



# The Administration of Justice and other Amendments Bill 2021

## Consultation Response Document

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Treasury

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# 1. Introduction

- 1.1 The Administration of Justice and other Amendments Bill 2021 (the “Bill”) has two key policy outcomes -
- To introduce a more comprehensive and easily accessible register of judgments and warrants for payment in the Island (a register of debts); and
  - To level the playing field for the enforcement of civil debts in the Island by removing statutory provisions that inhibit the effectiveness of Coroners undertaking enforcement action.
- 1.2 The improved register will provide anyone that is considering entering into a business arrangement with another person, the opportunity to review, and take into account, the credit worthiness of that person before doing so. This, the Treasury believes is only right and fair. People should have a right to be able to check the credit worthiness of that other party and anonymity should not protect those who have a history of failing to make good sums of money that they owe. It is envisioned that the changes will, over time, lead to a reduction in such debts arising.
- 1.3 Improvements in the effectiveness of debt recovery by the Coroners will increase the likelihood of a Coroner recovering a sum of money due to an execution debtor.
- 1.4 Policy consultation on the proposed legislation took place in early 2018, with consultation on the draft Bill running between November and December 2020. The development of the Bill has taken longer than expected due in part to the complexity of the changes being proposed. In recognition of this, the consultation on the draft Bill provided the opportunity to revisit a number of policy areas, in order to ensure the conclusions drawn in 2018 remained reflective of public and stakeholder views.

## Consultation responses

- 1.5 In total, 17 responses to the consultation were received.
- 1.6 Nine respondents provided comments on the draft Bill through the consultation hub. Eight respondents gave permission for their responses to be published. A full breakdown of these comments is found in Appendix A to this paper and these are discussed in detail within the body of this summary document. In respect of the respondent who did not wish for their response to be published, the comments that were received are taken into account where appropriate.
- 1.7 In addition, a further eight written responses to the consultation were received, with five of these respondents giving permission for their comments to be published (see Appendix B). Although these responses were not submitted within the structure of the questions provided in the consultation document, they have been helpful when considered in the context of the draft Bill. In respect of the three respondents who did not wish for their response to be published, two of these did not provide any comments that directly related to the Bill and **one proposed a number of typographical and stylistic amendments in respect of the draft Bill, which were considered as the Bill was being finalised.**
- 1.8 In addition to the responses received that directly related to the provisions included in the draft Bill, a number of respondents provided comments in respect of the Coroners and how they

operate. Phase II of the debt recovery project will focus on the Coroner structure, with policy formulation expected to begin by mid-2021. The comments received through this consultation will be revisited as part of this initial policy formulation exercise.

## Summary of Feedback and Treasury response

- 1.9 The consultation response found in sections 2 to 6 of this response document examines the range of comments received to the consultation, and a response from the Treasury is provided where applicable.
- 1.10 An executive summary of all actions arising from the consultation is listed in the below table –

Paragraph	Summary
1.7	A number of typographical and stylistic amendments in respect of the draft Bill were considered when the Bill was finalised.
2.7	The feedback received that opposed the exemption of costs orders from the register was taken into account as the Bill was being finalised.
2.13	Clause 4 of the draft Bill has been amended to include a requirement for the Treasury to consult with appropriate persons prior to the making of an Order under new section 15(7) of the AJA.
2.18	Comments received in respect of fees/charging for access to the register will be shared with the General Registry in order that they can be taken into account as the Chief Registrar finalises arrangements in this respect.
2.19	The suggestion that new section 15C should include a provision to enable costs to be defrayed from General Revenue was considered further in consultation with the drafters of the Bill. In the final version of the Bill any fees received under this section must be applied to pay the expenses incurred in keeping the register and publishing the information recorded on it, with any surplus being paid into the General Revenue.
2.26	Warrants for payment will not be eligible for entry in the register until three days after the period within which an application to have a warrant set aside has passed. Arrangements to provide for this are in new section 15E of the AJA (found in clause 5 of the Bill).
2.30	The definition of a "warrant for payment" provided in clause 6 of the Bill, removes warrants for payment issued under section 114AB of the Social Security Administration Act 1992 (Recovery of an outstanding budgeting loan) from the definition of a "warrant for payment" for the purpose of the Bill.
4.24	The wording provided in clause 13(3)(b) of the Bill, has been changed to provide that where a section 12 LTA application to the courts is made, uncollected goods in the possession of a landlord may be disposed of except that where the goods are valuable the court will consider any application a landlord may make at that time as to the sale of those goods in a similar manner as found in section 12 of the Torts (Interference with Goods) Act 1981.
6.7	Warrants for payment that have a value of <£1,000 will be exempt from entry in the register, and appropriate provision has been made within clause 5, new section 15E of the AJA.

6.14	These suggestions received relating to the content and operation of the register, as provided for within the Register Regulations, will be shared with the Chief Registrar for consideration as the Regulations are finalised.
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### **Next Steps**

- 1.11 The steps listed in the table above have been, and will be, taken and a final version of the Bill has been prepared and submitted to the Council of Ministers in order that it may be introduced into the Branches of Tynwald as soon as possible.

## 2. Amendment of the Administration of Justice Act 1981

### Summary

- Part 2 of the Bill (clauses 3 to 7) provides the main basis for the revision of the register.
- In general, respondents supported the changes the Bill will bring about, particularly in respect of increasing the range of judgments and warrants for payment recorded in the register.
- However, the proposal to include warrants for payment that are issued in respect of outstanding budgeting loans have been withdrawn from the final version of the Bill.
- No further comments were raised that required any substantial amendments to be made to this part of the Bill.

### Clause 4 - Amendment of section 12 (priorities)

- 2.1 In general, respondents supported clause 4 of the Bill, which will amend section 12 of the Administration of Justice Act 1981 (the "AJA") in consequence of the repeal of Recovery of Rent Act 1954 ("RoRA"). One respondent did not support the proposed amendment.
- 2.2 No substantive changes in respect of clause 4 of the Bill were therefore considered necessary in light of the consultation feedback received.

### Clause 5 - Register of Judgments

#### Section 15 of the Administration of Justice Act 1981

- 2.3 Overall, respondents expressed support for the content of the register to be extended to include additional judgments of the High Court ("judgments") and warrants for payment. Respondents recognised that a comprehensive register of debt will be beneficial for those seeking to check the credit worthiness of someone they are considering entering into a financial relationship with.
- 2.4 A couple of respondents suggested further types of debts that should be included within the register. These included fixed penalties for parking offences, which are discussed in section 3 of this response document, debts arising through the non-payment of rates and costs orders.
- 2.5 Under section 15(1) of the AJA (as amended by clause 5 of the Bill), all judgments on or under which a sum of money is payable (other than a fine) will be eligible for entry in the register.
- 2.6 In the case of outstanding rates payments, where an issuing authority applies to the High Court, and a judgment is made in respect of the sum of money payable, details of that judgment will be eligible for entry in the register subject to any applicable exemptions. As discussed in the consultation on the Bill, it is proposed that details of most judgments will be exempt from register entry unless and until execution is granted by the court on the judgment.
- 2.7 In respect of awards for costs only, the General Registry has previously proposed that such amounts should be exempt from entry in the register.

- 2.8 The response submitted by the Island's Information Commissioner's Office (the ICO) examined the process that precedes the issuing of a warrant for payment relating to the recovery of outstanding budgeting loans. The ICO considered the compatibility of this process with the European Convention on Human Rights (ECHR). The ICO's thoughts on this matter were shared with the Treasury prior to the consultation and a review, extending to all processes connected to the various warrants for payment that may be issued by the Assessor or Treasury, was initiated by the Treasury. Following that review, it was determined that the various warrant processes meet the requirements of the ECHR, with the exception of the process connected to warrants for payment issued in respect of the recovery of outstanding budgeting loans.
- 2.9 In light of these findings, details of warrants for payment issued in respect of the recovery of outstanding budgeting loans will not be included in the public register. Clause 6 of the Bill was revised to remove warrants for payment issued under section 114AB (Recovery of an outstanding budgeting loan) of the Social Security Administration Act 1992, from the definition of a "warrant for payment" for the purpose of the Bill.
- 2.10 The comments raised by Land Registry have been subject to further dialogue with the responding officer. No concerns were raised in respect of the range of judgments and warrants for payment that will be entered into the register. It was noted that matters appertaining to the availability of a register of bankruptcy will be considered within the scope of Phase III of the civil debt recovery project in so far as it relates to insolvency. It was also noted that the comments submitted by Land Registry in response to the remaining parts of the consultation related to such a register of bankruptcy that may be introduced in the Island.
- 2.11 In respect of the making of the Register Regulations, respondents identified a wide range of stakeholders that should be consulted by the Deemsters prior to the making of such. As new section 15(3) of the AJA will make it a requirement for the Deemsters to consult with appropriate persons prior to making the Register Regulations, the Bill was not changed in light of the comments received.
- 2.12 A couple of helpful comments were made in respect of matters that should be included in the Register Regulations, and these are discussed in section 6 of this response document. One respondent suggested that a debt should not be entered into the register until it is unpaid i.e. the period within which it was due to be paid has passed and it has not been paid; or until the time within which it can be disputed has passed, this comment is also addressed in section 6 of this response document.
- 2.13 In general, respondents supported the proposal that the Treasury, or another Government body should have the power to make an Order under new section 15(7) of the AJA to amend the types of decision that must be recorded in the register. Mixed views were received as to whether consultation should be necessary prior to the making of any such Order, with a narrow range of stakeholders being identified as key consultees (including the Coroners, Treasury, Advocates, Local Authorities and Landlords). **In light of this feedback, clause 4 of the draft Bill was amended to include a requirement for the Treasury to consult with appropriate persons prior to the making of an Order under new section 15(7) of the AJA.**

- 2.14 No further substantive changes were considered necessary in respect of sections 15 and 15A to 15E of the AJA (as amended by clause 5 of the Bill) in light of the consultation feedback received.

