Consultation Response document – Public Consultation on Private Members Bill for Leasehold Reform

Consultation period: 9th March 2021 to 9th April 2021

Lawrie Hooper MHK

Member of the House of Keys for Ramsey

Leader of the Liberal Vannin Party

Contents

Foreword **3**

Executive Summary **4**

Background 4

Consultation outline 4

Conclusions – "Right to Manage" 5

Changes to the "Right To Manage" proposal following consultation 5

Conclusions – "Right to Enfranchisement" 6

Outcome from the consultation 6

Background **7**

Where did this all start? 7

The Consultation **8**

Question 1: What is your name? 8

Question 2: What is your email address? 8

Question 3: Are you responding as an individual or on behalf of an organisation? 8

Question 4: If you are responding on behalf of an organisation please state which. 8

Question 5: Property Definition 9

Question 6: Are you a resident of the Isle of Man? 9

Question 7: May we publish your response? 10

The Right To Manage **11**

Question 8: Do you agree that long leaseholders of flats on the Isle of Man should have the ability to acquire the right to collectively manage their block of flats as they would if they were in the UK? 11

Question 9: Do you have any comments on the proposed qualifying criteria or the Right to Manage Company structure? 11

Theme 1 – General comments 11

Theme 2 – Multiple blocks 12

Theme 3 – Participation in management 12

Theme 4 – Mixed use developments 13

Question 10: Do you have any comments on using the existing process as already set out under the law for the granting of a Management Order? 14

Theme 1 – Ineffectiveness of the current process 14

Question 11: Do you have any other comments on the "Right to Manage" provisions in the Bill? 16

Theme 1 – General comments 16

Theme 2 – Safeguards 16

Theme 3 – Detailed specific responses 18

"Right To Manage" - Conclusions **21**

"Right To Manage" - Outcomes 21
The Right to Enfranchisement 22
Question 12: Do you agree that long leaseholders of flats on the Isle of Man should have the ability to collectively acquire the freehold of their block of flats as they would if they were in the UK? 22
Question 13: If this Bill looks to introduce this right, do you agree that it should be exercised through a Right To Enfranchisement Company making an application to the Court on behalf of all qualifying Leaseholders in a block of flats? 22
Question 14: Do you have any other comments on collective enfranchisement for long leaseholders of flats? 23
Theme 1 – General comments 23
Theme 2 – Application of the "Right To Enfranchisement" provisions 23
Theme 3 – Complexities surrounding costs and pricing 25
Theme 4 – Detailed specific responses 26
"Right To Enfranchisement" - Conclusions and Outcomes 28

Foreword

Thank you to everyone who has responded to this consultation, I hope that this response document accurately reflects the responses received and clearly explains how these responses have helped shaped my thinking behind this Bill, as well as how the Bill and the proposals it contains have evolved and changed as a result of this consultation.

Now that the consultation has concluded and the responses analysed, I will be entering the revised Bill into the House of Keys at the end of April, where it will be subject to detailed scrutiny by my colleagues and where I hope it will receive their support.

Please note the comments and views expressed in this document are my own and whilst I have consulted with others, including legal draftsmen and other Members of Tynwald, the views expressed herein, along with any errors and misunderstandings, are mine alone.

Lawrie Hooper MHK

Member of the House of Keys for Ramsey

Leader of the Liberal Vannin Party

Executive Summary

Background

On the 12th March 2019 the House of Keys granted me leave to introduce "A BILL to make further provision in relation to leasehold premises and to amend *the Housing (Miscellaneous Provisions) Act 2011* in respect of Compulsory Purchases; and for connected purposes"

The aim of this Bill would be to amend the existing law on the Island to reform the law around how long leaseholders of flats are able to acquire a 'Management Order' which would allow them to collectively take over management of their block of flats and to reform the law around how long leaseholders of flats are able to cooperatively acquire freehold ownership of a block of flats

Consultation outline

After some considerable work the Bill was nearly ready for consultation in early 2020, unfortunately the Coronavirus pandemic meant that this had to be delayed until matters had become more settled, resulting in the launch of a public consultation on the 9th March 2021, running to the 9th April 2021 – a period of 4 ½ weeks. The end date for this consultation was determined largely by the legislative timetable of the branches of Tynwald and the remaining period in which we have to legislate before the end of this Parliament.

The consultation was promoted through social media and through an article on my own website[1]. I also drew it to the attention of the Island's media outlets and to those individuals who had raised issues with me about this issue in the past, as well as every Member of Tynwald. Lastly, the consultation was pinned to the top of the Isle of Man Government Consultation Hub webpage throughout the entire consultation period so as to prominently feature it for anyone who visited.

The approach to the consultation was to ask a few very simple yes / no questions and then to enable respondents to provide as much information as they wished in a free text format.

The consultation was split into two distinct parts:

1. "Right to Manage" - dealing with simplifying the route to obtaining a Management Order, and;
2. "Right to Enfranchisement" - dealing with the proposal for broadening the right to collective compulsory acquisition of a landlord's

In total there were 77 responses to the consultation, 69 from leaseholders, 3 from freeholders and 3 respondents who were both a leaseholder and a freeholder. All responses from those who gave permission for their response to be published will be published in full on the consultation hub. This report summarises and responds to some of the key issues and questions raised by respondents.

It is worth noting that a significant number of responses (48) were from one residential complex on the Isle of Man. However these were entirely in line with other responses and so amplified the overall response as opposed to having a distorting effect, which can be seen in the detailed breakdowns later in this document.

[1] https://lhooperiom.com/2021/03/10/isle-of-man-leasehold-reform-consultation/

Conclusions – "Right to Manage"

The responses were overwhelmingly in favour of the proposals set out in the Bill, with 76 in favour and only one not in favour of allowing long leaseholders of flats the ability to acquire the right to collectively manage their block of flats as they would if they were in the UK.

20 respondents provided further context to their response, which I have responded to further in this document

Changes to the "Right To Manage" proposal following consultation

Given the positive response I will be proceeding with this element of the Bill with some minor amendments that have come out of the consultation – namely:

1. Clearly defining the term "RTM" as "Right To Manage"

2. Introducing a requirement that the "Right To Manage" would only apply to premises where the following two conditions are met:

    a. the total number of flats held by qualifying tenants is not less than 2/3 of the total number of flats contained in the premises and;

    b. that the internal floor area of any part of the premises is occupied or intended to be occupied otherwise than for residential purposes must not exceed ½ of the total floor area of the premises in question

    For the purposes of this condition the internal floor area of any common parts shall be disregarded.

