

**3. Climate Change Bill 2020 –
Consideration of clauses concluded**

Mrs Poole-Wilson to move.

The President: We turn now to the Climate Change Bill 2020.

65 We took the Bill in various stages of the clauses last week, and were in the middle of debating clause 23.

70 Could I remind everyone, just to be absolutely clear in regard to the amendments, that the list of amendments attached to the Order Paper should be ignored and instead the latest list of amendments for the clauses stage is that circulated by the Clerk at 6.39 this morning. In addition, there are some tabled amendments for the Third Reading, should we get to Third Reading, and these were distributed by the Clerk at 4.14 p.m. yesterday.

So we resume the clauses stage by turning to clause 2. I call on the mover, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

75 Clause 2 sets out the commencement provisions for the Bill. It provides for the majority of the Bill, that is to say Parts 1 to 4, sections 21 to 23, Parts 6 and 8, sections 34 to 36, and section 37 to the extent necessary for paragraphs 3(a) and 3(b) of the Schedule to the Bill to come into operation on the day on which this Bill is passed. All remaining provisions in the Bill come into operation on such day or days as the Council of Ministers may by order appoint.

80 These provisions are clauses 24 to 27 inclusive, which relate to the appointment of the monitor and all other provisions in the Schedule, aside from paragraphs 3(a) and 3(b), as already mentioned. The power to make such an Appointed Day Order includes provision to make consequential, incidental, supplemental and transitional provisions in connection with the commencement of that order. The clause, as it presently stands, will ensure that most of the Bill has immediate effect upon Royal Assent being announced, supporting climate change actions already planned and enabling future climate change actions to be undertaken without delay.

85 Following debate in this Hon. Council regarding timing for activation of the enforcement powers in sub-clause 30(3), clauses 32 and 33 of the Bill, Mrs Lord-Brennan and Mr Mercer have proposed amendments to the commencement provisions. Hon. Members, as previously indicated, the Climate Change Transformation Board supports the first part of Mrs Lord-Brennan's amendments, and I will explain fully the support and other commitments from the Board in reply to the debate on this clause.

Mr President, I beg to move that clause 2 stands part of the Bill.

95 **The President:** Thank you.
May I have a seconder?

Mr Henderson: Yes, Eaghtyrane.

100 Mr Henderson is down to second Mrs Poole-Wilson through the clauses stage, sir.
Ta mee shirrey kied dy pholldal as dy loayrt ny s'anmey my vees feme ayn.
I beg to second, sir.

The President: Thank you, sir.
Mrs Lord-Brennan, please.

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

I want to explain the purpose of me seeking to amend these commencement provisions in the way that I have, focusing in particular on amendment number 2 to clause 2. Essentially, it is picking up on some of the issues that had been raised in the other place and also really a matter of principle. It had been said, and I agree with the point, that the Bill is coming forward with lots of

sticks and not enough carrots. In asking Members to consider my amendment, I would also ask them to note that a key part of the Island's ability to meet its commitments or, indeed, perhaps not be in breach of certain things, really, truly relies on the Government taking a lead on truly this time advancing key strategies.

115 Now, there had been a research paper kindly prepared at the request of Mr Mercer in the first or second sitting where this Council considered the Climate Change Bill and part of that shows that there may have been numerous strategies and approaches to dealing with climate change, energy supply in particular, what we would have once referred to as clean tech, that have not actually arrived at anything.

120 Now, what I would say to Hon. Members is that, is it right that we would be putting in place the provisions that create the capacity for various offences, powers of entry, penalties until we are sufficiently progressed with the key strategies? Now, we at least know now what these key strategies are and they are mentioned in the amendment, having been clarified as being the important strategies, certainly in House of Keys Answers. They may well appear on the action plan, I am not sure, but they are the Island's Renewable Heating Strategy and the Island's energy strategy to 2030.

125 So in my view it is just not really appropriate that we would be legislating for the various offences and powers in this Bill, and I am referring to clauses 30(3), 32 and 33 without giving the public something, some kind of way forward in order to comply. Now, that is why I am seeking to effectively hold off some of those things, some of those Government powers, some of those penalties, some of those sanctions, until we have these meaningful strategies sufficiently progressed.

130 Now, I had been advised that part of the problem with my initial proposed amendment was that it would effectively limit the ability to take action on single-use plastics, and related to fossil fuels as well at section 28, that is 'Fossil fuel and fossil fuel heating systems', and also possibly to do with applying certain UK legislation in respect, for example, of waste. So if we needed to take action against certain types of waste coming to the Island, nobody would want to see the Island as a dumping ground for that sort of thing.

135 So in acknowledgement of that, there is a section 6 in my amendment number 2 that basically says that what I am proposing here to carve out some of these more extreme and punitive measures would not apply to section 28 or 29, to try and acknowledge what has been said in that respect, because I think that with all these penalties etc. we need to realise that there is a time and a place for this. Certainly I think that, as I said, in the absence of a way forward for the Island to do with energy strategy and renewable heating, well, those are the big things that need to be addressed. We need to show the public much more about what can be done to help them rather than what may be done to punish them.

140 So with that, Mr President, I beg to move both amendments 1 and 2 to clause 2:

Amendments to clause 2

1. Page 13, line 11, for 'Parts 6 to 8, sections 34 to 36' substitute «sections 28, 29, 30(1), (2), (4), (5) and (6), 31, 34, 35 and 36».

3. Page 13, line 19, after subsection (3) insert —

«(4) An order must not be made to bring section 30(3), 32 or 33 into operation until —

(a) Tynwald has approved the Island's Renewable Heating Strategy;

(b) Tynwald has approved the Island's Energy Strategy to 2030; and

(c) the strategies mentioned in paragraphs (a) and (b) have been adopted and are being implemented.».

Renumber subsequent subsections.

The President: Can I just be clear in this? Amendment number 2 is in the name of Mr Mercer. Do you mean amendments 1 and 3 to clause 2?

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155 **Mrs Lord-Brennan:** Hang on, Mr President. Bear with me a second. I do. This is the problem with multiple lists. That is quite right. I will be moving amendments number 1 and number 3, and for clarity, where I have referred to number 2 in my previous commentary, I did in fact mean number 3, which is about 'An order must not be made to bring in sections 30(3)' etc. and then this (a), (b) and (c).

Thank you, Mr President, and apologies.

160 **The President:** Thank you.
Miss August-Hanson.

Miss August-Hanson: Thank you. I beg to second, Mr President.

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

Mr Henderson: Gura mie eu, Eaghtyrane.

170 I shall be voting against the amendments on the grounds that I put forward at First Reading stage of this Bill, inasmuch as that I feel we most definitely need a backstop for the Bill and by prolonging the backstop the way that the proposed amendment does, I think is going to prove the ineffectiveness of the Bill as it is progressed, in my view, and the measures mentioned in the Bill as it stands should go forward.

175 I think the whole idea of it is obviously to help and assist the public to start with, but the public are going to have to take responsibility as well in due course, especially when we see the ongoing effects and accumulating effects of climate change and pollution, whereby I pointed out at First Reading that in fact, I predict what will happen, actually, is that within a very short space of time, possibly before some of the deadlines mentioned in the Bill, emergency legislation will have to be passed *on top* of this climate change legislation in order to tackle the extreme effects of human activity on this planet.

180 Unfortunately, there needs to be a backstop because to try and effect social change that this Bill is trying to achieve may very well ultimately need to have these backstops in place. I am sure that the theory behind the Bill is to inform the public of what they are, but nonetheless, we need them to give this Bill strength and to ensure that change does take place. As I say, social change in communities is very hard to affect, if not impossible sometimes, without having some sort of backstop.

185 With that, I will leave it there, Eaghtyrane.

The President: Thank you.
Miss August-Hanson.

190 **Miss August-Hanson:** Thank you, Mr President.

195 I will make this very brief. So far, we have not necessarily proven that we are the most effective in communicating with the public in relation to climate change. We are bringing this Bill in 2020, as opposed to the UK in 2008 in Scotland in 2009. So I think that the position that we are currently in at the moment regarding communications, regarding the public and bringing the public on board with all of this, it is *very* important to note that perhaps we need to take a sensible approach to commencement here, which is precisely what Mrs Lord-Brennan is making suggestion of.

Thank you, Mr President.

The President: Thank you.

200 Now, can I just clarify with Mr Mercer, do you intend to move amendment number 2 to clause 2 that is in your name?

Mr Mercer: I do not intend to move this amendment, as a result of the amendment moved by Mrs Lord-Brennan. I –

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The President: That is fine. Thank you for clarifying.
Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

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I note the concerns that have been raised by Mrs Lord-Brennan and that she has clearly explained, and I think they were the concerns that prompted Mr Mercer's suggested amendment as well. I would like to thank both of them for their engagement and discussion on these commencement provisions.

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As I understand it, the key concern is that the full commencement of enforcement powers should be balanced against other action that does show the way forward and, I think as Mrs Lord-Brennan has put it, help the public with finding their way to comply. Whilst I understand Mr Henderson's point that we will all have to make necessary change if we are to meet net-zero, I also do have a great deal of sympathy with a perception that we have a Bill that could impose penalties, perhaps without all of the strategies and ways forward as to how we are going to achieve net-zero. So I do understand the concern underlying the proposed amendments.

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I can say that the amendment in Mrs Lord Brennan's name at number 1 is supported and the effect of that will be that clauses 30(3), 32 and 33 would not come into effect on Royal Assent for the Bill but would require an Appointed Day Order to bring them into effect. These enforcement provisions, as Mrs Lord-Brennan has rightly pointed out, will be needed in fairly short time, in the context of the first likely set of regulations to be made under the Bill, namely those relating to single-use plastics pursuant to clause 29. It is hoped that regulations in this area, subject to the Bill completing its passage and achieving Royal Assent, will be submitted for Tynwald approval as soon as possible.

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However, it is understood that an Appointed Day Order can be made limiting the commencement of those relevant clauses to the extent needed to provide enforcement capability in the context of particular regulations, for example, made pursuant to clause 29. The same approach can be taken if there is a need to introduce other regulations under the Bill in the short term. Another good example would be pursuant to the power in clause 31 to apply aspects of UK legislation.

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However, the Board is unable to support Mrs Lord-Brennan's second amendment to this clause, which is set out at amendment number 3. As I have explained, and as Mrs Lord-Brennan rightly acknowledges, the enforcement powers and penalties will be needed to support new regulatory controls, and whilst I see that the intent with the amendments at number 3 are to try and achieve this, I think there are practical concerns about where we may end up if we approve the amendment set out at number 3. The concerns pertains to the fact that the language used in the amendment is not defined, so whilst there has been discussion and reference to the Island's 'Renewable Heating Strategy' in debate, that is not a defined term. There is a practical risk, I think Hon. Members, with tying commencement of provisions to what may in practice not happen in the way envisaged by this proposed amendment.

