



**St Helena
Government**

GOVERNMENT OF ST HELENA

**PROCEEDINGS OF THE LEGISLATIVE COUNCIL –
FRIDAY 27TH MARCH 2020 – FIRST SITTING OF THE
FIFTEENTH MEETING**

ST. HELENA
LEGISLATIVE COUNCIL

THE PRESIDENT

The Honourable John Gilbert Cranfield

EX-OFFICIO MEMBERS

The Honourable Chief Secretary	-	Mrs Susan O'Bey
The Honourable Financial Secretary	-	Mr Dax Richards
The Honourable Attorney General	-	Mr Allen Cansick

ELECTED MEMBERS

The Honourable Clint Richard Beard
 The Honourable Cruyff Gerard Buckley
 The Honourable Gavin George Ellick
 The Honourable Jeffrey Robert Ellick
 The Honourable Corinda Sebastiana Stuart Essex
 The Honourable Anthony Arthur Green
 The Honourable Lawson Arthur Henry
 The Honourable Cyril Kenneth Leo
 The Honourable Christine Lilian Scipio
 The Honourable Derek Franklin Thomas
 The Honourable Russell Keith Yon

The Honourable Brian William Isaac	-	On sick leave
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CLERK OF COUNCILS

Mrs Connie Johnson

PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Friday, 27th March, 2020

The Council met at 10.00 am
in the Council Chamber, Jamestown

(The Speaker in the Chair)

ORDER OF THE DAY

1. FORMAL ENTRY OF THE PRESIDENT

2. PRAYERS
(The Right Reverend Bishop Dale Bowers)

3. ADDRESS BY THE PRESIDENT

Honourable Members, ladies and gentlemen and radio listeners, good morning and welcome to this first sitting of the fifteenth meeting of Legislative Council. As is customary, the Right Reverend the Lord Bishop, Bishop Dale, has again attended our meeting to open it with the benefit of prayer and I would like to thank him for the support that he has given us to this Council. It is also pleasing that Mr Merlin George has once again responded so willingly to perform the ceremonial duties of Mace Bearer and for that I express my thanks. I also express my thanks to the staff members of SAMS radio for providing support to our listening audience at this meeting and I hope now that we've got our new system in place that there will be some marked improvements to our listeners. I would also like to welcome back the Honourable Christine Scipio from her recent CPA British Isles Mediterranean Region Commonwealth Women's Parliamentarian Conference that took place in the Falkland Islands and we look forward to her report in due course. I would also like to point out that as a result of the Coronavirus and social distancing campaign in place it has been decided that the questions for this session be deferred until our next scheduled formal sitting on 17th April 2020. SHG is really concerned about the Coronavirus and is taking appropriate action to endeavour to stop the virus from reaching St Helena.

Honourable Members, this brings me to the business of this Honourable House today. There are seven Sessional Papers to be presented and four Motions for debate. I wish Honourable Members well in your deliberations and I would also like to thank the staff of the Castle for making sure that everything is in place for our meeting today and that they work hard behind the scenes and they need to be thanked, so without further delay I will call on the Clerk to announce the next item of business, please?

4. PAPERS

SP 10/2020 – The Honourable Financial Secretary.

The Speaker –
The Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper 10/2020 entitled Pensions (Amendment) Bill, 2020.

Ordered to lie on the table.

SP 11/2020 – The Honourable Anthony Green.

The Speaker –
The Honourable Anthony Green?

The Hon. Anthony Green –
Mr Speaker, I beg to present Sessional Paper 11/2020 – Criminal Justice (Fixed Penalties) Bill, 2020.

Ordered to lie on the table.

SP 12/2020 – The Honourable Dr Corinda Essex.

The Speaker –
The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –
Mr Speaker, I beg to present Sessional Paper 12/2020 – the Audit St Helena, Strategy and Delivery Plan, April 2020 – March 2023. Mr Speaker, I seek your permission to make a brief statement outlining the rationale for this Sessional Paper.

The Speaker –
Thank you.

The Hon. Dr Corinda Essex –
As a Member of the Public Accounts Committee, I am pleased to present to this House Sessional Paper 12/2020 being the Strategy and Delivery Plan for Audit St Helena for the three-year period April 2020 to March 2023. Audit St Helena supports the Chief Auditor in carrying out his statutory responsibilities under the Constitution and Public Finance Ordinance. This Plan outlines four strategic priorities which are directly aligned to the national goal of an effective, efficient and accountable public sector –

- (1) Audit of the financial statements of Government and other public bodies;
- (2) Audit of value for money in the use of public resources;
- (3) Provision of advice and assistance to the Public Accounts Committee;
- (4) Developing the professional practice of external audit.

The budgetary estimates of the Audit Special Fund provide the resources necessary for the statutory audit function and the revenues earned for the provision of these services. The Special Fund estimates are not required to be appropriated, but will form part of the overall budgetary estimates of the Government for the year 2020/2021. By convention and to preserve the independence of the Chief Auditor, the forward plan and estimates of Audit St Helena are scrutinised by the Public Accounts Committee. I'm able to report that the strategy and estimates have the full support of the PAC and are laid in this Sessional Paper in the interest of openness and transparency. Mr Speaker, you will be aware that the Public Accounts Committee is established by Constitution and the Standing Orders that oversee the accountability between public funds appropriated by this House and the stewardship and governance of these resources applied to the delivery of public services. Clearly the PAC could not perform this Constitutional role without the efforts of the Chief Auditor and his team at Audit St Helena. Mr Speaker, I beg to present Sessional Paper 12/20.

The Speaker –

Thank you very much indeed.

Ordered to lie on the table.

SP 13/2020 – The Honourable Financial Secretary.

The Speaker –

The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I beg to present Sessional Paper 13/2020 entitled Performance Audit – The 1, 2, 3 Main Street Hotel Development.

Ordered to lie on the table.

SP 14/2020 – The Honourable Financial Secretary.

The Speaker –

The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I beg to present Sessional Paper 14/2020 entitled St Helena Government - Response to Recommendations of the Performance Audit Report, The 1, 2, 3 Main Street Hotel Development.

Ordered to lie on the table.

SP 15/2020 – The Honourable Financial Secretary.

The Speaker –

The Honourable Financial Secretary.

The Hon. Dax Richards –

Mr Speaker, I beg to present Sessional Paper 15/2020 entitled St Helena Government – Response to the Public Accounts Committee Report and Recommendations in Sessional Paper 41/2019 – March 2020.

Ordered to lie on the table.

