

**3. Council of Ministers (Amendment) Bill 2020 –
For Second Reading –
Referral to Joint Committee proposed –
Three provisional Members elected**

Mr Mercer to move:

That the Council of Ministers (Amendment) Bill 2020 be read for a second time.

70 **The President:** Item 3, for Second Reading, the Council of Ministers (Amendment) Bill.
Mr Mercer.

Mr Mercer: Thank you, Mr President.

75 In moving the Second Reading of the Council of Ministers (Amendment) Bill 2020 today, I have reflected on the wide-ranging debate at the First Reading and want to focus on the purpose and principle of this Amendment Bill before us.

80 As Hon. Members are aware, this Bill seeks to amend a single clause in the Council of Ministers Act 1990, whereby a vote of no confidence would require an affirmative vote of 13 Members; this change being one from a two-thirds majority to a simple majority of the House of Keys. Since the Council of Ministers Act 1990 was amended in 2018, Tynwald and Members of the Legislative Council have not been involved in the election of a Chief Minister, this instead now being solely a concern of Members in the other place. Indeed, my hon. colleague in Council, Mrs Lord-Brennan, referred to this in her remarks during the First Reading of this Amendment Bill.

85 Mr President, I think that we should be mindful of this if, indeed, Hon. Members wish to move amendments to this Amendment Bill.

This move to a simple majority has been approved by a majority of Members in the House of Keys, and I observe that the numbers approving of this change, numbering 17, exceeded even the two-thirds majority currently required in the Council of Ministers Act 1990 in the clause this Bill seeks to amend.

90 Hon. Members, I have circulated a response from Professor Edge to our First Reading debate and separately, as requested in the First Reading, a paper on previous votes of no confidence prepared by the Tynwald Research Team.

95 Our debate at First Reading revealed a number of additional suggestions for improvement to the Council of Ministers Act 1990, and I welcome the contributions from hon. colleagues and the diligence of their scrutiny. Are there other elements of the process that might benefit from post-legislative scrutiny? Almost certainly. However, we must remind ourselves of the narrow focus of this Amendment Bill. Does this legislation achieve what it has set out to achieve and does it have the majority support of the Keys? I believe that the answer to both these questions is yes.

100 Mr President, with that, I beg to move that the Council of Ministers (Amendment) Bill 2020 be read for a second time.

The President: Thank you.
Miss August-Hanson.

105 **Miss August-Hanson:** Thank you, Mr President.
I would like to second and reserve my remarks.

The President: Mrs Lord-Brennan.

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

I welcome the consideration of the Second Reading of this Bill in terms of the principle at hand. Recently in conversations with Members, it has helped me actually identify, perhaps, why I do feel

115 like I am approaching this somewhat with something approaching consternation, and that is because, understanding that this has been settled by the House of Keys and recognising absolutely that there is primacy of that Branch, it is quite hard but also beneficial to detach yourself from the consideration there.

120 That being the case, and I do consider – I am quite sure – that this Bill will pass through this Branch and I do recognise the Keys coming to their decision on this, in a way, and with that step-back approach, it is actually helping me vocalise here and now some of the concerns that I would have around this principle, which is essentially around how you would go about removing a Chief Minister and I think that perhaps the benefit of consideration of it in this Council is that we are not part of that. It is right that it is the House of Keys that elects the Chief Minister and this is the other side of that, so I think there is benefit in a step-back approach.

125 I found it actually helpful to consider this almost on a scale. What the Bill is proposing to do by changing one number, and I will come back to that in a minute, is it is seeking to address the idea and the concerns that the system in place currently makes the present Government almost untouchable; that is what has been put forward, that it would actually be quite hard to achieve the removal of a Chief Minister in the House of Keys. On the other side of things, I would perhaps consider, has it gone too far the other way in addressing that number? There are some solid reasons why this has genuinely preoccupied me – in the main, quite seriously, because I really do not quite know how to deal with it. In fact, I think it is quite possible that we cannot actually, in fact, deal with it in this Branch.

130 Part of the reason for this is that I am not feeling full of confidence that this has actually been considered in the round, given that we are just dealing with the matter of the change of one number. I may have alluded to the situation in the previous sitting, and I have certainly discussed it with the Members and turned it around in my mind. Firstly, there is the point where, under this Council of Ministers Bill – of which we are only amending one part, so there are other bits of it that we cannot look at because of the long title and that, actually, we probably should not look at because we are Legislative Council – is that in order to remove a Chief Minister, it requires a vote of no confidence, effectively, in the Council of Ministers.