#### **New sections 15A to 15E of the Administration of Justice Act 1981**

- 2.15 The majority of respondents supported arrangements that will require information to be provided to the Chief Registrar as is necessary for the purpose of the register (new section 15A of the AJA). Respondents also supported the proposed provisions that deal with the keeping and publishing of the register (new section 15B of the AJA).
- 2.16 The ICO's response to the consultation provided some comments on the operation of the public registers that are hosted by Registry Trust Limited (RTL), with it being expected that RTL will be appointed by the Chief Registrar to publish the IoM register. The new arrangements for the publication of debts on the register are expected to mirror the arrangements applicable to equivalent UK debts, with most debts entered into the register being available for 6 years. The ICO pointed out credit-related issues will likely arise for a debtor whose details are entered into the register as the data in the register will be accessed by credit reference agencies in the UK, and Treasury noted these points.
- 2.17 When considering the new arrangements for the register, it is important to retain sight of the creditor of a judgment and execution in these circumstances, who will likely have gone through financial and emotional stress in their bid to recover a sum of money owed to them. There is no telling what impact the failure to pay a sum of money may have on a creditor, which could be as severe as resulting in them having to close their business, or default on their rent or mortgage payments. One respondent provided some comments to the consultation that demonstrate the effect of such circumstances on the creditor of a civil debt.
- 2.18 The proposals in respect of fees/charging for access to the register received mixed feedback (new section 15C of the AJA). Some respondents supported the charging proposals, some disagreed, and some suggested that access should be free for certain roles such as the Coroners. The policy in respect of this matter will be one for the General Registry to determine as it specifies arrangements for such access. **The feedback received in relation to fees and charging for access to the register will be shared with the General Registry in order that it can be taken into account as the General Registry finalises arrangements in this respect.**
- 2.19 One respondent suggested that provision should be included in new section 15C to enable costs to be defrayed from General Revenue. Such costs associated with the keeping and publication of the register will be met through General Registry's budget allocation and upon initial review it is not thought that it will be necessary to provide separately for such defrayal of costs in the Bill. **This matter was considered and, on review, it was decided to retain existing provision in the Bill.**
- 2.20 Some respondents referred to certain fees that are incurred and payable to a Coroner in connection with the enforcement of an execution. It was reported that in some instances such fees go unpaid if the sum of the execution is settled privately between an execution creditor and debtor. This matter is addressed with the Register Regulations where it is proposed that a "debt" will not be considered as settled for the purpose of a register entry until all amounts due in respect of the execution, including those due to a Coroner, are paid.



- 2.21 No specific comments were received on the data protection provision contained in new section 15D of the AJA.
- 2.22 The proposed transitional arrangements found in new section 15E of the AJA were subject to varied feedback with some respondents seeking a broadening of the model proposed to enable more judgments and warrants for payment, specifically those that are older, to be entered into the register.
- 2.23 Advice has been taken in respect of the transitional arrangements and the Treasury is satisfied that the proposed model ensures compliance with data protection legislation. The registration requirements in terms of both judgments and warrants for payment cannot apply retrospectively to determinations made prior to the legislation being introduced.
- 2.24 The consultation on the draft Bill proposed that warrants for payment would be entered into the register upon being issued. The consultation went on to explain that the Register Regulations would then provide for a register entry in respect of a warrant to be cancelled if a subsequent application to the Chief Register for the warrant to be set aside was successful.
- 2.25 The statutory arrangements that enable a person to apply to the Chief Registrar to set aside a warrant are an appeal mechanism should the person believe that they have been issued a warrant without proper procedures being followed. The application is not a means of disputing the sum of money owed as the process to make an independent appeal in that regard occurs prior to a warrant being issued.
- 2.26 **Taking into account the potential impact the entry of details of a warrant in the public register may have on a person, it has been concluded that warrants should not be eligible for entry in the register until the period within which an application to have a warrant set aside has passed (14 days) and a further 3 days have elapsed to permit any application submitted on the last day to be received. This is specified within new section 15E.** The Register Regulations will exempt warrants from register entry where such an application has been made, and if that application is successful, details of the warrant will be exempt from registration. If the application is unsuccessful, details of the warrant will be entered into the register.
- 2.27 One respondent felt that the proposals contained in new sections 15A to 15E of the AJA were immoral but did not indicate in what manner they were immoral, or offer any alternative to the proposals.
- 2.28 No further comments were raised by the respondents in terms of the content of clause 5 of the Bill and consequently, no further substantive changes are considered necessary in respect of sections 15A to 15E of the AJA in light of the consultation feedback received.

### **Clause 6 – Interpretation**

- 2.29 The majority of respondents were satisfied with the definitions provided in clause 6 of the Bill. One respondent referred to fixed penalties, which are discussed in section 3 of this response document.

- 2.30 In light of the determination of the AGCs that the warrant process for the recovery of outstanding [budgeting loans](#) falls short in terms of the requirements of the ECHR (see paragraphs 2.8 and 2.9 of this response document), these will not be included in the register. **The definition of a “warrant for payment” provided in clause 6 of the Bill was changed so as to remove warrants for payment issued under section 114AB of the Social Security Administration Act 1992 (Recovery of an outstanding budgeting loan) from the definition of a “warrant for payment” for the purpose of the Bill.**

**Clause 7 – Amendment of Schedule 1 (arrest and sale of goods etc.)**

- 2.31 In general, respondents were satisfied with the transitional arrangements provided under clause 7 of the Bill and therefore no substantive changes in respect of clause 7 of the Bill were considered necessary in light of the consultation feedback received.

### 3. Amendment of the Summary Jurisdiction Act 1989

#### Summary

- Part 3 of the Bill (clauses 8 and 9) includes amendments to section 101A of the Summary Jurisdiction Act 1989 (the "SJA") (register of sums adjudged to be paid on conviction) in order to regularise arrangements connected to the operation of this register (the "register of fines"), with the operational arrangements relating to the Island's judgments register as proposed in part 2 of the Bill.
- No fundamental issues have been raised through the consultation that would necessitate changing the provisions proposed within part 3 of the Bill.

- 3.1 In general, respondents supported the proposals found in part 3 of the Bill (clauses 8 and 9), which will provide consistency between the arrangements for the operation of the Island's register of fines and the new operational arrangements for the register of judgments.
- 3.2 A number of respondents sought clarification as to whether amounts arising through fixed penalty parking fines should be recorded in the register of fines, or whether they should be recorded in the judgments register. Clarification was also sought as to the priority of these debts in enforcement action.
- 3.3 A "fixed penalty" is an amount specified in paragraph 3(3) of Schedule 5A to the Road Traffic Regulation Act 1985 (RTRA) and a "fixed penalty offence" is an offence listed in the Table of Schedule 5A. A "fixed penalty notice" may be given to a person or affixed to a vehicle under Schedule 5A: the "fixed penalty notice" is a notice offering the person the opportunity to discharge any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with Schedule 5A.
- 3.4 There is a suspended enforcement period of 21 days (or other specified period) from the date of the fixed penalty notice, during which proceedings cannot be brought and in which the fixed penalty can be paid. If no request for a hearing has been made and the penalty is not paid by the end of the suspended enforcement period, the Chief Registrar may issue a certificate under paragraph 10 of Schedule 5A for a sum 1.5 times the fixed penalty for enforcement as a fine.
- 3.5 Sums collected by virtue of enforcement arising through paragraph 10 of Schedule 5A are payable to the Chief Registrar as a fine and they are considered likely to meet the criteria of a Crown Debt for the purpose of section 3(1)(a) of the Preferential Payments Act 1908. This is unchanged by the Bill.
- 3.6 A phased modernisation/digitisation programme is currently underway within the General Registry. The process of how fixed penalty notices are currently recorded and collected and any changes that may be made to this (including those fixed penalty notices in respect of which a certificate for enforcement as a fine are issued) will form part of discussions across all relevant stakeholders.

## 4. Recovery of Rent Act 1954

### Summary

Within Part 4 of the Bill, clause 14 proposes the repeal of the Recovery of Rent Act 1954 (RoRA). The repeal of this piece of legislation will have a consequential impact on a number of sections of connected pieces of legislation, the most notable of which being section 12 of the Landlord and Tenant Act 1954 (LTA).

Having considered the views received from stakeholders in respect the repeal of RoRA and the consequential impact of this –

- The Treasury remains of the view that the removal of preferential rent and the removal of the landlord's arrest procedure (by virtue of the repeal of RoRA) are necessary to provide greater equity for execution creditors who are seeking to recover a sum of money they are owed through enforcement action. Accordingly, clause 14 of the Bill, which will repeal RoRA, remains unchanged.
- Clause 13(3)(b) of the Bill has been changed to provide consistency between the treatment of goods left in tenanted premises in the case of abandonment of the premises where a section 12 LTA application is made, and the treatment of goods left in tenanted premises in other circumstances.

### Preferential rent

- 4.1 Under section 4 of RoRA, when seeking to enforce an execution against a tenant, a Coroner must leave the tenant with sufficient means to pay any rent arrears they owe plus any rent that will be due in respect of their current tenancy agreement (up to 12 months' rent in total); this is known as "preferential rent". In many circumstances, this leaves a Coroner unable to collect sums owed by an execution debtor despite them having sufficient means to make good the sum of the outstanding debt.
- 4.2 The Treasury believes that the preferential rent provision is unfair in so far as it –
- i. prevents an execution creditor from obtaining payment of a sum of money that they are owed;
  - ii. provides an opportunity for those who are tenants to run up debts with minimal repercussions;
  - iii. provides protection from enforcement to those who rent premises that is not afforded to those who may alternatively have mortgage payments to keep;
  - iv. provides a blanket protection to all people who rent premises regardless of their means.
- 4.3 The majority of respondents supported proposals to remove the preferential rent provision from RoRA.

- 4.4 One respondent proposed that the removal of section 4 of RoRA should be postponed until an Isle of Man occupancy deposit protection (ODP) scheme has been established by the Department of Infrastructure (the "DOI") under Part 6 of the proposed Landlord Registration (Private Housing) legislation (when said legislation is introduced). Another respondent raised the matter of how the removal of RoRA would impact the security available to landlords for rental payments.
- 4.5 An ODP scheme such as that envisioned by the DOI is expected to provide a more robust framework around the taking, securing and repayment of occupancy (tenancy) deposits: such deposits providing security to landlords for the likes of damage to premises, rental arrears etc. Occupancy deposits are already widely taken by landlords in the Island for these purposes and this would be unchanged by the introduction of an ODP scheme.
- 4.6 However, whilst the preferential rent arrangements may be perceived as providing a form of security to landlords in respect of rental payments, there does not appear to be any statutory provision that makes it necessary for a tenant to use any preferential rent they are left with to make good any rent due, noting of course that preferential rent extends to any rent arrears plus any rent that would be due for the remaining term of the tenancy agreement. Accordingly, it is not considered there is any benefit in retaining the preferential rent provision in Manx legislation.