SP 16/2020 – The Honourable Lawson Henry.

The Speaker –

The Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, I present Sessional Paper 16/20 –Consumer Protection (Control of Sales During Limited Supply) Bill, 2020 and I have here with me a Certificate of Urgency signed by His Excellency the Governor.

The Speaker –

Thank you very much indeed.

Ordered to lie on the table.

The Speaker –

Next item of business, please?

5.

MOTIONS

Motion No. 1 – The Honourable Financial Secretary.

The Speaker –

The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I beg to move that in accordance with and subject to Section 102 of the Constitution, this House empowers the Financial Secretary to authorise the withdrawal of moneys from the Consolidated Fund in order to meet expenditure necessary to carry on services or projects of the Government in the financial year commencing 1st April 2020, until the occurrence of either of the following, whichever is the earliest:

- (a) The expiry of four months from the commencement of the 2020/2021 financial year; or
- (b) The enactment of the Appropriation Ordinance for the financial year 2020/2021.

The Speaker –

Thank you very much indeed. Do we have a seconder, please?

The Hon. Susan O’Bey –

Mr Speaker, I beg to second.

The Speaker –

Thank you very much, Chief Secretary. Do you wish to address, Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, in accordance with and subject to Section 102 of the Constitution, I recommend that this House empowers the Financial Secretary to authorise the withdrawal of moneys from the Consolidated Fund in order to meet expenditure necessary to carry on the services or projects of the Government in the financial year commencing 1st April 2020, until the occurrence of either of the following, whichever is the earliest:

- a) The expiration of four months from the commencement of the 2020/2021 financial year; or
- b) The enactment of the Appropriation Ordinance for the financial year 2020/2021.

It is disappointing that today I have to bring forward this Motion for a resolution. This will be the third rollover budget in the last four years. The start of this year has proved to be a challenge with a new UK Government, a change in Ministers and the astronomical impacts that the Covid-19 is having on the UK and the whole world. It is disappointing that we start yet another financial year with a rollover budget, as this does not provide the certainty that this Government and our community needs. Members have already expressed their dissatisfaction on how long the process has taken to get a decision from HMG. We were informed by HMG just last week that St Helena will receive £31.79m in 2020/2021. This is the same level of financial aid in cash terms received in the 19/20 financial year. When factoring in inflation, this represents a decrease in the real terms in financial aid. We are grateful to HMG for agreeing this budget in such challenging times, however, in light of the settlement, the St Helena Government will need to look or relook at the budgets submitted by Directorates back in November 2019 as priorities have changed as a direct result of Covid-19. A significant amount of work has been completed by Accounting Officers based on the scenario of planning for a flat line budget, which will aid the swift completion of the budget process so that an Appropriation Bill can be brought back to this House in a timely manner.

The economic impacts of Covid-19 means that, as a Government, we must re-examine the priorities and Elected Members will have to make some tough decisions on where to put the limited resources to ensure it generates the best return for the island. It was pleasing to hear from Her Majesty's Government yesterday that additional funding will be made available to support Overseas Territories as a result of the negative impact on the different economies of the OTs of Covid-19. This is very welcoming indeed.

Mr Speaker, whilst we would prefer to be in a different position today, the rollover budget will allow the Government to continue providing essential services from 1st April 2020. The Constitution allows for up to one third of the 2019/20 budget to be spent. This means that LegCo will be authorising the Financial Secretary to allow expenditure of up to £15.352m for the four-month period. This affords the Government some time to reassess priorities in the light of Covid-19 and the ever-changing circumstances.

Therefore, Mr Speaker, today I will not be delivering a Budget Speech, however, I will take this opportunity to announce and update the public on a number of changes that will come into immediate effect. As is customary, the duty on alcohol will increase by inflation in line with the current policy; this means a 2.9% increase. As a result, the duty on a bottle of 250ml of spirits will increase by 41 pence, a 750ml bottle of wine will increase by 14 pence and the duty on a 330ml bottle of Castle Lite will increase by 2 pence. Tobacco and tobacco products will increase in line with the existing policy of inflation plus 1% or a 3.9% increase. That means

that on a packet of twenty cigarettes the duty will increase by 9p. There are some positive changes to the Customs duty that will also come into effect from today. To address concerns expressed over fairness during the Labour Market Strategy consultation, I can announce that employees within the private sector who are coming to work in St Helena will be treated the same way as any Government worker. Anyone who shows that they will be returning to St Helena or moving to St Helena to work will be eligible to bring in all household goods for personal use duty free within the first six months of arrival. This includes any new items as well as used items. It does not, however, include the duty on a vehicle, which will be payable on arrival for all entering St Helena, including Government workers. More details and guidance on this will be published shortly. I can also confirm, Mr Speaker, that there are no proposed changes to the tax rates for the next financial year. Corporation tax rates will remain at 25% or 20% for those businesses who are supporting and delivering, the delivery, sorry, of the Sustainable Economic Development Plan, as was outlined in my Budget Speech last year. The personal allowance will remain at £7,000 and the first £18,000 of taxable income taxed at 26% and 21% for those businesses supporting the Sustainable Economic Development Plan and for income over £25,000 this will be taxed at 31% or 26% for those businesses supporting the Sustainable Economic Development Plan. The tax incentives for businesses announced in 2019 in support of the Investment Policy will continue for the next financial year.

Mr Speaker, I would also like to take this opportunity to remind businesses of the support package that has been introduced in response to the negative impacts that Covid-19 is having on the economy and particularly on the hospitality sector and I would encourage those in the hospitality sector who are struggling to contact Mr Alan Bennett at the Customer Service Centre and apply for the support if it is needed.

The St Helena Government and Enterprise St Helena are working with Her Majesty's Government to continue to explore what other support mechanisms can be put in place to support businesses impacted as a result of Covid-19 and more on this will be announced soon. Finally, Mr Speaker, I would like to take this opportunity to thank all those members of the Public Service and the Private Sector who are working hard behind the scenes and on the frontlines to prepare the island in the event that a case of Covid-19 presents itself. There are so many people going above and beyond the call of duty, often on top of their normal day to day jobs, to ensure that we are ready to deal with an outbreak. It is reassuring to have the Private Sector, including the media, playing a vital role in reaching out and supporting the community as a whole. On behalf of the Government, I would like to say a huge thank you to everyone for their efforts and support, it's a clear indication that in a crisis this community pulls together for the greater good. Mr Speaker, I look forward to the Members' support and I beg to move.

