

920 **The President:** We move on to the clauses stage. Clause 1, Mr Attorney.

The Attorney General: Thank you, Mr President.
Clause 1 of the Bill provides for the short title of the Act, should the Bill be passed.

925 **Mrs Sharpe:** Thank you, Mr President. I beg to second.

The President: I put to Council clause 1. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 2.

930 **The Attorney General:** Clause 2 provides for the commencement of the resulting Act, by Appointed Day Order by the Council of Ministers.
I beg to move it do stand part of the Bill.

The President: Mrs Sharpe.

935 **Mrs Sharpe:** Thank you, Mr President. I beg to second.

The President: I put clause 2. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

940 Clause 3.

The Attorney General: Clause 3 acts as an introduction to the subsequent clauses which will make changes to the Criminal Justice, Police and Courts Act 2007.
I beg to move that clause 3 do stand part of the Bill.

945 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

950 **The President:** I put to Council clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

The Attorney General: Clause 4, Mr President, repeals the existing section 29 within that 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 President: Mrs Sharpe.

960 **Mrs Sharpe:** Thank you, Mr President. I beg to second.

The President: I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 5.

965 **The Attorney General:** Clause 5, Mr President, provides a new section 30, replacing the existing section 30 in its entirety with a more detailed provision.

This new section sets out the manner in which eligible criminal proceedings will be directed to take place via either 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.

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.

975 It ought to be noted that the right of the public to attend court hearings is, fundamentally, a common-law right, hence not in statutory form. During the emergency period, it was the case that the court met within the courtroom, with measures in place for social distancing, and so on, and that the Island’s public and press were able to attend that courtroom. Proceedings via live link take place with the judiciary in place within the physical courtroom and other participants then connect into this space, either via audio or video link.

Justice can and should be done in the open, and subject to public observation.
I beg to move that clause 5 do stand part of the Bill.

The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 5. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clause 6.

The Attorney General: Clause 6 repeals the existing section 31. Again, this is a present provision no longer required and is effectively replaced by wording contained within the new section 30.

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

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: I put clause 6. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

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The Attorney General: Thank you, Mr President.

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

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

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: I put to Council clause 7. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

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The Attorney General: 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.

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.

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: I put clause 8. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

1035 **The Attorney General:** Mr President, with your permission, I would like to move clauses 9 and 10 together.

The President: Is that agreed? (**Members:** Agreed.) Thank you.

1040 **The Attorney General:** Thank you.

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.

Clause 10 serves a similar purpose within the existing section 35.

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

1045 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

1050 **The President:** I put to Council clauses 9 and 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

The Attorney General: Thank you, Mr President.

1055 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.

1060 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', '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.

1065 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 do stand part of the Bill.

The President: Mrs Sharpe.

1070 **Mrs Sharpe:** Thank you, Mr President. I beg to second.

The President: I put to Council clause 11. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

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The Attorney General: Clause 12 introduces the new Schedule to be inserted into the 2007 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.

1080 In addition, there is an exception for contempt proceedings, which are to take place face-to-face, as per customary practice.

I beg to move that clause 12 stand part of the Bill, and also that the new Schedule do stand part of the Bill.

The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put to Council clause 12 and the new Schedule. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clause 13.

The Attorney General: Clause 13, Mr President, introduces a new stand-alone 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.

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The House of Keys supported 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.

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Subsection (4) provides further interpretation for this provision, and in particular defines the relevant tribunals – namely those found in 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 'Island of Man' – strange! – are subject to the provisions of this Bill.

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

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: I put to Council clause 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

The Attorney General: Thank you, Mr President.

I am now turning to the clauses which form Part 3 of the Bill, concerning bail.

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

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

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 14. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

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The Attorney General: Thank you, Mr President.

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.

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

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, sir. I beg to second.

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The President: I put clause 15. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

1140 **The Attorney General:** Thank you, Mr President.

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

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

1145 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, sir. I beg to second.

1150 **The President:** I put clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

The Attorney General: Thank you, Mr President.

1155 Clause 17 inserts a new section 50A in the Act relating to bail, with conditions that provide 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.

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

1160 Access to the duty advocate at a police station is available to anyone who has voluntarily or involuntarily – that is, if they have been arrested – attended a police station to assist Police with their enquiries. 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.

1165 The House of Keys supported 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, in order to provide an additional level of oversight in the event that an individual requests a review of the conditions attached to a grant of bail.

1170 This means that a senior officer can be requested to review the bail conditions set by the custody sergeant. If the accused remains unsatisfied, they may make written representations to a justice of the peace for a review of their bail conditions.

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

1175 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: Mrs Poole-Wilson.

1180 **Mrs Poole-Wilson:** Thank you, Mr President.

I am supportive of conditional bail for all the reasons that the learned Attorney set out. It makes a lot of sense and by all accounts has been working well through the emergency period.

1185 I do think it is important, though, that we recognise that by now putting this on a permanent footing, as opposed to its more temporary emergency basis, we seek to ensure that the legislation is absolutely correct.

The learned Attorney referred to the amendment that was introduced in another place last week and has explained that amendment, and I am grateful for his detailed response at First

1190 Reading that makes it clear that an individual who has left police custody may return to the
Police to seek a review under new section 50A(5)(a) and that it is the Chief Constable's
commitment that such a review would be undertaken, and thereby the individual would still
have that review power available to them, including, if dissatisfied, by being able to apply in
writing to a justice of the peace.

1195 I suppose, at this stage, I would like some reassurance – and I suppose the reassurance
should really come from the Department of Home Affairs – that this will continue to be
monitored, as it has been monitored through the emergency period, to check that it is working
in the way that the legislature understands it will be operated in practice. I know that as Chair of
the Justice Committee, certainly we would be very interested to understand that this provision
is, in fact, working as the legislature understands it will, and so the data to inform Tynwald that
this is, in fact, the case would be welcome. I would seek a reassurance that that is the intention,
1200 and that will happen.