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For example, what if Tynwald does *not* approve a renewable heating strategy, but following Tynwald debate, further work is conducted around the outputs of any such strategy and then folded into the five-year action plan, which Tynwald does approve? Technically, there would be no Tynwald-approved Renewable Heating Strategy, but there would be an approved action plan that incorporates action on renewable heating. The narrow ability to switch on the enforcement provisions is defined in the new proposed sub-clause 2(6), but again I have concerns that this list that is included in the new proposed sub-clause leaves out powers under clause 31 of the Bill to apply UK legislation relating more generally to climate change action and mitigating potentially negative consequences from climate change. So we are in danger of tying ourselves into a potential knot of not being able to act where it is indeed appropriate to do so and needed.

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255 So my proposal is to invite Members to instead accept a commitment from the Climate Change
Transformation Board that the *vires* in sub-clause 30(3) and clauses 32 and 33 will only be
commenced initially for the purposes of making regulations such as those anticipated for
controlling single-use plastics and other appropriate actions, for example, under the powers in
clause 31. Accordingly, the Appointed Day Orders for such regulations will be drafted and
260 consulted upon *with* those regulations before they are made.

It would then only be after the five-year plan that comes into effect from 1st April 2022 is
approved that consideration will be given to full commencement of the remaining clauses of the
Bill. By that time, other aspects of the package to support our transition to net-zero will have been
brought forward as part of that plan and the role for regulation and associated penalties and
265 enforcement powers in the Bill can be set out in the full context of support, engagement and a
pathway for the public to make their own journey to net-zero.

Hon. Members, the concern to be addressed is that in *not* commencing the enforcement
provisions fully, we do not unduly restrict the ability where such powers are needed in discrete
contexts to bring them into force, and we do not create hurdles in primary legislation that we may
270 in practice not meet, because Tynwald approvals for action occurs in other ways. The approach I
am inviting Hon. Members to support is, I suggest, pragmatic and balanced, allowing for the ability
to bring into force the enforcement powers in a limited and targeted way, whilst recognising that
their full commencement is not needed immediately and can await the approval of the first five-
year climate action plan.

275 Thank you, Mr President.

The President: Thank you.

Mrs Lord-Brennan to reply.

280 **Mrs Lord-Brennan:** Thank you, Mr President, and I thank the hon. mover for her comments on
this.

I agree with her, absolutely, that these measures, these enforcement measures, do need to be
balanced with actions and I welcome and accept the commitment on the record to do with limiting
the commencement provisions to address this.

285 I think that it is *really* very important that the public have a way forward and the Government
puts out there these key strategies that allow people to comply. I do not believe that the
amendment, as it is drafted, is limiting. Now it has been amended further in terms of bringing in
other action that might be required. I have a hesitancy generally about a statutory approach, that
thinking, 'Well, what we need to do to deal with an issue is to create loads of offences', and then
290 actually we are happy to put the offences and the enforcement etc. provisions down, but a little
less firm about putting down Government's commitment to addressing these points, which is why
I have taken the approach that I have. But I think we have moved forward in the right direction
with the Board's acceptance of amendment number 1 and absolutely the recognition of
everything that Mrs Poole-Wilson has said about having a stepped approach, a timely approach,
295 and not putting everything all in there together, so that effectively at each step along the way, the
bringing in of such offences and enforcement and penalties would effectively need to be justified
and approached at the right time. So I think in that, that is a better way forward and more
balanced and appropriate.

I would like to respond to Mr Henderson's comments, and I do mean this incredibly
300 respectfully. Yes, the public need to take responsibility, but Government needs to play its part
majorly and needs to show leadership and show the way forward on this. The public themselves
alone can certainly not solve the problems that need to be solved here because even if they make
various changes, we are still reliant on the bigger-picture issues as I have explained before. So the
public needs to take responsibility, so does Government. Government just cannot go around
305 saying they are going to ban things, enforce things, set out punishments, etc. So there is another
side to this.

I agree this Bill does not inform the public in that way in terms of what Government will be doing in order to help this come forward, but it does quite clearly set out what will be possible in terms of powers if the public do not comply, which is why I guess it would have been good and ideal in some ways to actually set some of these schemes, some of these strategies on a statutory basis, in the same way as we are seeing fit to set other aspects of the climate change response on a statutory basis.

But I will be moving both of my amendments, Mr President. I thank everybody for their consideration and for Mrs Poole-Wilson for grasping the point about the staggering. I do appreciate that, and I accept the on-the-record assurances.

Thank you, Mr President.

The President: Thank you.

Mrs Poole-Wilson, you have right of reply to the debate on clause 2, if you wish.

Mrs Poole-Wilson: Thank you, Mr President.

I do not really have anything to add to the comments I have already made. I would like to thank Mrs Lord-Brennan for her acknowledgement of the on-the-record commitment I have made on behalf of the Climate Change Transformation Board.

I think the engagement with her and Mr Mercer has proved helpful to surface the balancing that she has talked about. I am afraid I still cannot support the amendment set out at amendment 3 because of the practical difficulties that we may well face by them going into the Bill. Whilst I do support her sentiment, the amendments themselves cannot be supported.

So Mr President, to be very clear, there is support for Mrs Lord-Brennan's amendment number 1, but not the amendment numbered 3.

Thank you, Mr President.

The President: Thank you.

I put to Council first the amendment number 1 moved by Mrs Lord-Brennan. I take Council to be content unless I see dissent.

There is dissent, we shall have a called vote.

Voting resulted as follows:

FOR

Miss August-Hanson
Mr Greenhill
The Lord Bishop
Mrs Lord-Brennan
Mrs Maska
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

AGAINST

Mr Henderson

The President: Eight votes for, 1 against; that amendment carries.

I now put amendment number 3 moved by Mrs Lord-Brennan. I take Council to be content unless I see dissent.

We will have a called vote, thank you.

Voting resulted as follows:

FOR

Miss August-Hanson
Mrs Lord-Brennan
Mr Mercer

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop

Mrs Maska
Mrs Poole-Wilson
Mrs Sharpe

The President: Three votes for, 6 against; that amendment fails to carry.
I put clause 2, as amended, and take Council is content. Clause 2, as amended, therefore carries.

We move now to clauses 24 to 27, and I call Mrs Poole-Wilson to move.

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Mrs Poole-Wilson: Thank you, Mr President.

With your permission, Mr President, and noting that all of these clauses relate to the role and function of the monitor, I would seek to move clauses 24 to 27 together and have them voted upon separately.

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The President: Is Council content with that? Thank you.

Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

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Clause 24 empowers the Council of Ministers to designate one or more persons to investigate whether or not public bodies are complying with their climate change duties.

Clause 25 enables the Council of Ministers to issue directions to the monitor as to the production of a report on the monitor's activities, use of resources and undertaking of functions. Such a report must then be laid before Tynwald.

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Clause 26 provides the Council of Ministers with further powers to issue guidance to the monitor with respect to the undertaking of its functions.

Finally, clause 27 enables the Council of Ministers to issue a direction to a monitor as to the exercise of its functions and a monitor must comply with such a direction.

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Taken together, these clauses set out a mechanism for the Council of Ministers, if necessary, to determine whether or not public bodies are undertaking their climate change duties and support the undertaking of any necessary actions by the Council of Ministers if they are not. Such a report may serve as evidence to the Council of Ministers to give further directions to public bodies as to their climate change obligations or impose further reporting requirements on those public bodies, further to clause 23(1)(b).

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The laying of the monitor's report before Tynwald ensures Members are informed as to the work of the monitor and provides a basis for potential further scrutiny as to how such public bodies are undertaking their climate change duties.

These provisions, which follow broadly the equivalent provisions in the Scottish climate legislation, are considered an important part of the Bill's overall governance structure to be used as a last resort when all other reasonable options have been exhausted.

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Mr President, I beg to move that clauses 24 to 27 stand part of the Bill.

The President: Thank you.

Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy pholldal as dy loayrt ny s'anmey my vees feme ayn.

I beg to second.

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The President: Mrs Lord-Brennan, please.

Mrs Lord-Brennan: Thank you, Mr President.

I have let Hon. Members know of my very strong concerns about these provisions, and I will seek to summarise and capture some of that for the record here.

390 It certainly was the case that in the other place it was I think proposed that this monitor function should happen in a different way. Another suggestion was proposed. I think it was proposed about the Auditor General. I have not at all gone down that route but I flag it because I think that there were concerns then, and I share those concerns now about how this would work in practice. Will it be something that will be sufficiently free of conflict? So it is perhaps helpful to talk that through.

395 Really, the clauses themselves say it all. What the Bill is seeking to do is to provide some way to capture when things are going wrong, that may have come up in reports or may have come up otherwise, in terms of public bodies and Departments failing to meet their duties under the climate change provisions and responsibilities in the Bill. So what the Bill is proposing is that there is a monitor that is set up.

400 Now, I was keen to understand how this would work in practice. Then it became clear that it was going to be something of a last resort. So that begs the question: if it is a last resort, what would prompt that? The answer is the Council of Ministers would prompt that. What is the involvement of the Council of Ministers to do with this monitor provision? Well, the Council of Ministers can direct the monitor. What is the ultimate outcome? The ultimate outcome is that there would be a report to Tynwald. And then you think, well, so what? Ultimately you are having all these layers that may cause delay, there are certainly conflicts in terms of is the Council of Ministers in the best position, or is it an uneasy position to be the ones that have to decide when something has possibly gone wrong on their patch or public bodies associated with their patch. That is quite a difficult, and late in the day, action to take. Will it be sufficiently independent, is the other point.

405 So I have a number of concerns about this to do with how such a monitor would work and it is really obvious when you just look at it, you think that there is just something that is not right here, knowing what we know about the difficulties that Government has effectively monitoring itself. Will we see examples of this all the time?

415 I am not saying that we need to settle this now, but it feels to me *really* clear that actually this needs more thought. So in my amendment, and this is amendment number 8 to clauses 24 to 27, I am saying, capture the idea that we need a monitor, acknowledge that we need powers of investigation, of course, when you have got powers of investigation it will be sufficiently separate from the Council of Ministers or to the bodies that they may be investigating, but will also be directing them. It is basic stuff this. So I am just saying: capture those things that are in the Bill, recognise them, but actually, let's put the detail in regulations, and then just naturally, because of how this Bill is otherwise structured, the regulations would need to be consulted on.

420 I have also added the word designating an 'independent' monitor because I just feel in setting things the way that they are, and I know that there are various things that can be amended to do with some of the monitor provisions, but there is not an overall ability to amend the fundamental structural set-up of this monitor, and who may direct etc., and when it might kick in.

425 I worry that every so often we ourselves here in Legislative Council or in Tynwald come across a piece of legislation where we think, 'Ten years ago, why did they set it up that way?' I really feel that with these provisions this is where it is going, because it needs more thought.