135 Now, that may seem to be a reasonable test because then the Chief Minister would have to think, ‘Well, you know, it is not just one person; it is the entire Government’; so that to me really brings into focus the significance. I think that part of the way this has been framed, may be even understood, has been about removing the Chief Minister; but this has a consequential effect of really in order to achieve that – if that is the goal of the Bill and if that is the goal of the provisions, and that is also what I would question – would the provisions actually work to achieve that well if we were to think about the principle of how you would remove a Chief Minister?

140 To do that, you would have to say to all of the Council of Ministers – Keys would say – ‘We do not have confidence in all of you.’ So there is your first point, which is that actually, in terms of achievability of that, you have departmental Members in there. Is it the right threshold to remove a Chief Minister, to point to all the Council of Ministers? Is this Bill then seeking to amend just one figure when actually, if the whole matter had been looked at, perhaps things would have would have turned out differently?

145 My other thought process is, once that has been passed, a no confidence vote in an entire Council of Ministers, then in forming a new administration, has the House of Keys not just said, ‘We do not think that a certain number, eight or nine of you, are acceptable to run a Government’? Now, I do not know how this would actually work out in practice. Indeed, it has not happened before, but is this Bill lowering the bar so that maybe it could actually be more achievable and that we might be found to figure out how this would actually work in practice in a different way? The answer is that I do not know about that, but to me, potentially, it could mean that at 13 votes, it would be possible to indicate to the whole Council of Ministers that they are not suitable, that Keys do not have confidence in them, as well as remove the Chief Minister. What happens next then with the administration? Does that fully mean that you are sourcing a whole new Government? This is where I think that it is right for Legislative Council to at least think about it,

165 not in the personality politics and the career trajectories that the House of Keys may also find it hard to get away from, but in terms of taking the longer-term view.

So how do you source that new administration? Is it right that to remove the Chief Minister, you have a vote for confidence in the Council of Ministers? I just think it could be complex. So I think that in looking at the number, I get that mathematically there is absolutely an argument for it, but also I think that you have to think about how things would work out in practice.

170 So on an Order Paper in the House of Keys one day, because House of Keys meet frequently, such a motion could appear. This is where I think that, does dealing with it in this way and having the number at 13 leave things at risk to short-termism, potentially political opportunity, in a very serious circumstance; reactionary politics; populism? The answer is I do not know, but I feel that through this Bill we are addressing this one number and I think that whereas the other present situation may be too high, and I understand that, that was felt to not be a comfortable place to be, at 13 is it rendering it so low that it makes these other aspects potentially thrown into either greater risk of happening, or does it, in fact, shine a light or emphasise to a greater extent the other matters that there may be with the Act?

180 Now, we cannot look at the Act because this is just dealing with one number. I do not think that a mid-point, a midway, or something with a safety catch, if you like, to address some of these issues has actually been identified in the House of Keys. It was quite a straightforward debate. I noticed that in this Council now on the Order Paper today there is other evidence and other options that may have been considered. At the same time, in considering the implications long-term for the whole Island and what it would actually be like, we would be bystanders then to watch that happen to Government. What is our role here?

So I had tried, and I will say here, I am not going to move for it today, and I probably will not move for it at all, but it crossed my mind, certainly, to explore that, actually, given this and given that it did not really ... there were some answers that I could not see that were readily available and it did not make me feel comfortable – the idea of having a Committee between the Legislative Council and House of Keys to explore these matters, or at least, I guess, for the Legislative Council to be able to ask these questions from the directly elected Branch to see what answers came out to explore this matter a little bit more fully.

190 Indeed, were there other amendments that would be sensible or right to the Council of Ministers Act? If we were looking at the mechanism to remove a Chief Minister and, indeed, actually we are talking about the Council of Ministers, would there be a better way that would sit more appropriately for the political system for the Isle of Man in the long-term and also for the House of Keys to be able to rightly exercise their concern and their power that rests with them in order to remove a Chief Minister?

200 So, I have sounded that out, really, only in very narrow quarters because I felt that if that was the right thing to do, if it was felt to have favour, and if the House of Keys were to be amenable to it, then it would need to have the support from the mover in the House of Keys. I do not think that that will be forthcoming. I can understand why: the reason why is that this has been settled, it is only about a number, etc. I still have concerns about the practicalities, but in a way I feel that my hands are tied.