Thank you, Mr President.

The President: Learned Attorney to reply.

1205 **The Attorney General:** Mr President, if I might ask Mr Dan Davies, the CEO of the
Department of Home Affairs, to give evidence to provide the answer to Mrs Poole-Wilson.

The President: Mr Davies, if you would like to come forward.

1210 **Mr Davies:** Thank you.

The President: If you would identify yourself and your position for the record, please.

1215 **Mr Davies:** My name is Dan Davies, and I am the Chief Executive Officer for the Department
of Home Affairs.

The President: Thank you.
Mr Attorney.

1220 **The Attorney General:** Yes, Mr Davies, you have heard the question posed by
Mrs Poole-Wilson. Could you please confirm the Department's position?

Mr Davies: I have. Thank you, Mr President and Mr Attorney.

1225 I can confirm to the Hon. Member that the Department will commit to reviewing, on a
monthly basis in the first instance, with the Chief Constable, the information relating to the
appeals and the process that is followed by the custody sergeant in relation to the new
provisions here.

1230 If I may add for the record that, over the period of the emergency powers regulations, the
Department understands from the Constabulary that there were just over 140 such conditional
bail processes made, and of those 140 we understand from the Constabulary that only one was
subject to a review under the emergency regulations powers.

The President: Thank you, sir.

1235 **Mrs Poole-Wilson:** Thank you.

The President: Mr Attorney.

The Attorney General: I have nothing further, sir.

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The President: That is fine, thank you very much, Mr Davies.

Mr Davies: Thank you, Mr President.

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The President: Mr Attorney.

The Attorney General: I beg to move that clause 17 do stand part of the Bill.

The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put to Council clause 17. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clause 18.

The Attorney General: Thank you, Mr President.

Clause 18 amends section 52, which relates to 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.

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

Thank you, Mr President.

The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 18. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clause 19.

The Attorney General: Thank you, Mr President.

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.

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

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

1280

The President: I put clause 19. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

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The Attorney General: Thank you, Mr President.

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

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

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

1295 **The President:** I put clause 20. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 21.

The Attorney General: Thank you, Mr President.
1300 We are now moving on to the clauses which form Part 4 of the Bill, regarding local authority meetings.
Clause 21 provides the definition of certain terms used within Part 4 of the Bill.
I beg to move that clause 21 do stand part of the Bill.

1305 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 21. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
1310 Clause 22.

The Attorney General: 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.
1315 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.
I beg to move that clause 22 do stand part of the Bill.

1320 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 22. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
1325 Clause 23.

The Attorney General: Clause 23 makes provision that any decision taken at a virtual meeting of a local authority and subsequently ratified was, and is, valid.
1330 The current Local Government Act 1985 sets out an implication 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 authority determine that there is a need to put these on a secure legal footing.
In a wider context to other meetings taking place virtually or remotely, for example, through
1335 Teams or Zoom, 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 or parliamentary sittings, or operational group meetings across Government and in the private sector.
I beg to move that clause 23 do stand part of the Bill.

1340 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

1345 **The President:** Can I just ask, learned Attorney: I take it the word 'virtual' falls into an interpretation clause in some Act or other – 'a virtual local authority meeting'?

The Attorney General: I believe not, sir. I think it just has its ordinary meaning.

1350 **The President:** The ordinary meaning which we take in the extremely modern form that we know. Thank you very much.

I put to Council clause 23. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

1355 **The Attorney General:** Thank you, Mr President.

We now move 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.

1360 The House of Keys supported 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 Department of Health and Social Care is satisfied that the person holds the position of representative of the individual. This brings such definition in line with similar provisions within
1365 the current National Health and Care Service Act 2016.

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

The President: Mrs Sharpe.

1370 **Mrs Sharpe:** Thank you, Mr President. I beg to second.

The President: I put clause 24. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

1375 **The Attorney General:** 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.

1380 I ought to advise 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 discharge, where needed.

1385 The power to do so under this clause is limited by, and subject to, strict checks and balances. Thus, the person that is duly authorised by the Department to move the person must have: firstly, taken and considered the advice of the healthcare professionals involved in the care and treatment of that person; and, having done so, must be satisfied that one of the following applies: (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 facility being occupied is needed for someone else who requires care or treatment and, again, that the person
1390 can be removed without undue risk to their health or wellbeing.

For good governance, subsection (2) provides a statutory duty whereby 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.

1395 I beg to move that clause 25 do stand part of the Bill.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

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I wonder if the learned Attorney would for clarity be able to say, has this facility been exercised during the lockdown period and, if so, how many displacements have been caused and in what circumstances? That would be one question.

1410

I do have a concern that it may put a heavy weight on a personal representative P who is forced to make such difficult decisions. I do understand the need to vacate facilities that someone has a greater need for, but in my experience also in the past it has been sometimes very difficult, even for a consultant to make such a weighty decision which impacts on the living circumstances and the quality of life that O, in this case, might face. It is a very sensitive subject, and I just would like it for the record really.

1415

The President: Thank you.

Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President. This also relates to the previous clause, but we do make a great mention of O's representative throughout this clause as well.

1420

At public consultation, I believe that it was mentioned by a number of respondents, including myself, to that public consultation that we were missing a definition of 'authorised person', so family members, carers, that could claim rights as an authorised person, next of kin, etc.

1425

So I was very happy when the Minister for Health and Social Care, Mr David Ashford MHK, put forward an amendment to clause 24 in the other place. The one thing that you can never really guarantee is that something would definitely get through in Keys. I am just wondering why it was left to Keys to make that amendment, when it could perhaps have been made at an earlier stage, when it was highlighted.

Thank you, Mr President.

1430

The President: Learned Attorney to reply.

The Attorney General: Mr President, with reference to Mrs Maska, unfortunately, I do not have the answer to the question you posed. I think we were trying to make some inquiries as to whether the power that currently exists under the emergency regulations has been exercised. I will see if I can find that answer quickly whilst they are searching.