430 It could be the case that other bodies come forward to help with, effectively, compliance or analysis, but we are really not there yet. So I really implore Members to support this amendment. There is no harm in it. It is simply carving out a chance for further thought on something which ought to be really important to get us to where we need to be. It ought to be something that should be of help to Government. I think it would be quite a burden in a way to have that closeness with a monitor in a future Council of Ministers.

435 I am really just saying let's not settle this now in the Bill, just support this. It can go back to Keys, there can be more time for regulations, more thought, more input from people who know about this in detail. I just think that would be a much better place to be. We need not be settling

440 this in this way, and I am absolutely at a loss, actually, to why it is acceptable to form it in this way, given all the issues that we know when it comes to any sort of monitoring oversight. It is not a regulation matter, but it certainly is about whether Government itself is complying. This is not the right way, Hon. Members, so please support this. It is flawed and we need to have more thought given to this, which is possible with this amendment.

445 So I beg to move, Mr President. Thank you.

Amendment of clauses 24 to 27:

8. Page 29, lines 28 to 38, page 30, lines 1 to 37 and page 31, lines 1 to 9, for clauses 24 to 27 substitute —

«24 Monitors

(1) The Council of Ministers must make regulations no later than 31 December 2023 for the purposes of establishing or designating an independent monitor.

(2) Regulations under subsection (1) may include, but are not limited to provisions as to —

(a) the functions and duties of a monitor;

(b) the powers of investigation of a monitor;

(c) the matters that the monitor must or may investigate;

(d) the matters that the monitor must or may report in relation to any investigation and its powers and duties generally under this Act; and

(e) directions or guidance that may be given to a monitor by the Council of Ministers in connection with the monitor's functions and duties under the regulations.».

Renumber subsequence clauses and cross references throughout.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President. I would like to second.

450 I would also like to agree that often in Tynwald, when we are looking at pieces of legislation, we are looking at the construct of the various different areas in Government, like regulators, we are talking about independence. We are talking about independence because it provides a level of integrity to a process that needs that level of integrity. I think that if something is to be escalated to this degree, it needs to be given that due process and it needs to be given that level of integrity.

455 It would be very valuable to CoMin as well, because it would give integrity to the process that they are enacting off the back of something being highlighted to them regarding this *very* urgent matter, and their climate change duties; and also helps parliament in terms of scrutiny work. I think that if we constantly keep coming back to independence and we constantly keep saying in Tynwald and elsewhere, 'Let's give a process independence ...' We are talking about Government having some degree of responsibility here, which is precisely what this Part intends to do. Then
460 why is it that we would choose not to do that here?

I am seconding Mrs Lord-Brennan's amendments because I think they are *very* sensible. I really am not understanding as to why they would not be supported by (a) DEFA, and (b) the Transformation Board. I do not fully understand as to why they would not be. I do not think that I have heard enough of an argument as to why independence would not be something here that
465 would be valuable to the process.

I have an amendment to this section. Now, what I had requested from the drafter — this is the thing with amendments and concatenated lists being flown around quite late in the day, the day before a sitting. I understand exactly the reasons why and it is perfectly understandable that the drafter has been put into this position with so many pieces of legislation on her books, she has an
470 awful lot going on. However, it does end up confusing things ever so slightly.

So the amendments that I have to clause 24 and, because I am supportive of Mrs Lord-Brennan's amendments here, it is essentially a compromise, but I did ask for it to be drafted for Third Reading. It has now been put into clauses, so I am requesting that that be moved to Third Reading, because I would not like to move it at clauses stage at this point.

475 But I do urge Members, *please* –

The President: What I would like, Miss August-Hanson –

480 **Miss August-Hanson:** – to have a real think about this because otherwise likely –

The President: Miss August-Hanson, if I could interrupt a moment?

Miss August-Hanson: Of course, yes, Mr President.

485 **The President:** We have an amendment number 8 to substitute clauses 24 to 27 duly moved and seconded. I would like to dispose of that amendment one way or the other first, before we consider amendments to the individual clauses, otherwise –

490 **Miss August-Hanson:** Forgive me, Mr President, but actually you have got the substitution of clauses 24 to 27 and then in the concatenated list that I have in front of me there are separate amendments to clause 24, that is numbered 9. I am trying to understand why it has been put that way, but is it possible to remove that then, Mr President, and put that to Third Reading, if that is okay?

495 **The Clerk:** Mr President, the proposal which you outlined was entirely consistent with the analysis given by Miss August-Hanson.

I think the President's preference is to deal with amendment 8 and then, if that carries, amendments 9 and 10 would fall. But if amendment 8 were to fall, then the President would invite Members to move amendments 9 or 10 in the clauses stage, before the clauses are voted on.

500 However, of course, Miss August-Hanson may choose not to move amendment 9 at that stage, in which case she would also be able to move it at the Third Reading, if that is her preference.

The President: Is that clear, Miss August-Hanson?

505 **Miss August-Hanson:** It is clear, Mr President. Yes.

I would like to hear how Mrs Lord-Brennan's amendments go first, because I think it is important that we get things done in the right order.

510 **The President:** I think that would be very sensible, otherwise we will get ourselves a bit tied up with what exactly we are talking about.

Could I then invite Mrs Poole-Wilson to respond, if she wishes to take the opportunity, before we move to a vote on the amendment?

Mrs Poole-Wilson: Yes, thank you, Mr President.

515 I appreciate, again, the engagement of Mrs Lord-Brennan and also Miss August-Hanson – although I recognise she has not at this stage moved her amendment numbered 9 – on this matter, and the matters that they have raised in debate here.

520 Hon. Members, I think it is worth noting at this stage that in relation to the points raised by Mrs Lord-Brennan and her proposed amendment, they are based on an interpretation of the role and function of a monitor that was not intended to be provided by this Bill. So the appointment of a monitor as a consequence of clause 24 is a governance tool, primarily for the Council of Ministers for the purposes of an investigation into a public body's compliance with its climate change duties, further to clause 21, and any regulations made further to that clause. Alternatively, such an appointment would be to investigate whether or not a public body is having regard to the guidance issued to it by the Council of Ministers, further to clause 22.

525

530 These investigations would be undertaken if necessary as a preliminary step to the Council of Ministers using existing powers, such as the power to give directions to Statutory Boards further to the Statutory Boards Act 1987. It also places the role of the monitor into a position of supporting the Council of Ministers' responsibilities and functions under this Bill. The role is thus more akin to an audit function as opposed to a quasi-judicial function or indeed a regulator, and it is on that basis considered that the current provisions of the Bill best reflect the intended role of the monitor.

535 Mr President, in relation to the concerns that have been raised around independence and the issue of timely, ongoing and regular scrutiny, as I have just explained, this was not the intended functions of the monitor as currently provided for by the Bill, because they are intended to be a specialised and limited set of legal provisions, allowing for investigations in the particular circumstances that are set out in the Bill. As I have mentioned, they are based on similar provisions in the Climate Change (Scotland) Act 2009, which had not been used by the Scottish government, to the best of my knowledge, since that Act has come into effect. But they are felt, and indeed the Board has been advised by Prof. Curran, that they are a worthwhile provision to leave in the Bill as it currently stands, in the event that it is appropriate as a last resort to trigger the particular monitor provisions.

540 I think to the point that Mrs Lord-Brennan's amendment proposes removing these provisions from primary legislation and covering them in regulations, such a monitor role should be clearly set out in primary statute, primarily so the processes are clear and binding on all parties in the event that an investigation is commenced. So it would not be appropriate, I understand, for those provisions to be deferred to secondary legislation.

545 I would also note the points that Mrs Lord-Brennan has raised about requiring more thought and that other bodies could potentially come forward to address the matters that she is raising around independence. Indeed, that is the position in other jurisdictions. So there is oversight and scrutiny provided in Scotland and in the UK by different mechanisms, not all of which are on a statutory footing. For example, the Scottish Sustainability Network monitors Scottish public bodies, reporting on their compliance with the Scottish legislation and also has the capacity to offer private advice to public bodies on how their compliance could be improved in future.

550 An alternative approach might be to adopt an approach similar to the UK's Climate Change Committee, which is the creation of a wholly independent advisory body that undertakes functions similar to that of the Scottish Sustainability Network as part of a larger role of reviewing and advising the UK government as a whole on its progress towards the net-zero emissions target. Given the needs and resources of a small Island jurisdiction, that solution was not considered so far to be appropriate or necessary, and the Climate Change Board has instead taken independent advice from Prof. Curran and derived support from independent consultants on research and preparing various strategies required to support the climate change plans.

555 However, the Climate Change Transformation Board does recognise the concerns expressed by Hon. Members in this regard and acknowledges that the position around independence of advice and ongoing scrutiny may change as the Bill is implemented and the climate change plan is delivered. Consequently, while the Climate Change Board would not support the proposed amendment from Mrs Lord-Brennan, the Board does acknowledge and support consideration of options for the provision of external scrutiny and appropriate technical advice to support the effective delivery of climate action. The Board thus commits to the Climate Change Transformation Team considering how best to ensure appropriate technical scrutiny for public body reporting and other elements of climate action as soon as possible, with such work to inform the delivery of climate change guidance and reporting to public bodies.

560 Public bodies' compliance with requirements under the Bill would then in turn be reviewed after the first year of reporting, with a report submitted to Tynwald by October 2023 on what additional statutory or indeed non-statutory measures may be needed in terms of external scrutiny requirements. Such an approach allows for the Climate Change Transformation Team to consider further models, including non-statutory options used elsewhere, and would allow time

for a solution suitable for the Island to be identified on the basis of a climate change plan that has been agreed and a cycle of reporting that has taken place.

580 Hon. Members, I would therefore invite you to oppose the amendment proposed by Mrs Lord-Brennan and accept instead the commitment by the Climate Change Transformation Board that I have just outlined.

Thank you, Mr President.

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

Miss August-Hanson: Thank you, Mr President.

590 I welcome what Mrs Poole-Wilson has just said regarding some form of advisory body, as it were, because last week I requested an amendment to be drafted – turned out that there was not enough time to get something drafted – but doing exactly that and putting it on statute. But I do recognise the fact that perhaps it does not necessarily need to be on the statute and it would be great if you could get buy-in in terms of the Transformation Board, or the connected individuals involved in climate change, on board with that.

595 I do find that there are other jurisdictions obviously that have this form of a body within their climate change legislation; like, for example, the Climate Change Act 2008 of Parliament links from Part 2 of that Act. Essentially, it is a *great* big section of legislation and understanding that is very prescriptive and very different from what we have in front of us at the moment and the route that Scotland has gone down, which is very enabling and also common sense, I suppose, in interpretation.

600 I do feel that if it had been legislated for, or the opportunity was there for it to be legislated for, that that would have provided some level of buy-in from the following administration and any administration that follows. Because some level of advisory body or a quango, as it were, something separate from Government, and separate from the Transformation Board, something that would provide technical aspects of reporting by all of our 55 public bodies to be reviewed, understood and validated makes sense; and that information to be processed and delivered into CoMin that could then refer issues on to the Transformation Board as well. It would round the piece, as it were.