### **Landlord's Arrest**

- 4.7 As the policy on the Bill developed, it became apparent that section 4 of RoRA could not be removed from the legislation in isolation. This is because the operation of the remaining parts of RoRA are predicated on section 4 being in operation. As a consequence, the only option would be to repeal RoRA entirely.
- 4.8 The main impact arising from the repeal of RoRA (beyond that arising from the removal of the section 4 preferential rent provision) is the loss of a procedure found in section 7 of the legislation.
- 4.9 Under section 7 of RoRA, if goods liable for the payment of preferential rent are removed from the tenanted premises, or there are reasonable grounds to believe that such goods are about to be removed, a landlord can to apply to the High Court for an order enabling such of the goods to be arrested by a Coroner as are sufficient to satisfy the sum of the preferential rent. This is known as a "landlord's arrest". It is important to point out that the current process in itself does not enable a Coroner to sell those goods as part of the landlord's arrest in order to make good the rental arrears, following the arrest of such goods.
- 4.10 It is possible though that such goods might otherwise have been arrested by a Coroner to satisfy an existing execution. Under the landlord's arrest arrangements, the satisfaction of rental arrears owed to a landlord obtain priority over any other execution debts owed by the tenant. The landlord's arrest procedure consequently gives rise to concerns regarding fairness.
- 4.11 It is important to note that a landlord's arrest cannot be undertaken without a court application. Furthermore, section 7 of RoRA does not give a landlord an automatic right to sell a tenant's goods in lieu of rent arrears.
- 4.12 A couple of respondents acknowledged the similarities between the landlord's arrest procedure and distress arrangements in the United Kingdom: some respondents also recognised that the

procedure might be more relevant to commercial landlords in the Island. However, no representations were made to indicate that the remedy should be retained for either residential or commercial landlords in the Island.

- 4.13 It is thought that section 7 landlord's arrest applications to the courts are rarely, if ever, made. However, no statistics are available to evidence this and no evidence in that regard was submitted as part of the consultation responses.
- 4.14 The landlord's arrest arrangements in the Island have a similar effect and purpose to arrangements found in many countries around the world known (most commonly) as "landlord's hypothec". Owing to the lack of local evidence as to the continuing operation of the landlord's arrest provisions in the Island, we have looked further afield to assess recent changes in the operation of landlord's hypothec in other jurisdictions.
- 4.15 The continuing existence of landlord's hypothec in modern societies has been well reported by Professor Andrew Steven of the School of Law, Edinburgh University<sup>1</sup>. Steven reported that whilst hypothec has provided security to landlords for rental payments dating back as far as the ninth century it is now widely considered to be unfit for modern societies. He reported that countries such as Holland, Quebec, Northern Ireland and some Australian states have abolished landlord's hypothec over the last century. In other countries, including the Republic of Ireland, England, Wales, Scotland and Canada; landlord's hypothec has been partially abolished in so far as the remedy has been removed for residential lettings. In these countries, rent arrears must be pursued by a residential landlords through ordinary debt recovery procedures available in relevant courts.
- 4.16 In our closest neighbouring jurisdictions, the key driver to removing hypothec (known more commonly as distress in England) has been its lack of use, but there are other documented arguments in favour of abolition<sup>2</sup>. These include a perception of unfairness that the arrangements give priority to landlords over other creditors, the lack of opportunity for a tenant to challenge the claim and the intrusiveness of the process.
- 4.17 As reported earlier, no arguments were received as to the necessity of retaining the landlord's arrest procedure; conversely however a number of respondents expressed support for its abolition in the Island. As a consequence, it is considered the repeal of section 7 of RoRA should take place as proposed.
- 4.18 It is envisioned the changes provided under this Bill will, in practice, provide greater protection to local landlords. Firstly, the greater range of debts recorded in the register will arm landlords with accurate and up to date information as to the credit worthiness of someone they are considering renting premises to. Secondly, the consequences arising from the entry of a debt in the register will, we suggest, encourage debtors to make early payment of sums of money they owe so as to avoid court proceedings where judgment and execution may be granted against them.

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<sup>1</sup> [The Landlord's Hypothec in Comparative Perspective](#), Electronic Journal of Comparative Law, Andrew J M Steven, 2008

<sup>2</sup> [Landlord and Tenant Distress for Rent](#), Part III (The case for reform), The Law Commission, 1991

## Landlord and Tenant Act 1954

- 4.19 Treasury's interest in section 12 of the Landlord and Tenant Act 1954 (LTA) has arisen solely because under the section 12 procedure, should a tenancy agreement be terminated by the court, then any goods left in the premises by a tenant are to be treated as though under a 'landlord's arrest'.
- 4.20 As alluded to in the consultation on the Bill, it is understood that section 12 LTA applications to the court are rarely, if ever, received. We believe that this is largely due to the prevalence of robust tenancy agreements, which would enable matters such as abandonment of premises and rent arrears to be dealt with far sooner as a breach of contract. The changes proposed in the Bill do not interfere with the existing section 12 provision in so far as it requires an application to the court.
- 4.21 As the landlord's arrest process will no longer exist in Manx legislation upon the repeal of RoRA, it has been necessary to find an alternative means of dealing with goods left in premises where a section 12 LTA application is made.
- 4.22 Clause 13(3)(b) of the draft Bill proposed a form of wording that left it to the courts to determine what happens to such goods. On the whole, this proposal was not supported by respondents and a respondent requested that the Bill be amended (see 4.24 below) to provide greater clarity over the treatment of a tenant's goods in these circumstances.
- 4.23 Recognising that established procedures to deal with uncollected goods already exist under sections 11 and 12 of the Torts (Interference with Goods) Act 1981, it appeared entirely sensible to lean on these tried and tested legislative arrangements and incorporate them in the Bill for the purpose of section 12 of the LTA. This approach will provide greater consistency and clarity for landlords and tenants who may find themselves in circumstances where a tenant's goods are left within premises, and are of value.
- 4.24 With this in mind, the amendment proposed in clause 13(3)(b) of the Bill has been changed.  
**Under a section 12 LTA application, if uncollected goods are in the possession of a landlord, the landlord may dispose of such goods as is thought best. However, the court will consider any application at that time from the landlord as to the sale of those goods, where they are considered to be valuable, in accordance with provisions adapted from section 12 of the Torts (Interference with Goods) Act 1981.**
- 4.25 Some comments were submitted in respect of the amendment found in clause 13(3)(a) of the Bill. Presently, a section 12 LTA application to the courts may only be made where insufficient goods are left in the abandoned premises to make good the sum of the rental arrears. The amendment will see the section 12 LTA procedure become available to any landlord regardless of the value of any goods left in the premises by a tenant (if any). As discussed in the consultation documentation, this change is necessary to ensure there is no loss of remedy for landlords who would otherwise have relied upon the landlord's arrest procedure to deal with goods left in their premises.

- 4.26 Existing arrangements under both section 7 of RoRA (for a landlord's arrest) and under section 12 of the LTA require an application to the courts. The changes to section 12 of the LTA do not impact this requirement and therefore the changes proposed will not be more onerous for landlords seeking resolution in these circumstances.

### **Connected consequential amendments and repeals**

- 4.27 In connection with the repeal of RoRA, the proposed amendments found in the following clauses of the Bill were broadly supported by respondents -

- Clause 10, which will repeal section 25 of the Bankruptcy Code 1892
- Clause 11, which will repeal section 6(a) of the Preferential Payments Act 1908
- Clause 12, which will amend section 1(2) of the Conveyancing (Leases and Tenancies) Act 1954
- Clause 15, which will amend section 1(2) of the Tenancies (Implied Terms) Act 1954
- Clause 17, which will the repeal of section 6(2)(e) of the Preferential Payments and Other Acts (Financial Adjustments) Act 1973
- Clause 19, which will repeal of section 32 of the Administration of Estates Act 1990.



## 5. Other consequential amendments and repeals

### Summary

- Part 4 of the Bill provides a number of further consequential amendments and repeals.
- No substantive comments were raised that would require any amendments to be made to the relevant clauses of the Bill as currently drafted.

### Disclosure of Information

- 5.1 In connection with disclosure of information, amendments found in the following clauses of the Bill were broadly supported by respondents -
- Clause 16 of the Bill relating to disclosure of information under the Income Tax Act 1970
  - Clause 18 of the Bill relating to disclosure of information under the Customs and Excise Management Act 1986
  - Clause 22 of the Bill relating to disclosure of information under the Social Security Administration Act 1992 (Application) Order 1994.
- 5.2 One respondent suggested that the disclosure gateway found in clause 16 of the Bill, in respect of confidential income tax data, should be extended to make such data available to Coroners for the purpose of enforcing any warrant for payment. This point received further consideration but it was determined it may be more appropriate to consider this matter for a later Phase of the Debt Recovery Project.

### Other

- 5.3 In addition, the proposals found in the following clauses were generally supported by respondents –
- Clause 20, which will repeal of section 15 of the Debt Recovery and Enforcement Act 2012
  - Clause 21 of the Bill concerning the Equality Act 2017.

## 6. The Register Regulations - (Proposals)

### Summary

- The consultation on the draft Bill sought views on some initial policy proposals relating to the Register Regulations, which will be made by the Deemsters under s.15(3) of the AJA (as amended by the Bill).
- The Register Regulations do not form part of the Bill itself.
- The comments received will be retained for further consideration as arrangements for the register regulations are finalised.