The Speaker-

Thank you very much indeed, Honourable Member. Honourable Members, the Motion is that in accordance with and subject to Section 102 of the Constitution, this House empowers the Financial Secretary to authorise the withdrawal of monies from the Consolidated Fund in order to meet expenditure necessary to carry on the services or projects of the Government in the financial year commencing on 1st April 2020 until the occurrence of either of the following, whichever is the earliest –

- (a) The expiry of four months from the commencement of the 2020/2021 financial year; or
- (b) The enactment of the Appropriation Ordinance for the financial year 2020/2021.

And Honourable Members, you can now speak to the Motion. Any Honourable Member? The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I rise in support of this Motion. As the Financial Secretary said, it is very very disappointing that once again the island finds itself in the position that we have a rollover budget and if the reason for the 2020 rollover budget is because of Covid-19 we have yet to learn what was the reason for the previous two times. I won't say any more about that, but I'd just like to reflect in the record.

As the Financial Secretary said, it is very difficult for a Government to provide its services and plan if we don't have certainty around our finances and time and time again, I know, as a member of Executive Council, my colleagues and I, together with officers, point out to the visiting FAM team the difficulties that we have as a small, isolated island, still in receipt of grant-in-aid, have when we can't plan and it seems every time we raise this we get the same result. What I find difficult if the rollover budget is a result of Covid-19, is that the team came here, you know, before the UK went into lockdown, some months, they know the importance of this, so it do really make you wonder when you hear Ministers from HMG make statements like the Overseas Territories is part of the UK family. Where were we when it come to decide that a rollover budget, again, as the Financial Secretary said, three times in the period of four years. The latest str?.line...., from the Prime Minister himself, is that no communities should be left behind, all communities need to catch up. Well, we've been trying to catch up for some years now and whilst I do recognise that the aid that is afforded to St Helena, these are very, very challenging times for us and we have had some real shocks to our economy, to the Private Sector as a result of decisions made by HMG and have not been recognised by HMG. In 2018, we had a high-level team from DfID and the Foreign Office visit us. I can recall they saying rollover budgets would be a thing of the past, you know, and whilst I think we all accept the situation with Covid-19, we is a very, very small part of that and knowing the background to two previous years of rollover budget one would have thought that they would do the extra mile to think about us as part of the British family and community that is continually being left behind, so whilst supporting this budget, I felt I needed to say that.

I would also like to join the Financial Secretary in thanking all those public servants who, as he said, is going beyond the call of their public duty and those members of the private sector who is supporting all our efforts in protecting this island so as that Covid-19 doesn't reach here. I think, as political leaders, we should stand to the front and thank those people from the bottom of our hearts. Mr Speaker, I beg to move.

The Speaker –

Thank you very much indeed, Honourable Member. Any other Honourable Member wishes to speak? The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Mr Speaker, it is unfortunate that we find ourselves yet again in the situation with a rollover budget, bearing in mind plans were undertaken at a very early stage to try and avoid this. What is disappointing is the fact that the level of funding is to remain the same, we're not even seeing inflationary increase, which is very disappointing, you know, it's not good at all, maybe not even seeing inflationary increase, but I do hope and we were hoping for this year that instead of having an annual budget, we were looking at a three-year budget and that didn't happen, but we have been told that the British Government is working towards that, a three-year budget settlement and I think in the coming year we should try and push these negotiations to see that we can enter into a three-year budget aid settlement where we can better plan and there will be a lot of uncertainty. What is pleasing to hear, and I know Baroness Sugg did gave that undertaking, but the Financial Secretary said now that that's been enforced to say

that Her Majesty's Government will make available additional funding in support of the Covid-19, it's very encouraging and pleasing to hear that, because we have to do a lot of work here in terms of preparation which will come at additional cost, so likewise I'd like to also commend all those people involved in the work they are doing in trying to protect the island against the Coronavirus, not always gonna get things right, but we have to learn from mistakes made and try and improve, so they are working hard, I know that, in terms of the planning I am really grateful for this, so I do give my support to this rollover budget and hopefully the settlement that we got we can discuss it at an early stage, prioritise it and get it into place. Thank you.

The Speaker –

Thank you very much indeed. The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker. Mr Speaker, as has already been said, it is extremely disappointing that despite all the efforts of Elected Members and officials, we can today only authorise the Financial Secretary to implement a rollover budget. This is certainly not what any of us wanted to see, and, quite frankly, after we have all worked so hard to try and avoid this eventuality, it feels like a slap in the face. However, that is the situation that is facing us, so reluctantly I don't really have any alternative but to support a rollover budget. If I didn't Government services would not be able to function after the 31st and St Helena really would be in a crisis situation.

It is also deeply disturbing that the Financial Secretary has announced that the next settlement is going to be identical to the settlement for the current financial year. Again, all our efforts seem to have not brought any reward and that is most demoralising and disappointing. We are aware of the pressures that the British Government is experiencing at the moment, we are aware that they are having a comprehensive spending review at the end of the year and all we can do is hope that the outcome from those activities will be more beneficial to St Helena going forward.

The lack of more than a year on year settlement and even more so in the face of the current rollover position merely undermines our possibility for long-term planning in a meaningful and productive way. In particular, we are asked to have a vision for 2050, to aspire towards that vision for 2050, but how can we realistically do so if we are living year to year on a settlement that we know basically does not even meet our reasonable needs at this point in time. I will reserve more detailed comments about the proposed settlement for when the Appropriation Bill comes before this House, but I can assure you all and the listeners, that I will have plenty to say on that matter. We are constantly being told we have to reprioritise the priorities; it's no wonder St Helena isn't moving forward at the pace that we would like to see. We go so far down one track and we just feel we're achieving something and then the rug gets pulled from under our feet.

The financial support for businesses negatively impacted as a result of Covid-19 that the Financial Secretary announced is very welcome as is his other announcement that Her Majesty's Government will provide additional financial support required by British Overseas Territories as a result of the pandemic. Those are two good news stories. Similarly, the fact that most taxes are going to remain stable for the next year and the tweaking with Customs duties is minimal at this point in time, so it's not all gloom and doom.