605 I think the expectation is that this is the type of ... Basically, I was looking at it following clause 27. I was looking at a new Part 5A, but it has not been possible. But Prof. Curran pointed to something quite similar in the IMPACT Report as well, and Mrs Poole-Wilson has made reference to Scotland, the Sustainable Scotland Network, which she talked about in the briefings that I have attended, which I have appreciated a great deal, because they pointed me off in different directions regarding research. But they have a contract with government there, and that body performs the role of reviewing and monitoring reports of all of *their* public bodies and feeds back into government and parliament on the progress, again providing some level of independence and integrity.

615 On the Isle of Man, that could clarify debate on all sides, provide focus on issues, provide evidence, add transparency and accountability, and give us those facts and statistics that we actually need, because there is so much emotion that sits around this subject matter. There is an *awful* lot of emotion that sits around this subject matter. You almost, to a sense, to understand exactly the position that we are in and where we are going to, you need to have hard facts, hard statistics. It is a sense check.

620 So I am *really* appreciative that the Transformation Board are looking into some similar framework, and I hope that when the Transformation Board have a look at whatever *could* be possible, that they will not only look to Scotland and the UK, but to other smaller jurisdictions as well that perhaps might be doing something a little bit innovative, might be doing something a little bit different that works better for their particular jurisdictions, and particularly under the constrictions that they face. We do not have the numbers the UK have, that Scotland have; we have much smaller numbers here on the Isle of Man and therefore we probably have a much

630 smaller amount of expertise. So it is about getting the right mix here and making use, I suppose, of our virtual abilities that perhaps we did not think were possible before COVID, and now we absolutely believe that they are.

So I am *very* appreciative of that assurance. But just moving back to the amendment specifically that Mrs Lord-Brennan is bringing, I do think that can still sit alongside the amendments that
635 Mrs Lord-Brennan is bringing regarding designation of a monitor and that independence there, and understanding what the vision was for the designation of a monitor here.

Public bodies' compliance with climate change duties, the guidance and that preliminary step, as Mrs Poole-Wilson has suggested, supporting CoMin. She also said that it had not been used by the Scottish government as of yet. *Why* has it not been used by the Scottish government, would
640 be my question, and I would hope that perhaps Mrs Poole-Wilson, if you would be so kind, I would like to hear why the Scottish Government have not made use of it. If you have an answer to that, I would be *very* grateful.

My concern is, I suppose, that governments do not necessarily want to be criticising themselves in their own house. So this is about providing that independence, that step away, so that whatever
645 that preliminary step in terms of looking at a public body that might not be acting responsibly regarding the planning and reporting of its duties – what would provide a level of integrity here? What would make that reporting back for that monitor? If it was independent, surely it would provide some comfort to the Council of Ministers and also separately to parliament, when parliament turns its scrutiny arms, to looking towards those reports.

650 Thank you, Mr President.

The President: Now, Hon. Members, I am conscious we have a good deal of business to get through this morning and we are not going to manage it at the present rate, so I would ask Members to be concise, if they can, in their arguments.

655 Mrs Lord-Brennan, please.

Mrs Lord-Brennan: Thank you, Mr President. I will be concise.

I actually zone out sometimes at some of the responses and the explaining away of some of these matters. I never got a response directly at all, actually, from the Climate Change Board. It is
660 just explaining away constantly, as we have heard today – explaining away the *status quo*. Nobody has actually given me any comfort or has actually sought to explain how this would work in practice. I think, frankly, these monitor clauses, at best they are useless and at worst they will bury the truth. As Miss August-Hanson said, it is *very* difficult for a government, for the Council of Ministers, to look at themselves and assess perhaps admissions or failings, which may not be their
665 fault. This is effectively what we are setting up.

Two final points, Mr President: did we not in Tynwald a few weeks or months ago have a big debate about the need for an Auditor General? And what was the big point about that for saying this is effectively an audit facility for the Council of Ministers? The Auditor General, the whole
670 point about that is we were saying, 'Actually, no, it's not good enough that we have this set-up that we already do within Treasury, etc., for auditing'. No, we need something *independent*. This is the same argument. If we want things to work effectively, we should not be designing it from the floor. I honestly believe that some parts of this Bill are designed to actually not work well! That is the conclusion I have come to.

Furthermore, in terms of the point about being advised or being informed by what has worked
675 in Scotland, as part of a call we spoke to Prof. Curran and he gave his view about this; but also the layers of other inputs that happen before things get to this point of Scotland using their equivalent provisions. But I would say, Mr President, Hon. Members, anybody who has got any awareness of the political system or Government on the Isle of Man in our small jurisdiction would surely look at this in a different way, and think, actually, how is this going to work in practice here?

680 It is because I have concerns over both of those aspects that I am moving what I am moving today, the fact that effectively you get some kind of facepalm dismissal on some of these elements

where there is real concern, or do not get a proper answer at all, or just get bored by the response of officers explaining away, and then hear the same in this Council, it is just not acceptable. We are not thinking about what we are doing here.

685 Thank you, Mr President.

The President: Mrs Poole-Wilson, and then we move to a vote on the amendment.

Mrs Poole-Wilson: Thank you, Mr President.

690 If I could just respond to Miss August-Hanson and Mrs Lord-Brennan. I understand Miss August-Hanson's comments about consideration for inserting something in this Bill around an independent body, and of course that is a policy area and requires further thought. But that is what my commitment on behalf of the Climate Change Transformation Board is today, that the team will look at options. I think she is correct. It should be a range of options, and as well as how things are working in the UK and in Scotland, we see statutory and non-statutory approaches, but
695 I think she is absolutely right that we should look at smaller jurisdictions as well, because one of our challenges is our scale.

Indeed, she and I both took part in the CPA conference last week, which was very helpful for Commonwealth parliamentarians to consider preparation for COP26. I think there is another
700 interesting source for information-sharing about different models that can work. So it will be that the team looks at options and considers what model may work best for the Isle of Man which, as I say, could be a statutory provision, or perhaps not, as is the case in Scotland.

She particularly asked why the Scottish government has not invoked its own monitor provisions, which are to be invoked by ministers in Scotland under their legislation. My
705 understanding is that there has not been a need to invoke them, because actually their non-statutory approach involving the Sustainable Scotland Network has worked well in terms of providing a process for overseeing reporting, synthesising the outputs of, I think, in the region of 180 public bodies in Scotland and providing visibility and oversight in terms of their reporting.

To Mrs Lord-Brennan's points, I think, again, I would just try to be clear that the monitor provisions in this Bill are intended to be limited, as opposed to the broader independent oversight that she has been talking about. I suppose I would draw the parallel between the fact that, whilst
710 we are going to have a Tynwald Auditor General – and I am a huge supporter of that – we will not do away with Internal Audit as a function, which is currently a mechanism available to Government to look at its internal risks and reports, and seek to address matters.

Hon. colleagues may be aware that the reports from the internal audit function come to the Public Accounts Committee as a way of alerting Tynwald to any potential issues that are generated. The same would be true of this monitor provision, if it were to be triggered. Any report
715 would come to Tynwald. So there would be an opportunity for Tynwald to see what a monitor had investigated and its conclusions.

I think the other matter is I recognise she is grappling with the position of the Council of Ministers, and any tension between the Council of Ministers and what an individual Department does. I think the broader point is there are 55 – or in the region of that – public bodies who are captured by this Bill, and so there is a range of public bodies involved. It is possible that if it were
720 needed – and I say *if* it were needed – this is one tool of governance available to the Council of Ministers. It does not preclude other forms of scrutiny, oversight and independent reporting and, indeed, the commitment I have made on behalf of the Board today is for the Transformation Team to look into other models that may support that independence and oversight.

With that, Mr President, I beg to move.

730 **The President:** I put to Council the amendment numbered 8 in the name of Mrs Lord-Brennan, substitution of clauses 24 to 27.

I take it Council is content unless I see dissent, otherwise ... I see dissent. We will have a called vote.

Voting resulted as follows:

FOR

Miss August-Hanson
Mrs Lord-Brennan
Mr Mercer

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Maska
Mrs Poole-Wilson
Mrs Sharpe

The President: With 3 votes for and 6 votes against, that amendment fails to carry.

735 Now we have amendments to clauses 24 and 26 in the name of Miss August-Hanson and Mrs Lord-Brennan respectively. I invite them to move those.

Mrs Lord-Brennan: Thank you, Mr President.

I am just not going to move it. I cannot actually be bothered.

740 Thank you, Mr President.

The Clerk: Mrs Lord-Brennan is not moving her amendment, number –

The President: You are not moving amendment 26, Mrs Lord-Brennan?

745

The Clerk: Amendment 10.

The President: Amendment 10, to clause 26?

750 **Mrs Lord-Brennan:** No, I am not.

The President: Thank you.

Does any other Member wish to speak?

755 **Miss August-Hanson:** Mr President, if I may?

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

760 Just on, then, as it is down on the concatenated list, we might as well just not toss it over to Third Reading. We might as well move it now, my amendment to clause 24, then, if you would, Mr President? Can I have an indication that you are content with that?

The Clerk: Miss August-Hanson is asking, is she allowed to move amendment 9 at this stage?

765

The President: You are, yes. You are entitled to move it now.

Miss August-Hanson: Thank you, Mr President.

770 On conclusion of Mrs Lord-Brennan's amendment, then, in that case, if I may just move that we look at the Appointments Commission regarding some degree of independence on the designation of a monitor. It is a very short amendment, so I will be very short in my introduction of it. But essentially, like I said earlier, it would help the Council of Ministers in terms of providing a level of independence in giving us a level of integrity behind the reporting here to ensure that there is no conflict of interest as well.

775 I am suggesting, having taken advice on the matter as well, that the Appointments Commission put forward or designate a monitor. The reason why I am suggesting the Appointments

Commission is that they appoint those presiding over tribunals and also the prison governor. They have some experience in terms of designating various independent individuals.

So yes, with that, as a compromise, I am asking that Members please support.

Amendments to clause 24

9. Page 29 —

a. line 30, for 'The Council of Ministers may designate' substitute «Upon the request of the Council of Ministers, the Appointments Commission (established under section 1 of the Tribunals Act 2006) must designate»;

b. line 32, after subsection (1) insert —

«(2) A person designated under subsection (1) must not act as a monitor in respect of a public body if in the person considers that, in doing so, there would likely be a conflict of interest.».

Renumber subsequent subsections and cross references throughout.

780 **The President:** Thank you.
Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

785 I think what Miss August-Hanson is aiming to achieve is very worthwhile. She has also trying to shape up some kind of impartiality around this, so I welcome her amendment and I will support it and I am happy to second it.

Thank you, Mr President.

790 **The President:** Thank you.
Mrs Poole-Wilson to reply to the debate.

Mrs Poole-Wilson: Thank you, Mr President, and again, thank you to Miss August-Hanson for her engagement on her thinking.