1435

I entirely agree with the sentiments which have been expressed. It does place, on face value, quite a heavy burden on 'O's representative', which is why there has been an attempt in the legislation to effectively ensure that there is a real link between the representative and the person who they are representing – either a donee of a power of attorney, appointed by the court to represent the interests of the person involved in their care and treatment, which is perhaps the more common one which we may come across, and basically there is a continuing or has been a relationship between them.

1440

I can say no more than I entirely agree with the sentiment, and that is why I am sure that the attempt was made to adequately deal with this in the Keys.

1445

If I can turn very quickly to Miss August-Hanson, I cannot see why the results of the consultation were only picked up by the Keys in this regard, save that it is a perfect example of appropriate scrutiny by the legislature, be it in the Branches, the Keys below, or here, to ensure that, where necessary, these gaps are filled. So I cannot speculate. It would be wrong of me to

say why, other than perhaps we could say here, sitting here as Council, thank God they did! But we have got that provision in the Bill.

1450 It then comes to Mrs Maska's concerns, which I think are realistic and I empathise with those, but there is not much more I can do. I do not know if I have got any comments.

If you can bear with me for one second, Mr President, I should have the answer hopefully to Mrs Maska's other, appropriate question. Thank you very much.

1455 Yes, Mr President, thank you very much and I am grateful for the answer, which confirms that the provisions currently in place have not been used. There have been discharges undertaken by the Department on a number of occasions, but all through negotiation on an informal basis from the hospital/nursing home with the patient and their family and representatives.

1460 **Mrs Maska:** I am obliged. That is very helpful.
Thank you.

The Attorney General: Thank you.

1465 **The President:** Thank you, Mr Attorney.

The Attorney General: I beg to move that clause 25 do stand part of the Bill.

The President: I put to Council clause 25. Those in favour, say aye; against, no –

1470 **Mr Mercer:** Sorry, I do not think that was seconded?

The Attorney General: Oh, I am sorry.

1475 **The President:** I am sorry, Mr Mercer.

The Attorney General: Sorry, Mr President, Mr Mercer was making the point that it was not seconded, before being put – that my motion to move clause 25 has not been seconded. That was the point ...

1480 **The President:** I thought I invited Mrs Sharpe to second after you moved it. You have just done the summing up after the debate.

Mrs Sharpe: Sorry, Mr President, I have lost track now of where we are up to!

1485 **The Clerk:** Mr President, I cannot remember, but I think it would be in order ...

The President: Mrs Sharpe, would you formally second.

1490 **Mrs Sharpe:** Certainly, Mr President. I beg to second.

The President: I put clause 25. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

1495 **Miss August-Hanson:** Belt and braces.

The Attorney General: Thank you, Mr President.

Clause 26 puts on a statutory footing the procedure that the Department must follow before it removes, in accordance with clause 25, a person.

1500 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 remain existing
provisions within section 8 of the Social Services Act 2011 for the assessment of an individual's
1505 need for care and access to services. Within this process there is legal provision for the right to
make representation to the Department of Health in respect of such an assessment.

It should be stressed that using these powers would be very much an action of last resort.
I beg to move that clause 26 do stand part of the Bill.

The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: I put clause 26. Those in favour, say aye; against, no. The ayes have it. The
1515 ayes have it.

Clause 27.

The Attorney General: Thank you, Mr President.

1520 Clause 27 of the Bill makes provision to allow the Department to, firstly, charge a person a
daily occupation fee in circumstances where they persist without good reason or refuse to
vacate; or, 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.

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

1525 I beg to move that clause 27 do stand part of the Bill.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

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The President: I put clause 27. Those in favour, say aye; against, no. The ayes have it. The
1535 ayes have it.

Clause 28.

The Attorney General: Thank you, Mr President.

1540 Clause 28 amends the Public Health Act 1990.

The subsections amend sections 51C and 51F of the Act to provide that the effect of a
pandemic may be addressed by regulation, and that a penalty of three months' custody and
fixed penalty notices may be enforced for a breach of health protection regulations.

1545 The House of Keys supported an amendment to section 51Q of the Act to provide for an
extended Tynwald procedure in respect of certain regulations under Part 2A of the Act.

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

1545 As has been seen over recent weeks, the ability to enforce the directions made under the
current Emergency Powers 1936 regulations has helped to maintain the low infection rate of the
virus on the Island. Breaches have been dealt with by the Police and courts in a proportionate
and appropriate manner.

1550 The Public Health Directorate, within the Cabinet Office, is drafting regulations under the
current Public Health Act 1990 for all the necessary measures for our Island's continued

response to the global pandemic, including entry restrictions, which, subject to consideration by the Council of Ministers, will be submitted to the December 2020 sitting of Tynwald.

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

1555 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

The President: Mrs Lord-Brennan.

1560

Mrs Lord-Brennan: Thank you, Mr President.

As we know, the regulations made under the Emergency Powers Act have been used for vast powers – powers to close businesses, restrict movement and gatherings, set penalties, send people to prison for breach offences, manage the borders and make directions to individuals. Potentially, the Public Health Act may be used for the same. We know the issues with rushed legislation and the inability to take an informed approach.

1565

Reflecting on the emergency experience, it is important to have clear and collaborative policy determination with early and diverse political input and oversight. This should come chiefly from the Council of Ministers and then from Tynwald. This is especially important, considering the vast matters and balances we are dealing with. They need to come from executive Government. It cannot be left in the hands of a few people and one or two Ministers.

1570

Mr President, this is part of the argument that I have laid out already to Hon. Members of Council in trying to focus on the significance of what we are dealing with here and that potentially we have the opportunity to address. So part of my argument is clearly that these are powers that really warrant coming from executive Government, not just in terms of the regulations, but also the thinking behind that. If we think back to some of the issues that we had in the early part of the emergency period, it really indicated to many Members that you needed to have that diversity of thought, because it is actually not just about one aspect. It is not just about health; it is affecting so many issues, and the powers are such that it really should be with the Council of Ministers.