The purpose of amendment 2. (a) is to provide the same level of protection in respect of blocks of flats with mixed ownerships as currently exists in the United Kingdom. The Isle of Man already has an appropriate provision set out in legislation[2] in respect of compulsory purchase and this provision has been mirrored here

The purpose of amendment 2. (b) is to ensure there is appropriate protection in respect of developments where there is a mixture of commercial and residential property and where the development is primarily commercial. The Isle of Man already has a relevant provision set out in legislation[3] in respect of compulsory purchase and this provision has been mirrored here

[2] Housing Miscellaneous Provisions Act 2011 – Part 6, https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0019/HousingMiscellaneousProvisionsAct2011_6.pdf

[3] Housing Miscellaneous Provisions Act 2011, Clause 23 - https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0019/HousingMiscellaneousProvisionsAct2011_6.pdf

Conclusions – "Right to Enfranchisement"

The responses were overwhelmingly in favour of the proposals set out in the Bill, with 75 in favour and only two not in favour of allowing long leaseholders of flats the ability to acquire the right to collectively manage their block of flats as they would if they were in the UK. 72 were in favour of adopting the "Right to Enfranchisement" company provisions from the UK, with three not in favour and two who did not answer the question. 18 respondents provided further context to their response, which I have responded to further in this document

The purpose of including this section in the consultation was to indicate whether there would be appetite to proceed and as I outlined in the consultation documents themselves might not form part of this final Bill. Unfortunately, due to the time constraints that have resulted from the coronavirus pandemic it was not possible to include in full in the consultation the provisions which would have been necessary to implement this proposal as part of this Bill

Outcome from the consultation

Given the time constraints that still exist and some of the very valid questions that were raised during the consultation (which I will address later in this document), I have decided that some matters would require further consultation, and increased legislative drafting time (which is not currently available). As such I have decided that it would not be prudent to proceed with this element of the proposals at this time.

This means "Right To Enfranchisement" provisions will not be included in this Bill.

However, given the very positive response to the consultation and the number of very valid and informative comments and questions raised it would be my intention to bring a second Private Members Bill to address this issue early in the next administration, should I be successfully re-elected. It may be that I can convince the next government to include broader leasehold reform in their government plan / programme for government, which would enable me to look at much broader issues.

Background

Where did this all start?

During my time in the House of Keys I have had a number of representations from various constituents who have encountered difficulties with various management companies that oversaw the blocks in which they hold a long leasehold property – a property which is their home.

It became apparent that these individuals did not have any say in how the management company operated. They did not have a vote in appointing the Directors of the company and so had no oversight or involvement in the management process.

Most modern developments consisting of flats are set up in such a way that the leaseholders of those flats already each have a share in the management company and are able to have a role in managing their block of flats. Unfortunately, this is not always the case, and there are a number of places in the Island where leaseholders don't have any formal say in how their block of flats is managed and instead the management is undertaken by or on behalf of the freeholder of the development.

Often, this doesn't cause problems: people can be generally content with arrangements, but sometimes issues may arise, and the current law doesn't make it easy for leaseholders to assume management rights over a building their leasehold property forms a part of.

On undertaking further investigation, it became apparent that this problem was relatively common on the Island amongst blocks of flats of a certain age and soon I was in correspondence with people from all over the Island, frustrated with or unable to access the current system of obtaining a management order to gain management rights over their block of flats.

This led me to ask the House of Keys for permission to introduce a Bill to allow me to investigate two things:

1. *First, to reform the law around how long leaseholders of flats are able to acquire a 'Management Order' which would allow them to collectively take over management of their block of flats; and,*

2. *Second, to reform the law around how long leaseholders of flats are able to cooperatively acquire freehold ownership of a block of flats.*

The Long Title of this Bill became:

A BILL to make further provision in relation to leasehold premises and to amend the Housing (Miscellaneous Provisions) Act 2011 in respect of Compulsory Purchases; and for connected purposes

---

The Consultation

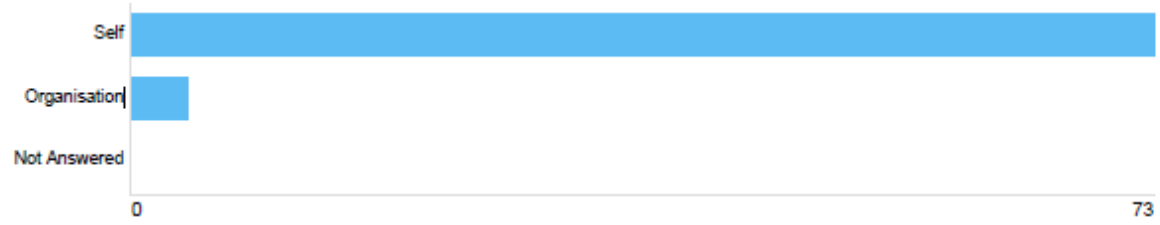
Question 1: What is your name?

There were **77** responses to this part of the question.

Question 2: What is your email address?

There were **46** responses to this part of the question

Question 3: Are you responding as an individual or on behalf of an organisation?



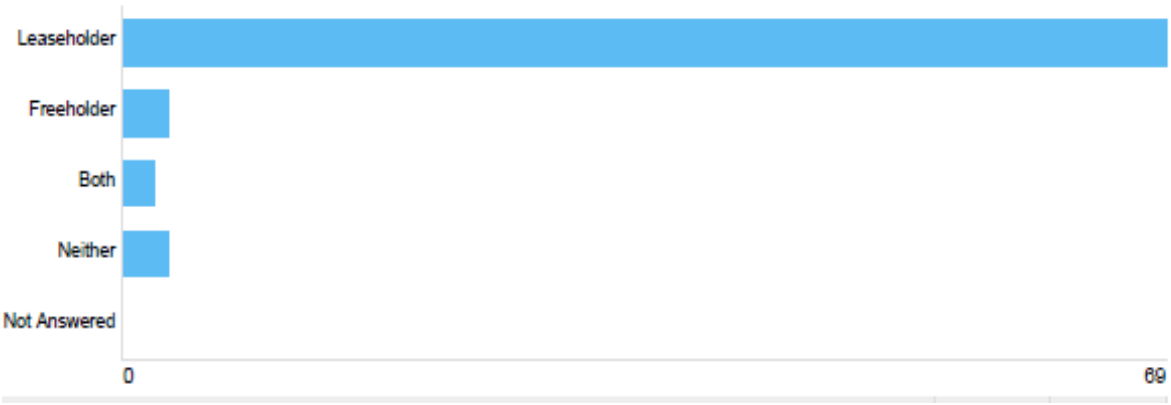
Self	***73***	***94.81%***
Organisation	***4***	***5.19%***
Not Answered	***0***	***0.00%***

Question 4: If you are responding on behalf of an organisation please state which.