795 I do not want to repeat everything I have already said. I think I would just highlight again that the provision as drafted is intended as a governance tool for the Council of Ministers with the monitor being more akin to an audit function as opposed to a quasi-judicial function or a regulator, and so on that basis it is considered that the provisions as drafted are appropriate and the proposed amendment is therefore not supported.

Thank you, Mr President.

800 **The President:** Thank you.

I put to Council first the amendment to clause 24 by Miss August-Hanson. I take Council to be in agreement, unless I see dissent.

I see dissent, we will have a called vote.

Voting resulted as follows:

FOR

Miss August-Hanson
Mrs Lord-Brennan
Mr Mercer

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Maska
Mrs Poole-Wilson
Mrs Sharpe

805 **The President:** Three votes for, 6 against; the amendment fails to carry. I put to Council clause 24. I take Council to be content. Clause 24 carries.

I put clause 25. I take Council to be content. Clause 25 carries.

Clause 26. I take Council to be content. Clause 26 carries.

Finally, clause 27. I take Council is content. Clause 27 carries.

810 We revert now to clause 23. At the sitting last week, Mrs Poole-Wilson moved this clause, it was seconded, Mr Mercer moved an amendment and that is number 4 on today's list. Mrs Lord-Brennan moved two amendments and on today's list, these are numbered 5 and 7. Further consideration was then deferred at Mrs Lord Brennan's request and that having been done, precedence in the resumed debate goes to the Member who requested the adjournment.

815 So I call Mrs Lord-Brennan first, please, if she wishes to speak.

Mrs Lord-Brennan: Thank you, Mr President.

Sorry, that was to clause 23?

820 **The President:** Yes. You, having requested a deferment, have the right to speak next in the resumed debate, if you wish.

Mrs Lord-Brennan: Thank you, Mr President.

825 To say obviously we do not have the same concerns as I had last time because obviously the amendment has been defeated. So I have two amendments to clause 23. I am not going to be moving amendment 5, which says substitute 'may' for 'must'. I will not be moving that. I would like to move amendment 7. (**The President:** Right.)

I beg to move:

Amendment to clause 23

7. Page 29, line 27, after subsection (2) insert —

«(3) A public body that prepares a report under subsection (1) must publish it.».

The President: Thank you.

830

The Clerk: Mr President, amendment 5 –

The President: Was already moved.

835 **The Clerk:** So if Mrs Lord-Brennan wishes to withdraw it, (**The President:** Yes.) it would require leave.

The President: Okay. With the leave of the Council, amendment number 5 moved by Mrs Lord-Brennan last week is withdrawn. Is Council content? Thank you.

840 So that leaves on the table amendment number 4 and amendment number 7. Amendment number 6 is not eligible to be moved as a consequence of Council's decision about substituting clauses 24 to 27.

I invite Mrs Poole-Wilson to reply to the debate, then, on clause 23.

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

850 I did not reply last week as we paused the debate, so I would like to be clear that in discussing the amendment proposed by Mr Mercer, it has been noted there is a strong desire for a quicker legislative response from Government in making the secondary legislation to support the functioning of this Bill and that this has been balanced by a recognition that not *all* of the legislation needs to be in effect immediately and that a minimum viable product in the form of general reporting requirements for public bodies may be all that is required at the early stages of the Bill's implementation.

It is on that basis that the Climate Change Transformation Board supports Mr Mercer's amendment to this clause, which is the amendment numbered 4, and ensures that regulations

855 would be introduced to require public bodies to report on implementation of their climate change duties and the climate change plan that will come into effect on 1st April 2022. Similarly, to provide greater transparency as to the work of public bodies in meeting their climate change duties, the Board also supports Mrs Lord-Brennan’s amendment number 7 to this clause.

So with that, Mr President, I beg to move.

860

The President: Thank you very much.

I put to Council then first amendment number 4 of Mr Mercer to clause 23, and I take Council to be content unless I see dissent. That amendment carries.

I put amendment number 7, Mrs Lord-Brennan’s. I take Council to be content. That carries.

865

I put clause 23, as amended and take Council to be content. That carries.

Moving on to clause 30, I call Mrs Poole-Wilson to move.

Mrs Poole-Wilson: Thank you, Mr President.

870

Clause 30 of the Bill requires that all regulations and orders made under the Bill are subject to the consultation requirements set out in clause 35. Once these consultation requirements have been met, and except for orders made under clause 2 of the Bill or is otherwise provided in the Bill, such secondary legislation requires Tynwald approval before it may come into effect.

875

The clause provides for such regulations or orders to contain consequential, incidental, supplementary, transitory, transitional or savings provisions as the body making such secondary legislation considers appropriate. It also allows for the purposes of those regulations or orders the ability to modify any Act of Tynwald as well as impose criminal offences for breaches of the requirements of those items of secondary legislation. The criminal offences that may be specified in such legislation must not exceed, for a summary conviction, a fine of Level 5 on the standard scale, or upon conviction on information, a fine.

880

Finally, such regulations or orders under this Act may enable the Council of Ministers, the Department of Environment, Food and Agriculture or such bodies as may be specified in the relevant secondary legislation, the ability to issue a direction or guidance to a person.

Mr President, I beg to move that clause 30 stands part of the Bill.

885

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy pholldal as dy loayrt ny s’anmey my vees feme ayn.

I beg to second, sir.

890

The President: I put to Council that clause 30 do stand part of the Bill. I take Council to be content. Clause 30 carries.

Clause 31.

895

Mrs Poole-Wilson: Thank you, Mr President.

900

Clause 31 of the Bill provides the Council of Ministers or the Department of Environment, Food and Agriculture with the ability, by order, to apply the legislation of the United Kingdom to the Island. The clause limits the application of such UK legislation to the provisions set out in the Environmental Protection Act 1990, the Environment Act 1995 and the Clean Air Act 1993, noting such legislation has been used in the UK to regulate and prevent emissions of greenhouse gases.

905

In addition, the clause allows for the application of any legislation of the UK or Scottish parliaments that relates directly or indirectly to enabling climate change actions or mitigating the potential negative consequences arising from climate change actions. Such an order may apply such legislation, subject to exceptions, adaptations or modifications as prescribed to enable it to function on the Island, as well as amending any Tynwald enactment requiring to be amended as a consequence of this legislation being applied. To ensure clarity as to the legislation applied, such

an order must have annexed to it a text of the instrument applied by the order as amended, when that order is laid before Tynwald for approval following a consultation.

910 I would like to thank Miss August-Hanson for moving some technical amendments to this clause, and also Mrs Lord-Brennan for her engagement to propose a more substantive amendment which is supported by the Climate Change Transformation Board.

Mr President, I beg to move that clause 31 stands part of the Bill.

The President: Mr Henderson.

915

Mr Henderson: Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy pholldal as dy loayrt ny s'anmey my vees feme ayn.

I beg to second, sir.

920 **The President:** Miss August-Hanson, please.

Miss August-Hanson: Thank you, Mr President.

925 This is just my amendment numbered 11 here, but just to be absolutely clear, I think there is a slight drafting error that has just been made in how this ties into Mrs Lord-Brennan's amendment which is supported. It is just that, to be absolutely clear, it is 11(a), 11(b) and 11(c) of that amendment that is being moved here and *not* 11(d), as it overlaps.

The President: 11(a), 11(b), and 11(c), and not 11(d)?

930 **Miss August-Hanson:** That is quite right, Mr President.

The President: Okay, thank you.

935 **Miss August-Hanson:** When this clause was considered in the other place, some concerns were expressed that the terminology used did not align with the provisions in the Interpretation Act 2015. That has accordingly been reviewed and identified that there is a need to replace the references to the legislation of the UK, or the United Kingdom, with references to 'UK legislation'. So the amendment accordingly makes that change and ensures that the terminology used in this clause aligns with section 13 of the Interpretation Act 2015, which defines what is meant by

940 'parliamentary enactment' and references to UK legislation accordingly.

So I beg to move. Thank you, Mr President.

Amendment to clause 31

11. Page 33 —

a. line 21, for 'legislation of the United Kingdom' substitute «UK legislation»;

b. line 25, for 'legislation of the United Kingdom' substitute «UK legislation»;

c. line 29, for 'legislation of the United Kingdom' substitute «UK legislation»;

The President: Thank you.

Mr Mercer.

945 **Mr Mercer:** Thank you, Mr President, and I beg to second.

The President: Thank you.

Mrs Lord-Brennan.

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

955 I had recognised the Bill as drafted had referred to three outdated UK Acts from the 1990s, where, upon a little bit of research, it was clear that they were out of date, in need of massive change anyway. So I am very grateful to Teresa, the drafter, for assisting me to update this amendment with a view to ensuring that we can capture the relevant things that we need that have a basis in UK legislation along the themes that we need to do with climate change and environmental protection sufficiently, without pegging the Island to standards from 25/30 years ago. So I am grateful finally to have got to a position of support on that.

I will need a seconder, if somebody would be kind enough to do that for me, and hopefully, because it is supported, that will not be a problem.

960 Thank you, Mr President.

Amendment to clause 31

12. Page 33, lines 31 to 38 and page 34, lines 1 to 10, for subsection (3) substitute —

« (3) This section applies to —

(a) any provision of UK legislation; or

(b) any instrument of a legislative character made under UK legislation, which relates, directly or indirectly, to climate change action, or mitigating potentially negative consequences arising from climate change, and to environmental protection.

(4) For the purposes of subsection (3), provisions that relate to climate change action, or mitigating potentially negative consequences arising from climate change, or to environmental protection, include provisions relating to —

(a) the generation and regulation of renewable energy and the technologies associated with renewable energy;

(b) the conservation, protection and restoration of biodiversity, ecosystems and improving the natural environment;

(c) waste and resource management;

(d) air and water quality, including the regulation of air and water pollutants and their sources; and

(e) the control of products that fail to meet standards specified for the protection of the environment.

(5) The Council of Ministers may by order amend subsection (4).».

Renumber subsequent subsection.

The President: Thank you.

Do we have a seconder? Mrs Maska. Happy to second, thank you.

Mrs Maska: Thank you, Mr President.

965 Happy to second.

The President: Thank you.

I invite Mrs Poole-Wilson to reply.

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

I would just like to thank Miss August-Hanson for moving the technical amendments to the clause that she has set out, and I agree with her. Because of the overlap with Mrs Lord-Brennan's amendment to this clause, it is not necessary for us to approve item (d) of amendment numbered 11.

975 I would also like to thank Mrs Lord-Brennan for her consideration of this provision and for her work engaging with the drafter, with me and with officers on an appropriate set of amendments to this clause, which I think will provide the flexibility necessary to apply to the Island a wide range of UK legislation relating to environmental protection and climate change, subject, of course, to consultation and Tynwald approval.

980 So with thanks for her work on that, I beg to move.

The President: Thank you.

I put first to Council the amendment by Miss August-Hanson numbered 11(a), 11(b) and 11(c). I take Council is content with that amendment. That carries.

