

5. BILL FOR SECOND READING

**5.1. Administration of Justice and Other Amendments Bill 2021 –
Second Reading approved**

Mr Shimmins to move:

That the Administration of Justice and Other Amendments Bill 2021 be read a second time.

1405 **The Speaker:** Item 5 Administration of Justice and Other Amendments Bill 2021. I call on Mr Shimmins to move.

Mr Shimmins: Thank you, Mr Speaker.

1410 I am pleased to present to the House the Administration of Justice and Other Amendments Bill 2021 for its Second Reading.

1415 The background to the Bill is that the current framework and general systems for debt recovery need to be updated. Lots of reports and reviews have identified this need. In 2012, a Private Member's Bill was passed, but Treasury have been unable to find solutions to the underlying issues that have prevented its implementation. Accordingly, in 2017 a comprehensive review of relevant legislation and procedures relating to the collection of civil debt was undertaken. In setting out the context of this Bill, Treasury were conscious of the size of the task and determined to break it down into three phases that address particular aspects of debt recovery.

1420 Phase 1 of the review looked at the underlying framework for debt recovery and a consultation on policy proposals was undertaken between November 2017 and January 2018. The policy consultation indicated that Phase 2 would cover coroner reform; and Phase 3 would focus on modernising the Island's insolvency law so it meets the needs of our community today. Current thinking is Phases 2 and 3 will be undertaken in tandem, though it is likely the review of insolvency law will take slight priority as a significant amount of work has already been undertaken in that regard.

1425 This Bill covers Phase 1 and was prepared having taken into account the views expressed during the policy consultation. In introducing the Bill at this stage in the life of the Keys, Treasury recognises that the Bill may not complete all its stages in both Branches before the general election and may therefore have to return once more to the Keys after the general election. It considered it never nevertheless important to introduce the Bill *now* so Members in both Chambers may give this key initial item of legislation in the Debt Project full and detailed scrutiny.

1430 Turning to the principle of this Bill, it is concerned with improving how civil debts are recorded and how that information is made available. It is hoped that by having accurate information that is easily available, this will lead to a reduction in debts arising over time. This is because the improved register of debts and debtors will provide people with an opportunity to review the creditworthiness of a person before entering into a business relationship with them.

1435 The other key aim of the Bill is to take steps to level the playing field in terms of priorities for the recovery of debts owed by a person. The Bill does this by modernising some legislation that currently gives priority to the payment of rent owed to landlords over the collection of debts a debtor owes to other creditors. One of the benefits of this has been to simplify otherwise complex landlord and tenant legislation. These changes in terms of the recording and publication of information and the removal of the prioritisation of the collection of rent are designed to improve the overall effectiveness of debt recovery by the Coroners. We believe this will benefit creditors who are seeking to recover money they are owed through enforcement action. We are mindful that even small amounts of money owed to a creditor may be very significant to that individual.

1445 The public consultation on the draft Bill took place in November last year, and the response document was published in April. Looking briefly at the key features in a bit more detail, Part 2 of the Bill amends the Administration of Justice Act and extends the range of matters which are

recorded in the Judgments Register. It is proposed that judgments of the High Court and tribunals, along with details of warrants for payment will be entered into the register.

1450 Part 3 of the Bill amends the Summary Jurisdiction Act insofar that the Chief Registrar must keep and publish the Island's register of fines. The amendments will provide consistency between the arrangements for the keeping and publication of the Fines Register and the equivalent arrangements that are to apply to the Judgments Register under Part 2 of this Bill. Although these amendments were not in the original brief for the Bill, it became apparent that it would be lacking in foresight to leave the arrangements for the Fines Register behind whilst we improve the arrangements for the Judgments Register.

1455 Part 4 of the Bill removes preferential rent protection for landlords and clause 14 repeals the Recovery of Rent Act 1954. These provisions were considered unfair because they gave landlords priority over the other creditors of a tenant. It is also rarely used.

1460 Finally, the Bill makes a number of consequential amendments. Following feedback received from the consultation exercise, in particular from the Landlords' Association, we have revised the amendment to section 12 of the Landlord and Tenant Act found in clause 13. There is now clear alignment between section 12 and the well-established Torts (Interference with Goods) Act. The procedure now offers a one-stop shop to any landlord who finds themselves in a position where they need to rely on a section 12 application to the court to regain free and unencumbered possession of their property. In other words, the revised process not only gives them possession of their premises but guides them as to what to do with any goods left on the premises.