There were **5** responses to this part of the question.

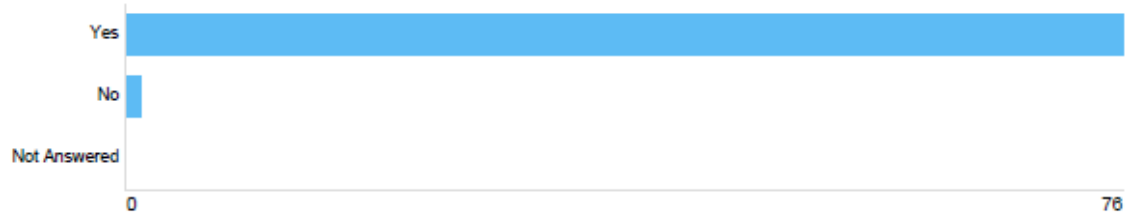
One of these responses was an individual highlighting they were party to an organization but were not responding on behalf of it.

Question 5: Property Definition



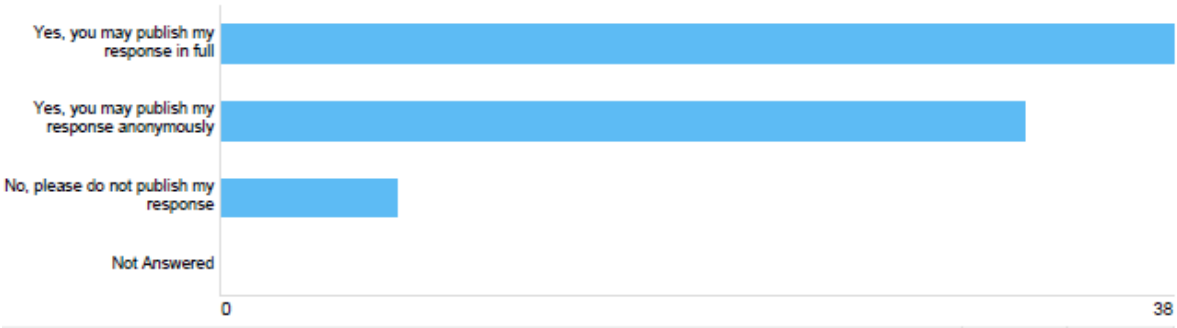
Leaseholder	***69***	***89.60%***
Freeholder	***3***	***3.90%***
Both	***2***	***2.60%***
Neither	***3***	***3.90%***
Not Answered	***0***	***0.00%***

Question 6: Are you a resident of the Isle of Man?



Yes	***76***	***98.70%***
No	***1***	***1.30%***
Not Answered	***0***	***0.00%***

Question 7: May we publish your response?



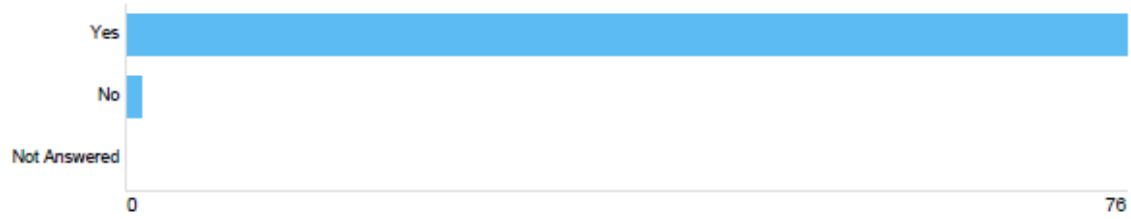
Yes, you may publish my response in full	***38***	***49.35%***
Yes, you may publish my response anonymously	***32***	***41.56%***
No, please do not publish my response	***7***	***9.09%***
Not Answered	***0***	***0.00%***

The responses to the following questions raised some specific issues which I will address below. Not all responses have been reproduced in full as they are available on the consultation hub. Instead I have lifted out common themes and used specific comments to highlight them.

I have not lifted out every relevant comment, instead I have tried to ensure this response addresses the comments that were raised by multiple respondents as well as comments that highlighted particular or distinct issues. My intention with this document is to present a balanced overview of the responses and my responses to these. The full submissions have been published on the consultation hub, where permitted by the respondent, and I would encourage readers to read these as well in order to help make your own determinations.

The Right To Manage

Question 8: Do you agree that long leaseholders of flats on the Isle of Man should have the ability to acquire the right to collectively manage their block of flats as they would if they were in the UK?



Yes	***76***	***98.70%***
No	***1***	***1.30%***
Not Answered	***0***	***0.00%***

Question 9: Do you have any comments on the proposed qualifying criteria or the Right to Manage Company structure?

There were **19** responses to this part of the question.

Theme 1 – General comments

Almost all of the comments of a general nature were supportive:

> *"No, this is adequate. I think it's reasonable and with the right free public help people could understand it. It's not totally simple, but simple enough that with some free advice I think anyone could get it."*
>
> *"It is long overdue for the IOM to align with the position in the UK and this should be rectified immediately"*
>
> *"They appear comprehensive and fair."*

One response did not support the proposals.

Response

I would like to thank respondents for these comments and will address the single negative response in Theme 4 – Mixed use developments

Theme 2 – Multiple blocks

This theme was centred on where a development may comprise of multiple blocks and the view was there needed to be flexibility.