985 I put amendment number 12 moved by Mrs Lord-Brennan. I take Council to be content. That carries.

I put clause 31 as amended, and I take Council is content. Carried.

We move to clause 32.

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

Clause 32 of the Bill sets out the powers of entry that an authorised person has for the purposes of clause 28 of the Bill or as may be prescribed in any regulations or order made under the Bill. Such powers of entry may be applied by an authorised person during reasonable hours to enter any premises if they have reasonable grounds for considering that an offence has been committed or that there has been a contravention of any regulation, order or Act. These powers of entry may only be demanded with regard to private dwelling houses if 24 hours' notice of the intended entry has been given to the occupier.

The clause also empowers a justice of the peace, upon sworn information in writing, to grant entry into premises using reasonable force if there are reasonable grounds to do so. Such reasonable grounds may include the refusal by an occupier of a private dwelling house to grant entry to those premises. When entering such premises, an authorised officer may take with him or her such other persons as are considered necessary. Once in the premises, those persons may inspect any records and seize or detain any records as may be required in evidence in any proceedings arising under the resultant Act or under secondary legislation made as a consequence of this Bill.

To ensure the confidentiality of trade secrets that may be encountered when conducting searches, the Bill makes it a criminal offence to disclose such a trade secret unless that person was making such a disclosure in the performance of his or her duty. Such an offence may be punishable on either summary conviction, with a fine of Level 5 on the standard scale, or upon conviction on information to a fine. Upon leaving the premises, the authorised officer must ensure that it has been as effectively secured against unauthorised entry as when the authorised officer found those premises.

It has been noted that Hon. Members here and in the other place did have some concerns as to the basis for these powers. The powers in the Bill are similar to powers of entry already provided to building control officers further to section 36 of the Building Control Act 1991 and section 35 of the Local Government Act 1985. As those officers will be enforcing the ban on fossil fuel heating systems in new homes as part of their existing building control duties, it was considered appropriate to ensure the powers of entry provided by this Bill aligned with their existing powers of entry under existing legislation and the associated processes on the use of those powers. Without such powers, officers would be unable to gather evidence to determine whether a suspected offence is being or has been committed. As a result, offenders would be protected, as the associated provisions of clause 28 would be unenforceable.

Mr President, it is anticipated that these powers will be used as a last resort as it is the Department of Environment, Food and Agriculture's enforcement policy to work with the public and businesses on the Island to encourage and facilitate compliance with the regulatory controls before enforcement action is taken. However, it is important that such powers are available to ensure the effective enforcement of the requirements of the Bill and secondary legislation made under this Bill, should such engagement prove unsuccessful.

Mr President, I beg to move that clause 32 stands part of the Bill.

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The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy phohlldal as dy loayrt ny s'anmey my vees feme ayn.

I beg to second, sir.

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The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

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It is just to move a number of amendments and that are listed in the concatenated list here, starting with amendment 13 and recognising what Mrs Poole-Wilson has said regarding building control. The reason why I have laid this amendment, that an authorised officer may not enter premises under the section unless accompanied by a constable, is very similar to, I suppose ... I think a number of us will have been listening to the House of Keys yesterday – or the other place, my apologies – and Mr Robertshaw. We always do take great note whenever the hon. gentleman stands up, but in terms of encroaching on people's individual homes and premises, and that Government are, as he put it, 'relentless' in right to access and his thoughts on it being quite inappropriate.

1045

I agree with him to a great degree, and I think that we need to be *very* careful as to where we actually apply these powers to authorised officers as opposed to with, quite rightly, a keeper of the peace, which would be a police officer or a constable. For me this feels like very much the right action, the right course. A keeper of the peace may turn up to a premises with the blue lights flashing, or whatever way that we might imagine that that might happen, that it could cause a stir. However, they are also there as a mediator, as a function that they have been trained in dealing with matters like this and I think that we need to apply some level or some degree of trust in that function.

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I do think that we need to look at legislation differently in terms of encroaching on people's individual homes and businesses, and allowing that, quote unquote, 'authorised officers', whoever they may be, are able to do that. So that is the reason why I am putting that particular amendment forward.

1060

Mr President, would you prefer that I continue on with the amendments that I am making to this particular clause, or would you prefer that I left it at that one and we voted on that one first?

The President: No, move all the amendments in your name to clause 32 and then we can get on with the debate.

1065

Miss August-Hanson: Okay. Thank you very much, Mr President.

1070

The present drafting of clause 32(4) requires 24 hours' notice to be given to the occupier of a private dwelling house before an authorised officer may seek admission to these premises, and clause 32(5) of the Bill provides that in an event the occupier of that private dwelling house refuses entry, a warrant may be applied for. So noting that these requirements are therefore inappropriate for use in clause 32(4), to use the term 'demanded as of right', the amendment that I am proposing essentially seeks to make clear that the authorised officer is instead simply requesting entry to the private dwelling house by giving 24 hours' notice, which is a request that may be refused by the occupier of those premises. The amendment emphasises to authorised officers that such powers of entry must be used with greater care and consideration with respect to private dwelling houses, particularly given the right to the protection of property provided by the Human Rights Act 2001. So that is 'demanded as of right', which is on page 34, line 33.

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So moving on: page 35, line 33, subsection (9). When this clause was considered in the other place, some Members had expressed concerns that while the clause provided protections for trade secrets in the event of a search occurring, it did not provide any protections for legally privileged materials. So these amendments provide that in the event of these powers being used that there is not a compulsion on any person to supply privileged information or to allow information to be seized. So the second amendment that is approved by the Transformation Board

1085 that is in my name ensures that in the event, privileged material is given the same legal protections as trade secrets and that consequently, in the event that privileged material is seized and divulged other than in the course of authorised officers' performance of their duty, such an action would be a criminal offence punishable on summary conviction to a fine up to a maximum of Level 5 on the standard scale, and upon conviction on information to a fine.

1090 The final amendment sets out a definition of what privileged information for the purposes of this clause is. So this definition provides that privileged material means any information to which a legal professional privilege would be maintained in legal proceedings.

So Mr President, I hope Hon. Members would agree that these amendments ensure adequate protections are given to legally privileged materials, and I beg to move *all* of those amendments standing in my name accordingly.

1095 Thank you, Mr President.

Amendments to clause 32

13. Page 34, line 31, after subsection (3) insert –

«(4) An authorised officer may not enter premises under this section unless accompanied by a constable.».

Renumber subsequent subsections.

14. Page 34, line 33, for 'demanded as of right' substitute «requested».

15. Page 35, line 33, after subsection (9) insert –

«(10) Nothing in this section –

(a) compels a person to supply any privileged information; or

(b) confers a right on a person who enters premises in exercise of the powers in this section to seize such information.».

Renumber the subsequent subsection.

16. Page 35, line 36, after 'trade secret' insert «or privileged information».

17. Page 35, line 41, after subsection (10) insert –

«(11) In this section "privileged information" means information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.».

The President: Thank you.

Mr Mercer.

Mr Mercer: Thank you, Mr President. I beg to second.

1100

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

1105 Just to support everything that Miss August-Hanson has said there to do with powers to officers and ensuring adequate protections. It is slightly scary, actually, that things get quite far down the line before some kind of balance is put on these things. It does seem to be a trend, so I welcome the balancing off and correction of some of these matters and welcome the amendment she is bringing.

1110 It is unfortunate if we are getting to the point where we are starting to see some of this stuff almost becoming like a go-to position. When these powers are given, and of course we are talking about amendments to clause 32 of the Bill that deals with powers of entry, we really should take care, as legislators, that we are giving the right powers to the right people with the correct authority and the appropriate constraints around that.

1115 So I welcome the thought and work that has gone on with these, from Miss August-Hanson, and doubtless others as well, in order to bring this to a supported conclusion.

Thank you, Mr President.

The President: Mrs Maska.

1120 **Mrs Maska:** Thank you, Mr President.

Just to speak briefly to amendment number 13, I would also share with Hon. Members that existing powers already are working well whereby building regulation officers, environmental health officers, housing officers already exercise a power of entry and exercise those powers very well. I think requiring a constable to be in attendance might be deemed to be overweighted in terms of what the Constabulary really should be preoccupying themselves with.

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I liken it also to the powers under the recent Road Traffic (Amendment) Bill, whereby to stop and inspect a vehicle it was not just a constable that could do that. Those powers were relaxed to allow an authorised officer to inspect a vehicle. I liken similar powers in this regard that are already in place and I would not be supporting the amendment, which suggests that a constable should be also in attendance. I think that would actually inject a degree of fear and stigma, and so I cannot support amendment number 13.

1130

Thank you, Mr President.

The President: Thank you.

1135

Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

I would just like to say that I understand the principles behind Miss August-Hanson's amendment 13. However, like Mrs Maska, I do find the idea of the presence of a constable to be over the top, can I say, when we consider that there are numerous occasions when these kinds of situations occur and, as Mrs Maska has said, constables are not expected to be present in those circumstances. So I will not be able to support the amendment as put forward.

1140

Thank you, Mr President.

The President: Thank you.

1145

I will call Miss August-Hanson and then Mrs Poole-Wilson to reply to the debate.

Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1150

I will make this very brief. The intention was certainly not to scare the life out of anybody or to take a step too far. It was simply to put before Council to try and take the temperature, and that is mainly because the job of a constable is *very* clear to all of us and we do need to trust their ability to be the keeper of the peace, when I do not think that we are quite looking at this in the correct way. It is not really for officers to do something like this. Really, I think that is not providing the public with the level of protection that perhaps they need on that side of the fence. As opposed to seeing it as an escalation, it is almost seeing it as a de-escalation, and also to ensure that ... officers are *very* well used to interpreting legislation and interpreting their PPPA, so they understand how these things need to be rolled out, they understand protocol, they are perhaps better trusted or could be better trusted than an officer that perhaps is not necessarily used to doing it to the same degree.

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1160

So the intention was *very* much about protecting the public and providing a mediator role between one and the other, which is very much within their remit as well anyway.

Thank you, Mr President.

The President: Mrs Poole-Wilson to reply.

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Mrs Poole-Wilson: Thank you, Mr President.

I would like to thank Miss August-Hanson for moving amendments numbered 14 to 17 inclusive, which are supported and were taken on board following debates in another place to

1170 clarify how powers of entry may be applied to private dwellings and to emphasise the protections provided to legally privileged information. So there is support for amendments numbered 14 to 17.

1175 However, whilst I recognise the concerns Miss August-Hanson expresses and why she is moving amendment number 13, this is not supported, and I have to say I think it has been well articulated by hon. colleagues Mrs Maska and Mrs Sharpe. As I referenced earlier, the powers of entry provided in this clause have been based upon existing powers of entry provided to building control officers further to section 36 of the Building Control Act, which grants officers powers of entry set out in section 35 of the Local Government Act. The approach in this Bill was taken as those officers would be using these powers as part of their existing Building Control duties to enforce the ban on installing fossil fuel heating systems in new buildings from 1st January 2025.