1465 The Bill makes amendments to a number of pieces of legislation and, whilst this introduces a degree of complexity, Treasury is satisfied that the various repeals and amendments are necessary if we are to achieve our goal of effective and fair action in respect of debt recovery. The Bill at just over 20 clauses is, nevertheless, short.

1470 Mr Speaker, I believe this Bill makes important initial improvements in respect of debts. I commend the Bill to the House and beg to move that the Administration of Justice and Other Amendments Bill 2021 be read for the second time.

1475

The Speaker: Hon. Member for Ayre and Michael, Mr Cannan.

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

1480 **The Speaker:** Hon. Member for Onchan, Mr Callister.

Mr Callister: Thank you, Mr Speaker.

1485 I just want to put on record my sincere thanks to Treasury and to the Member for Middle, Mr Shimmins, for bringing this important piece of legislation before the House. I know that I have been engaged with local businesses since 2017, and I think Mr Shimmins and I have had conversations since 2016 in order to bring forward modernisation of the arrangements in respect of civil recovery of debt. I know this has been a hindrance for a lot of small businesses who are trying to open trade accounts, but also trying to support the economic value in respect of people setting up a new business on the Island.

1490 So I really do think this piece of legislation is very important. I think it is long overdue. I hope that the next House can pick up parts 2 and 3 as a matter of urgency in the next administration, whoever may be in this House. But I do commend the Treasury and Mr Shimmins and the Department for actually bringing this piece of legislation forward.

Thank you, Mr Speaker.

1495

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

Mr Hooper: Thank you very much, Mr Speaker.

1500 I think I completely agree with the comments made that our bankruptcy and insolvency procedures need absolutely overhauling. It is a little bit disappointing it has taken so long to get to this stage, but it is welcome, I think, that we are actually here.

1505 The issue I have with this Bill centres around the rent preference element being removed, the repeal of the Recovery of Rent Act, because a lot of the comments made by Treasury in the consultation document, comments just made by the Hon. Member moving the Bill, I think are inaccurate and actually do not reflect the real position on the ground that we are facing. So I have not actually heard a good reason to remove the rent preference. That has not been stated, other than Treasury does not think it is appropriate. That really has not been explained as to why they do not think it is appropriate.

1510 The consultation document, interestingly, says that one of the reasons it is appropriate is because there is no such protection for people making mortgage repayments. That is because mortgages tend to be secured on a property, so they already come very high in the list of preferential payments, well above 12 months' rent to a landlord. So actually Treasury making that statement that mortgagees do not get this level of protection is just irrelevant if not incorrect because mortgages are secured debts. So the consultation document itself was quite misleading in that respect to try and make some of these comparisons and inferences.

1515 Treasury have also outlined that they cannot understand a reason why a landlord may need a slightly higher preference than, say, a trade creditor. The reason for that is relatively straightforward, I think. It is because a landlord does not really have the option of stopping providing their services. So it takes quite a while to evict someone and actually I would rather landlords not be evicting people if there is an alternative way of resolving the issues. Whereas the situation that we will be putting landlords in now and saying, actually there is no way of guaranteeing or providing an added level of security over your debt so really you are encouraged to evict your tenants as quickly as possible. Do not try and seeking any mediation, do not try and work things out with them, get them out of the property so your debt stops building.

1525 That actually has not been mentioned at all, the potential consequences or implications of this move. I have not heard anything and in fact there is nothing in the consultation document either, where Treasury acknowledges the potential consequences on rental markets and on tenants as a result of moving this rent protection.

1530 The other reason that this is different I think to, say, a trade creditor is if someone does not pay you for last month's supplies you just do not send them next month's supplies. You do not keep incurring debt with your customers that are non-paying. A landlord does not have that choice, unfortunately, debt *will* accrue naturally as people maintain a life in a premises.

1535 So really my point here is I have not heard any good reason why we should do this and, equally, I have not had any explanation of what Treasury feels the consequences of doing this would be. I actually do not feel Treasury knows. I do not think they have any idea what the consequences of this would be. That is partly because in the consultation document itself, Treasury identified quite clearly that there is going to be a need to consider the ranking of preferential debt in the wider context of the reform of insolvency law. That is absolutely right, because the consultation document makes no reference at all to commercial insolvency. It only talks about an individual paying rents to a landlord, not actually what happens in a liquidation to the company – no mention. In fact, I cannot see any responses from insolvency practitioners to the consultation. I am not even sure if they were aware of it, because the Bill as consulted on was sold as a debt register: a register of executions, not anything else.