As my colleagues have already stated, there are individuals within our community who are working long hours in addition to their normal duties to try and deal with the implications of Covid-19 and to try to soften the very negative impacts that are already starting to be felt. We must recognise their efforts; they are playing absolutely key and essential roles in seeing that the situation does not deteriorate further. At this critical point in time, we all need to work

together to get St Helena over the hump and back to some form of normality, although I'm afraid that that may take a number of months if not possibly years. We're all aware that the first cases in China occurred almost five months ago, things are still far from normal in China. England and South Africa, which are the two countries with which we have the most contact and upon which we are most dependent for different reasons, were only affected much more recently, so therefore, realistically, we have to accept the fact that we are not going to get back to anything like a normal situation in the short term and that's why it is so critical that we all unite and pull together to see St Helena through this very, very depressing, demoralising and down heartening period. There will be a light at the end of the tunnel if we all do that. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Cyril Leo?

The Hon. Cyril Leo –

Thank you, Mr Speaker. DfID will be fully aware of the exceptional early starts St Helena Government Directorates and Elected Members made in preparing the 2020/21 budget. This comprehensive work was carried out to allow DfID officials more than enough time to provide St Helena with a budget settlement and on time. I would like ExCo, Elected Members to request a written statement from DfID as to the true reasons for the late delivery of the budget settlement for St Helena so as lessons can be learnt for the future. However, I support the Motion.

The Speaker –

Thank you very much indeed. The Honourable Russell Yon?

The Hon. Russell Yon –

Mr Speaker, I rise in support of the budget request. Although I am not in favour of the process of what has been requested, this, however, is at no fault of the work undertaken by SHG officials and Elected Members. The members of the DfID team who visited us last year have requested that SHG submit their budget request on time; this was orderly done. They also informed us that they too were not in favour of rollover budgets. Two years ago, they sat here and basically told us that they would be more in favour of a three-year settlement as they also saw the advantages of working with a longer-term budget settlement. For all that has been ongoing in British politics for the last year or so, to include Brexit, several elections, changes in cabinet and now adding to this the worldwide pandemic of Coronavirus, there is no doubt that our UK Government is still, as I would say, in upheaval. However, I don't quite get it that it should give them a good reason to treat the Overseas Territories like this. St Helena Government has played by the rules and done so within reason, however, as we all know, and have come to expect by now, it is DfID officials who like to change the rules in the middle of the ball game.

Last week, we were informed that DfID had agreed a budget settlement for 2020/21. However, it was the same as we had received last year, yes, last year, so that means not even the inflation rate was included in this new settlement. Again, Mr Speaker, receiving this information so late has left us here today having to support a request for a rollover budget, which, to me, is mind boggling. How do we develop an island when we have to work with a recurrent budget that does not include an inflation rate? I guess there will have to be some tinkering with the budget of this Directorate to accommodate the uplift requested by another Directorate, yet each Directorate will still have to provide the services required to keep the island's basic public services afloat.

Mr Speaker, I will support the request, but as a politician I would assume that I would have the backing of my colleagues that it is time some strong messaging needs to be sent to the UK Government spelling out our grave concerns as to how and when they arrived by their decision and also addressing the timely manner in which it was delivered to this Government.

Mr Speaker, I would like to take this opportunity to commend all involved in planning and implementing the protection process for keeping the island safe during this Covid-19 pandemic.

Mr Speaker, I beg to move.

The Speaker –

Thank you very much indeed. Any other Member wishes to speak? The Honourable Anthony Green?

The Hon. Anthony Green –

Thank you, Mr Speaker, I support the Motion, I also associate myself with a lot of the sentiments that my colleagues have expressed, I trust now that we as Committees will spend some time urgently with the appropriate Directorates rather than having to rubber stamp something at the end of what has already been agreed, we need to do that. I also appreciate the support and the information that we've had recently that HMG will give us additional funding for the Coronavirus, I trust we'll take full use of that, I do feel though that we must give legal authority to er, giving the Financial Secretary the power to distribute money over the next four months. I, too, would like to express my deepest and sincere gratitude to all those people who are actually working so hard behind the scenes and while we make these great strides I trust that there will also probably introduce some compliance monitoring to ensure that there's no weak link in the circle, but I do think we must appreciate what everybody is doing. Mr Speaker, thank you very much, I support the Motion.

The Speaker –

Thank you, Honourable Member. The Honourable Christine Scipio?

The Hon. Christine Scipio –

Thank you, Mr Speaker, and just for the benefit of the listeners, I was trying to get my mic to turn on, hence the pause.

Mr Speaker, it is very disappointing that during this harsh economic climate we're being asked to support the rollover budget to the amount of £15.3m without any evidence that demonstrates that this amount will be used for delivering essential services only. It is my understanding that the Constitution provides guidelines that we work towards, but it does not prevent the sharing of good information. At formal LegCo sitting of 30th March 2017, Elected Members were presented with a rollover budget that provided detail of expenditure being authorised, I am not aware that this matter presented any difficulties when finalising the appropriation. I am concerned that we're not being consistent with our methods as it appears that what we approve today will be set in stone for which Elected Members will have to accept responsibility.

Mr Speaker, it is my expectation that Elected Members will meet within the next two weeks to prioritise the forthcoming expenditure as I have no intention of rubber stamping. As the old lady down the hill said to me, I am certain that the ink has now run out of your ink pad to rubber stamp. Will the Honourable Financial Secretary give this House the assurance that we will be sitting within the next two weeks to prioritise the forthcoming expenditure?

Mr Speaker, in relation to Covid-19, we as Government, we need to ensure that we are consistent with our messaging. It is irresponsible to state that there are no cases of Covid-19 on the island when we are fully aware that we don't have the test kits to establish this. Should we be saying there are no known cases on the island? Mr Speaker, we do have an ageing

population on the island and we must, I will say, we must protect our vulnerable who are people aged over 70, people with diabetes, people with heart disease, people with lung disease, people with decreased immune systems, but, Mr Speaker, on 23rd March, last Monday, the Elected Members gave a political steer to not allow yachts to be entered into St Helena, but, Mr Speaker, I'm told that there are yachts arriving. Those individuals are walking the streets, they are integrating with our community. Maybe we should engage the service of Jonathan the Tortoise to implement our decisions, because it is still happening.

Mr Speaker, we need to protect our vulnerable people, we need to make sure that there are systems in place that are robust around our borders. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Clint Beard?

The Hon. Clint Beard –

Thank you, Mr Speaker. Rollover budget is not an ideal situation to be in, it's extremely disappointing for how it is for the island, how do we plan, how do we make sure we spend in effective areas? Budget figures relay a somewhat tough and challenging period ahead. It is important to display and plan on how we will be spending. Service delivery is critical and that needs must be met. The yearly budget is not ideal to make and allow St Helena to gain financial and economic stability in future years, we need to look at a longer-term budget period. The planning for the outer years is important and this is critical and important that we again bring forth not a yearly budget, but a longer period of budget so that we can spend. I support the budget request as without doing this I will put extra strain on delivering our services.