> *"Criteria of 50% seems appropriate but in instances of a single company that owns three separate entities as is the case with Kings Court, Queens Court and St Paul's in Ramsey - a RTM company would need to exist for each entity within this complex due to the different usage and tenant profiles in each."*

> *"Where there are a number of blocks of flats in a complex a single RTM would inevitably be very cumbersome and I would suggest it would be advisable to have separate RTMs for each block."*

Response

Having queried this with the drafters I have been advised that it would be possible for an RTM Company to cover either one block or multiple blocks and no amendment is required to the Bill to enable this to happen.

Theme 3 – Participation in management

There were views expressed that only leaseholders should be able to participate in the management company:

> *"the leaseholders are the only people to be allowed membership of the RTM Company.*
>
> *a Management Committee be set up from the leaseholders by voting of the leaseholders."*

> *"I would like to see that the freehold owner is not able to be the manager of the flats"*

Response

Appreciating the views expressed, I believe it is important to recognize that the freeholder of a property has a material interest in the building, often representing a significant investment in the asset in question. The purpose of this Bill is to try and find an appropriate balance between the sometimes different interests of leaseholders and freeholders and as such I must unfortunately disagree with these views and will be ensuring that the Bill enables the freeholder to play an active role in management working alongside the leaseholders in a partnership.

Theme 4 – Mixed use developments

There were views expressed that these provisions should not apply to developments where there is a mixture of commercial and residential property as these groups might have differing interests. The only respondent who answered "No" to this question as highlighted in Theme 1 outlined this as their primary objection.

> *"There needs to be engagement from all sides not just knee jerk reaction from pressure groups as this is only an issue in a very limited number of cases in contrast to the UK"*
>
> *"It should be residential, longleasehold originally in excess of 21 years, it should relate to properties on a nominal or low ground rent (The exact criteria should be carefully considered). Mixed developments would be difficult to assess."*
>
> *"residential needs are completely different to commercial, retail and garage owner needs and therefore the Management Company must be impartial, would this be achieved if the Residential Leaseholders were solely responsible for instructing the Management Company?"*
>
> *"In my opinion a RTM can only be applied for by a solely Residential complex, complexes that also include retail, commercial and garage owners can not apply for a RTM"*

Some concern was raised that residential leaseholders would acquire the "Right To Manage" parts of a complex that were not connected to their residential leases, but these respondents asked for their responses not to be published.

Response

I would like to thank these respondents for their responses, which raise some valid concerns.

The UK has RTM provisions that apply to mixed blocks as well as solely residential blocks and has had for some time. The UK Law Commission recently undertook a review of the RTM provisions in the UK as part of their Leasehold and Commonhold Project[4] and their report "Leasehold home ownership: exercising the right to manage"[5], was published on 21 July 2020.

In respect of the issue of mixed use premises the Commission recommended:

> *"We recommend that the non-residential limit be increased to 50%, such that the RTM cannot be claimed in relation to premises in which the internal floor area of any non-residential part (or where there is more than one such part, all of those parts taken together) exceeds 50% of the total internal floor area of the premises"*

[4] https://www.lawcom.gov.uk/project/right-to-manage/
[5] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/07/RTM-Report-final-N5.pdf

This appears a sensible recommendation, especially as it is already the case in the Island that the law surrounding a Compulsory Acquisition Order already includes this provision. As a result, I will be including a change to the Bill to make only buildings that meet this criterion eligible for the "Right To Manage".

The Law Commission also received similar concerns in respect of residential leaseholders managing commercial parts of a property. They confirmed that in the UK the RTM provisions do not allow for this to occur.

In the Isle of Man we already have a process for granting a Management Order, which this Bill does not propose to change. The process provides that the Rent and Rating Appeal Commissioners are able to transfer rights and liabilities to a new manager as part of a Management Application. This is a flexible provision that allows the Commissioners to determine on a case by case basis what is appropriate, which is in my view an improvement over the UK approach.

As this process already exists and this Bill does not seek to change this process then I do not propose any changes in this respect.

Change proposed

I will introduce additional eligibility criteria as follows:

1. Introducing a requirement that the "Right To Manage" would only apply to premises where the following condition is met:

    a. that the internal floor area of any part of the premises is occupied or intended to be occupied otherwise than for residential purposes must not exceed ½ of the total floor area of the premises in question

    For the purposes of this condition the internal floor area of any common parts shall be disregarded.

Question 10: Do you have any comments on using the existing process as already set out under the law for the granting of a Management Order?

There were **18** responses to this part of the question.

Theme 1 – Ineffectiveness of the current process

Almost all respondents agreed that the current Rent and Rating Tribunal Process is ineffective.

One response in particular summed up the current position:

> *"To the best of my knowledge there are no major issues as it has never been triggered to any great extent. It therefore potentially illustrates* [sic] *the following:-*
>
> *a.It is an adequate safeguard.*
>
> *b.There is no demand for it's* [sic] *application and there is not an issue.*
>
> *c.It is totally in appropriate*
>
> *Unless you illustrate the facts these subjective questions do not hold any reasonable weight as they are only anetdotal* [sic] *and subjective."*

The following responses served to highlight which of these three options the respondents believed to be the case:

> *"Existing process out of date and allows building owners too much power and not enough accountability with regard to use of service fees etc"*
>
> *"I do know many residents who own flats in a managed block who have had terrible trouble getting the management company to do any building repairs, this has meant for some that they are unable to sell their property and in essence, they have become a prisoner within this property because of the current lack of legislation in the island."*
>
> *"The case I took to the RRTC was long and protracted and after many years has not yet reached a conclusion. This has blighted properties affected. Whilst the RRTC broadly accepted the leaseholders case their powers in some areas have been limited. This is a difficult issue for many leaseholders to take on."*
>
> *"Only reservations about effectiveness of the process!!!*
>
> *Currently, The IOM-RRAC however well conducted does not appear to have adequate sanctions available to ensure compliance after a Decision."*

In addition to these concerns there were various comments made around the need to ensure the Rent and Rates Appeal Commissioners have adequate property management experience, the need to reform the *Property Service Charges Act 1989*, the need to reform the operation of the Rent and Rates Appeal Commissioners in their role in respect of dispute resolution and the need to grant the Commissioners (or whatever dispute resolution body replaces them) with adequate powers to ensure their decisions are implemented.

It was interesting to note that the views expressed by leaseholders were that the burden of proof was too high, and the decisions of the Commissioners could not be enforced, however the views of freeholders were that the Tribunal's lack of property management experience meant decisions were often weighted against the Management Company.