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So a couple of examples we have talked about already: the first one that comes to mind was about repatriation. The second one that has already been mentioned today is about the matter to do with tenant protection. This really says to me that what needs to happen, when we are considering making such powerful laws, is that you need to have the policy thought behind it. So my issue with it being Cabinet Office, rather than Council of Ministers in the Public Health Act, is simply that now we are very clear on actually how we are going to be using the Public Health Act, it feels not appropriate and not with the correct checks and balances and not where the power should exactly be, because we know that we are dealing with very serious powers.

1585

Some of the arguments that will be put against this, I think, will be that actually having the Council of Ministers specified, where it could be Cabinet Office as it is already, is potentially dealing with getting Council of Ministers drawn into operational matters and things like that. I would say that most of Public Health's work and most of the things that are dealt with anyway by Environmental Health are already happening at an operational level. It is not like we see constant regulations coming forward from Cabinet Office on behalf of Public Health that would be an issue with transferring the power. What is an issue to me is transferring the powers where, instead of it being the full Council of Ministers behind bringing regulations, actually putting us in a situation where the regulations and the thought behind that are emanating from only one or two people with executive power and thought behind that.

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The other point that might be put against is that actually, if we just keep things as they are now, with Cabinet Office being able to make these huge decisions under regulations which may not come to Tynwald for 14 days, if we just leave it as it is, as per the current Public Health Act, then we can sort it out later. I would put to this Council that this is simply too big to accept this

1600

1605 on. So part of a solution – and I have put another solution to the Minister – is actually, if we have it as the Council of Ministers now, that gives clarity around where such regulations and such thinking is coming from. Then, if there is a need to change it down the line, maybe for particular areas, then that could be changed by way of the Public Health Act. So I would say that we need to walk into this knowing exactly where these decisions are coming from now.

1610 The other point that probably would be put against it would be actually, fine, the regulations may be made by Cabinet Office but then go to the Council of Ministers. I would say that this is part of where the early thinking really comes into play, because when regulations come up from a particular Department, hopefully, if there are lots of Members and lots of diverse thought within that area, and lots of cross-Government working, they will be well-thought-out. That is not really what we are talking about here. We are talking about them coming from one small aspect of Government that has significant impact for lives on the Isle of Man, and then potentially going to Council of Ministers.

1615 For me, this is absolutely an executive authority, representation and accountability issue, which is why I hope that the strongest argument that Members in this place will listen to will be that it is really a debate that the House of Keys are yet to fully have.

1620 First of all, this matter was not mentioned in the letter from Minister Harmer which came out prior to amendments being moved in Keys. There has been no robust case put forward, as I have seen it, from any Minister as to why these powers should go to the Cabinet Office and not the Council of Ministers.

1625 In the House of Keys sitting where an amendment to that effect was considered, it was considered as batched with lots of other amendments. When the Minister was pressed as to what his thinking was on it being the Cabinet Office, as opposed to the Council of Ministers, his response was effectively that they have not had time to think about it yet. This just makes me incredibly nervous, if we are going to sign off, effectively, such powers that we know are going to be used – and I accept that they are already in the Public Health Act anyway – without it being something that is properly justified or explained.

1630 I have, in the past week, attempted on many occasions to get clarity and explanation as to why this is necessary and why it is important, because I believe it is a step away from how things are ordinarily handled. I know I have been told on a number of occasions that this is simply about day-to-day business, this is about operational matters; I am sorry, it is not. It is *not*. It is the very stuff that has helped us get through this crisis and with that, it should come from the Council of Ministers. So I have not been able to get any sufficient explanation, unfortunately, from the Minister that has helped me think that this is the correct way to go about things.

1635 Of course, I have had put towards me the idea that actually it is because of Public Health being in the Cabinet Office, which is why you need to have these regulations coming from the Cabinet Office. I have been very supportive of Public Health, and Public Health input and advice. I would put to Members of this Council that this is actually confusing matters, because what you need is space for both. You need to have space for Public Health and other scientific and medical input, and then you also need to have space for political determination and thought. That is where the Council of Ministers come in, because there is actually no real basis for the Cabinet Office to be doing these things.

1645 If you look back at the Cabinet Office and the sorts of regulations that it has made, they are happening in very discrete areas. They are not something that you would think, ‘That is affecting the economy majorly; that is certainly a matter of justice or home affairs.’ They are generally matters to do with immigration or GDPR and things like this. So this is a significant step, and actually, notwithstanding the Cabinet Office being mentioned in the Public Health Act, I would question the mandate seriously for these serious matters to be coming from the Cabinet Office, because I believe that when the Cabinet Office was first formed as a Department, is probably the right phrase, part of its justification when it was debated in Tynwald was that it was just there to deal with some separation for policy matters related to planning.

1655 So how have we got seriously so far down the line where it has not been able to explain to anybody why we would comfortably agree to having the Cabinet Office have these powers.

1660 I would ask that this Council supports this amendment to substitute the Council of Ministers for the Cabinet Office in the Public Health Act, so the House of Keys can have a better chance to assert their thought and debate it distinctly, and it can be put to them. I would also like to reiterate on the record that what I thought could be done, aside from any issues, if there are any with this being changed by the Public Health Act down the line – because actually, once you give over these powers, it is very difficult to take them back – is the other point that what I have suggested to the Minister is that in explanatory notes or memos to do with regulations that ideally Council of Ministers would bring forward, they could include on those notes what the advice from Public Health is. That way we get the right executive advancement on these
1665 important measures, if we need to use them again, and maybe we will, but also we would have the distinction of Public Health input as separate from the political process that I think was the true will behind the point of having Public Health in the Cabinet Office anyway, as in remove it from the political decision-making and the operational side of things to do with health.