### Exemptions

- 6.2 A number of comments were received in relation to the exemption proposals applicable to the entry of details of civil debts and warrants for payment in the register.
- 6.3 Some respondents indicated support towards the exemption arrangements as they will ensure that judgments will not be entered into the register until they go unpaid or until the period within which they can be appealed has passed.
- 6.4 In respect of the proposals to exempt low value warrants for payment from the register, mixed views were received, with some respondents in support and some against the proposals. Where support was expressed, there did not appear to be any evidence that the support was strongly motivated by a desire to ensure the vulnerable were protected; more so, there was a general acceptance that the proposal to include a de minimis was sensible.
- 6.5 When asked what an appropriate de minimis would be, responses ranged from £500 to £3,000.
- 6.6 The impact to a person arising from the entry of details of a warrant for payment in the public register must be proportionate given the value of the sum of money that they owe. The Treasury has concluded that a de minimis should be included in the arrangements relating to the entry of warrants for payment in the register to achieve this proportionality, and that level should be £1,000.
- 6.7 **Warrants for payment that have a value of <£1,000 will be exempt from entry in the register under clause 5 (see new section 15F) of the Bill.**

### Operation of the register

- 6.8 The proposed arrangements for the operation of the register were subject to a range of feedback. Feedback on matters that should be included in the register were also received as part of the comments submitted regarding clause 5 of the Bill.
- 6.9 Suggestions regarding information that should be recorded in the register extended to: the name of the creditor, details of whether the debt was contested, and the date between the judgment being made and the debt being paid (where applicable).

- 6.10 One respondent sought clarity on how searching the register will work in practice. It is anticipated that a search will be available based on either the name of the debtor, the address of the debtor, or a combination of these two elements. It is also possible that a reference number in respect of the debt may be used to conduct a search; with the reference number matching the court reference allocated to the particular case in the High Court, or the reference number attached to the warrant for payment. These arrangements will of course be subject to consideration and finalisation by the Chief Registrar.
- 6.11 A couple of respondents commented that a debt should not be considered as satisfied until any/all fees payable to a Coroner, where the associated execution or warrant has been passed to a Coroner, have been paid. It is the intention that the Regulations will require that where fees are payable to a Coroner in connection with execution/warrant, that these fees must be paid before the register entry will be marked as satisfied.
- 6.12 Arrangements proposed for the register would see all debts removed from the register once they are 6 years old regardless of whether or not they have been paid. This approach is consistent with the approach in respect of the UK registers, and is considered proportionate and fair given the impact a register entry will have on a person's credit rating.
- 6.13 It was, however, one respondent's view that all debts should remain in the register until they have been satisfied, regardless of how long that may take. A further respondent suggested that details of a debt should be removed from the register as soon as it is satisfied.
- 6.14 **These suggestions received relating to the content and operation of the register, as provided for within the Register Regulations, will be shared with the Chief Registrar for consideration as the Regulations are finalised.**

## Glossary of terms

**This glossary of terms is for the purpose of the interpretation of the consultation. They are not, nor are they intended to be, a comprehensive legal or dictionary definition of the terms given.**

**Budgeting Loan** – A [budgeting loan](#) is available from Social Security to people in receipt of Income Support or income based Job Seeker's Allowance, to help spread the cost of items other than regular expenses.

**Civil Debt** – A civil debt arises when the court is asked to make a decision about a disagreement between two parties over money or property, and concludes that one of the parties is liable to pay a specified sum of money to the other party.

**Coroners** – Coroners are the appointed authority in the Isle of Man with responsibility for enforcing executions that are handed to them by execution creditors.

**Crown Debt** – In the Isle of Man, Crown debts are, in general, sums payable into the general revenue of the Isle of Man Government i.e. excise duty, custom duty, income tax, VAT and other duties.

**Crown Preference** – Crown preference is a provision in Manx legislation that gives Crown debts preference over other debts in certain circumstances. In the case of enforcement action being undertaken by a Coroner, Crown preference means that Crown debts must be enforced by a Coroner ahead of any other executions held against an execution debtor.

**Enforcement action** – Is the action taken by a Coroner to collect from an execution debtor the sum of money they are liable to pay to an execution creditor.

**Execution** – Is an enforceable order of the court which may be granted on a judgment in respect of a civil debt. Where an execution order is granted, the execution creditor may take that execution to a Coroner for enforcement.

**Execution creditor** – Is the person that is owed the sum of a judgment upon which execution has been granted.

**Execution debtor** – Is the person liable to pay the sum of a judgment upon which execution has been granted.

**Occupancy deposit scheme** – Part 6 of the [Landlord Registration \(Private Housing\) Bill 2020](#) provides that the Department of Infrastructure may introduce a scheme for the purpose of safeguarding occupancy deposits. The Department has committed to formally consult stakeholders on a proposed scheme once the Landlord Registration (Private Housing) Bill has completed its legislative passage.

**Judgment** - Means a determination of a court. In the context of the Bill, a judgment relates to a determination by a court in a civil matter whereby it is determined that one party is liable to pay a sum of money to another party.

**Judgments Register** – Means the Isle of Man’s public register of civil debts.

**Landlord’s hypothec** – Landlord’s hypothec is a landlord’s right in security over moveable property kept in leased premises (this can extend to property owned by the tenant only or to any goods including those belonging to third parties). It means a landlord’s claim for unpaid rent will rank as a secured claim over goods in the premises.

**Warrant for payment** – Is the documentation issued by the Assessor or the Treasury to a person at the end of a process during which the person has failed to pay a sum of money into Government, which it has been determined they owe. A warrant for payment may be passed to a Coroner for enforcement. Warrants for payment may only be issued in respect of a limited range of debts and only where underlying legislation allows.

## Appendix A - Comments received to the consultation

### Consultation response summary

- 9 – Responses were received in total
- 4 – Respondents gave permission for their response to be published in full
- 4 – Respondents gave permission for their response to be published anonymously
- 1 – Respondents did not wish for their response to be published

Notes: No response and “no comment” responses are omitted from this table.

Amendment of the Administration of Justice Act 1981	
Clause 4 - Amendment of section 12 (priorities)	
Question 1: Do you have any comments on the proposed changes to section 12 of the AJA in consequence of the repeal of RoRA?	
Eddie Teare	None.
DBC <sup>3</sup>	No.
Coroner of Rushen	I have no issues with repealing RoRA 1954 as it is necessary for this proposed bill to progress.
ANON-5WDJ-5S5T-B	Taken with Landlord Registration, loss of priority may affect rental market at lower end of sector Higher deposits etc. However I'm still in favour of disincentives to buy to let and rentier landlords.
ANON-5WDJ-5SJ3-Y	I think at the time when a pandemic is going on for you to even look at this is immoral.

Clause 5 – Register of Judgments	
Question 2: Do you agree with the range of judgments and warrants which will be included on the register?	
Eddie Teare	Yes.
DBC	Suggestions accepted but with the suggestions that rates debts be added.
Land Registry	Section 22 of the Registration of Deeds Act already provides a mechanism for a register of judgment to be maintained where a judgement effects land or personal estate.  An accessible register of bankruptcy orders and petitions in bankruptcy would be desirable. It is as relevant to a purchaser or lender of real estate that the seller or purchaser is the subject of a petition in bankruptcy as subject to a judgment.

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<sup>3</sup> Douglas Borough Council

	<p>The effect of registration of judgments and/or warrants and indeed petitions in bankruptcy relating to registered land should be registered in the Land Registry in accordance with section 54 of the Land Registration Act and/or as Schedule 6 burdens where appropriate. If judgment or petitions are not registered in accordance with the provisions of the Land Registration Act then they are liable to be overreached by operation of the notice provisions of the Land Registration Act which mean that a buyer for value may rely on the register of title to ascertain all interests burdening the property and will take free from any unregistered burdens. The Land Registry would welcome greater awareness of the provisions of section 54 of the Land Registration Act 1982 and the Land Registry Rules relevant to bankruptcy and insolvency (rules 93-97).</p> <p>Under these provisions the current legislative situation is that petitions and orders relating to bankruptcy and changes of trustees in bankruptcy should be protected by registration at the Land Registry. As stated previously, petitions or orders which ought to be protected by registration but have not been are liable to be overreached on a disposition of registered land.</p>
Coroner of Rushen	I believe it is time for a fairer system which allows potential Plaintiffs the opportunity to establish as to whether taking an action against someone is likely to obtain results as well as the creditworthiness of someone.
ANON-5WDJ-5S5T-B	Yes. VAT and NI being non-pressing creditors are often ignored by debtors and public information re these debts might discourage non-payment more than current regime. Searchable register extending to warrants will affect business reputation and creditworthiness and maybe stop misuse of the privilege of limited liability trading.
ANON-5WDJ-5SJ3-Y	Are we going to arrest the civil service and MHKS for wasting our money and defrauding us of our taxes.
ANON-5WDJ-5SJU-1	All J&E, Warrants, Fines etc. should be on the Judgements Register, I think it should be accessible to all, this would reduce the amount of Claims made and increase the Power of the Coroners. If Landlords, Business Owners, and the general public had access they would make better informed decisions about their Tenants, Customer of contractors before money was exchanged.
Question 3: Do you consider that the register should or should not include any particular type of judgment or warrant?	
Eddie Teare	Yes.
Douglas Borough Council	All types should be included.
Land Registry	<p>The conveyancing community and those purchasing property ought to be able to readily inspect a register of petitions in bankruptcy and bankruptcy orders. Insofar as there is an obligation to register all judgments relevant to registered land at the Land Register the position relative to Registered land ought to be unaffected by this Bill. There are other reasons for making a record of judgment debtors readily inspectable.</p> <p>As regards unregistered land, there is already a mechanism for recording memorials of judgments in a public register which can be readily inspected online. The Deeds Registry is a register of notice.</p>
Coroner of Rushen	I feel the proposed register is correct.
ANON-5WDJ-5S53-A	<p>Perhaps it should only be if the sum owing is not paid by a certain time.</p> <p>A debt may be legitimately disputed. Whilst I believe in the justice system, in some cases where parties are diametrically opposed the only way that the dispute may be fairly resolved is by a court a tribunal. It may be that that once determine, the debt is then paid immediately/as soon as possible.</p>

	Alternatively perhaps the entry sound be removed once paid or if paid within a specified time. I can see scenarios where without greater information being included, persons/entities may feel aggrieved that they appear on a register without any context, allowing inferences which may not be accurate to be drawn.
ANON-5WDJ-5S5T-B	Put them all in. There seems to be no shame in debt any more.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Register should include - Fixed Penalty Warrants of Execution - Issued under the Collection of Fines Act 1985. Parking Fines - Particularly those issued for failure to exhibit vehicle licence and those with more than 1. These are Crown Debts also.
Question 4: Who do you consider should be consulted regarding the making of the Register Regulations?	
Eddie Teare	Public.
DBC	Should include Coroners, Treasury, Advocates, Local Authorities, Landlords.
Land Registry	The Land Registrar The Registrar General The Isle of Man Law Society (Property Committee). The Land Registry has laid the foundation for drawing conveyancing searches together into one easy to use location -The Land Registry Titlelocator. Bankruptcy Searches play a crucial role in the process of conveyancing and the Land Registry is already host to information about Bankruptcy Petitions and orders affecting Registered land. The Land Registry would welcome the opportunity to see the Register functionalities relating to orders relevant to unregistered land made inspectable on such a common platform. This would provide a centralised focus for conveyancers and also a centralised hub for all government information relevant to land.
Coroner of Rushen	I feel it is very important that the Coroners' should be consulted on the Register Regulations as that are the ones who have first-hand experience of debt recovery and any issues that may arise.
ANON-5WDJ-5S53-A	Advocates.
ANON-5WDJ-5S5T-B	Information Commissioner. OFF debt advisory. Coroners.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Everyone - Public consultation, give everyone the opportunity to comment.
Question 5: Do you have any views on the matters which must or may be included in the Register Regulations?	
Eddie Teare	None.
Land Registry	The Land Registrar has a power under section 3(2) of the Land Registration Act 1982 to require information held by any public authority to be made available to the Registrar for the purposes of compiling the Registry. It would be useful not to require the Registrar to rely on this power to be entitled to examine data held on the register of debtors and petitions. I restate that a searchable and inspectable register of petitions in bankruptcy and orders in bankruptcy would be desirable to the conveyancing community, as well as those involved in registering land.