Whilst it was clear different groups had different viewpoints it was a universal response amongst freeholders, leaseholders, management companies and tenants alike that the system was in need of reform.

An issue raised by one respondent highlighted the following concern:

> *"Currently on the IOM Management Companies do not have any reasonable and cost effective recourse when it comes to recovery of Service Charge debt. Under the terms of the Lease Service Charges are due on receipt however if a Leaseholder does not pay their service charge contribution recovery via the legal system must be sought"*

Response

The majority of responses discussed issues which are outside the scope of this bill. I am not seeking to reform the dispute resolution process, nor am I seeking to reform the *Property Service Charges Act 1989*, or any other aspects of Leasehold law. Having said this, the responses do raise some real

concerns and I intend to refer the consultation responses to the Environment and Infrastructure Policy Review Committee of Tynwald to see if they will undertake further investigation.

The comments which do pertain to issues within the scope of the Bill however indicate that there are no reasons to believe that the Rent and Rating Appeal Commissioners would provide an inappropriate mechanism – the concerns raised were largely around the determination of complaints, which is exactly the process this Bill proposes to address by creating a different process by which an RTM Company can obtain a Management Order. As such I don't consider any changes are needed to the Bill as a result.

One area of concern however was around the ability of the Rent and Rating Appeal Commissioners to enforce their Orders – however no respondent raised concerns specific to the granting of a Management Order, and as highlighted by the first comment on the previous page this makes it difficult to ascertain whether or not there are any issues here. As such it seems prudent not to make any alterations to the current process at this time, however I am sure this part of the process will be explored further as the Bill makes its way through both Branches of Tynwald.

In respect of the recovery of service charges - I have been made aware of this particular issue prior to this consultation and it is therefore interesting to see it raised again here by a different party. Whilst this is outside the scope of the Bill it does highlight the need for reform in Isle of Man law around how debts are recovered, and I will raise this issue with the Isle of Man Treasury Department who I am aware have an ongoing piece of work around reform of debt collection on the Island.

Question 11: Do you have any other comments on the "Right to Manage" provisions in the Bill?

There were **20** responses to this part of the question.

Theme 1 – General comments

There were a number of general responses stating support for the proposals

> *"This is a great first step. More must be done."*
>
> *"This is a simple enough proposal to achieve, so should be actioned."*

Response

I would like to thank the respondents for these responses.

Theme 2 – Safeguards

There were a number of responses that asked about safeguards of varying natures:

> *"The right to manage is double edge sword which must be considered carefully having regards to both the poitive [sic] and negatives."*
>
> *"Prevent majority shareholders being able to control management companies."*
>
> *"There are however examples often in smaller blocks where there are dominant parties who own more than one flat and have disproportionate control to the*

detriment of the single owners interest. Consideration must be given to this, as it has the same effect as a third party freeholder or Management company".

"In addition and with reference to the previous points where self run management companys [sic] run by the appointed Directors(Often Long leaseholder) reduce maintenance for the sake of lower service charge which is to the detriment of the individual owners interest in the form of poor standards of maintenance there should be safeguards to prevent this happening."

Response

In respect of the final issue highlighted, that the RTM company may not act in accordance with the best interests of the leaseholders there are a variety of safeguards in place.

Firstly, all leaseholders have an interest and a vote in the RTM company that is managing their property - meaning that they have a direct way of influencing decisions.

Equally, the freeholder will also retain this voting right meaning they too have influence.

Should any party be aggrieved at the way the RTM company is acting then they retain the right to take the RTM company to the Rent and Rating Appeal Commissioners, in exactly the same way as under the current law.

These safeguards are the same as those that exist for the vast majority of leasehold properties that exist on the Island where the leaseholders already have control of or an interest in the management company.

One respondent to the consultation estimated that:

"The Isle of Man is lucky and very democratic in the long leasehold residential market as in contrast to the UK 95% of the Management Companies are controlled by the Long leaeholders [sic] *and probably in excess of 80% have the contol/freehold* [sic] *vested in the Management company which they control."*

The Bill is simply seeking to make it easier to bring the estimated 5%-20% of leaseholders in line with the rest of the market. A second stage to the reform of leasehold on the Isle of Man should in my view seek to tackle the problems that are perceived within the market, but this Bill is not the mechanism to do this.

I share the concerns in respect of majority shareholders and the ability of dominant parties to have disproportionate control. The Bill as proposed addresses this by ensuring that only "Qualifying tenants" are able to participate in a "Right to Manage", and anyone who owns more than two leaseholds in one block does not qualify for participation. This is one of the safeguards already present in Manx Law in respect of a compulsory acquisition and it seems appropriate to ensure this safeguard is repeated in any RTM provisions.

The issue of smaller blocks is unfortunately a more complex one – given the shift in emphasis the Bill is centred around it is difficult to strike the right balance without unduly compromising the rights of people who find that they are not 'Qualifying Tenants'. For example, I would not like to see a situation where in a block of four flats where one tenant owns one leasehold and another tenant owns the other three, the sole "Qualifying Tenant" has the ability to oust the management control from the owner of the other three leaseholds.

This issue has caused me to reflect further on the safeguards in the Bill around these "minority interests", i.e., the interests of individuals who may be in the minority but who may own a number of leaseholds in any given development, thus excluding them from being treated as a "Qualifying Tenant".

Noting there is nothing in the Bill that would prevent these individuals from participating in an RTM, I still feel that an additional safeguard is required.

Therefore, as an additional protection it seems appropriate to amend the proposed Bill to include a requirement that in order for the block of flats to qualify for the "Right To Manage" that a sizeable majority of tenants in the block are qualifying tenants. There are existing provisions in Manx Law that appear sensible to apply here as well[6].

Change proposed

To include criteria that in order for a premises to be eligible for the Right To Manage:

1. the total number of flats held by qualifying tenants is not less than 2/3 of the total number of flats contained in the premises

This also mirrors a requirement inside the UK RTM provisions, which the recent Law Commission Report recommended retaining.[7]

Theme 3 – Detailed specific responses

A number of responses to the consultation highlighted specific issues which I intend to address in turn:

"This should not be confined to blocks of flats."

Response

I agree with the sentiment of this statement. There have been widely reported issues with leasehold houses in the UK and the UK Government has been reported to be taking action to address these concerns.

Whilst I am not aware of similar widespread issues on the Island, it is possible there may be similar difficulties in the future.