1670 So that is the plea, because I think that this needs more thought. It needs more thought in the House of Keys. I do not think there is any precedent for it. We need the policy determination early on from all of the Council of Ministers and not just Cabinet Office, and we need to let the Keys decide on this, and give the Minister another opportunity to explain clearly to the other place why this is correct.

1675 I would be happy to try to answer any questions on it, if there is the opportunity, Mr President, but we just need to be really clear. We need to be *really* clear on what we are doing here, because the implications of this have not really had the attention.

Thank you, Mr President.

1680 **The President:** For clarity, you are moving amendments numbered 1, 2 and 3 in the concatenated list.

Mrs Lord-Brennan: I am moving just numbers 1 and 2.

1685 **The President:** Numbers 1 and 2.

Mrs Lord-Brennan: And I would like to move the others separately.

The President: Right. So if you would like to move amendment number 3 ...

1690 **Mrs Lord-Brennan:** I can, if you like. Okay, I will speak to amendment 3 now.

Amendment 3 provides for Tynwald to amend regulations brought forward under the Public Health Act, where they are brought forward in terms of there being an urgency. It provides essentially for the equivalent of what we had and used in Tynwald in connection with the emergency powers.

1695 This was actually a help to Government in many instances, because when things are done urgently, there is often a need to fix, so this is a new amendment. It has not been brought forward in the House of Keys, and it would only, as I understand it, apply to those regulations made under the Public Health Act where they are brought forward under the urgency, so for Tynwald to approve, but also amend.

1700 I beg to move amendments 1, 2 and 3:

Amendments to clause 28

1. Page 21, after line 3 insert –

‘(2) In the following provisions, for “Cabinet Office” there is substituted “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).'

Re-number following provisions accordingly.

2. Page 21, after line 14 insert—

'(5) In section 51(6) for "Department" there is substituted "Council of Ministers".'

Re-number following provisions accordingly.

3. Page 21, line 19 after 'approved it' there is inserted 'with or without amendment'.

The President: Do I have a seconder? Miss August-Hanson.

Miss August-Hanson: I would like to second all three, if you will, Mr President.

1705 **The President:** Thank you. So we have the clause with the amendments open for further debate.

Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1710 I have a large degree of sympathy with these amendments, without wanting to repeat what Mrs Lord-Brennan has said. It is notable to me that the first and second amendments before us were not really debated in the House of Keys last week, and yet a substantial minority on the voting did support the amendments. I think a lot of good points have been made in that we are clear, and the learned Attorney has been very clear with us today, that the importance of this

1715 Bill is the next line in our COVID defence. So it is envisaged already that should the pandemic go out of control again – we hope that will not happen, but should that happen – then the ability to make regulations under the Public Health Act to address many aspects of people's lives will be essential, as the emergency continuation regulations fall away.

So I think on that basis alone, it seems to me that there is a compelling argument to have the

1720 Council of Ministers as a whole being the body that brings forward regulations in that context. I accept that the Public Health Act is written to look at more than the present pandemic, but the reality that is in front of us is that we recognise there is a real risk that that is how the regulation-making power under this legislation will be used. So I have a lot of sympathy with that argument.

1725 I also think that, given there was not a fulsome debate on this particular point in the House of Keys, and if there are significant matters to be debated in that other place, then it would be important that that consideration is given.

On the third amendment, the insertion of 'with or without amendment', this seems to me to be another practical, helpful addition. The reason is that as we have already seen, this is not an

1730 academic point that we are debating. We have actually lived the experience under the Emergency Powers Act of having detailed regulations coming forward on a frequent basis to address the rapidly changing situation. We recognise the hours of work that officers and drafters have put in to try to get those right. Inevitably, when under pressure, when things are rapidly

1735 changing, you will not always achieve perfection. It must be better in an emergency situation,
this time potentially under the Public Health Act provisions rather than the Emergency Powers
Act provisions, for Tynwald to ultimately have the ability to make a sensible amendment to
make legislation practicable and workable than be left with the extremely unsatisfactory binary
situation of either putting up with imperfect legislation or having to vote down the entirety of
regulations because of a small imperfection that could be rectified by way of amendment.

1740 So I do not see the downside in the third amendment. On the contrary, we have seen that it
can be an absolute benefit to everybody in what is ultimately an effort to try to make sure that
we can move rapidly to have legislative provision that works and does what it needs to do during
an emergency situation. So I am very supportive of amendment 3.

Thank you, Mr President.

1745

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

1750 I will be brief. I am supportive of the amendments. I feel that now we have some hindsight,
the powers that are given under this Bill, and under such regulations as might come forward, are
very far-reaching. They impact on people's lives, businesses, ability to cross borders and in other
major ways, and as we have seen through the COVID experience, even the daily briefings were
brought forward representing decisions made by the Council of Ministers and enabled us all to
understand and have confidence.

1755 I think that the amendments as proposed are very sensible and very good housekeeping,
almost. I think it would give an opportunity for further consideration by another place as to why
it should *not* be the Council of Ministers. I think it would give that opportunity for further
reflection, and on that basis, Mr President, I will be supportive of these amendments.

Thank you.

1760

The President: Miss August-Hanson

Miss August-Hanson: Thank you, Mr President.

1765 I will try not to repeat what Hon. Members have said, because I agree with them
wholeheartedly. I think that there was an awful lot of effort – an *incredible* amount – from the
drafters over the course of the emergency period. They did an astounding job over the course of
that period, but there was also a lot of work that was done by the Civil Service. They did an
incredible job, but parliamentarians did spend an awful lot of time trying to get through and
scrutinise emergency powers regulations over the course of that period as well and were
1770 helpful, I believe – useful and helpful to drafters and to the Attorney General's Chambers over
the course of that period. So I do think that we cannot forget that: it is very important to
remember.