I would also like to send a message of thanks to all involved in the budget talks. Again, our talks have fallen on a really non-reactive budget settlement that will suffice St Helena's needs for this coming year.

Finally, thanks to all involved in the works of the Coronavirus and the planning that is being done. Thank you.

The Speaker –

Thank you very much indeed. Any other Member wishes to speak? The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Thank you, Sir. I cannot support this Motion, because for three years now we've been doing our best to show DfID that we need something done and for three years they have taken no notice of us, so why should I support a rollover budget again this year? Oh, oh, sorry, Mr?....., I don't think that is very important at this moment in time. I think that we should take a better stand in dealing with DfID, because if we don't it comes again next year. We just had an exercise couple of days ago saying what shall we do, what shall we do, resources, funding, if we aint got funding and resources how can we get our jobs done, so therefore, Sir, I cannot support this budget. Thank you.

The Speaker –

Thank you very much. The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Thank you, Mr Speaker, I will have to share Councillor Ellick's sentiments also, it is rather disappointing this year that we find ourselves in the same situation. I do wonder, Mr Speaker, when HMG is going to realise that St Helena is in fact an asset rather than a liability and I think

we ought to be recognised as a friend rather than a distant cousin. I do feel now with the ministerial change in the UK, the amat..?.. is changing, I think St Helena has a lot of potential to attract funding from international partners, but the fact, by virtue of the fact we are grant in aid, Mr Speaker, this hinders our ability and all of these tentacles, Mr Speaker, are reaching in and they cannot attach to what is the backbone, which is the St Helena Government's recurrent budget.

Mr Speaker, I just want to express my thanks again to all those frontline staff that are out there trying to keep this island safe from Covid-19. Thank you, Mr Speaker.

The Speaker –

Thank you very much. The Honourable Jeffrey Ellick?

The Hon. Jeffrey Ellick –

Mr Speaker, I rise in support of the Motion. Yes, I agree with some of the views of my colleagues, but I think, Mr Speaker, we have to work with what we've got and what we really need to do now is to sit down and prioritise and move forward. You know, we can complain about what has happened, but we've still got to go forward and this is difficult times ahead and we all need to work together, but I'd also like just to take this opportunity to thank those people who are out there working on Covid-19, it's a difficult job, but they are out there, they're putting themselves forward, there's a lot of more work we need to do and I do agree with the compliance issues and so forth, but, again, we need to work together on these issues, but I'd just like to say thank you again, I have been saying thank you on my radio sessions, but, yes, thank you. Thank you, Mr Speaker.

The Speaker –

Thank you very much indeed. I think everyone has spoken, does the Honourable Mover wish to respond to the debate?

The Hon. Financial Secretary –

I don't think I got the ability to respond?.....Mr Speaker,.....(*inaudible*)

The Speaker –

It's another normal er....okay, okay. Right, Honourable Members, the Motion is that in accordance with and subject to section 102 of the Constitution, this House empowers the Financial Secretary to authorise the withdrawal of monies from the Consolidated Fund in order to meet expenditure necessary to carry on the services or projects of the Government in the financial year commencing 1st April 2020 until the occurrence of either of the following, whichever is the earliest:

- (a)The expiry of four months from the commencement of the 2020/2021 financial year; or
- (b)The enactment of the Appropriation Ordinance for the financial year 2020/2021.

Question on Motion, put and agreed to.

The Speaker –

Thank you, Honourable Members. Next item of business, please?

Motion No. 2 – The Honourable Financial Secretary.

THE PENSIONS (AMENDMENT) BILL, 2020

The Speaker –

The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I beg to move that the Pensions (Amendment) Bill, 2020, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Do you have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you very much. The Honourable Mover wishes to speak?

The Hon. Dax Richards –

Thank you, Mr Speaker. I beg to move that the Pensions (Amendment) Bill, 2020 be approved in principle and referred to a Committee of the whole Council. This Bill presented today amends an inconsistency identified within the Pensions Ordinance 2012 where the current Ordinance allows an SHG officer to access their pension early if they become medically boarded. Although that officer was transferred as part of a divested service and become medically boarded, they are not currently entitled to their pension until they reach the normal retirement age of sixty-five. This puts those officers who have been divested at a significant disadvantage which was clearly not the policy intention when the Ordinance was first enacted in 2012. This amendment corrects that anomaly and it's a necessary tidying up exercise. This amendment will also make a significant difference to those who have been disadvantaged. Mr Speaker, I beg to move.

The Speaker –

Thank you very much indeed. Honourable Members, I put the question that the Pensions (Amendment) Bill, 2020 be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. Any Member....., the Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I rise in support of this short amendment to the Pensions Ordinance. This matter was debated in the Economic Development Committee in February, we endorsed the proposal, it is only right and proper that divested officers be treated the same as SHG officers so it has my full support.

The Speaker –

Thank you very much indeed. Any other Member wishes to speak? The Honourable Russell Yon?

The Hon. Russell Yon –

Thank you, Mr Speaker, I rise in support of the Bill to amend the Pensions Ordinance 2012. This Bill will ensure that officers who were transferred to other entities due to divestment by Government of certain services will now be able to receive a pension with respect to early retirement for medical reasons as other employees within Public Service. Mr Speaker, I won't say this has been a long time in the making, but I will say this has been long overdue. I support the Bill.

The Speaker –

Thank you very much, Honourable Member. The Honourable Dr Corinda Essex

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker, I fully support the amendment. Prior to this hopefully passing the House today, there is a situation which is actually unfair and inequitable in that individual or individuals who have left the Public Service, not by their own free will, but because the section or sections in which they were employed were divested, are deprived of the same rights as those individuals remaining within Government employment and that is something that is not acceptable, so I'm extremely pleased to see the amendment before the House today. Thank you, Mr Speaker.

The Speaker –

Thank you very much, Honourable Member. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Yes, I rise in support of this Bill, Mr Speaker, it is only right and fair that those members who worked with the Government service and have left and becomes medically ill that they should be, their pensionable rights should be protected and honoured, so I do give my support to this Bill.

The Speaker –

Thank you very much. Any other Honourable Member wishes to speak? The Honourable Cyril Leo?

The Hon. Cyril Leo –

Mr Speaker, I recall asking the Public Solicitor to assist in this anomaly. I commend all those who worked to bring about the long overdue change and I wholeheartedly support this Bill.