205 In that vein, my view is that the principle of the Bill, which we are discussing at Second Reading today, if we were only to have that, I think that would be appropriate just in case, things can change maybe with time. If there was will or interest from the House of Keys to say, 'Actually, we wish to take another look at this', then that would give time for potentially that to be sounded out, because I cannot think of any other way, and I am really conscious of trying to deal with this in an appropriate way because I think it is highly significant.

210 I think that this matter about post-legislative scrutiny, in this case, is a red herring. It is a red herring in that we should not be putting laws through that we are saying, 'Once something like this comes to pass, do not worry; we can look at it later, see how it went.' This is really significant in this case.

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I also recognise that, and I think that other Members have said, actually, they do think there are other things to be changed with the Council of Ministers Act. Again, we cannot initiate that; it would not be right from this Branch, but if that is the case, then why are we just dealing with one number? I think, also, in the future things are going to be potentially quite difficult for the Isle of Man and who knows then what any reaction would be to that for people trying to, within or outside the system, or wanting to put their voices forward, maybe correct things or just react to individual situations. I do have some concerns, I hope I have explained them well. It has taken me hours and hours of thought and I feel like I really do not know how to approach it and I am very concerned about going against the House of Keys. That is not what I am suggesting.

I just wish that I had more answers to the questions that I had found in order to find comfort, whilst absolutely respecting the primacy of the Keys in this decision. I am trying to find my way through how Legislative Council deals with that in their evaluation. Part of me almost wishes that it would have been better to understand this from people who had had ... and I appreciate we do have this to some extent here, but people who have been through the ups and downs of the political system, holding ministerial positions for many years, who would actually, maybe, be able to think about times when such things may have almost come to pass.

My issue is that this makes it much more achievable, and so does it highlight more some of the potential other issues? I hope today we will only do Second Reading and not skip to clauses.

Thank you Mr President.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

Thanks to the hon. mover for his circulation of papers and also his remarks. I do not wish to repeat what Mrs Lord-Brennan has articulated as I agree with very much of what she has articulated. Looking at this again has given me some pause for thought in that we are amending, as she has rightly pointed out, one aspect, and the long title restricts us to one aspect of a much bigger Act, but actually the clause, or the section, we are looking to amend, the heading is 'appointment and tenure of Office of Chief Minister'. What jars slightly, which I think the Hon. Member Mrs Lord-Brennan has been articulating, is that the particular clause that we are seeking to amend is that it is a vote of confidence in the Council of Ministers and the debates in the House of Keys did highlight the issue and the matter of stability – the matter of stability of government on an ongoing basis, and the risks of populism or day-to-day ups and downs in some of the challenges that a Government might need to bring forward and whether adjusting the figure in the relevant section would in fact undermine stability.

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Now I note, one of the counter-arguments to that was over the last 30 years, we have not faced a confidence vote, but we also need to recognise that during that period, a different mechanism was in place. It is only recently that we have changed this to become a matter that is solely for the Keys, so there are a number of things in play here.

I completely recognise as well, as the hon. mover has highlighted, that this is a matter that is now within the Keys' control, as it were, or their exclusive exercise, and I also appreciate that the passing of the Bill was by a significant majority in the House of Keys. So I recognise all of that, and like the Hon. Member, Mrs Lord-Brennan, in no way would I suggest that this Legislative Council seeks to undermine the settled will of the House of Keys.

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I do raise a note of caution, though. I think this Act deserves a much closer look. I think a number of things have come to light; I particularly valued reading the research paper by Professor Edge. There are a number of factors which I think possibly have not been fully thought through that ought to be thought through. I hear what Mrs Lord-Brennan says about post-legislative scrutiny, and should we be talking about that if there is a nervousness at this stage. Our dilemma in this Council is we have a settled will from the House of Keys, and at that point I think our next best option is for some more thoughtful, post-legislative scrutiny.

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270 Speaking as the Chair of the Constitutional and Legal Affairs and Justice Committee, I wonder whether that Committee might be well placed to have a look at this particular piece of legislation in due course and consider thoroughly all the ramifications of how it might operate in different situations.

So at this point, I am minded to support the Bill as it stands, but I thoroughly agree that I think there are more aspects to this to be considered and that absolutely must and should be considered for the good governance of the Isle of Man.

Thank you, Mr President.

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The President: Miss August-Hanson.

Miss August Hanson: Thank you, Mr President.