1775 Regarding policy gaps and just going back to the evictions regulations that we were speaking
of earlier, because I have spent some time with the Cabinet Office trying to figure out ... well,
actually, no, I have spent some time since probably March, trying to figure out exactly what was
being done with evictions regulations, looking at other jurisdictions and what other jurisdictions
have done as well. Over that period between March/April and now, we have had the emergency
regulations, which will fall on 26th December, but what we have not had is an overall policy
decision and understanding as to how we are actually going to move past that period to ensure
1780 that nobody ends up being caught out by that.

I think a lot of that is because that needs to be made by the Council of Ministers. That is a
high-level policy decision that needs to be made, and that is something that is currently sat with
the Cabinet Office, although I know it has not always been so. So my concern would be that in an
emergency period, where we are taking decisions and making law by regulation on very big

1785 subject matters that affect the entire Island, I think, essentially, that responsibility always needs to be with the Council of Ministers, and the Council of Ministers need to be accountable.

1790 What I would seek, because I have had from the Council of Ministers and from the Minister for Policy and Reform, is the *intention* in setting it as the Cabinet Office instead of the Council of Ministers, what I am trying to understand is ... He has explained that the intention was that the normal route with secondary legislation would be Departments; then worked up into the Council of Ministers. Council of Ministers would then pass that, and it would go into Tynwald, if they approved it.

1795 But in an emergency situation, if there was an alteration in moving from the Department to the Council of Ministers, does that then knock out the process? That is what the Policy and Reform Minister seems to be insinuating is the concern there: that the process would then be knocked out, it would go straight to the Council of Ministers and the work could not be done beforehand. They would be expected to make these regulations, which seems a little bit, to me, not quite right – because obviously, he sits in the Cabinet Office, as does the Member for Ramsey,

1800 Lawrie Hooper, and also the Chief Minister is the Minister of the Cabinet Office as well. So just a little bit more clarity, perhaps, on that.

I am very supportive of all three amendments.

1805 Just going back to the evictions, though, we are talking about operations there. Operationally, you rely on data in order to make a decision, but if you are relying on the data, what you are not doing is being proactive about something and thereby preventing issues arising in the future, by foresight. So surely that would rest at a higher level anyway, which means that that would rest with the Council of Ministers, as opposed to with the Cabinet Office.

1810 The only concern that I have got, and what we have not talked about, is whether or not there is a need, with the third amendment, for the long title of the Bill to be amended on the floor now, if that should pass. I am just wondering, would that need to happen? There is an amendment to the emergency powers –

Mrs Lord-Brennan: I have not moved that – sorry, Mr President.

1815 **Miss August-Hanson:** I am just wondering if we can have an answer on that one.

Mrs Lord-Brennan: I have not moved that one.

1820 **Miss August-Hanson:** I think it is a very good idea that the other place works out some of this.

So I am very supportive of all three amendments passing in this place and going into the House of Keys, because I think there is an awful lot that perhaps has not really been figured out on these three matters just yet.

Thank you, Mr President.

1825

The President: Thank you, Hon. Members.

The Council will now stand adjourned until 2.30 p.m. The first to speaker will be Mr Mercer.

*The Council adjourned at 1.02 p.m.
and resumed its sitting at 2.35 p.m.*

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

The President: Fastyr mie, Hon. Members.

1830 **Members:** Fastyr mie, Mr President.

The President: Please be seated.

1835 **The Attorney General:** Mr President, could I possibly have your forbearance to speak first?

The President: Of course. Mr Attorney.

1840 **The Attorney General:** Mr President, Hon. Members, I thank you for your forbearance in enabling us to have a slightly delayed start, but it has been constructive because I am able to advise Council that I now have instructions from the Minister for Policy and Reform to accept the amendments 1, 2 and 3, which have been moved.

Thank you.

1845 **The President:** Thank you, Mr Attorney. Whether that curtails debate remains to be seen. Mr Mercer.

Mr Mercer: I will be very brief. Thank you, Mr President.

1850 The Public Health Act, as amended by this Bill, further increases the penalties available for non-compliance with health protection regulations and adds, amongst others, a new clause allowing custody for a term not exceeding three months.

I believe it would be prudent to increase the controls around these and other measures. Leaving this power in the hands of a single Minister does not, to my mind, provide the necessary balance of scrutiny.

1855 The amendments to clause 28 suggested by my hon. colleague in Council, Mrs Lord-Brennan, redress this balance by providing that the Council of Ministers exercise these powers, rather than as at present just the Minister for the Cabinet Office.

For these reasons and for those expressed earlier today by my hon. colleagues in Council, I think these amendments are sensible and proportionate, and I will be supporting them.

Thank you, Mr President.

1860 **The President:** Miss August-Hanson.

1865 **Miss August-Hanson:** Mr President, may I speak to the clause as a whole, or are we not at that point yet?

The President: You may, yes – the clause or the amendments, as long it is this clause.

Miss August-Hanson: Thank you.

1870 I just wanted to point out in clause 28, we make a mention a number of times of the President of Tynwald *must* summon Tynwald, and I would just like to put on the record that this is a bit of a rarity and that perhaps it should not be used liberally. I believe in the past – it is in Part 2 of the Legislation Act, regarding the announcement of Royal Assent to Tynwald and also the announcement certificate – it has been in a failed Bill, the Treasury (Amendment) Bill 2010, which fell at Second Reading in Keys in 2010, saying that the President of Tynwald must adjourn debate, but this is, again, a rarity.

1875 So I would just like to put on record that perhaps it must be noted that telling the President or saying that the President *must* do something should be used only on rare occasions.

Thank you, Mr President.

1880 **The President:** Thank you. I call on the mover to reply, Mr Attorney.

The Attorney General: Yes, very briefly, Mr President.

I thank Hon. Members for their careful consideration and scrutiny of the provisions currently appearing in the Bill. I was very pleased to be able to confirm the Minister for Policy and Reform's agreement to the careful and considered amendments from Mrs Lord-Brennan, and I thank her very much for her work on that. I know it has been a challenge over the past few days, but we are where we are now, and I am very grateful, and would record that gratitude to her.