1180 The proposed amendment I think does seem, as Mrs Maska has suggested, somewhat overweighted, to require building control officers to gain a police escort every time they wish to utilise the powers of entry. It also effectively creates a one-size-fits-all approach for *all* types of premises – commercial, distribution, private dwelling houses – and does not seem to allow for a situation where an occupier would be content to admit a building control officer without a police presence.

1190 So if it is of any comfort to the hon. mover, as well as other colleagues, as has been pointed out, the powers of entry are *not* unusual. They are similar to powers of entry granted to other officers; building control officers, but also planning enforcement officers, housing officers and environmental health officers. The amendment as drafted does place an unusual and disproportionate, or overweighted, I think as Mrs Maska said, requirement in place and is therefore not supported.

Mr President, I beg to move.

1195 **The President:** Thank you.

I put first the amendment numbered 13 moved by Miss August-Hanson to clause 32. I take that amendment to carry, unless I see dissent. Yes, we will vote on that, as a called vote, please.

Voting resulted as follows:

FOR

Miss August-Hanson
Mrs Lord-Brennan

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Maska
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

The President: With 2 votes for, 7 against, that amendment fails to carry.

1200 I now put amendments 14 to 17 inclusive to form part of the Bill. Is Council content? Those amendments carry.

I put clause 32, as amended. I take Council to be content. That carries.

Clause 33.

Mrs Poole-Wilson: Thank you, Mr President.

1205 Clause 33 of the Bill provides that any regulations or orders made under this Bill may make provision by notice for the imposition of fixed monetary penalties for a breach of such a regulation or order. Such fixed penalty notices may vary in amount but must not exceed the equivalent of Level 5 on the standard scale. The clause sets out the provisions relating to the administration and issue of such fixed penalty notices and how the issue of fixed penalty notice may be appealed up to consideration by court of summary jurisdiction. Establishing the potential issue of fixed penalty

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notices provides a means for enforcing the requirements of regulations and orders made under this Bill that would otherwise be liable to a criminal prosecution.

I note Miss August-Hanson will be moving some amendments and would advise in advance that these are supported.

1215 So with that, Mr President, I beg to move that clause 33 stands part of the Bill.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

1220 Ta mee shirrey kied dy phohlldal as dy loayrt ny s'anmey my vees feme ayn.
I beg to second, sir.

The President: Miss August-Hanson.

1225 **Miss August-Hanson:** Thank you, Mr President.

When the clause was considered in the other place, some Members expressed concerns that it would allow for the imposition of unreasonable fixed penalty notices as a consequence of an order or regulations made under the Bill. The amendment before us will ensure that when regulations are made to impose a fixed monetary penalty, such regulations do not impose a fixed monetary penalty that is unreasonable after having regard to the severity of the breach of the regulations or order in question.

1230

So Mr President, with that simple explanation, I beg to move:

Amendment to clause 33

18. Page 36, lines 14 to 16, for subsection (4) substitute —

«(4) Regulations or an order may not provide for the imposition of a fixed monetary penalty that is —

(a) unreasonable, having had regard to the severity of the breach of the regulations or order in question; and

(b) in any circumstance, in excess of the amount of a fine of level 5 on the standard scale.».

The President: Thank you.

Mr Mercer.

1235

Mr Mercer: Thank you, Mr President.

I think this amendment brings a necessary proportionality to this clause.

With that, I beg to second.

1240 **The President:** Thank you.

Mrs Poole-Wilson to reply.

Mrs Poole-Wilson: Thank you, Mr President.

I think Miss August-Hanson and Mr Mercer have explained well enough the benefit of this amendment and it is supported.

1245

I beg to move.

The President: Thank you.

I put the amendment to clause 33. I take Council to be content. That carries.

1250 Clause 33, as amended. I take Council as content. That carries.

Clause 34.

Mrs Poole-Wilson: Thank you, Mr President.

1255 Clause 34 requires the Council of Ministers, when exercising the duties conferred on it by this Bill, to do so in a manner that contributes towards sustainable development and the achievement of the United Nations sustainable development goals, supports the just transition principles and climate justice principles, and protects and enhances biodiversity, ecosystem and ecosystem services. This clause consequently ensures the Council of Ministers fulfil their climate change duties in a manner similar to the other public bodies when undertaking duties conferred on it by
1260 this Bill in order to ensure the net-zero target and the interim target are achieved.

Mr President, I beg to move that clause 34 stands part of this Bill.

The President: Mr Henderson.

1265 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy phohlldal as dy loayrt ny s'anmey my vees feme ayn.

I beg to second, sir.

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

Just a general, probably broader query, but it certainly relates to this clause. We have dealt with what potentially can happen to people if they are thought to be not complying with particular things under this Bill. My question is what happens to the Council of Ministers if they do not
1275 exercise their duties and their functions under this Bill?

Thank you, Mr President.

The President: Mrs Poole-Wilson to reply.

1280 **Mrs Poole-Wilson:** Thank you, Mr President, and thank you to Mrs Lord-Brennan for her question.

As the rest of the Bill sets out, there are requirements to set in train action plans and in specifying actions these matters that are in clause 34 must be taken into account. So of course there is an opportunity for Tynwald to assess, even before approving an action plan, as to whether
1285 the Council of Ministers is acting in a way in line with these duties and of course ultimately then in delivering on those plans, if there is a failure to deliver them in line with those duties there is again accountability in a public way through the reporting and the answering to Tynwald.

Thank you, Mr President. I beg to move.

1290 **The President:** Thank you.

I put to Council that clause 34 do stand part of the Bill. I take Council to be in agreement. That carries.

Clause 35.

1295 **Mrs Poole-Wilson:** Thank you, Mr President.

In developing legislation, it is vital to engage with those affected to ensure proposals are reasonable, proportionate and effective. Such consultation and engagement is particularly important when measures may impose significant new regulatory controls. Clause 35 of the Bill therefore requires, except as otherwise provided in the Bill, for the Council of Ministers or the
1300 Department of Environment, Food and Agriculture as the case may be, to consult before making any regulations or orders under the resultant Act.

A consultation must be with every person to whom the legislation relates or persons who appear representative of persons to whom the legislation relates. Such consultations may also engage any other person that Council or the Department considers appropriate to engage. The

1305 Bill does not specify a time limit or process for consultations, but the consultations would, it is anticipated, be conducted in accordance with existing Government policy in this area.

Noting Members' concerns over potential delays caused by consultation requirements, it is important to note that the Bill does not prescribe a minimum duration for consultations and the current policy in this area allows for consultations to be shortened if necessary.

1310 Mr President, I note that there is a helpful amendment to be moved by Miss August-Hanson to bring the wording of this clause more into line with the standard wording we would expect to see in other consultation provisions in other legislation, and that amendment is supported.

With that, Mr President, I beg to move.

1315 **The President:** Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy phohlldal as dy loayrt ny s'anmey my vees feme ayn.

I beg to second, sir.

1320

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1325 Just before I proceed, just to let Mr Henderson know that when he is live, or when the mic is on, there is a bit of feedback just in the background that is like a *very* long tone. I do not know if anybody else is getting that, but just to let him know.

The President: Thank you.

1330 **Miss August-Hanson:** So at present, as Mrs Poole Wilson says, essentially the amendment is just almost a drafting error really, that has some unfortunate consequences. The requirement in this clause requires that the Council of Ministers or the Department when intending to make regulations or orders under the Bill to consult with *every* person that secondary legislation may relate to. So this could impose a bit of a high bar for consultation to be undertaken in accordance
1335 with the legal requirement. So the amendment essentially resolves this issue by substituting the term 'every' for 'any' and removing any overly burdensome obligation accordingly.

I beg to move, Mr President:

Amendment to clause 35

20. Page 38, line 5, for 'every' substitute «any».

The President: Thank you.

Mrs Lord-Brennan.

1340

Mrs Lord-Brennan: Thank you, Mr President.

I had also noticed this point in the consultation requirements. It would seem overly prohibitive, the way it was originally drafted, to say 'every' person, but, however, the consultation process with this, particularly to do with regulations and orders, are going to be *really* important because
1345 there are some *massive* issues that will need to be handled and engaged over to do with climate change, *huge* changes that need to happen, and people need to be brought along with that. So I have an amendment down, which takes a slightly different tack but also is making the point about consulting with any person that has an interest in, or may be affected by, the proposed regulations or order.

1350 The basis with this is really to take a stakeholder approach in this, and I say that in regard in particular to the need to have regard for just transition. So of course it is quite obvious that the outcome that you might get might depend on who you ask about a particular course of action in

1355 the first place. So it is in that spirit, and in the spirit of just transition, that I am suggesting also at
the third part, at part (c) to my amendment number 19, that the Council of Ministers or the
Department, as the case may be, must publish a list of the persons identified as the relevant
stakeholders, because I recognise that in the process of consultation it *may* be the case that it is
said that, 'Well, we have approached these certain parties', but what I am trying to do is to ensure
and force that thinking, that the right people will be asked, the right organisations will be asked
in line with how I have termed it there, and that that should be published and transparent.

1360 Thank you, Mr President. I beg to move and I notice that Mr Mercer has seconded
Miss August-Hanson's, Miss August-Hanson has an amendment. I would love it if somebody would
just second mine, even if it is just for the purposes of disposing with this amendment, as we term
it.

Thank you, Mr President.

Amendment to clause 35

19. Page 38 —

a. line 2, renumber the text as subsection (1);

*b. line 4, for 'consult —' substitute « consult any person that has an interest in, or who may be
affected by, the proposed regulations or order.»;*

c. lines 5 to 9, for paragraphs (a) and (b) substitute —

*«(2) The Council of Ministers or the Department, as the case may be, must publish a list of the
persons identified as relevant stakeholders for the purposes of each consultation of proposed
regulations or of a proposed order.».*

1365 **The President:** Thank you.
Mr Mercer.

Mr Mercer: Thank you, Mr President.

I beg to second the amendment in Miss August-Hanson's name numbered 20.

1370

The President: Thank you.
Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

1375 I beg to second Mrs Lord-Brennan's amendment, which I think is very sensible. I think that, as
she says, the public needs to be brought along on this journey and that her amendment will cause
Government to work very hard to proactively reach out to anyone who may be affected by
regulations or proposed orders.

Thank you.

1380

The President: Thank you.
Mrs Maska.

Mrs Maska: Thank you, Mr President.

1385 I just have concerns that by including anybody that may be affected, the net might be being
cast far too wide, as how do we know who might be affected? The obligation to have such a level
of consultation may then be setting ourselves up to fail before we even start because
retrospectively, if somebody comes back and says, 'Well, you didn't consult with me and I have
been affected', I do not think that is actually the intention of what we would set out to do in a
consultation. So I have a nervousness about broadening the net that we are casting.

1390

Thank you, Mr President.

The President: Thank you.