1545 I have reached out to various individuals and organisations hoping to get a response back on their view of what insolvency practitioners may feel about this particular change being made in isolation, because Treasury so far does not have that perspective.

1550 The other concern I have with this is at present the way the law works, as I understand it, is if you are a landlord you can essentially evict a tenant and seize property, seize assets that are inside that property with a court order. So, you go to court and get permission to arrest the assets in the property and you can then sell those assets. The credit of that sale obviously, the first 12 months'

rent value would go to the landlord provided of course there is not anything else in preference to it. The rest of the money is then distributed to all the other creditors.

1555 Now, the way that this new law is worded would seem to remove that 12-month cap entirely. So if a landlord goes to court and gets an execution order, arrests the assets of their tenant and then sells them, it would seem that actually the landlord could keep *all* of that money. There is not a limit on the amount that a landlord could withhold. It is 12 months only at the moment whereas here it would seem to say, actually if you have got say, 24 months' worth of debt the landlord could keep the value of up to 24 months or 36 months, or whatever it happens to be, because there does not appear to be a limit. So I am not entirely clear why Treasury is removing
1560 that, because on the one hand they are saying landlords do not need any additional protection and on the other hand they are then giving landlords considerably more protection if they decide to go through a court process. So I am quite confused as to how this is actually going to work in practice.

1565 So some of the very specific questions I would like an answer from Treasury on are: why are they getting rid of this? What is the reason for it? Not just, 'We don't think it's fair.' That is not good enough. If you are going to make a change like this you have to have a good reason why you are doing it.

1570 I would like to know what the view of Treasury is on the impact on insolvency proceedings, on commercial liquidations, because that has not been considered at all. I know from my experience actually, having the rent payments partially secured, as it were, is quite beneficial when you are negotiating with a landlord around a commercial liquidation about whether you can stay in the premises, whether you can continue using it, how that debt would accrue and be dealt with. It gives you a bit more flexibility, I think, which I am concerned this would remove.

1575 So I would like to understand Treasury's viewpoint on the commercial side of things. I would like to understand Treasury's views on the consequences of this move, what they think the consequences will be on the rental market, the consequences on landlords, the consequences on tenants, the consequences on commercial landlords and tenants.

1580 I would also like to get an understanding of why the 12-month element is being removed. Why it is the intention to allow landlords with a court order to seize property and assets up to a greater value than perhaps is currently allowed inside the law.

1585 I think I would also like to get a slightly better understanding of why Treasury feels it is important to make this change *now* when they are to be changing the rest of the preferential payments elements as part of the Phase 3. So why is this particular issue more important than reforming any of our other preferential payments elements of the law, and why is it that this should be done in isolation? Why we are not reforming all of our preferential payments system at the same time?

1590 So lots of issues here that I do not think have been considered. There is a lot of language that has been used in the consultation document that I am not particularly happy with, describing the way the law works. I am not convinced it is entirely accurate. Equally, I have not heard really a good explanation as to why we should be doing this. I have heard lots of 'We don't think it is a good idea. We think this should happen ...' But, again, none of the documentation that has been published, none of the responses to the consultation, in fact nothing in the Member's remarks actually explains the logic behind this particular move in terms of why we are doing it, why we are doing it now and what the potential consequences would be.

1595 So I think if I can get answers to some of those questions, Mr Speaker, it would be greatly appreciated.

The Speaker: Hon. Member for Douglas Central, Mr Thomas.

1600 **Mr Thomas:** Thank you, Mr Speaker.

I am supportive of this Bill and in fact I want to start with some commendation of various aspects of the process behind the Bill before us today.

1605 The first one is that I would like to commend the Department and the officers and the mover and other people involved for actually having seen this piece of legislation in terms of three phases. It was generally accepted that dealing with insolvency, reforming the coroner system and debt recovery was important, so the approach that was taken in this case was exactly the right approach, which is: 'Let's scope the problem and let's tackle it in bite-sized chunks and then stick to that phase' – which is what is happening today with the Bill before us.