280 Like my colleagues on Council, I do want to agree with the Keys here. It is very much about the primacy of the Keys; I do understand that and I do respect that, but I feel that when a piece of legislation arrives into Legislative Council, it is our place to scrutinise it. No matter how big or small that might be, it is our place to review it, it is our place to ask for further thought where we feel further thought is needed, and that is the way we do deal with legislation in here typically.

285 Great law, as according to the Commonwealth Association of Legislative Counsel, the association that gathers together drafters from across our Commonwealth collective, has described law as having three values. It is something that I have written above my desk at work and it is something that I physically look at when I am looking at legislation at home as well as at work. It is that it is accessible, that it is fit for purpose, and that it is constitutionally sound. To feel 100% comfortable with a piece of legislation, I would want to follow those three values of a piece
290 of legislation.

We do have a job to do in here and any piece of legislation that comes before our Branch ... if something needs more explanation from the Keys, then it needs more explanation from the Keys. Does this small change to the substantive Act, in terms of its number change, make it accessible? Some Members of the Keys have thoughts on how this Act might need to be improved, whether
295 it is small tweaks to it or there are bigger ideas, and chose not to take this opportunity, because they did not want to change the long title and wanted to keep it simple. I would say that this is not necessarily as simple a piece of legislation as it looks on the surface.

Is it fit for purpose? Mrs Lord-Brennan is quite right when she says that it is not about just the Council of Ministers, it is not about the Chief Minister; it is about the Council of Ministers, and by
300 extension the departmental Members. So this is about all of Keys, but also parts of Tynwald as well. How quickly do we take a decision that has such a substantial effect on a piece of legislation, whether it be big or small, when it has such a substantial effect, and how much evidence is actually needed, and are we being dismissive or inclusive of others' views here? Some of the discussion that was borne out in Keys, perhaps investigating that ever so slightly is worthwhile.

305 We see the research from the Clerk of Tynwald's Office that a vote of no confidence as a parliamentary tool has had little attraction in past administrations as well as this one, so why do we need this piece of legislation that is before us today? What are we actually trying to fix? The past kind of dictates to us that it has not really been used, it is not really a sort of thing that people are very quick to the mark for, so what are we actually trying to fix here?

310 Professor Peter Edge has been consulted, a great deal of respect for him. He is an expert in his field and when he supplies advice we do listen, don't we? So what happens when this then changes? Based on his advice there are, as my colleague on Council, Mrs Poole-Wilson said, there are things that we have not really discussed. When does confidence return in the Council of Ministers once the vote of no confidence is then passed? When do we then have confidence again,
315 or Keys have confidence again, in that administration of the Council of Ministers? At what point would they say, 'Oh okay, well, we will bring you back in, in a reshuffle,' say, for example? Do we have confidence in them then at that point, whereas we did not before the no-confidence vote was brought?

I have a great deal of respect for Professor Peter Edge, but he is one man, he is one academic. I know he will be listening to this, I have absolutely no doubt. So with the greatest of respect, when I conduct a piece of research on any matter, I look to develop my thinking by expanding horizons beyond more than one source and I would want to hear from more than one source, as I am sure he would as well. We have not really looked at some of the effects of 14, 15. We have not really looked at other possibilities, other options to make sure that this is the most appropriate decision. I cannot say that I am comfortable with that because I feel that more work needs to go into it.

I would say that we are reminded by the Keys and by the public that we are indirectly elected to our roles in here and that matters like this one, perhaps, are not necessarily within our remit. It is advisable that, perhaps, we should allow this to go through – what I would say to that is that I remember particularly when all of us women were elected in 2018, we looked around the Chamber one day – not the Chamber; the common room – and we had a 10-minute discussion and we said, ‘Well, let’s get rid of some of these dark pictures in here, this old-school look of LegCo. We put up black-and-white photography by Chris Killip of Manx people and those are the people that we serve, and we looked at having a map and we brought in a commissioned, hand-drawn map of the Isle of Man that was produced by a very passionate resident. We talked about it being symbolic because we work for the people, regardless of who elects us, to the position that we are in.

So when we have a piece of legislation that goes before us, it is not only about the Keys getting it right; it is also about the effect, with the greatest respect to them, to the Island as a whole and whether or not it improves the legislation; that it is accessible, that it is fit for purpose, that it is constitutionally sound. We are part of the way there as it stands at the moment, but is it perfect? Well, we do not know because there are questions that still remain to be answered. There are other amendments that could have been made to this substantive piece of legislation that this looks to amend in terms of tidying bits and pieces up. I have looked at some of those, I have had amendments drafted; I am not laying them because there is a feeling that perhaps that is not the appropriate thing to do, even though this could be the vehicle to do that.