The Speaker –

Thank you very much. Any other Member, the Honourable Anthony Green?

The Hon. Anthony Green –

Thank you, Mr Speaker, I also rise in support of this Motion, obviously this was an unintended situation where people have gone on to these entities and if they retire early on medical grounds it's only right and fair that they be rewarded appropriately. Mr Speaker, I beg to support the Motion.

The Speaker –

Thank you. If no other Honourable Member wishes to speak then I'll ask the Honourable Mover if you wish to reply to the debate.

The Hon. Dax Richards –

Thank you, Mr Speaker, I'd just like to thank the Honourable Members for their support and we will go through the detailed provisions of the Bill.

The Speaker –

Thank you. Honourable Members, I put the question that the Pensions (Amendment) Bill, 2020 be approved in principle and referred to a Committee of the whole Council.

Question put and agreed to.

The Hon. Dax Richards –

Mr Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Do we have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you.

Question that the Council resolves into a Committee, put and agreed to.

Council in Committee.

The Chairman –

Honourable Members, I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Any Member wishes to speak? The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, it may be just useful to say that under Clause 1 (2) it says this Ordinance also applies to any person who retires before the commencement of the subsection (1) but no pension is payable in respect of any period before that date. Effectively that is saying that this change will impact on anyone prior to the commencement date, however, there will be no backdating of any payments, so it will only be applying payments from the enactment of this Ordinance going forward.

The Chairman –

Okay. Any Honourable Member wishes to speak? No?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Chairman –

I put the question that Clause 2 do stand part of the Bill. The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, this is the main change to the Ordinance that has been requested. Section 2, Part 4 (a) basically says now that an employee who was divested as part of a divested entity would be eligible effectively with the same benefits that you would do if you were a Government employee.

The Chairman –

Okay. Honourable Members, any questions?

Clause 2.

Question put and agreed to.

Council Resumed.

The Speaker –

We're back into the House again. The Honourable Mover?

The Hon. Dax Richards –

Mr Speaker, I beg to report that the Pensions (Amendment) Bill, 2020 passed the Committee with no amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Do we have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you. The Honourable Mover, you may wish to speak?

The Hon. Dax Richards –

Mr Speaker, I don't really have anything to add other than to say thank you to the Members for this very small but very important amendment to the Pensions Ordinance.

The Speaker –

Thank you very much. I put the question that this Council approves the Pensions (Amendment) Bill, 2020 and recommends to the Governor that it should be enacted. Any Member wishes to speak again? No, nothing further? Thank you.

Then I put the question that this Council approves the Pensions (Amendment) Bill, 2020 and recommends to the Governor that it should be enacted.

Question put and agreed to.

The Speaker –

Thank you. Next item of business, please?

Motion No. 3 – The Honourable Anthony Green.

THE CRIMINAL JUSTICE (FIXED PENALTIES) BILL, 2020

The Speaker –

The Honourable Anthony Green?

The Hon. Anthony Green –

Mr Speaker, I beg to move that the Criminal Justice (Fixed Penalties) Bill, 2020, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Do we have a seconder, please?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. The Honourable Mover, you may now speak to the Motion?

The Hon. Anthony Green –

Mr Speaker, the Criminal Justice (Fixed Penalties) Bill, 2020, if approved by the House today, would provide an alternative method for dealing with certain minor offences on the island. This Bill creates a fixed penalty notice regime. At present, most offences are dealt with by way of a criminal prosecution or a Police caution. Convictions and cautions remain on a person's record for life. Fixed penalty notices provide for minor offences to be treated as civil penalties. The legislation is an enabling one that does not create fixed penalty notices, but enables regulations to be made to do so. Other jurisdictions have used fixed penalty notices for a number of years to provide an alternative to prosecution. It allows for the diversion of minor offending from the Court system. It would also allow for a relevant offence not to be recorded as a criminal conviction against an individual. Fixed penalty notices could be used by authorised enforcement officers other than the Police for relevant offences. For example, this could include other agencies such as Environment, Fisheries, Customs or Education. Fixed penalty notices would have the same time limit as prosecution for the underlying offence. It would allow for a system of enforcement for matters such as illegal parking or littering, to name just a few offences, that could be dealt with by fixed penalty fines and not treated as criminal matters. This proposed system provides an opportunity to discharge a criminal liability by paying a fine. It allows for minor offending to be addressed in a proportional way. This Bill stipulates that the evidential standard must be met before a fixed penalty notice can be issued. An individual issued with a fixed penalty notice may be prosecuted for the offence if they either ask to be tried in the Court for the offence or fail to pay that penalty within the time period stipulated in the notice and the prosecutor decides to proceed with the charges. This Bill, Mr Speaker, will enable the Governor in Council to make regulations to specify, amongst other things, the offences that will initially be dealt with by fixed penalty notices. When the regulations are formulated, public awareness and engagement will be the key. A fixed penalty notice system is a cost-effective means of justice. It avoids minor offending being treated as criminal offences. It modernises the system. There will be considerable savings in time and impact on offenders and also the Court system. This piece of legislation, along with the Rehabilitation of Offenders Act (Application) Order, 2019 and the Police and Criminal Evidence (Amendment) Bill, passed by this House in December, offers a more

streamlined approach going forward on how offences are handled. Seven public consultation meetings on this Bill were held around the island in January, none of which attracted any adverse comment and feedback received was that it would be welcome. I commend this Bill to the House. Mr Speaker, I beg to move.

The Speaker –

Thank you very much indeed. I put the question that the Criminal Justice (Fixed Penalties) Bill, 2020, be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. The Honourable Jeffrey Ellick?

The Hon. Jeffrey Ellick –

Mr Speaker, I rise in support of the Fixed Penalty Notices Bill. This Bill has been long overdue, in fact, it should have been in place in 2014. However, it is much welcomed as it is a piece of legislation which will enable law enforcement officers to serve fixed penalty notices by way of a fine for minor offences. Under current circumstances, minor offences, such as parking offences and non-imprisonable offences, can lead to prosecution, leaving dozens with criminal records and causing individuals difficulty in obtaining employment, especially when applying for overseas employment. This Bill will enable regulations to be made to address the issue I have mentioned. It is also timely, in my view, and could be a useful tool for enforcing laws in respect of the Coronavirus, should the need arise. Mr Speaker, I would like to take this opportunity to thank the Police, my colleagues in the Social and Community Development Committee and the Legal services for working on putting together a sensible piece of legislation that will prevent unnecessary criminalising of individuals. Mr Speaker, I support the Motion.