Miss August-Hanson.

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Miss August-Hanson: Thank you, Mr President.

I am actually requesting that the mover of the Bill give an explanation as to why one would be supported and the other one not. Understanding Mrs Maska's concerns here, obviously we are a small Island, so it is just to bring a bit of balance here as to a proper explanation that we might have on *Hansard* as to why one might be supported over the other.

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The President: And she will have the opportunity to do so now, Mrs Poole-Wilson, as I invite you to reply.

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Mrs Poole-Wilson: Thank you very much, Mr President; and yes, very happy to respond as requested.

I agree absolutely with Mrs Lord-Brennan that it is *very* important that people are brought along and that they are given an opportunity to engage with proposed regulations and orders under the Bill. I think the issue, and what I had understood certainly from earlier conversations on this area, was the need to engage the appropriate people but also be proportionate in the approach to consultation.

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I think the challenge with the actual words used in the proposed amendment from Mrs Lord-Brennan is we have moved away from the language which talks about persons to whom regulations or an order relate, which is more able to be clear, I would suggest, than language which requires consultation with any person that has an interest in, or who may be affected by, which then at that point might become quite difficult. I think Mrs Maska has articulated that very well. There is the potential risk that by requiring that, there could be disputes as to who should have been consulted and the potential for a legal challenge if an organisation or individual considered themselves to be a person with an interest or affected and who was not consulted.

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So I completely empathise with the sentiment behind Mrs Lord-Brennan's thinking. I think there are difficulties with the language used and so that is the reason for not supporting the proposed amendment.

1420

The other thing I would say is that the language used in this Bill is language we frequently see in our legislation when we come to exercise consultation. I would also like to reassure Hon. Members that it is currently and existing practice to produce a summary of consultation responses, including a list of persons directly consulted.

1425

So to reiterate, there is support for Miss August-Hanson's very sensible, clarifying amendment, but there are concerns with the amendments proposed by Mrs Lord-Brennan, and for that reason they are not supported.

1430

Thank you, Mr President. I beg to move.

The President: Thank you.

Now, clause 35. I put first the amendment by Mrs Lord Brennan. If that fails to carry, I will then put the amendment of Miss August-Hanson. So Mrs Lord-Brennan's amendment. I take Council to be in agreement.

1435

No, there is dissent. We will have a called vote on Mrs Lord-Brennan's amendment.

Voting resulted as follows:

FOR

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

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Maska
Mrs Poole-Wilson

The President: Four votes for, 5 against. That amendment fails to carry.
I then put Miss August-Hanson's amendment. I take Council to be content. That carries.
I put clause 35, as amended, and take Council to be content. That is carried.
1440 Clause 36, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1445 Clause 36 of the Bill enables the Council of Ministers, by regulations that have been consulted upon and approved by Tynwald by no later than 31st December 2023, to specify when climate impact assessments are required and how such assessments are prepared.

1450 The use of climate impact assessments is intended to support public bodies in the undertaking of their climate change duties, further to clause 21 of the Bill, and any regulations made specifying climate change duties for public bodies. Thus, ahead of the proposed regulations made under this clause, it is now – based on amendments already made to clause 22 – the case that guidance will be issued to public bodies by April 2022, and it is anticipated this will include reference to climate impact assessments to help ensure that Government considers how the decisions and actions it takes every day may help reduce the Island's emissions. For that reason, the second part of Mrs Lord-Brennan's proposed amendment to this clause is supported by the Board, restating as it does the climate change duties in clause 21 and requiring Departments to take account of the impact of a policy or decision on climate change.

1455 Furthermore, the use of climate impact assessments by public bodies will likely form part of the reporting requirements for public bodies further to clause 23 of the Bill. The package of secondary legislation is intended to ensure, initially through guidance and reporting requirements, and subsequently through regulations made under this clause, that climate impact assessments are undertaken and monitored to assist all public bodies in fulfilling their climate change duties.

1460 Mr President, I beg to move that clause 36 stands part of the Bill.

The President: Mr Henderson.

1465 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Ta mee shirrey kied dy pholldal as dy loayrt ny s'anmey my vees feme ayn.
I beg to second, sir.

The President: Mrs Lord-Brennan.

1470 **Mrs Lord-Brennan:** Thank you, Mr President – sorry, I am just getting my paperwork in front of me.

1475 The climate impact assessments is something that needs more impetus in terms of the Government responding to its commitment and its proclamation of a climate change emergency. So I recognise that detailed regulation is something that needs careful thought and that we will need time for that. That is why I have sought to change the date at amendment 21 to clause 36 to require that such regulations must be made by the Council of Ministers no later than June 2022. So those would be regulations to require climate impact assessments to be prepared in accordance with requirements set out. So that gives a really formalised approach.

1480 I have chosen June 2022 because when we look at some of the other dates that have been brought in in terms of dates or guidance, etc. and from reporting, I think it is helpful that in Legislative Council, some of these dates have been pinned down and some of the requirements from 'mays' to 'musts' have been able to be brought forward in terms of those dates. So that is why I have chosen June.

1485 I feel if it is December 2023, we need to give our public bodies, our Departments, more of a steer before December 2023, especially if it was 2019 when Government declared an emergency, which brings me to my amendment 22, which I am *really* happy that this is going to be supported. What this gives is effectively a soft launch, if you like, a soft start but an urgent start on

1490 Government Departments needing to assess their policies etc. in terms of impact for climate change, and this will do two things. It is going to focus the mind on actions and how money is spent in this regard, because funding has been allocated. So it is really important that we understand that that is not just going to be used in some kind of greenwashing way, but it is going to be used in a proper way in order to bring about the changes and the commitments that are needed to pursue the climate change goal. So it has to be meaningful.

1495 Along with culture change to the public, there is culture change for Government Departments. So when people are sitting round the table signing off those policies, there needs to be that obligation, even in a soft way, even in just the most basic simple way one might imagine, to take account of those impacts. Hon. Members will note that what the amendment says is that until the formal regulations are made under subsection (1), the Council of Ministers must require
1500 Government Departments 'when approving a policy or approving a change in policy, making a decision on a procurement matter or making any other decision, to take account of the impact' of that policy or decision, what that impact will have on climate change. This is a starting point, Hon. Members. I am really grateful this can be brought forward. It has just a way focus thinking.

1505 So with that, I beg to move amendments 21 and 22. I would *urge* Members please to just consider supporting amendment 21, even though it is not officially supported, but I do thank the powers that be for supporting my amendment to clause 36 to give the impetus for change.

Thank you, Mr President.

Amendments to clause 36

21. Page 38, lines 11 and 12, for '31 December 2023' substitute «30 June 2022».

22. Page 38, line 28, after subsection (2) insert —

«(3) Until regulations are made under subsection (1), the Council of Ministers must require Government departments. when approving a policy or approving a change in policy, making a decision on a procurement matter or making any other decision, to take account of the impact that the policy or decision will have on climate change.».

The President: Thank you.

Miss August-Hanson.

1510

Miss August-Hanson: Thank you. I would like to second, Mr President.

I think that Mrs Lord-Brennan has laid out her reasoning behind her amendments *very* well, so all that is left to say really is just how incredibly important all of this is. I know that we all take it extraordinarily seriously, and also the urgency, the very serious degree of urgency with which we need to work apace at making sure that we are fulfilling our obligations here.

1515

So I beg to second.

The President: Mrs Poole-Wilson to reply.

1520

Mrs Poole-Wilson: Thank you very much, Mr President; and, again, thank you to Mrs Lord-Brennan for her engagement on this provision.

I think I would suggest to her that her second part, her amendment number 22, is more than a soft start, actually. It restates the duties in clause 21 of this Bill which will take effect on Royal Assent, which will require that public bodies act in a way to contribute to net-zero.

1525

So I actually think that front-line duty and the only way you can do that is to start to assess how your decisions and policies and actions are taking place in the context of the impact on climate change —

The President: Mrs Poole-Wilson, will you accept Mrs Lord-Brennan making an interjection?

1530

Mrs Poole-Wilson: Yes, of course.

Mrs Lord-Brennan: Thank you, Mr President, and I thank you, Mrs Poole-Wilson.

1535 I just wanted to clarify one point because there has been lots of talk about public bodies and the complicated matter that that actually entails. So the starting point with this amendment is about requiring Government Departments in the first instance, not going so far as to require all of that with public bodies. I am only flagging that just to clarify for the record, because I know that there is a great deal of sensitivity, and almost it is a more daunting challenge to require public bodies more broadly to make a start than it is, hopefully, for Government Departments.

1540 So that is why I have differentiated there; but yes, thank you for the support. I absolutely recognise about it coming in on Royal Assent.

Thank you so much.

The President: Thank you.

Mrs Poole-Wilson.

1545

Mrs Poole-Wilson: Thank you, Mr President.

1550 Yes, Mrs Lord-Brennan, that is a helpful clarification that her amendment does relate to Government Departments as opposed to public bodies as more broadly defined. However, it is public bodies who will be subject to the duty under clause 21. I think what Mrs Lord-Brennan has also indicated is how we support these bodies to make change, and Mr Mercer's helpful amendments, which we approved last week, to bring forward guidance, even as a minimum viable product guidance by April 2022, linked with the five-year action plan and, as I mentioned in my opening remarks on this clause, intended to provide some initial support for how to undertake climate impact assessments is important.

1555 So I think the issue with the proposed date is very much that the amendments already supported that are now included in clauses in the Bill, as I say, are going to result in guidance being issued by April 2022, which will set out basic climate impact assessment requirements. There will also be the reporting regulations to come forward by June 2022. With the commitments for the Climate Transformation team to both work on the research development and the detail of the five-year climate change plan, along with these commitments, which I agree are helpful, there is a concern that it would be too much; deemed too tight a statutory deadline to bring forward regulations under this clause by June 2022. That is the sole reason for having concerns about supporting the particular amendment.

1560 As Hon. Members may be aware, the date of 31st December 2023 was included in the Bill in another place by way of amendment from Mrs Caine, Hon. Member for Garff, and it is very much a backstop date. Work on developing more detailed regulations under this clause would be anticipated to take place well ahead of that backstop, but as I say, there is a concern that a June 2022 deadline in this particular clause would be somewhat tight for the team involved, given all the other work, important work, on the climate actions. So that is the reason why it is not supported, although amendment number 22 very much is.

1570 With that, Mr President, I beg to move.

The President: I put to Council first the amendment number 21. I take Council to be in favour unless I see dissent. Dissent – a called vote, please.

Voting resulted as follows:

FOR

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

AGAINST

Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Maska
Mrs Poole-Wilson

1575 **The President:** Four votes for, 5 against. That amendment fails to carry.
I put amendment number 22. I take Council to be in favour, unless I see dissent. That amendment carries.
I put clause 36, as amended. I take Council to be in favour. That is carried.
1580 Hon. Members, clause 37 and the Schedule were dealt with last week. That therefore completes the clauses stage.