Thank you, Mr President. I so move.

1890 **The President:** Hon. Members, I put to Council first the amendments to clause 28 numbered 1, 2 and 3. Those in favour of the amendments, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

1895 Clause 29.

The Attorney General: Thank you, Mr President.

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

1900 I beg to move that clause 29 do stand part of the Bill.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. I beg to second.

1905

The President: I put clause 29. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to the proposed new clause. Mrs Lord-Brennan.

1910 **Mrs Lord-Brennan:** Thank you, Mr President.

In speaking to this clause, there are a couple of points that I will probably need to clarify with the Attorney General, and there is also the matter of it potentially requiring amendment to the long title of the Bill to take account of the amendment to the Emergency Powers Act.

1915 So the amendment I have drafted would allow for continuation regulations to be amended by Tynwald. There are two aspects to this: one is to provide for the current situation, which may only be a very short amount of time, in that potentially when continuation regulations are made and should the case arise where we do have Royal Assent for this Bill, if there is something that needs to be addressed for a short timeframe by Tynwald, it would provide for those continuation regulations to be amended.

1920 Talking about that, I appreciate that that is a very narrow thing. It is perhaps something that should have been addressed in the original Emergency Powers Bill when we were making the amendments, but the second aspect of this is that this amendment would provide for in the future, in the case where there is another Proclamation of Emergency and the Emergency Powers Act is used again, Tynwald to have the power to amend those continuation regulations. So there is a short to medium potential and a longer-term fix in what this is proposing and so on.

1925 I would like to ask the Attorney General two questions in that, or perhaps three.

The first question would be that I have not been advised by any drafting advice at all that there would need to be changes to the long title of the Bill. Would there need to be changes to the long title of the Bill to take account of this amendment?

1930 The second question would be: is he aware that there will be new continuation regulations made that would potentially need to be captured by this amendment or are we through the issuing of such continuation regulations now?

1935 Thirdly, is there any other provision that Tynwald could rely on in the future to amend continuation regulations? It has been certainly put to me that that should be something that should stay within Tynwald. So before we have the Civil Contingencies Bill, we probably should check this out for the future.

So depending on what he is able to answer for me, then I will consider whether I should pursue moving this.

Thank you.

1940

The President: Thank you, Hon. Member.

So, at this stage you are not moving the new clause in principle until we get some clarification from the learned Attorney. (**Mrs Lord-Brennan:** Yes.) You made a number of points. The first, I think, was to do with any requirement to amend the long title.

1945 Mr Attorney.

The Attorney General: Thank you, Mr President.

1950 In considering the question of the long title, it is not the view of Chambers that there is any necessity – nor of the Department – to amend the long title, and we are quite comfortable that, couched as it is with reference to miscellaneous provisions and the couple that are already in there, this would cause no difficulty.

1955 If I could then address the issue of, in a sense, going forward, we are not able currently to amend, so there is no proposal to amend, continuing regulations or to issue any new continuing regulations. Those that *were* made were made whilst the Proclamation of Emergency was in place, and that is the trigger. Once the Proclamation of Emergency fails, then, of course, you cannot then come along and make new regulations because the power to do so has gone.

1960 So what we are actually dealing with and what we have in place at the moment are continuing regulations that were made at the time when the Proclamation was still in place and under the terms of the Act, they are able to continue for a maximum of six months. Then they automatically fall and they cannot be extended.

1965 What has happened in the interim is that, with reference to a particular regulation or a number of the continuing regulations, amendments have been made to them, and I can refer you to situations where the provisions and directions in relation to returning residents have been altered somewhat. Firstly, there was the seven-day testing period which was brought in, which has now been taken away; but the underlying continuing regulations remain there and we cannot issue new continuing regulations. I do not know if that satisfactorily answers that.

1970 When regulations were made under the Emergency Powers Act 1936, it was accepted and Tynwald did at times amend them before they came into force. So there was no issue there of Tynwald having the power to amend regulations issued under the Emergency Powers Act 1936.

1975 When the amendments to the continuing regulations have been made, the same view has been taken: that if Tynwald had wanted to amend them they could have amended them. So when they came before Tynwald, as they were required to do, for their approval, any amendments could have been made. So that was the view.

1975 I do not have instructions to accept the proposal, essentially on the basis, not that ‘if it’s not bust, don’t fix it’, but the provision is that amendments have been moved previously, Tynwald has had the power and has done so – has amended them – and as we sit here today, Tynwald’s actions in that regard have not been challenged, so we are where we are.

1980 **The President:** Thank you, Mr Attorney.

Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President, and I thank the learned Attorney for his answer.

1985 There does seem to be a difference between you amending normal regulations made under the Emergency Powers Act and amending continuation regulations, and then subsequently there are amended continuation regulations that are coming to Tynwald for approval. So because there does seem to be a difference between Government effectively having the ability to amend those continuation regulations before they come again for approval – which is how we are seeing new regulations coming through now, even though they are amended continuation ones – the difference between that and Tynwald also having the ability to amend those.

1990 So I think I would be minded to put forward and move the amendments so that there is that explicit provision for Tynwald, in approving continuation regulations, to amend them. I would seek to do that, Mr President:

New Clause

Page 22, after line 9 insert the following new clause —

'30 Amendment of the Emergency Powers Act 1936

(1) The Emergency Powers Act 1936 is amended as follows.

(2) In section 4A (continuation of emergency regulations), after subsection (3) there is inserted —

“(3A) Tynwald may, in approving continuation regulations, amend them.”.’

The President: Thank you. So you are moving the new clause in principle. We need a seconder.

1995 Miss August-Hanson.

Miss August-Hanson: I am happy to second, Mr President.

2000 **The President:** So we are debating the clause in principle and I invite the mover to move it in detail, should this approval in principle carry.