The Speaker –

Thank you very much indeed. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker, I rise in support of this Bill. This is a positive Bill which will be well received by our people in the community, it will benefit our people in the community where minor type of offending can be dealt with by way of a fixed penalty as opposed to having to go to the Court and end up with a criminal conviction. This Bill will add value to our Labour Workforce Strategy and as well as our people seeking offshore employment and job opportunities both offshore and on island, so this sensible Bill will benefit the people of St Helena. I do support the Bill. Thank you.

The Speaker –

Thank you, Honourable Member. The Honourable Cyril Leo?

The Hon. Cyril Leo –

Mr Speaker, this is yet again another change to the laws of St Helena that is long, long overdue. I fully support the Bill.

The Speaker –

Thank you very much indeed. The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker. I fully support the Bill; it is something that has been needed for many years. I have had constituents who have come to me seriously upset because they've been

refused employment and the reason that they have been given when they've enquired as to why they were considered unsuitable was because they did not have a clean Police record. When I then asked for the details of what was on their vetting certificates, in two instances they said traffic offences and in both those instances those offences were at a level that now, assuming that this Bill gets passed, would be dealt with by the fixed penalty route rather than the criminal justice route in the Courts. Therefore, I think that this is legislation which will help individuals not to have a Police record that they carry with them for the rest of their lives for minor offences and I think it will also help from the enforcement perspective. I have frequently spoken in this House about the need for better enforcement and more enforcement, but one of the previous deterrents to enforcement of fairly small offences, like, for example, littering and repeated parking offences, was that if the enforcement actions that really should be put in place were put in place, the individual would then carry a criminal record and it was not always felt that that was fully justifiable for things that are really of a minor nature, so this legislation will also assist in addressing that problem and enabling practices that are a nuisance and are detrimental to our environment and our society, like littering and repeatedly parking inappropriately, to be enforced without life damaging implications for those people that are actually responsible for those acts, so thank you very much for bringing this to the House and I fully support it.

The Speaker –

Thank you very much, Honourable Member. The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I stand in support of this Bill; I think it is long overdue and I think it will be a good thing for the future. Thank you.

The Speaker –

Thank you. The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Thank you, Mr Speaker. I think as we go through this process we will realise that we can extend this fixed penalty bill to other sectors which have already been mentioned, such as Fisheries, and it would hope to free up the Courts, which we know are fully bogged down with work and obviously will help tremendously with the enforcement side also. Thank you, Mr Speaker.

The Speaker –

Thank you. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I, too, rise in support of this Bill. I think it is a very good piece of legislation for the reasons that my colleagues have outlined, and, in particular, I'd like to emphasise, that it means that our people will not be creating criminal records for these minor offences, so I give it my full support. Thank you.

The Speaker –

Thank you very much. The Honourable Clint Beard?

The Hon. Clint Beard –

Mr Speaker, I rise in support of this Bill, I think at the end of the day we even make sure we don't talk about the future, but we make sure that people has a bright future ahead of them without having evidences. Thank you.

The Speaker –

Thank you very much indeed. The Honourable Russell Yon?

The Hon. Russell Yon –

Mr Speaker, I rise in support of this Bill. The Criminal Justice (Fixed Penalties) Bill will provide some flexibility within our criminal justice system and provide for certain prescribed offences to be dealt with by way of a fine rather than the individual or individuals having to appear in Court for such an offence. It will also make provisions for such crimes will not be recorded against the said persons criminal record, which, in the past, has been a hindrance to individuals being able to obtain employment here and overseas. Mr Speaker, this Bill will also free up some time for those persons in office who would have to prepare such cases and then to administer them in cases in Court. Doing so will allow these officers to spend more time with crucial cases that need to be brought forward in the Court of Law. Mr Speaker, historically, all driving offences were dealt with by the Court which could assess the driving history of the offender before passing sentence as all of their previous offences were held on their record. In future, this will not be the case, but there may be a need for a process to be introduced to track a driver's history and ensure that repeated offenders are not simply issued with multiple fixed penalty tickets and allow them to continue on driving. In the United Kingdom, where most driving offences are also non-recordable, certain offences, for example, speeding, careless driving, failing to comply with a traffic sign, no insurance and using a hand-held mobile phone while driving, attract penalty points, usually three or six. If a driver reaches twelve points in any three-year period, they are disqualified from driving, usually for one year. These offences are dealt with by issuing an endorsable fixed penalty ticket, so named, because the driver's licence is then endorsed with the points. Mr Speaker, this Bill will not only be to enforce moderate offences under the Road Traffic Ordinance, but will also address other issues for the likes of littering, fly tipping and offences with regards to our future, forthcoming legislation. Mr Speaker, I support the Bill.

The Speaker –

Thank you very much indeed. The Honourable Mover, you may wish to reply to the debate?

The Hon. Anthony Green –

Thank you, Mr Speaker and I wish to thank all Honourable Members for their support. I would stress that this is an enabling Bill and regulations to determine what and how will happen soon. It is absolutely correct that it would support the possibilities of people having employment and also in help with enforcing the law, so I thank my Honourable Members. Mr Speaker, I beg to move.

The Speaker –

Thank you very much indeed. Honourable Members, I put the question that the Criminal Justice (Fixed Penalties) Bill, 2020 be approved in principle and referred to a Committee of the whole Council.

Question put and agreed to.

The Speaker –
Honourable Mover?

The Hon. Anthony Green –
Mr Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –
Do we have a seconder, please?

The Hon. Derek Thomas –
Mr Speaker, I beg to second.

The Speaker –
Thank you very much, Honourable Member.

Question that Council do resolve into Committee, put and agreed to.

Council in Committee.

The Chairman –
Honourable Members, I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. The Honourable Attorney General?

The Hon. Allen Cansick –
Mr Speaker, nothing unusual in this part of the Bill, so nothing to add there. Pretty standard.

The Chairman –
Okay. Any Honourable Member wish to speak to the Title, the Enacting Clause and Clause 1?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Chairman –
I'll now put the question that Clause 2 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –
Mr Speaker, this is the interpretation section of the Ordinance. Members will note in regard to fixed penalty notice, it makes it clear that it gives the person an opportunity to discharge any liabilities conviction for the offence on paying a prescribed penalty. Definition also of “motor vehicle” by reference to the Road Traffic Ordinance. In regard to an “officer” for the purpose of the Ordinance, Members will note it includes not just a Police Officer, but somebody appointed for that purpose by the Governor to issue fixed penalty notices and the definition of “prescribed offence” means an offence prescribed in regulations.