Coroner of Rushen	The regulations should include to prevent Plaintiffs and their Advocates from using the Coroner's to apply pressure on a debtor and then withdrawing the Judgments in order to make a private arrangement. A Coroner can put considerable time and effort in chasing a debtor and seeking assets only to have a Plaintiff pull the Judgment and offer a private arrangement to settle.
ANON-5WDJ-5S53-A	Please see previous response. At the very minimum it should include date the judgment or order is made AND crucially where the debt has been satisfied the date upon which it was satisfied. In order for the registration to be useful it may also be helpful to include details of what the debt related to (e.g. non-payment of goods and services, non-payment of rent, etc.). In addition whether the debt was disputed, admitted or obtained by default.
ANON-5WDJ-5S5T-B	No.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Any matter on the register can only be removed/edited/set aside on production of the original Court document. Register should include - Fixed Penalty Warrants of Execution - Issued under the Collection of Fines Act 1985. Parking Fines - Particularly those issued for failure to exhibit vehicle licence and those with more than 1. These are Crown Debts also.
Question 6: Do you have any views on whether an order under new section 15(7) should be made by the Treasury or any other Government body?	
Eddie Teare	None.
Coroner of Rushen	Whilst I appreciate the reasons for recommending the Treasury there does need to be consultation with the Courts.
ANON-5WDJ-5S5T-B	Better Government/Treasury than anyone else. Order enables rapid policy response to any unanticipated consequences
ANON-5WDJ-5SJ3-Y	Immoral.
Question 7: Do you think that the body making the order should be required to consult with any other parties regarding the making of an order, and if so, which parties?	
Eddie Teare	No.
DBC	Yes, there should be consultation beforehand with Coroners, Treasury, Advocates, Local Authorities and Landlords.
Land Registry	I consider that it would be entirely appropriate for the order making body to conduct consultations with a representatives of the Courts, of the Tribunal's service, the Chief Registrar, the Land Registrar, the Registrar General and the Isle of Man Law Society and representatives of insolvency practitioners.  All these bodies already play a role in the processes leading to the creating of petitions in bankruptcy and orders for judgment debt.
Coroner of Rushen	Yes I feel it is necessary to include the Coroners' as they will be in a position to advise as to any problems that require changes to any orders.
ANON-5WDJ-5S53-A	Advocates.
ANON-5WDJ-5S5T-B	No. Additional requirement to consult. Those who squeal loudest typically face a loss whereas there is often silence or passivity from those who might benefit.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Consult the people that are trying to enforce the orders.

Question 8: Do you have any comments on the proposed arrangements for the provisions of information for the register to the Chief Registrar under section 15A?	
Eddie Teare	No.
Coroner of Rushen	No as it will be very important that the register is correct and up to date as is possible.
ANON-5WDJ-5S53-A	No, so long as the information is shared and used for this purpose only.
ANON-5WDJ-5S5T-B	It's good in order to provide a lawful basis for a complete register.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 9: Do you have any comments on the proposed arrangements for the keeping and publishing of the register under new section 15B?	
Eddie Teare	Access to this information should not be restricted to subscribing to a credit reference agency or similar body.
DBC	The Register should be accessible online.
Land Registry	The Land Registry consider that in 2020 and beyond it would be highly desirable if inspection could be conducted electronically through, for example, the Government Online Services platform. Memorials of Judgment recorded in the Deeds Registry and interests relating to bankruptcy and/or judgment which have been registered in the Land Registry are already available for search and inspection through this portal.
Coroner of Rushen	It is important that the Coroners' have free access to the register however it is kept.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Access to register for the Coroners without a charge.
Question 10: Do you agree with the fee making proposals under this provision?	
Eddie Teare	Yes, but see Q9.
DBC	There should be no fee to access the register.
Land Registry	Yes. The majority of these searches will, it is envisaged, be conducted for the purposes of conveyancing transactions or other secured lending. Government charges, though unavoidable, increase the cost of borrowing/purchasing.  Searching a registered title costs £6.50 and purchasing a Memorial of Judgement from the Deeds Registry costs £2 via the online service.
Coroner of Rushen	No issues with the public having to pay a fee, however as previously stated it is important that the Coroners' aren't charged to do their job.
ANON-5WDJ-5S53-A	So long as the fees are such that they are not restrictive. There must be access to justice for all. There should be no excess applied to the reserve the cost should be reflective of the cost of maintenance. Any provision should be staffed by current employees by increasing efficiency within government!
ANON-5WDJ-5SJ3-Y	Immoral.
Question 11: Do you have any comments on the proposed arrangements under new section 15D of the AJA?	
Eddie Teare	No.
Land Registry	There is a considerable public benefit in parties being able to ascertain the credit worthiness of parties with whom they may be contracting.

Coroner of Rushen	No particular views held.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 12: Are there any other circumstances where you consider that information must not be published or disclosed in the way proposed under the new sections 15-15B?	
Eddie Teare	No.
Land Registry	No.
Coroner of Rushen	I cannot see any reason for this information not to be published, however I feel this would need to be reviewed in time.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 13: Do you have any comments on the proposed transitional arrangements under new section 15E of the AJA?	
Eddie Teare	The information should be included on the register when the warrant is issued not relating to when the process was commenced.
Coroner of Rushen	I can see no issues with the proposed transitions arrangements provided a media campaign is conducted to ensure the public and other interested parties are aware of the changes.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	If there is already 5 Warrants for payment before the Legislation comes into operation and it takes longer than six years for the 5 not shown on the register to be paid, are all new register entries removed?
Question 14: Do you have any further comments on any of the matters contained in clause 5 of the Bill?	
Eddie Teare	No.
Land Registry	No.
Coroner of Rushen	No all the clauses, subject to my previous comments appear to be fair and workable.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 6 - Interpretation**

Question 15: Do you have any comments on the definitions of "execution" and "warrant for payment" provided in clause 6: do you consider the definitions are appropriate for the purpose of the registration of the types of judgments and warrants for payment that it is proposed to register?	
Eddie Teare	No and OK.
Coroner of Rushen	No but as previously stated it will be very important to ensure the public are made aware of the changes as a result of this bill.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Fixed Penalty Warrants of Execution - Issued under the Collection of Fines Act 1985. Are they a priority debt do they get Crown Preference?

### Clause 7 – Amendment of Schedule 1 (arrest and sale of goods etc.)

Question 16: Do you have any comments on the transitional provision proposed under clause 7 of the Bill?

Eddie Teare	No.
Coroner of Rushen	The problem of leaving a tenant with 12 months' rent has always been a difficult one to deal with as saying "12 months' rent" is like asking how long is a piece of string! The removal of the 12 months' rent is a welcomed change.
ANON-5WDJ-5SJ3-Y	Immoral.

### Amendment of the Summary Jurisdiction Act 1989

#### Clauses 8 & 9

Question 17: Do you have any comments on the proposed arrangements under Part 3 of the AJA, aligning arrangements for the register of fines with the proposed arrangements for the register of civil judgment debts and debts due under a warrant for payment?

Eddie Teare	No.
Coroner of Rushen	My only comment would be the need to establish where fines sit in the list of priority's as it is currently unclear as to where they sit on any list of priority debts.
ANON-5WDJ-5S5T-B	It's good to try and marry the two up.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Fixed Penalty Warrants of Execution - Issued under the Collection of Fines Act 1985.

### Consequential Amendments and Repeals

#### Clause 10 – Bankruptcy Code 1892 amended

Question 18: Do you agree with the repeal of section 25 of the Bankruptcy Code 1892?

Eddie Teare	Yes.
Land Registry	Distrain provided a powerful remedy to landlords to prevent defaulting tenants. It is an ancient common law remedy and was confirmed in the Act of Settlement. Will repeal also remove the common law remedies? What are the policy grounds for repealing this? The ability of a Landlord to secure payment of rent is a powerful driver of improvement in the rental market. Is a differentiation being made between residential and commercial tenants?

Coroner of Rushen	I consider this a welcomed amendment as it will bring the Island in line with the UK where the Distrain for Rent by a Landlord changed in 2014.
ANON-5WDJ-5S5T-B	Yes.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 11 – Preferential Payments Act 1908 amended**

Question 19: Do you agree with the repeal of section 6(a) of the Preferential Payments Act 1908?

Eddie Teare	Yes.
Land Registry	If the Recovery of Rents Act is being repealed THEN what is there to disagree with?
Coroner of Rushen	No comment as I believe this is required to progress this Bill.
ANON-5WDJ-5S5T-B	Yes.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 12 – Conveyancing (Leases and Tenancies Act 1954) amended**

Question 20: Do you agree with the amendment to section 1(2) of the Conveyancing (Leases and Tenancies) Act 1954?

Eddie Teare	Yes.
Land Registry	If RoRA is being repealed then YES.
Coroner of Rushen	No comment as I believe this is required to progress this Bill.
ANON-5WDJ-5S5T-B	Yes.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 13 – Landlord and Tenant Act 1954 amended**

Question 21: Do you have any comments on the amendment found in clause 13(3)(a) of the Bill which will open up the section 12 procedure under the LTA to landlords regardless of the value of goods left in the premises by a tenant?