Unfortunately, Manx law relating to the granting of Management Orders appears to solely relate to flats, therefore provisions relating to leasehold houses are not within the scope of this Bill.

As one of the underlying principles of this Bill, the principles on which the House of Keys granted leave to introduce, was that it would be utilizing the existing systems in order to make "bite sized" changes to leasehold law on the Isle of Man I don't feel it would be appropriate to try and create a whole new area of leasehold law on the Isle of Man via this Private Members Bill.

---

[6] Housing Miscellaneous Provisions Act 2011, Clause 23 - https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0019/HousingMiscellaneousProvisionsAct2011_6.pdf

[7] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/07/RTM-Report-final-N5.pdf

This doesn't mean I am not open to the idea and it may be that this sort of reform could be brought in at a later date. It may also be that another Member of Tynwald wishes to try and craft these provisions themselves as this Bill passes through the Branches and I would not oppose them doing so.

"50% threshold needs reviewing"

Response

The thresholds in the Bill match the law in the UK and they work together as a set of safeguards.

To qualify, a block of flats must

1. have no fewer than 2/3 of flats held by qualifying tenants

2. have at least 50% of the internal floor area be residential, not commercial

In addition to this, the RTM Company must have as its members at least 50% of all Qualifying Tenants

As already highlighted the UK Law Commission recently undertook a significant review of the operation of the law in this area[8] and made no recommendations to change these thresholds.

As such I do not propose to alter the thresholds in this Bill.

There must be included a right of Appeal against a decision by the Isle of Man Rating and Appeal Commissioners.

Response

Whilst I agree with the sentiment of this statement, in the context of this Bill it does not seem to apply.

The RTM provisions in the Bill are not designed to allow the Commissioners to apply discretion – either an application meets the objective qualifying criteria, or it does not, there is nothing to appeal against other than a point of law.

The UK system that this comment compares to is different in its approach, with an automatic right followed by an appeal to the Tribunal to determine any dispute solely on the basis of whether the application qualifies or not.

The proposed Isle of Man system skips this first step and goes directly to the Tribunal stage.

In respect of the other decisions the Commissioners may make, in respect of things like the assigning of rights and responsibilities there is a right of appeal to the High Court.

Whilst the respondent in this case makes the argument that this can be expensive and time consuming, unfortunately the Isle of Man does not have an interim tribunal to which an appeal might be made and the establishment of such a body is outside the scope of this Bill.

[8] *Ibid*

As mentioned previously, the intention of this Bill was to utilise existing processes as far as possible and as an existing appeal process does exist, I do not think it is appropriate to change this as part of this Bill.

Would tenants be required to appoint a manager, or could they manage the block themselves?

Response

This question was raised from multiple perspectives; making the appointment of a manager a requirement, whether there were adequate property management firms on the Island, and whether an RTM company could choose to manage the property themselves.

The answer to all of these questions is the same. The existing law provides for Management Orders to be granted and provides that individuals or organisations can undertake management duties themselves or employ third parties to undertake these duties on their behalf.

This Bill does not propose to change any of these existing processes.

Property Service Charges Act

> *"To put it in context, the Management Company can currently authorise £4650 worth of costs for Kings' Court a 10 storey building with 93 apartments before Consultation. To note, it is becoming extremely difficult to get contractors on site (even without Covid-19) to quote for what would be considered 'smaller jobs' in the region of £5000 - £7000 jobs when they know further quotes are being obtained, while qualified contractors are becoming increasingly more difficult to find."*

Response

A number of respondents highlighted problems with the *Property Service Charges Act 1989*. I sympathise with these views and the situation they describe. The situation they describe would equally apply to any RTM company as it does to any management company today, whether operated by the freeholder or leaseholders.

Unfortunately, as highlighted earlier, wider reform of Isle of Man law is outside the scope of this Bill, which has a very narrow defined purpose. As per my earlier comments I will draw the attention of the relevant Tynwald Committees and Government Departments to these consultation responses in the hope that they will be able to take action.

"Right To Manage" – Conclusions

Overall, the responses to the proposed Bill were very positive but it is important to note that a number of responses highlighted the complex nature of this area of law and potential pitfalls in making it easier for leaseholders to become engaged in management where they have not done so previously.

As stated, and as acknowledged by respondents to the consultation, the overwhelming majority of leasehold flats on the Island are already managed by companies under leaseholder ownership or with their involvement and as such my view is that this is a tried and tested approach that is extremely common on the Island. Leaseholders managing their own property, either directly or through a professional agent, is not a new concept being introduced by this Bill.

Equally, the consultation responses highlighted numerous issues with the operation of a variety of other aspects of Manx law. As stated at the outset, my intention with this Bill is to keep to a very narrow focus on one specific issue – namely changing the eligibility criteria for applying for a Management Order. This can be viewed as "Step 1" in the process of leaseholders obtaining management control. The remaining steps in the process are entirely unaffected by the changes I am proposing and as such are outside the scope of the Bill.

This doesn't mean they aren't important issues however and I will start looking at how to address them through other means.

"Right To Manage" - Outcomes

As a result of the consultation the following actions will be taken:

1. I will highlight the consultation to the Environment and Infrastructure Policy Review Committee of Tynwald as well as the Department of Infrastructure so that these bodies might investigate the issues raised in respect of the dispute resolution process, powers of the Rent and Rating Appeals Commissioners, the operation of the *Property Service Charges Act 1989* and other associated issues.

2. I will highlight the consultation to the Isle of Man Treasury Department so they can consider the responses in respect of debt collection and associated issues.