1610 We can see other areas of Government and public policy and law more generally that could benefit from adopting that approach. So that is the right approach for housing, I am sure; and that is the right approach to deal with consumer protection, I am sure; and that is the right approach to deal with probably issues around animal welfare, I am sure. So I would like to put on record that we have got exactly the right approach to dealing with difficult concepts. I hope the team that is behind this can carry on successfully through the next phases, and also I would hope that
1615 this case study will be transferred to other difficult parts of public policy that have needed tackling over a decade or so.

The second comment, which is actually a compliment, is to say that I do think that although we are ahead in terms of insolvency law, because people have been trying to think about tackling that for 20 years now, I do hope that coroner reform can now be given some priority. I have had
1620 constituents over all the time I have been in Manx politics who have been worried about the current system around the Island, and people have not stayed in post so long sometimes when they have become coroners. It is a very difficult job and it is a very difficult role, and I do hope that somebody, somehow – Treasury and the Attorney General's Chambers and whoever else needs to be involved – can apply attention as soon as possible to the whole system of coroners in the
1625 same way that they have that they have done for the first phase and the third phase.

The third compliment about this Bill is, to me, it has got the character of something that is so important in public policy. And that character is transparency. What this Bill aims to do is to make previous performance and previous history in this area, more transparent, using mechanisms and using law. That must be the way to deal with insolvency issues, especially when they affect people
1630 who cannot look after themselves, people who need to rely on buyer beware, but they have not got the capacity to have buyer beware. Actually creating some transparency in terms of the registers is *very* important.

The fourth compliment I want to give, and this is by way of a question to the mover, because it is my understanding, but I would like the mover to put it on record if my understanding is correct,
1635 which is that in actual fact there is no particular hurry with this Bill. It sounded like Mr Hooper made some points that need further consideration, but if they cannot be considered properly in the next week or so I understand that in actual fact this Bill has been structured to be considered properly and right, rather than quickly for political expediency. I hope that is the character that is behind the Bill. So be it if it has to come back to the House of Keys in the next administration
1640 because it does not complete its passage through the Legislative Council this time; so be it this is absolutely vital, and it is absolutely important that we get this right. I just wanted the mover to confirm that.

Obviously, I hope the issues can be dealt with in the next few weeks and that this Bill is on the statute book by the end of this administration. That would be one *hell* of an achievement for
1645 Treasury and those behind it. But I just wanted confirmation from the mover that his primary concern is to do this right, not quickly.

Then, finally, I just wanted to compliment the mover and all the people behind him for actually having looked back to the 1950s and the 1970s to the Rent Recovery Act and to the Landlord and Tenant legislation. I think it is absolutely vital that we begin to look back to the legislation that is
1650 absolutely fundamental to commercial and private activity on this Island to do with landlords and tenancy, and to do with rent recovery and all of those pieces of statute. It cannot possibly be right that 1950s legislation and 1970s legislation, although amended from time to time, does not need substantial review. *[A mobile phone rings.]*

1655 If it turns out to be correct that we are right in making small changes at this stage in this area, I hope that can then continue into other areas and the next administration can actually have a proper look at 1950s and 1970s legislation to do with landlords and tenants, and rents and conveyancing more generally.

Thank you, Mr Speaker.

1660 **Mr Perkins:** My sincere apologies for that, Mr Speaker.

The Speaker: Mover to reply.

1665 **Mr Shimmins:** Thank you, Mr Speaker, and thank you to all the Members for their engagement with this Bill.

I would like to thank Mr Callister, who has a keen interest in this Bill and who has regularly contacted me and Treasury requesting updates on the modernisation of our debt recovery regime. He recognises, as does Treasury, how important it is that we get this right if we are to support particularly small businesses that can be severely impacted by the failure that sometimes we see in our debt recovery regime. So I welcome Mr Callister's support.

1670 Turning to my hon. friend from Ramsey, Mr Hooper, he was disappointed that it had taken this long, but he is pleased that we are now here. He is right, this has taken longer than we originally envisaged, for which Treasury apologises. The crux really is that it has proved a lot more complicated than we originally thought. When you delve into, as Mr Thomas talked about, some of these very historical Acts it is perhaps not as straightforward as we originally thought.

1675 Mr Hooper raised a number of points, specifically regarding the preference for rent creditors and he felt that actually people had not been consulted properly, particularly insolvency practitioners. I can assure Mr Hooper that we have consulted with practitioners and we have actually run two consultations, which have really helped form this Bill. I guess consultancy practitioners are (**A Member:** Responsible.) just one group of stakeholders in this debate as well. But we are proactively engaging with insolvency practitioners, particularly as we head now towards Phase 3, which is obviously the insolvency section. So I just wanted to reassure Members that there has been –

1685 **Mr Hooper:** Would the Hon. Member give way, momentarily?