Eddie Teare	None.
Land Registry	This does not affect the Land Registration process.
Coroner of Rushen	I have no issue with this change.
ANON-5WDJ-5S53-A	I am not sure a court order should be required for the coroner to deal with the assets left on the property. This seems unnecessary.
ANON-5WDJ-5SJ3-Y	Immoral.

Question 22: What are your views on the treatment of goods left on premises deserted by a tenant following a landlord's application for recovery of possession of the property under section 12 of the LTA?

Coroner of Rushen	In principle I have no issues other than if the Courts issue an Order which authorizes the Destruction of abandoned goods by the Coroner, there needs to be a provision for the Coroner to charge for such an action as there will be costs involved.
ANON-5WDJ-5S53-A	I don't think a further court order should be required to allow sale of the assets. There should be an automatic right to sale. There should also be automatic consequences in the event that assets exceed the value of the claim e.g. treated bona vacantia. It should not be up to the landlord to deal with the assets
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	What fee will be required for this, will this fall under a section of the Coroners Fees Order 2009 as this has not been included in the current amendments.
Question 23: In more general terms, do you have any specific concerns regarding the proposed changes to section 12 of the LTA?	
Coroner of Rushen	I would expect there to be a reasonable time allowed between a tenant leaving a property and the Courts issuing an Order of some sort to allow the tenant the opportunity to recover such property. It is not unusual for a tenant to leave a property before they have been able to remove their goods as they often are busy trying to find a new property to rent.
ANON-5WDJ-5S53-A	There needs to be provisions for what happens when value of assets exceed the value of the debt. No additional burden should be placed upon landlords to make arrangements or even proposals as to what should happen with them.
ANON-5WDJ-5SJ3-Y	Immoral.

#### Clause 14 – Recovery of Rent Act 1954 repealed

Question 24: Do you agree with arrangements to remove the preferential rent protection afforded to landlords from Manx legislation?	
Eddie Teare	Yes.
Land Registry	Conceptually no. Investment in Property is promoted by a vibrant landlord and tenant relationship. If Landlord's cannot be secure of a rental stream this tends to lead to under investment in rental stock.
Coroner of Rushen	I agree with the removal of preferential rent protection as it is important that a Landlord makes such checks as necessary before renting a property and not just rely on the preferential rent provision.
ANON-5WDJ-5S53-A	No. The preference should be retained at least in respect of any debt subject to a judgment. Tenants are entitled to remain in a property until an order for possession is obtained. That order is obtained at the expense of the landlord. There is always a lag in obtaining that order (minimum 3 months...) and there is often difficulty in recovering loss of rent and mesne profits and the costs of obtaining the order. That protection must be balanced against some (any?) protection afforded to landlords. Tenants are currently gaining extra protection through the private landlord's bill, whilst landlords are losing the little protection they have.
ANON-5WDJ-5S5T-B	Yes.
ANON-5WDJ-5SJ3-Y	Immoral.

Question 25: Do you agree with arrangements to remove the landlord's arrest procedure from Manx legislation?	
Eddie Teare	Yes.
Coroner of Rushen	Yes as I believe the proposed bill will remove the need, as long as the Landlord follows the correct steps.
ANON-5WDJ-5S53-A	No. See response to above.
ANON-5WDJ-5S5T-B	Yes.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 26: Do you have any other comments on the proposed repeal of RoRA under clause 14 of the Bill?	
Eddie Teare	None.
Land Registry	This does not affect Land Registration. But, the ability of Landlord to collect rent is of vital importance to the property market generally.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 15 – Tenancies (Implied Terms) Act 1954 amended**

Question 27: Do you agree with the amendment to section 1(2) of the Tenancies (Implied Terms) Act 1954?	
Eddie Teare	Yes.
Land Registry	This is not material.
Coroner of Rushen	I don't see any reason that this should not be amended as it will be necessary for this Bill to progress.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 16 – Income Tax Act 1970 amended**

Question 28: Do you have any comments on the amendments included in clause 16(2) of the Bill concerning the disclosure of information to the Judgments Officer, a Coroner or a Lockman?	
Eddie Teare	No.
Land Registry	None.
Coroner of Rushen	Only that it is important that a Coroner and or their Lockmen have as much information as necessary to enable them to perform their duties efficiently.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 29: Do you have any comments on the amendments included in clause 16(3) of the Bill concerning the disclosure of information to the Chief Registrar?	
Eddie Teare	No.
Land Registry	No.
Coroner of Rushen	No, as in order to ensure the register is correct and up to date there needs to be a mechanism to such data as required.
ANON-5WDJ-5SJ3-Y	Immoral.

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**Clause 17 – Preferential Payments and Other Acts (Financial Adjustments) Act 1973 amended**

Question 30: Do you agree with the repeal of section 6(2)(e) of the Preferential Payments and Other Acts (Financial Adjustments) Act 1973?

Eddie Teare	Yes.
Land Registry	Does this Act have any continuing effect?
Coroner of Rushen	Yes.
ANON-5WDJ-5S53-A	No see above re removal of preference.
ANON-5WDJ-5SJ3-Y	Immoral.

**Clause 18 – Customs and Excise Management Act 1986 amended**

Question 31: Do you have any comments on the amendments included in clause 18(2) of the Bill concerning the disclosure of information to the Chief Registrar?

Eddie Teare	No.
Coroner of Rushen	I have no comments on this as I believe it is necessary.
ANON-5WDJ-5SJ3-Y	Immoral.

Question 32: Do you have any comments on the amendments included in clause 18(2) of the Bill concerning the disclosure of information to the Judgments Officer, a Coroner or a Lockman?

Eddie Teare	No.
Coroner of Rushen	In order that the Coroner's and their Lockmen are able to perform their duties as quickly and efficiently as possible it is necessary that all relevant information is available.
ANON-5WDJ-5SJ3-Y	Immoral.

**Clause 19 – Administration of Estates Act 1990 amended**

Question 33: Do you agree with the repeal of section 32 of the Administration of Estates Act 1990?

Eddie Teare	Yes.
Coroner of Rushen	Yes as the Bill must ensure a level playing field for all those using it.
ANON-5WDJ-5S53-A	No see above re removal of landlord protection.
ANON-5WDJ-5SJ3-Y	Immoral.

**Clause 20 – Debt Recovery and Enforcement Act 2012 amended**

Question 34: Do you agree with the proposal to repeal section 15 of the DREA?

Eddie Teare	Yes.
Coroner of Rushen	Yes as it is now unnecessary in light of the proposed Bill.



ANON-5WDJ-5S53-A	I think it would be helpful to understand priority for all those owed debts included in the register.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 21 – Equality Act 2017 amended**

Question 35: Do you have any comments on the proposed amendments to the Equality Act 2017 in clause 21 of the Bill?

Eddie Teare	Good.
Coroner of Rushen	Only that all actions under this Bill need to be on a like for like basis to avoid confusion.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **Clause 22 – Social Security Administration Act 1992 (Application) Order 1994 amended**

Question 36: Do you have any comments on the amendments included in clause 22(2) of the Bill concerning the disclosure of information to the Chief Registrar?

Eddie Teare	No.
Coroner of Rushen	No I don't see any issues with this clause.
ANON-5WDJ-5SJ3-Y	Immoral.

Question 37: Do you have any comments on the amendments included in clause 22(2) of the Bill concerning the disclosure of information to the Judgments Officer, a Coroner or a Lockman?

Eddie Teare	No
Coroner of Rushen	In order that the Coroner's and their Lockmen are able to perform their duties as quickly and efficiently as possible it is necessary that all relevant information is available.
ANON-5WDJ-5SJ3-Y	Immoral.

#### **The Register Regulations (Proposals)**

Question 38: Do you have any comments on proposed arrangements in respect of exemptions to register entry in respect of High Court and tribunal judgments?

Eddie Teare	No.
Land Registry	Yes. Notice of petitions in Bankruptcy should be published and made available for inspection at the earliest opportunity to enable prospective purchasers and lenders aware of the covenant strength of contract parties. Judgment relating to registered land should be registered at the Land Registry as soon as possible to ensure the secure priority to any other dealing. This is already provided for in the Land Registration Act. Deed (in the Deed Registry) secure priority relative to the time they are registered. And so, notwithstanding the intentions of these exemptions notice of judgment should be being registered as soon as they are given. Court costs are a civil debt, and it is not clear why a contrary view has been taken.

Coroner of Rushen	No as I consider this section well thought out.
ANON-5WDJ-5S53-A	It should be made clear what the debt is for and whether the debt was contested, admitted or obtained in default. It is not inconceivable that disputes arise that can only be fairly determined by the court or tribunal. Unfair interfaces may be drawn in the event this information is not contained. Equally if a debt is admitted and paid it seems unfair it should be treated the same. With the best will in the world since default judgments are not known about by the person owing the debt. The passage of time between entering judgment and payment is also relevant to the use the register may be put to.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 39: Do you have any comments on including provisions in the Regulations that would exempt details of warrants for payments that are below a specified limit from being included in the register?	
Eddie Teare	No.
Land Registry	This would keep registrations which are in reality not likely to disrupt a conveyance off the register. This would seem sensible.
Coroner of Rushen	Whilst I can understand the view that low level debts could be unregistered as they may be due to a financially vulnerable person, however there would need to be some checks and balances to ensure this was not abused by someone who tries to play the system to their advantage. Every case is different and I feel it's difficult to give a "one size fits all" answer.
ANON-5WDJ-5S53-A	I think this is fine so long as the sum is no more than £1k.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	All J&E, Warrants, Fines etc. should be on the Judgements Register. If Landlords, Business Owners, and the general public had access they would make better informed decisions about their Tenants, Customer of contractors before money was exchanged.
Question 40: Do you have any views on what the amount owing should be for a warrant for payment to qualify for such an exemption?	
Eddie Teare	£500
Land Registry	Sums below £3000.
Coroner of Rushen	Again not an easy question to give an answer to that isn't open to abuse by someone.
ANON-5WDJ-5S53-A	No more than 1k.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 41: Do you consider that there are any other circumstances in which details in a warrant for payment should be exempt from entry on the register?	
Eddie Teare	None
Land Registry	No.
Coroner of Rushen	I cannot think of any reason.
ANON-5WDJ-5S53-A	When it is paid within e.g. 14 days.
ANON-5WDJ-5SJ3-Y	Immoral.
Question 42: Do you have any comments on the proposed arrangements for the operation for the register?	
Eddie Teare	No
DBC	Consideration should be given to inclusion in the register of the type of debt, possibly by naming the debtor.
Land Registry	The output must be provided as response to an individual name search and detail any registered orders or indebtedness to which a named party is subjected. The output must be official and certificated as such. A purchaser will then be able seeks further comment from a selling advocate.