I respect that Mrs Poole-Wilson is going to potentially look at bringing this into the Committee that she is chair of. What I would say is that when we are talking about post-legislative scrutiny at this point in time, when we have a piece of legislation that is actually sat in front of us, is that the right time to be talking about post-legislative scrutiny when there is opportunity?

If there was a conference or a committee, or if anybody did have ideas around that, then I would be very interested in hearing what those ideas are and I would not be afraid of speaking with our colleagues in another place about whether or not there are other options available, just bearing this out in discussion, because we are all passionate about parliament and we are all passionate about what we do in here. I do respect the primacy of the Keys and it is their decision to take, but it does not necessarily mean that the debate would not be valuable and honest.

Thank you, Mr President.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

It is a very interesting conundrum that we have before us today. I am drawn, really, by the comments with regard to, ‘Should we be discussing this here?’ and ‘Is it not a Keys issue; they voted predominantly in favour of it? It is possibly not a Legislative Council issue.’ But I would put it to Council that it is very much a Legislative Council issue. What is being proposed here today, or has been proposed in the House of Keys, is ostensibly a lowering of the bar to the point where it has an effect of making it far easier to remove an entire Government layer – Ministers and Chief Ministers at the whim of a few votes, basically.

Members were asking about well, ‘Does that mean just the Chief Minister or all Ministers?’ Well, as the Act is written, if that vote was ever carried in Keys, it is the entire Government that

would have to stand down if it took a no-confidence vote, and that is the end of it. Then the Keys, LegCo, Tynwald would be in the hugely difficult situation of trying to sort out where to get another x number of Ministers and Chief Ministers from, and quickly, and who could slot into these situations and Departments and so on that have just been vacated, and the work streams that have been ongoing, and that they have been involved with. Indeed, if it was in a situation such as we face ourselves now in the middle of, what is effectively, a national emergency, a critical state emergency across – I mean, if the House of Commons in Westminster had the ability to do what we are proposing today, I am sure some of the opposition leaders would be trying it on every other week.

I would say to Council that one of the fundamental principles of our success in the Isle of Man is the fact of our political stability, both in terms of Government, the Branches and, indeed, Tynwald. It has been one of the single biggest selling factors, both locally and internationally, to grow our economy, attract people here and so on. I think it is absolutely right that Members focus on the point where, perhaps, we should be talking to the House of Keys a little bit more before we go any further, because I do not think that the ripple effect, or the side effects of what we are doing here, has actually been fundamentally understood to the depth that it needs to be understood and the possible effects that could emanate from passing such legislation.

I am uncomfortable with it; I am not saying whether ... The initial proposer presented it with the best of intentions. The trouble is, the further it is examined, and we have seen the commentaries from Professor Edge and others, I think, really it deserves further scrutiny before, rather than after the event. After the event, yes, we can have post-legislative scrutiny, but it is far more difficult to change anything than via recommendations; for those recommendations to come back in the form of a further draft Amendment Bill, to go through the Keys again, to come here. Should that process be necessary? We really need to examine what we are about here.

The most pragmatic way, for me, would be to actually say, 'Well, I think we need to talk to some Members of the House of Keys', to be quite honest, and put up the further ramifications of what we are doing here, so that everything has been, or as much as you can, considered in the round so that we understand the side-effects, or possible destabilising effects here. It has potential for that, and it is far easier to make a move to remove the entire Government now, and I think that needs to be looked at.

Personally speaking, Eaghtyrane, I have come across two situations in my Tynwald lifetime, as I put it. One was serving as a serving Minister whereby we were called to the Council of Ministers at 9 a.m. one morning, earlier than the usual waiting for an urgent sitting more or less, and the then Chief Minister read out his resignation speech and resigned on the spot, shook all our hands and walked out of the CoMin door. He did that of his own volition, so it was not actually on the point of a no-confidence vote, although maybe that could have come at a later point.

I have also seen it where Tynwald Members in the past who were disgruntled with then administrations. The Alternative Policy Group, myself included, did manage to get onto the Order Paper a no-confidence vote and itemised each Minister in name on the motion because of the fractious polarisation of the different views within Tynwald, Keys, LegCo at that time, and it brought it to a head. But that was not advanced to a final conclusion on that point.