Mr Shimmins: Of course.

1690 **Mr Hooper:** Sorry, the question that I was asking is: there are no responses in any of the consultation documents from any insolvency practitioners or organisations representing them. So is the Member able to share the results of this consultation and stakeholder engagement? Clearly he is saying they *have* engaged. I would very much like to see that engagement because that just is not available.

1695 **Mr Shimmins:** Let me explain. As I have said, we have run two public consultations and we have also proactively reached out to insolvency practitioners. So if people choose not to reply to the public consultation, then that is unfortunate. But I can absolutely assure the Hon. Member that we recognise the important role that insolvency practitioners play and that we are engaging with them on this matter, especially as we head towards Phase 3 of this project.

1700 In terms of what is the rationale? Mr Hooper is confused. He thinks Treasury is confused. The rationale is very clear. It is very clear in the Bill, and it is very clear in the notes to Members, which is actually it is to create a level and fair playing field for debt recovery.

I think some of the concerns – and I do understand Mr Hooper's concerns, and I am happy to continue and to discuss those with him and engage with him as we go through this process, to see

1705 if we can work effectively together. But some of the concerns I think perhaps are overdone. In reality, the provisions that are causing concern are *very rarely* used –

Mr Hooper: That is just not right.

1710 **Mr Shimmins:** And generally landlords who would have to go to court to invoke the procedures under the Recovery of Rent Act, it *very rarely* happens –

Mr Hooper: Again, would the Hon. Member give way because again I could help clarify that for him, if it would be helpful.

1715

Mr Shimmins: I am happy to give way again.

Mr Hooper: The whole point of what I was trying to explain in my remarks is that landlords quite often do not *have* to resort to a court process because they have the comfort of knowing that as you go through a debt collection process or a formal liquidation, there is an element of protection already there. By removing that element of protection, you will *force* landlords into the court process, which is exactly what I said in my remarks. That is what I am hoping Treasury will consider, as opposed to saying, ‘Well, nobody uses it today, so it’s probably okay.’

1720
1725 Actually, my concern is that by removing this you will force landlords down this route, which means you will start seeing an uptick in asset seizures and tenants being evicted, because there is no level of comfort and security provided by the law.

The question I asked the Hon. Member is: can he provide an explanation from Treasury’s perspective of what *they* feel the potential implications of this repeal will be?

1730 **Mr Shimmins:** Thank you.

In terms of Treasury perspective, we have engaged, and we are engaging with the Landlords’ Association and others in this matter. In actual fact one of the benefits of this Bill is it simplifies the process for landlords, and what would have been a two-stage court process is now a one-stage court process. But I am happy to continue to discuss with Mr Hooper his concerns. And, as I say, I think in many ways Phase 3 perhaps provides an opportunity to further look into the whole aspect of creditor preference. (*Interjection by Mr Hooper*)

1735
1740 In terms of Mr Thomas’s remarks: thank you very much for your support for the Bill. He commended the three-phased approach, breaking down this complex area into bite-sized chunks. He also pointed out that coroner reform needs to be a priority. We recognise the important role that the Coroners play in this process. It is a difficult role, but it is also an essential role if debt recovery is to be effective. So that is why we are committed to looking at that as Phase 2 of the process.

1745 He highlighted that transparency and the establishment of a more effective public register of debt is absolutely the crux of this Bill. That is what will provide people protection, including the landlords and other creditors that Mr Hooper is concerned about. That is what this Bill will bring and really help us move forward.

1750 In terms of the question on the need for hurry, there is a need for progressing this Bill, I think we all recognise that. But there is no burning deadline, Hon. Members. If we are able to progress this Bill quickly, great, that would be very helpful. But it is also important, as this is an important piece of legislation, that it is given proper scrutiny. So I am happy to confirm that for Mr Thomas.

So on that basis, Mr Speaker, I beg to move. Thank you.

The Speaker: I put the question that the Administration of Justice and Other Amendments Bill 2021 be read for a second time. Those in favour, please say aye; against, no. The ayes have it.
1755 The ayes have it.

Hon. Members, that concludes the business before the House this morning. We now stand adjourned until our next sitting, which will be on 18th May in Tynwald Court.

The House adjourned at 12.04 p.m.