	Expired debts are of no transactional relevance -albeit they may speak to creditworthiness.
Coroner of Rushen	It is very important that a debt is considered settled and therefore marked as such without a Certificate of Satisfaction from the Coroner who holds the Judgment/Warrant. Also a Plaintiff should not be able to withdraw a Judgment without a full explanation and application to the Court. There is a growing tendency for Judgments to be withdrawn after a Coroner has spent considerable time and effort in pursuing the debt only for a "private" arrangement to be made between the Plaintiff & Defendant. It is obvious that the Coroners are being used to obtain information etc. only to be left out of pocket.
ANON-5WDJ-5S53-A	They should not be removed unless satisfied.
ANON-5WDJ-5SJ3-Y	Immoral.
ANON-5WDJ-5SJU-1	Matters should not be marked Settled/Satisfied, set aside etc. or any application to the Court without the original Court issued /Warrant/Execution being returned to the Court. What proof will be required that matters have been paid, settled etc.

## Appendix B - Written responses received in connection with the consultation

### Written responses summary -

- 8 – Written responses were received in total
- 4 – Respondents gave permission for their response to be published in full
- 1 – Respondents gave permission for their response to be published anonymously
- 3 – Respondents did not wish for their response to be published

The following table contains three of the responses for publication with the final response following separately.

Response from	Comments
Eddie Teare	<p>There needs to be proper training for the Coroners as my own experience indicates that they are not adequately trained or supported by the Government. For instance they are unable to obtain advice from the AG's Chambers. They need a more professional and pro-active approach.</p> <p>The search should give access via the debtor's name and address in case the creditor does not have a full name. Clause 15c Fees (3) there is no provision for defraying shortfall in costs from the General Revenue. Clause 101B(3) is similar.</p> <p>I would also like to see costs orders included in the information published on the register.</p>
The Hon. Juan Watterson BA(Hons) BFP FCA CMgr FCMI FRSA SHK Speaker of the House of Keys Member for Rushen	<p>At a policy level, it is rather brave to be removing the Recovery of Rent Act 1954 ahead of the provisions within the landlord and tenant Bill which will implement a deposit protection scheme. This would reassure landlords that their interests were still being respected at a time of some anxiety for them.</p> <p>The other policy issue is that the register seems to note that when a debt has been fully paid this is noted on the register, rather than removed from the register. It may be preferable to people who have we paid the debt owed that it be removed from the register altogether.</p> <p>Finally with regards to disclosure of information, particularly the proposals under clause 16 for disclosure of information to the judgement officer, Coroner or Lockman, it seems anomalous that we would only give permission for information to be shared in respect of the recovery of income tax debt rather than all warranted debt. It only seems fair that information should be able to be shared regarding all warranted debt, not just debt belonging to powerful and well-informed elements of the executive.</p>
ANON-EMAIL	<p>I would like to tell you about my own experience dealing with Manx law with regard to a loan made to a respectable member of the Manx business community.</p>

	<p>In March 2015 I advanced £26,000 to an English qualified solicitor then in business in the Isle of Man. He drew up a promissory note which was witnessed, bearing interest at 10% and repayable after three months, that is on 31 May 2015. The individual concerned was a friend of mine and had in fact drawn up my Manx will and a power of attorney.</p> <p>The amount was not repaid as promised and I was given all sorts of untrue reasons why it was being delayed. Eventually I realised this individual had also cheated some other people here and was what is commonly called a confidence trickster.</p> <p>In 2019 I consulted and instructed a Manx advocate with a view to recovery, and judgement was granted in June 2019 for £35,975 including interest.</p> <p>Needless-to-say no payment was made. Later that year the firm of advocates went out of business and the recovery of the debt was placed in the hands of the Castletown coroner.</p> <p>I received some promising messages from the coroner following conversations with the debtor but nothing of any substance. Despite leaving some messages for the coroner this year, I have heard nothing from him either. Surely there should be some procedure where a blatant liar and cheat can be called to account for his words or actions in Court and be penalised accordingly.</p> <p>It seems to me that coroners don't have the powers they require or that they are required to be more pro-active in cases such as mine to ensure that justice is seen to be done.</p>
Isle of Man Landlords' Association	<p>Our main concerns with this Bill are that it appears to remove certain protections offered to landlords at a time when protection of tenants is being beefed up with the (potential) introduction of the Private Landlords Bill. Protection for tenants already, rightly, outweighs that offered to landlords. I certainly agree that persons should have a right to peaceful enjoyment of their homes and private life and should not be at immediate threat of homelessness. However, in relation to minimum standards, there is already protection built in to existing legislation, including environmental laws and regulations and the ability to withhold rent. In respect of deposits, the rights of tenants are exactly the same as landlords. In the event that there is a grievance, it can be pursued through small claims at very little cost. In the same way that in the event that there is damage to a property, this can be pursued through the court system or alternative dispute resolution.</p> <p>The big issue is the removal an automatic right to sell goods left on the property, replacing it with a need for Court Order.</p> <p>Our comments are as follows:</p> <p><b>Removal of Landlords' preference</b></p> <p>This Act effectively give some form of security to landlords. There is no way in which landlords can secure the debts, in the way e.g. other companies and banks may. In circumstances where security cannot be taken by landlords, and where government are not willing to give up their (ultimate preference) AND in light of the e.g. security over deposits and general increase in tenant protection, I am not sure why this should be accepted.</p>

### **Amendment to Section 12 LTA**

This Clause seeks to amend Section 12 of the Landlord and Tenant Act 1954. My understanding of Section 12, is that it is intended to assist where a property has been abandoned. Where a tenant deserted a property and was in arrears of 6 months' rent, the Landlord could make an application to Court seeking an Order (similar to a possession Order) that the Coroner may affix a notice to the property such that if the tenant did not return to the property by a certain date or pay the outstanding arrears, the coroner may enter into the property and hand back possession to the landlord. The advantage of using this Section, over simply seeking a possession Order is that it can be used regardless of whether you know where the tenant is and, ***without further order of the Court*** sell any possessions remaining on the property in satisfaction/part satisfaction of the rent arrears, so long as the goods left on the property are insufficient to clear the arrears.

Essentially it is proposed to remove the automatic right to sell goods. It also removes the need for the goods left on the property to be of insufficient value. The practical effect is that you will need a court Order to deal with the assets. The removal of the cap is really neither here nor there. In the event that it was thought that goods left on the property were worth more than the rent arrears, it is already no advantage to a landlord to use this provision in order to obtain possession. It would be open to the landlord to seek possession in the usual way on the basis of the existence of rental arrears. It would be necessary, in order to be fully protected, for any landlord to seek an Order of the Court providing how the possessions should be dealt with in the event that possessions were left upon the Property. Similarly if you used Section 12 and upon appraisal it transpired the goods were worth more, you would need to seek a further court Order.

In my mind, therefore, this repeal removes an automatic right and replaces it with a more onerous provision, meaning that even where a property has been abandoned, in order to obtain full protection, regardless of the value of the goods left are, a court order would be required before they could be disposed of. Certainly, the goods could not be sold without court Order in satisfaction of the rent arrears.

The reality is, it is more likely than not, that in most cases the goods left will be less than rent arrears of 6 months' rent, such that the repeal is likely to be disadvantageous to landlords. Furthermore, without guidance from the legislature, it is impossible to know what the Courts might Order in respect of any goods remaining on the property e.g. will they have to store them for a certain amount of time before disposing of them, and at whose expense? Will this become yet a further expense for landlords in the event that a tenant simply ups and leaves? "You can have possession such that you can re-rent the property, but you will need to keep hold of these assets for the period of x months" etc. I have come across issues in another realm (mortgage repossessions/receivership sales) where an Order has to be sought in respect of how goods left on properties ought to be dealt with. This satellite issue can be very (very) costly and time consuming to resolve.

If anything, I would suggest that the laws are already disadvantageous to landlords when properties are abandoned because of the need to obtain any kind of Order for possession. Of course, you could simply re-enter, but this could come back to bite, in circumstances where possessions might suggest the property has not been fully abandoned. Under those circumstances, instead of watering down landlords' rights in this regard, Section 12 should be amended to preserve the rights currently afforded under Section 5

of the Recovery of Rent Act, such that all goods left at the Property upon receipt of a possession Order or re-entry as a result of abandonment can be sold in satisfaction of the rent arrears. In the event that the value is greater than the arrears, directions can be sought at *this* stage as to what should be done with any surplus.

**Restraint of Assets**

The repeal of the ability to seek an Order to restrain the removal of goods from a property where there is a fear that they may be imminently removed, is probably more important to commercial lets. There is nothing preventing a landlord seeking an injunction in the usual way. However, without any preference, they would have no priority over any other creditor in the event of bankruptcy. They would also likely have to provide a cross undertaking in damages to the Court. I am not sure whether there is a requirement to provide a cross undertaking in these circumstances. If there is a requirement (and my understanding of the Act is correct) then this would put a landlord in pretty much the same position as any other creditor, such that this particular aspect may not be so troubling.

The main concern is the removal of the ability to sell any goods left on the property at the end of the tenancy. This is being effectively replaced by Section 12 of the LTA (see below). However, Section 12 of the LTA does not provide the same level of protection. In addition, the need for a Court Order is onerous.

27 November 2020

By email: - [Treasuryconsultations@gov.im](mailto:Treasuryconsultations@gov.im)

**Consultation on the Administration of Justice and Other Amendments Bill 2020**

**Submission by the Information Commissioner**

The Commissioner's submission relates to **Clause 5 – Substitution of section 15 (register of judgments)**, specifically:

- the inclusion of 15(1)(c) – **"warrants for payment"** in the register of judgments maintained by the Chief Registrar, and any provision relating thereto; (including the proposed "Register Regulations" set out on pages 21 and 22 of the consultation document.)
- the associated publication (beyond the Isle of Man) of **"warrants for payment"** by another person with whom the Chief Registrar has entered into **"arrangements"**.