So, it is an issue that is very rarely been used, Eaghtyrane, but to make it simpler and for the point I have just illustrated whereby some Members grouped together to put individual Ministers' names on the Order Paper for a confidence vote, because of fractious relationships, I think it just shows you how close you could be pushing things based on, maybe not as much fact as you would like other than personal feelings and their inter-reactions to destabilise Government in that way, and I would hate for us to go down a road where we could see this new method being used, or used more often than it should be.

It worries me, Eaghtyrane, and I will just point out the possible use of Urgent Questions as well; almost unheard of when I was elected first. If an Urgent Question was approved, it was just that; a seriously urgent matter of need of the moment that needed to be addressed, and I am not making any other commentary that Eaghtyrane. The point being that if a system becomes

overused, it will eventually become ineffective, and I can see with this a potential. It might not happen, and I am sure the supporters of this Bill will say, 'Oh, you will not see it. It will have to be dire situations', and all the rest of it. But, nonetheless the bar is potentially going to be lowered and we need to be careful and discuss the ramifications that may emanate from that, Eaghtyrane.

Thank you.

The President. Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I think, following Mr Henderson's comments there., to me this perfectly shows why it is of incredible value to have former Members of Keys, former Ministers in Legislative Council in order to be able to illustrate with actual examples some of the other dynamics that need to be considered that, for those, not having had that experience and not having come up through the Keys, would simply not have that perspective on. So, I am really glad that that is available to us here.

I agree about Mr Henderson's point about the international view, not that the whole world looks at the Isle of Man all the time, but there is that element about the attractiveness and appeal of a stable political system, stable government and a balanced, legitimate parliament, that is very valuable and that we treat in a light-handed manner at our peril in some ways.

There are two points – there have been a lot of things said – that I would like to draw to the attention of the mover. Firstly, a question, which may not be able to be answered: where is the safety catch with this? Secondly is to reiterate really clearly that it would in theory be possible to have a committee on the principle of the Bill or some other Joint Committee between Legislative Council and House of Keys. Although I am not moving for that now, if that were to be welcomed in the other place, and if the comments here are heard and felt to be of value or even just a caution or consultative vibes coming across from this Branch, then I would welcome that. I would wait to hear back. I would be hopeful that it could be something that would be concluded fairly quickly, so not a 'kicking it into the long grass' arrangement, but merely doing justice, actually, to the very issue that the Hon. mover in the House of Keys has brought forward to the Branches.

So it is those two particular points that I would like to make sure are absolutely clear and if they do not get answered, I hope they get conveyed.

Thank you, Mr President.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

As voiced by my hon. colleagues, I absolutely agree. This Bill has come to us as the will of the House of Keys. It is their right and has a substantial majority. However, I do have grave concerns. When I first looked at this Bill, one number seems a very simple principle. However, when you tax the proposal, and I know other colleagues have really found this a very difficult matter to consider ...

I do have grave concerns that a simple majority, given the timing now, we are just coming to the end of our current administration, with a new administration on the horizon. We do not know how that will shape, what kind of content there will be. There are bound to be new dynamics, there may be even parties that play something in the political dynamic as well. So it could be, if it was just moved, in this simple term, be mischievously used; that gives me real concern.

Mr Henderson: That's the trouble.

Mrs Maska: Timing is critical. I do agree with my hon. colleague Mrs Lord-Brennan that, as we have found as a Council before, a pause can give really good opportunity to give wider and better consideration and an opportunity to exchange our views and ideas with our colleagues in another

475 place. I would be supportive of that, and I would like the hon. mover to ... I thank him for bringing it today, but I really think that would be an important direction today.

As has also been said, we are actually being looked at by the whole world at this moment and as is being said and repeated, stability plays a big part in that. I really think this needs further and better consideration, but I thank the mover for bringing this to us today.

480 Thank you, Mr President.

The President: Mr Greenhill.

Mr Greenhill: Thank you, Mr President.

485 I will be brief. I fully share the concerns of other Hon. Members expressed today. I also have that specific concern over possible threats to the stability of government if this Bill is passed and if a vote of confidence were to be held during times such as we are experiencing now, during the pandemic.