3. The following amendments will be made to the Bill itself:

    a. Clearly defining the term "RTM" as "Right To Manage"

    b. Introducing a requirement that the "Right To Manage" would only apply to premises where the following two conditions are met:

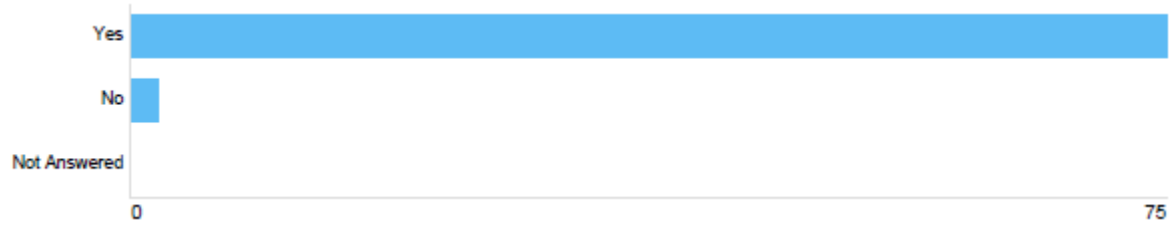
        i. the total number of flats held by qualifying tenants is not less than 2/3 of the total number of flats contained in the premises and;

        ii. that the internal floor area of any part of the premises is occupied or intended to be occupied otherwise than for residential purposes must not exceed ½ of the total floor area of the premises in question

    For the purposes of this condition the internal floor area of any common parts shall be disregarded.

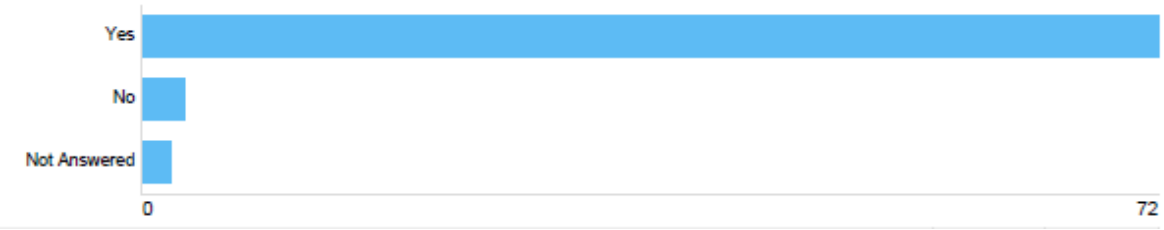
The Right to Enfranchisement

Question 12: Do you agree that long leaseholders of flats on the Isle of Man should have the ability to collectively acquire the freehold of their block of flats as they would if they were in the UK?



Yes	***75***	***97.40%***
No	***2***	***2.60%***
Not Answered	***0***	***0.00%***

Question 13: If this Bill looks to introduce this right, do you agree that it should be exercised through a Right To Enfranchisement Company making an application to the Court on behalf of all qualifying Leaseholders in a block of flats?



Yes	***72***	***93.50%***
No	***3***	***3.90%***
Not Answered	***2***	***2.60%***

Question 14: Do you have any other comments on collective enfranchisement for long leaseholders of flats?

There were **18** responses to this part of the question.

Theme 1 – General comments

> *"We need to get IoM up to date the same as the UK"*
>
> *"This sort of legislation is long overdue"*
>
> *"would support this suggestion to put people here in an equal position to those in the UK."*
>
> *"The current RTE process in IOM is subject to criteria being met. This is a protracted and litiginous* [sic] *process. If the UK provisions for Aquisition* [sic] *Orders through RTE companies are adopted it will be straight forward, comparatively quick and stress free.*
>
> *I hope this will be included in the Bill. I think it fair, proper and a necessary adjunct to RTM to place long term leaseholders on a Fair footing to buy the Freehold in an expeditious reasonable manner on paid for homes whilst sustaining often ruinous service charges."*

One response was not supportive but asked for it not to be published. The responder was concerned that the proposals would be unworkable for developments where there is a mixture of residential and commercial property.

Response

I would like to thank respondents for their supportive responses

In respect of the negative response, I address this below in Theme 2

Theme 2 – Application of the "Right To Enfranchisement" provisions

> *"Does the RTE apply to just the footprint of the residential properties in a mixed block?"*
>
> *"If there already is an RTE how will that be controlled or will it run in perpertuity* [sic] *in parallel with the management company, will there be an obligation to merge these two vehicles.*
> *The RTE should not be allowed the extinguish the longleasehold interests (I am aware of this being attempted) this would virtually make the tenure unsaleable in the form of a flying freeholds."*

"If an application to acquire the freehold were to be applied for at the Courts all 400 Leaseholders would have to apply and agree to the cost and terms, a near impossible task to begin with. You could not have half the complex on a Leasehold and the other half Commonhold.

In theory this could result in 400 Freeholders for one site or maybe even just 10 Freeholders and the rest Leaseholders, is this practical?

Imagine 10 Freeholders owning the 4th floor of Kings Court and selling just this floor to a developer, what do the other 80 Leaseholders then do? You can not just remove 1 floor to a 10 storey building."

"I think the proposed route by going to court may put some people off this route, as it would also be costly for legal fees. I would look to simplify this process more so that those with a limited legal understanding could collectively apply for this themselves".

Response

I thank the respondents for raising these and other questions about the practical application of any compulsory acquisition process for collective enfranchisement.

In response I would draw attention to the fact that the proposals would not introduce a new concept into Manx Law. The collective Compulsory Acquisition of a Landlords Interest in flats is already provided for in Manx law, in Part 5 of the *Housing (Miscellaneous Provisions) Act 2011*[9]. The law currently states:

This Part has effect for the purpose of enabling qualifying tenants of flats contained in any premises to which this Part applies to make an application to the Court for an order ("an acquisition order") providing for a person nominated by them to acquire their landlord's interest in the premises without the landlord's consent

---

Currently, as long as the premises is a qualifying premises the leasehold has to meet one of two conditions in order to apply, In essence:

- either the Landlord must be in breach of an obligation owed to the applicants under their leases and relating to the management of the premises; or
- Throughout the 2 years immediately preceding it, a Management Order was in force in relation to the premises in question which was made by reason of an act or omission on the part of the landlord

As these provisions already exist within Manx Law the responses that raise queries around how any right to collective enfranchisement might function are straightforward to answer – exactly as they do today.

[9] https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0019/HousingMiscellaneousProvisionsAct2011_6.pdf

As there is an existing provision, although there are concerns around the requirement to go to Court – it seems to me that this is an important safeguard when dealing with a compulsory acquisition and as such should be retained at this time.

It is also worth highlighting the provisions are around "collective enfranchisement", not the enfranchisement of individual owners – which seemed to be a misunderstanding in some of the responses.

The only difference this proposal would introduce would be to remove these "fault" grounds and create a different set of eligibility criteria, namely the establishment of a "Right To Enfranchisement" (RTE) company, in much the same way that the RTM provisions will function.