Yes, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

2005 I just wanted to make sure I have understood what the learned Attorney advised correctly just now. I think what I heard – and I may be mistaken – is that he said that under new section 4A of the Emergency Powers Act, which is the section that provides for there to be continuation regulations made, that Tynwald already has the power to make amendments to those regulations. Perhaps I have misunderstood that.

2010 So I just wanted to clarify with him: is that what he is saying is the case? I look at section 4A(4), which talks about:

Continuation regulations may provide for the continuation, for a period of not more than 6 months from the end of the period of emergency, and with or without modification, of any regulations under section 4 ...

2015 We have seen modifications of the original regulations made by the Government. Is he saying that that ‘with or without modification’ extends to Tynwald to be able to make amendments at the point of approval? I just would not mind making sure whether I have understood that correctly or not.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

2020 Yes, that is my view, and I have advised on that basis, that subsection (1) of section 4A of the 1936 Act is to be read in the light of subsection (2), and that when construed in that way the

phrase ‘intended effect’ has to be read on the basis of giving true interpretation to the emergency legislation that it refers to, ‘so as to promote’ – I am quoting from a case here – ‘rather than defeat its efficiency’.

2025 So my view is, and has been expressed, that when laying the amendments to the continuing regulations for Tynwald who have got to approve them, it is possible, even at that stage, for Tynwald to make amendments to those amendments, if I put it that way.

The President: Thank you. That is certainly my understanding, as Presiding Officer over sittings of Tynwald. Regulations brought under the Emergency Powers Act are capable of being amended – unlike other orders and regulations.

2030 Does anyone else wish to speak? Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

2035 If that is the advice of the learned Attorney and the understanding of the Presiding Officer of Tynwald, it seems that Mrs Lord-Brennan’s amendment is actually otiose, because if the power of Tynwald exists to make amendments on the floor of Tynwald to amendments of the continuation regulations, we do not need another line in the Act to give us that power. That is why I wanted to be absolutely clear, that power for Tynwald does exist; because if it does not, Mrs Lord-Brennan’s amendment is then important to discuss, but I think what I am hearing is that everybody believes and is advising that Tynwald has a power to amend any amended continuation regulations.

The Attorney General: Yes. Sorry, Mr President. That is my clear view, which I have expressed.

2045 **The President:** Thank you. Mrs Maska.

Mrs Maska: Thank you, Mr President.

2050 Just to express my appreciation of the explanation that has been given to us this afternoon. As the learned Attorney took us through his reasoning, I was able to follow the clauses in the Emergency Powers Act 1936, and I agree with my colleague that an extra layer to facilitate that, I feel, is unnecessary. So acting on the advice of the learned Attorney and Mr President’s interpretation and confirmation, I do not see the reason to take this new clause forward.

2055 Thank you, Mr President.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

2060 I am imagining what it might be like in future years, for example, or future months, when we have to rely again – maybe not us personally – on an Emergency Powers Act, and it strikes me that if there has been confusion as to whether Tynwald can or cannot amend continuation regulations, when having very clear understanding that there is the ability to amend the regulations that came through in the emergency proclamation period, it strikes me that actually future Members might not look back to this sitting to get the clarity over that ability being for Tynwald to be able to modify.

2070 Also, I suppose that in law it is much better to be clear, so if it is the case that Tynwald can already amend or modify these continuation regulations, then the amendment from me might be still considered to be worthwhile and helpful, in that it makes it explicitly clear that Tynwald – parliament – has that power. Actually, if this already exists but is expressed in a slightly less clear, more unusual way in talking about modifications, then it will not cause an issue. All that we will be really doing will be to put that more explicitly in the Emergency Powers Act, based on

the experience of us having known that, actually, Government can or there may be a need to modify continuation regulations, if not revoke and make new ones.

2075 So on the basis of clarity of language and clear preservation of the input from parliament on these matters, I will still move it, Mr President.

The President: Thank you. In that case I will put to the vote that the new clause moved by Mrs Lord-Brennan do form part of the Bill. Those in favour, say aye; against, no. The ayes have it. *(Interjections)*

A division was called for and voting resulted as followed:

FOR

Miss August-Hanson
Mrs Lord-Brennan
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

AGAINST

Mr Greenhill
Mr Henderson
Mrs Maska

2080 **The President:** With 5 votes for, and 3 against, the motion therefore carries. I ask the mover now to move the new clause in detail.

Mrs Lord-Brennan: Thank you Mr President.

2085 I beg to move the new clause, which will provide for Tynwald to approve continuation regulations and amend them.

I beg to move. Thank you.

The President: Mrs Poole-Wilson.

2090 **Mrs Poole-Wilson:** Mr President, I beg to second.

2095 My reason for switching horses, as it were, is that I am persuaded by Mrs Lord-Brennan's point that it was not clear to any of us sitting in this Legislative Council that the position was that Members of Tynwald could amend continuation regulations, and I think it is probably better to express in the legislation that that is the position, as we are advised it is, by the learned Attorney, and as the Presiding Officer yourself, Mr President, have indicated you understood it. I think it would be better to be express. You might say it is duplication, but it is not going to cause any harm, I think, and it will be clear on the face of the legislation that Tynwald has a power to amend regulations.

2100 So we are not making a change here, is my understanding from the advice we have been given; we are simply delivering clarity on the face of legislation, and for that reason I would like to support inclusion of this new clause.

The President: Thank you.

Miss August-Hanson.

2105

Miss August-Hanson: Thank you, Mr President.

I entirely feel the same way. I do not think that it will be just Members in here; I think Members perhaps in another place will be a little bit surprised by this. So I thank Mrs Lord-Brennan for bringing this forward, so that we can have some clarity in the legislation.

2110 Thank you, Mr President.

The President: I call on the mover to reply.

Mrs Lord-Brennan: Thank you, Mr President.

2115 I would just like to add thank the drafter and the Clerks, and I thank the Attorney General and all the colleagues in Council for their support today.

Thank you, Mr President. I beg to move.

2120 **The President:** I put to Council that the new clause do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That completes the clauses stage.