Thank you, Mr President.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

495 I just wanted to add that I was grateful to Mr Henderson for his input just now, and I would like to add my voice to a request for only taking Second Reading today. I do think there is an opportunity to have some further reflection and to engage with the House of Keys, because what we are talking about is to really reflect on the full ramifications of what does, on the face of it, look like a simple and straightforward amendment – a ‘no-brainer’ as some people might suggest. However, what we are articulating is that sometimes no-brainers have further ramifications that are worth reflecting on before they are agreed. So I would like to add my voice to that.

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Thank you, Mr President.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

505 I would like to put to the mover of the Bill, as has now been indicated, if we can have some answers to our concerns, if you could have some dialogue with the Keys mover and so on, so that we can have some sort of feedback on it. As of the opinions expressed at the minute anyway, certainly LegCo is desirous of having some sort of committee arrangement or meeting, and I think that needs to be conveyed to the mover of the Bill.

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I would just also like to re-emphasise my point, Eaghtyrane, that over the years of serving Tynwald and its Branches, one of the biggest pluses for the Isle of Man, coming from business and business moving here, is the political stability card that they always and invariably tell us about, so I would just like to put that on the record.

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

520 I would like to thank the hon. mover and all my hon. colleagues who have spoken already about their concerns regarding the Bill. I think they have outlined some very good reasons why it would be sensible for the Act itself to receive some extra scrutiny and discussion with Members of the other place. I think that Mrs Lord-Brennan’s original suggestion of this Joint Committee is our plan A, really. As she herself identified, given the fact that Members of the other place are, in the main, quite happy with this Bill and at the moment, given that we are living in uncertain times because of the pandemic, it might not be likely – we do not know – that enough Members in the other place might agree to meet with us. But I think that if we did not ask them, we certainly

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would not be doing our duty as a Legislative Council and, as Mrs Maska so rightly pointed out, really it is our job to point out when it would be useful to have a pause, press the pause button.

530 So I do think that, to my mind anyway, a committee would be my plan A; and I think Mrs Poole-Wilson's suggestion that the Constitutional and Legal Affairs and Justice Committee look at the Act would be a plan B.

Thank you, Mr President.

The President: Lord Bishop.

535 **The Lord Bishop:** Thank you, Mr President.

I would like to thank hon. colleagues for this debate, which I think has been fascinating, and a number of issues have been raised. I would just focus on three points that occur to me in the midst of all of this.

540 The first is the question of what is the purpose of this legislation, or of this proposed amendment I should say. I do not think yet that we have identified a satisfactory and full answer to that question, so my view would be that that question needs seriously to be addressed.

My second point is that, whilst it is true to say that the House of Keys voted significantly in favour of this amendment, they did not vote overwhelmingly in favour of it, and I think that also needs to be borne in mind.

545 My third point, I think, has to do with the relationship in terms of numbers between the size of the Council of Ministers and the size of the House of Keys, and that is a proportion that is unusual in terms of most national governances. It has always struck me that one of the great things about the debates that we have in Tynwald Court and indeed, that I have heard in another place is that it is essentially not adversarial, because we do not have a system of party politics. It is essentially non-confrontational, non-adversarial and for that reason, deeply constructive.

550 My question is whether putting in a mechanism that revolves round a simple majority, which, to be honest, is quite a blunt instrument, would introduce a propensity for a more confrontational style of discourse. Hon. Member, Mrs Maska, spoke of how it might possibly be used for mischievous purposes, and I think I would have to say I would share that concern, and would hope, perhaps, that this would not introduce into our system of parliamentary debate, a propensity towards confrontational and adversarial politics.

Thank you, Mr President.

560 **The President:** Before I invite Mr Mercer to that, I would like to make an observation which I think reflects some of the views that have been expressed.

In our parliamentary system we have our well tried, tested and trusted mechanism to ensure there is no precipitate decision made that people may come to regret and, in the case of Tynwald resolutions and policy and secondary legislation, it is of course a requirement for the two Branches to be in agreement.

565 If the Keys, of course, expresses its will, it is not the function of Council to block the will of Keys. The most it can do is delay, have a period of reflection during which reconsideration of what might be considered precipitate action can take place and further opportunity for thought. That, as we have seen, is precisely what happens in Tynwald Court. Council cannot block the will of Keys, but it can cause a period of reflection, a possible amendment, but ultimately the will of the Keys prevails. Similarly, with primary legislation, Council cannot block the will of the Keys. The most that we can do is delay the will of the Keys for 12 legislative months, during which time compromise or further thoughts come forward.