The effect of introducing "Right To Enfranchisement" provisions would be to simply require that in order to be eligible for the RTE compulsory acquisition route the "nominated person" who acquires the freehold on behalf of all leaseholders would be an RTE company, which would have to follow specified rules and procedures in order to acquire the right to collective enfranchisement.

Theme 3 – Complexities surrounding costs and pricing

"If an application to acquire the freehold were to be applied for at the Courts all 400 Leaseholders would have to apply and agree to the cost and terms, a near impossible task to begin with. You could not have half the complex on a Leasehold and the other half Commonhold."

"Ideally this would be an excellent idea but practically one can forsee [sic] *the problem that not all leaseholders would be in a financial position to participate."*

> *"Whilst drawing up this amendment to local Manx Law in this area, the opportunity should be taken to make the assessment of reasonable sales value of the Freehold so that setting this value is a more exact and non-costly process. - eg could set a multiple of ground, or something similar that is equally simple."*

Response

A number of respondents highlighted concerns around whether all leaseholders would be able to afford to participate at the same time – and equally concerns were raised surrounding how the freehold should be valued.

Currently where a Compulsory Acquisition Order would be made the law allows, where the parties cannot agree a price between themselves the Court may set the consideration payable

This is set out in Section 30 of the *Housing (Miscellaneous provisions) Act 2011*[10]

[10] https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0019/HousingMiscellaneousProvisionsAct2011_6.pdf

If an application is made under this section for the Court to determine the consideration payable for the acquisition of a landlord's interest in any premises, the Court must do so by determining an amount equal to the amount which, in its opinion, that interest might be expected to realise if sold on the open market by a willing seller on the appropriate terms and on the assumption that none of the tenants of the landlord of any premises comprised in those premises was buying or seeking to buy that interest.

I am aware this issue has also been considered by the UK Law Commission in their report "*Leasehold home ownership: buying your freehold or extending your lease - Report on options to reduce the price payable*"[11] published on 8th January 2020.

Whilst it was my intention to simply utilise the existing Manx process, it is clear that this is a highly complex issue which may have a better solution than the one set out currently in Manx law. I believe this issue of the valuation of a freehold in a compulsory collective enfranchisement process needs much more work and specific consultation on and I thank the various respondents for drawing out the potential complexities in this issue.

Theme 4 – Detailed specific responses

"The Government should not be exempt in contrast to other Landlod [sic] *and Tenant legislation as I believe the Government does benefit from Freehold interests. It should be a level playing field and market place"*

Response

This was an interesting comment, but I am not aware of the Isle of Man Government acting as a freeholder for flats with long leasehold residential tenancies

"As per my earlier comments, the provisions of the Bill should not be confined to flats"

Response

As identified earlier in this report, it is unclear how the legal framework on the Island deals with leasehold houses, however this is a sensible suggestion which I believe should be further explored.

[11] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/01/Enfranchisement-Valuation-Report-published-9-January-2020.pdf

"there should be a Right To Change the Length of the Lease to the Maximum period for the Isle of Man, which would seem to be 999 years"

Response

The Law Commission in the UK has issued a report which addresses this issue, entitled "*Leasehold home ownership: buying your freehold or extending your lease*", published on the 20th July 2020[12] and which made a series of recommendations including, but not limited to:

Recommendation 1.

15.1 We recommend that leaseholders of both houses and flats should be entitled, as often as they so wish (and on payment of a premium), to obtain a new, extended lease at a peppercorn ground rent. [Paragraph 3.36]

Recommendation 2.

15.2 We recommend that: (1) on a lease extension claim, an additional period of 990 years should be added to the remaining term of the existing lease; and (2) where a lease has been extended, the landlord should be entitled, during the last 12 months of the term of the original lease or the last five years of each period of 90 years after the commencement of the extended term, to obtain possession of the property for redevelopment purposes.

Whilst this issue was not inside the scope of the original proposals, I believe there is merit in exploring this further as part of any wider reform of Leasehold law on the Island, and as with other issues of this nature will draw attention to these consultation responses to the relevant Tynwald Committees and Government Departments.

We have a long lease in an apartment building. Have had for 30 years. The 'Freehold' has twice or thrice been sold over our heads in the last 30 years by absentee investment landlords. this would be illegal in England and Wales. We had a negotiated purchase some twenty years ago, but the new directors professed not to know of this and sold our Freehold without even notifying us.

Response

In the UK, qualifying tenants have a "right of first refusal" provided by Part 1 of the *Landlord and Tenant Act 1987*[13] as amended by the *Housing Act 1996*. This means where a landlord is intending to sell their interest in a building containing flats which qualifies for this right, the landlord must first offer their interest for sale to the tenants before offering it on the open market.

[12] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/07/ENF-Report-final.pdf

[13] https://www.legislation.gov.uk/ukpga/1987/31/part/I

Whilst this issue was not inside the scope of the original proposals, I believe there is merit in exploring this further as part of any wider reform of Leasehold law on the Island, and as with other issues of this nature will draw attention to these consultation responses to the relevant Tynwald Committees and Government Departments.

"Right To Enfranchisement" - Conclusions and Outcomes

Overall, responses to the proposal to introduce the "Right To Enfranchisement" were very positive but it is important to note that a number of responses highlighted the complex nature of this area of law and potential pitfalls, many of which have been explored by the UK Law Commission who have made a series of recommendations around improving these rights in the UK.

After giving this issue serious consideration and consulting with legal drafters and other Members of Tynwald I find myself in agreement with the following comments made by one respondent:

> *"In summary I believe this legislation is required but there should be pratical [sic] engagement with all stakeholders to have applicable and carefully considered regulation that provides the necessary criteria for improving this section of the industry not just now but in the future, does not need revising and does not have unintended consequences due to UK copy and paste."*

What this means is I will not be able to include the "Right To Enfranchisement" provisions in this Bill. I know this will disappoint many of those who responded to the consultation, but I would like to reassure them that I do not intend to let this issue be put aside.

It is my intention to do two things to address the "Right To Enfranchisement" and other associated issues of wider leasehold reform that this consultation have identified may be needed.

Firstly, I will bring these issues to the attention of the relevant Tynwald Committees and Government Departments

Secondly, should I be re-elected in September 2021 I will seek to ensure another Bill is brought forward, as early as possible, to try and address many of these issues, following full and proper consultation with stakeholders and the wider public.