The Treasury is seeking to amend the Register of Judgments to include *"warrants for payment on or under which a sum of money ... is payable"*.

In doing so, Treasury intends for details of such warrants to be provided to Registry Trust Limited in the UK, which thereby appear on an individual's credit file. In effect, Treasury's intention is to deny a person, against whom the Treasury has issued a warrant, from obtaining credit, including a mortgage, finance for white goods, etc.

The effect on the individual will be long lasting and even when the debt is paid, it will remain on a person's credit file for 6 years but the effect could be permanent where credit has been denied. In addition, the effect could be to force individuals towards less scrupulous lenders.

Clause 6 set out the definition of **"warrant for payment"**, of which only point (b) relates to debts owed by individuals and, therefore, the associated processing of personal data.

The Commissioner's concerns expressed in this submission specifically relate to the inclusion of "warrants for payment" that relate to **"budgeting loans"**.

There is no reference to, explanation, or mention of "budgeting loans" in the consultation document other than in the definition of "warrant for payment" in Clause 6.

(The concerns expressed in relation to warrants issued for budgeting loan debts are equally applicable to other warrants issued for personal income tax and National Insurance arrears.)

**Budgeting loans granted by Treasury**

Individuals who have had the need to approach Treasury for such a loan are, by their circumstances, some of the most vulnerable members of society, lacking the ability to finance some urgent basic requirements.



Section 140A of the Social Security Contributions and Benefits Act 1992<sup>i</sup> makes provision for "Exceptional Needs Grants and Budgeting Loans". Treasury's website contains details about budgeting loans<sup>ii</sup>.

In summary:

- Budgeting loans must be repaid, but no interest is payable;
- Applicants must already be "*in receipt of Income Support or income based Jobseeker's Allowance for at least 4 weeks*", and in limited circumstances, employed person's allowance.
- The purposes for the loan are restricted, and include, for example, purchase, delivery and installation of certain items of furniture (specified in Regulations<sup>iii</sup>); deposits for rent charges, heating costs, essential repairs, clothing or footwear, reusable cotton nappies.
- The maximum amount of a budgeting loan is prescribed in Regulations<sup>iv</sup> and is £1000. (no additional loan can be paid if there is an existing loan of a specified amount still owed)
- Repayment<sup>v</sup> is made at a minimum of £12.50 per week by making deductions directly from any social security benefits including Manx state pension (but not certain disability benefits);
- If the person leaves benefits they "*must make arrangements to repay the remainder of the loan at the rate of at least £12.50 per week, either by making payments by standing order or by cash or cheque at the Post Office*"<sup>vi</sup>
- The person is required "*to sign a loan agreement*"<sup>vii</sup> ... *so that you are clear as to the terms on which the loan is made and how you must repay it*"<sup>viii</sup>

#### **Budgeting loan default**

It is difficult to see how a budgeting loan can fall into default for so long as a person remains in receipt of social security benefits.

Therefore, in practical terms, the only circumstances in which a budgeting loan will fall into default will be if a person has "left benefits", for whatever reason, (for example, found employment, left the Island, deceased) and fails to make payments as above.

#### **Recovery of outstanding budgeting loans**

Recovery of outstanding budgeting loans is provided for by section 114AB of the Social Security Administration Act 1992<sup>ix</sup> (of Parliament) as it has effect in the Island.

Treasury determines whether a budgeting loan is in default and an "authorised officer" of Treasury may issue a warrant for recovery of the outstanding budgeting loan. The warrant "*direct[s] [a specified Coroner] to enforce this warrant in the same manner as an execution of the High Court ...*"

#### **Action by Treasury and appeal by individual prior to issue of warrant**

Page 6 of the Consultation Document states:

*"The issuing of a warrant is preceded by a person being notified that they are liable to pay a sum ... advised that in the absence of arrangements being made to pay the sum*

*due within a specified timeframe (or an appeal being raised), a warrant will be issued. Any appeal that is raised regarding the amount which a person is assessed to be liable to pay is heard by a tribunal.*

*It is only when a person fails to engage in the process to pay the sum of money that they are notified that they owe, or where an appeal in respect of the sum determined to be owed is unsuccessful, that a warrant will be issued to the person".*

The Register Regulations (Proposals) on page 22 of the Consultation Document state:

*"Warrants for payment are only issued at the end of a lengthy and costly process to seek payment of a sum of money a person is liable to pay; every effort will have been made to engage a person to pay the sum they owe through all viable means..."*

The "process" followed to seek repayment of the debt is not explained on Treasury's website or in the published literature associated with budgeting loans.

Although the Commissioner requested Treasury to provide a copy of the 'loan agreement' detailing the terms and conditions, it had not done so at the time this submission was made.

The Commissioner has not been able to identify a statutory appeal mechanism against the issue of the warrant or a relevant tribunal for appeals against warrants for budgeting loan debt disputes.

There is no apparent external verification of the budgeting loan debt owed to Treasury prior to the proposed inclusion of the warrant in the Register of Judgments.

The intention of Treasury to include warrants for such sums in the Register of Judgments, without any obvious appeal mechanism or involvement of any independent third party, such as a tribunal, is contrary to the general right to a fair trial.

The processing of that personal data would not appear, therefore, to be fair, infringing the principle of lawfulness, fairness and transparency (Article 5(1)(a) of the Applied GDPR) and unlawful as it appears to infringe Article 6 of the European Convention on Human Rights.

#### **"arrangements" made by Treasury for publication of Isle of Man debts in the UK**

The "arrangements" that currently exist are with Registry Trust Limited<sup>x</sup> ("RTL"), a not for profit company established in 1985. The "mission" of RTL is:- *"... to maintain the register of Judgments, Orders and Fines for England & Wales, Scotland, Northern Ireland, ROI, IOM and Jersey."*

RTL *"operate[s] TrustOnline<sup>xi</sup>" which "provides access to the official statutory Register of Judgments, Orders and Fines for England and Wales on behalf of the Ministry of Justice. Registry*

*Trust also provides access to the Registers for Scotland, Northern Ireland, Isle of Man, Jersey and the Republic of Ireland by agreement with the authorities in those jurisdictions.*

*TrustOnline is the only service which provides members of the public and businesses with immediate access to search the complete Register."*

RTL provides the data submitted to it to credit reference agencies such as Equifax and Experian. RTL states:- "This data is intrinsic to responsible lending and informed business decisions in the UK."

Details of the information currently contained in "official registers" submitted to RTL for inclusion by TrustOnline can be found at: <https://www.trustonline.org.uk/help-topics/>

The "official register" submitted for England and Wales, with the exception of Tribunal awards, contains "Judgments, Orders and Fines" of a court and each entry includes the court case number. In respect of Tribunal awards, these are only included "once steps have been taken in the high court or county court to enforce the tribunal decision".

The Register of Judgments<sup>28</sup> is the "official register" and current source of information supplied to RTL by the Chief Registrar.

#### **Effect on the individual of inclusion in the 'Register' managed by RTL**

The submission of data to RTL does not provide a mechanism for recovery of an outstanding debt, but results in the inclusion of an individual's outstanding debt on the register against which 'credit reference' checks are made. That information remains available for a period of 6 years.

This impacts on the ability of individuals to obtain credit from reputable, regulated lenders.

Some 'pay day loan companies' or similar 'money lenders' promote the fact, however, that they do not undertake 'credit reference' checks, but as a consequence, charge high rates on interest.

The effect of inclusion of warrants for outstanding budget loan debts in the 'Register' communicated to RTL could be to push those debtors towards less reputable, unregulated lenders, the knock on effects of which could be spiralling debt and a return to the 'benefits system'.

#### **Information sought by the Commissioner to assist in the submission**

In seeking to understand the policy justification for the inclusion of warrants for budgeting loan debts in the Judgments Register, and the necessity and proportionality of the processing of any associated personal data, the Commissioner requested Treasury to provide:

- The current total value, and number, of budgeting loan debts in default
- The number of budgeting loans approved and being repaid (financial year 2019/20)
- The value of budgeting loans approved and being repaid (financial year 2019/20)

- 
- The total value and number of budgeting loans granted in each of the last 5 years
  - The total value of budgeting loan debts written off in each of the last 5 years
  - The average number of budgeting loan debts written off in each of the last 5 years
  - The number of warrants issued for defaulted budgeting loan debts in each of the last 5 years
  - The number of warrants issued for defaulted budgeting loan debts successfully appealed in each of the last 5 years
  - The number of warrants issued for defaulted budgeting loan debts in each of the last 5 years executed by a Coroner

The Treasury did not provide the information prior to this submission.

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<sup>i</sup> <https://www.tynwald.org.im/links/tls/socsec/ss/SocialSecurityContributionsandBenefitsAct1992.pdf>

<sup>ii</sup> <https://www.gov.im/categories/benefits-and-financial-support/grants-and-loans/budgeting-loans/>

<sup>iii</sup> SD791/03 Income Support and Jobseeker's Allowance (Exceptional Needs Grants and Budgeting Loans) Regulations 2003, SD2016/308 – Exceptional Needs Grants and Budgeting Loans (Amendment) (No.2 ) Regulations 2016

<sup>iv</sup> Ibid

<sup>v</sup> SD879/04 – Budgeting Loans (Recovery by deduction from benefits) Regulations 2004

<sup>vi</sup> <https://www.gov.im/media/516457/blg2-may-2018.pdf>

<sup>vii</sup> SD878/04 – Exceptional Needs and Budgeting Loans (Claims and Payments) Regulations 2004 – Regulation 7

<sup>viii</sup> Ibid

<sup>ix</sup> <https://www.tynwald.org.im/links/tls/socsec/ss/SocialSecurityAdministrationAct1992.pdf>

<sup>x</sup> <https://www.registry-trust.org.uk/>

<sup>xi</sup> <https://www.trustonline.org.uk/>

<sup>xii</sup> <https://www.gov.im/about-the-government/offices/general-registry-isle-of-man-courts-and-tribunals/register-of-judgments-and-new-claims-court-entry-books/>



ISLE OF MAN  
**TREASURY**  
*Yn Tashtey*



This document can be provided in large print or audio tape on request

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