570 What we are considering today is, I am not sure if it is unique, but it looks fairly unique, and that is a situation where the Keys has exclusive cognisance of an issue itself, and that is the vote on a Chief Minister with no reference at any stage to Legislative Council and hence opportunity for further consideration. I think that is the concern that is being expressed today and certainly Professor Edge's helpful paper spelled that out. That having been said, there is an opportunity of

course, and Mrs Lord-Brennan was the first Member to flag this up, a further discussion with the
Keys. Now, a conference would not be appropriate because that only kicks in when readings have
580 been completed and amendments to legislation are being considered, but what would of course
be possible would be a Joint Committee – I think this has already been flagged up – between
Council and Keys; a Joint Committee that would require a proposal before we reach the Second
Reading that a Joint Committee ... The proposal would be to ask Keys for a Joint Committee. It
would be subject to their agreement, but there could be a motion to the effect that a Joint
585 Committee with Keys be sought and three Members could be provisionally elected to that
Committee. Taking on board the fact that the long title of this Bill is very specific, anything before
that Committee may well involve amendment of the long title to enable other policy
considerations to be introduced; something just to bear in mind.

But there is the option procedurally for a motion for a Joint Committee and provisionally
590 electing a delegation where all these issues could be brought before the Members of the Keys,
should they agree to a Joint Committee and progress in that way.

Mr Henderson.

Mr Henderson: Eaghtyrane, given your point of information and direction, if it is in keeping
595 with Standing Orders, you said before the Second Reading concluded, then I propose that
Legislative Council put to the House of Keys an idea that three Members of the Legislative Council
meet with three Members of the Keys to discuss issues surrounding this particular Council of
Ministers (Amendment) Bill. I move:

*That the Council desires to refer the issues raised by the Council of Ministers (Amendment) Bill
2020 to a Joint Committee; that a message be sent to the Keys informing it of this resolution
and requesting its concurrence; and that a delegation of three Members be provisionally
elected to the Joint Committee.*

The President: Thank you, Mr Henderson.

600 Could I just procedurally invite the Clerk to comment on the mechanism that ... Should such a
motion be passed, it is then conveyed in writing to the Secretary of the House of Keys. Can I just
ask what provision would be made for the Member of the House of Keys in charge of the Bill to
be informed; is there an informal mechanism for that to happen, or is it purely a formal
mechanism?

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The Clerk: Formally speaking, Mr President, you are talking about communications between
the Branches (**The President:** Indeed.), not communications directed to any particular Member of
any Branch; but these proceedings are in public and there is no way, I can imagine, that the mover
of the Bill in the Keys would not find out about this pretty quickly. (*Laughter*)

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The President: Thank you very much.

We have a proposal by Mr Henderson that Keys be invited to agree to a Joint Committee.
Mrs Lord-Brennan.

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

I am very happy to second that.

The President: Mrs Poole-Wilson.

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

Thank you very much for your advice, procedurally and I think this is a welcome step. I think it
is our duty to at least suggest this to the House of Keys and to see if they are willing to discuss
some of these wider issues.

625 **The President:** Thank you. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would just like to thank Mrs Poole-Wilson for her support and my seconder, Mrs Lord-Brennan. I hope Council can go forward with the proposal.

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The President: Thank you.

I therefore put to Council the motion that is tabled that this Council asks the House of Keys for a Joint Committee. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That having been done, we now have to elect three provisional Members to that Committee. Provisional in the sense that Keys would agree.

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Miss August-Hanson.

Miss August-Hanson: I would like to suggest Mr Henderson, please.

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The President: Thank you. Mrs Poole-Wilson.

Mrs Poole-Wilson: I would like to suggest Mr Mercer, please.

The President: Mr Mercer.

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Mrs Sharpe: I would like to suggest Mrs Lord-Brennan.

The President: Mrs Lord-Brennan. We have three proposals. If there are no other nominations, may I have seconds? Lord Bishop.

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The Lord Bishop: I second Mrs Lord-Brennan, please.
Thank you, Mr President.

The President: Thank you.

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Mrs Maska: I would like to second, Mr Henderson.

The President: Second Mr Henderson.

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Mr Greenhill: I will second Mr Mercer.

The President: Thank you very much. Unless anyone objects, that would be our Committee. So thank you, Mr Mercer, for your forbearance in this matter. *(Laughter)*

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Mr Mercer: Every day is a school day!

The President: So, that decision having been made, the Clerk will convey that message to the Secretary of the House. Thank you very much.