The Chairman –
Thank you very much. Any Honourable Member wishes to speak?

Clause 2.

Question put and agreed to.

The Chairman –

I put the question that Clause 3 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Mr Speaker, it's unusual to put reference to the evidential test into an Ordinance, but it was thought incredibly important in this case to make it explicit that the evidential test for the issuing of a notice is the same for the prosecution of offence. That's to ensure that when a fixed penalty notice is issued it's not issued when there's insufficient evidence as potentially a way to get around any evidential deficit, so it's spelt out in the Ordinance that it's exactly the same for the issuing of a notice.

The Chairman –

Any Honourable Member have any questions? The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Yeah, thanks AG. Who performs this evidential test?

The Hon. Allen Cansick –

It depends what stage it will be added. Because this is a fixed penalty notice it will be performed by a Police Officer.

The Hon. Cruyff Buckley –

Is there no higher provision to ensure that the right decision was made in the first place?

The Hon. Allen Cansick –

Yes, you'll refuse the fixed penalty notice and you'd go to Court in those circumstances.

The Hon. Cruyff Buckley –

Thank you for that clarity.

The Chairman –

Thank you. Any Honourable Member have any questions on Clause 3?

Clause 3.

Question put and agreed to.

The Chairman –

I'll put the question that Clause 4 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, this includes the provisions in regard to where serving all the natural notice, in Clause 4 (3) there's a list of the various ways that can be done. In Clause 4 (4) Members will note that there is a power for a reduced amount of the fixed penalty notice if it's paid early in a particular amount of time.

The Chairman –

Any Honourable Member have any questions on Clause 4?

Clause 4.

Question put and agreed to.

The Chairman –

I put the question that Clause 5 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, Clause 5 details the actions that can be taken following service of a notification of a fixed penalty notice, either to accept the fixed penalty notice in the manner described and pay the penalty specified or deny the offence by returning the notification of a fixed penalty notice. There is an amendment I'd like to propose in regard to this Clause. It had gone to Executive Council and been approved for them, but in the published Bill it doesn't appear to have come about. The reason for the amendment is at present it states a fixed penalty notice must be paid within fourteen days on which the notification is served. It may, when this becomes into action fixed penalty notices are served, be too much of a short period and it may be that a longer amount of time is needed for individuals to pay that notice. If that appeared to be the case, with it written here fourteen days, we'd have to return back to Legislative Council to change that, so the proposal is that this is done by regulations and the time for payment is specified there to give flexibility. So, the proposed amendment is that Clause 5 is amended by deleting the words "fourteen days of the date on which the notification is served" and substituting the words "the period prescribed by regulations".

The Chairman –

Within the period?

The Hon. Allen Cansick –

The period prescribed by regulations.

The Chairman –

Do we have a seconder for the amendment?

The Hon. Dax Richards –

Mr Speaker, I beg to second.

The Chairman –

Okay, Honourable Members, an amendment has been proposed and seconded that in Clause 5 after "within fourteen days of the date on which the notification is served" be deleted and substituted with "the period prescribed by regulations". Any Honourable Member wishes to speak to the amendment? The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Fourteen days for me seem adequate for a payment to be made, but that is just my view, I thought, you know, paying it within fourteen days is an adequate time. I don't know how Members?.....

The Chairman –

The Honourable Jeffrey Ellick?

The Hon. Jeffrey Ellick –

Mr Speaker, I see this as a sensible amendment. We have to consider various people in society who probably won't be able to pay within fourteen days. This piece of legislation will cover all aspects of laws, so I think this is a sensible amendment. Thank you, Mr Speaker.

The Chairman –

Thank you. Any other Honourable Member wishes to speak to the amended Clause? No?

Clause 5 (as amended) –

Question put and agreed to.

The Chairman –

I put the question that Clause 6 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

So, Mr Speaker, Clause 6 contains what should be in a fixed penalty notice, for example, the offence itself, the amount of time to pay, the penalty and some other matters. It's to ensure that when fixed penalty notices are issued, they contain exactly what needs to be there.

The Chairman –

Any Honourable Member wishes to speak to Clause 6? No? The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I was just wondering, we have the fixed penalty notice, but I don't see what we having it for, because nothing specifically says, like, for jay walking or throwing stones at somebody's vehicle or something like that there, I don't see nothing specific in there where we would be consenting to why we having it? I know all the details, I sit down and discuss it, but I always did ask if you could have that there or a list of what it entails, because one of the things is it open to interpretation and when you go in the Courts and everything else sometimes it comes out wrong, so is that a possibility?

The Hon. Allen Cansick –

Yes, Councillor, they're going to be dealt with by regulations and when I get to the regulations section, which is Clause 9, I'll detail that a bit further.

The Hon. Gavin Ellick –

Thank you, Sir.

The Chairman –

Any other Honourable Member wishes to speak?

Clause 6.

Question put and agreed to.

The Chairman –

I put the question then that Clause 7 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, Clause 7 details the effect of a penalty notice and of payment. It makes it clear that after a fixed penalty notice is issued, but while it's awaiting payment, proceedings can't be issued, and further, once payment is made, no proceedings for that offence can be commenced in the future.

The Chairman –

The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

On a point of clarification, can the Attorney General state what happens if someone does not pay the fixed penalty notice?

The Hon. Allen Cansick –

Yes, Councillor Essex, the matter returns to the Court system and it proceeds as a normal prosecution.

The Hon. Dr Corinda Essex –

Thank you.

The Chairman –

Thank you. Any other Honourable Member wish to speak to Clause 7?

Clause 7.

Question put and agreed to.

The Chairman –

Then I'll put the question that Clause 8 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, Clause 8 deals with the withdrawal of a fixed penalty notice. So, the notice itself could be given by a Police Officer of any rank, but once it's been given the only person who can withdraw it is the Director of Police or the Police Officer of a rank of Inspector or a person appointed by the Governor to do so. This is to make sure that once it's there only a senior officer can withdraw it. It stops potential pressure on officers after they've given a notice.

The Chairman –

Any Honourable Member wishes to speak to Clause 8? No?

Clause 8.

Question put and agreed to.

The Chairman –

Then I'll put the question that Clause 9 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Mr Speaker, this details the regulations that can be made to bring into effect the purpose of this Ordinance and you'll see it includes the offences in respect of which a fixed penalty notice may be issued. So, it's expected regulations under this Ordinance would contain a list of this which could readily be added to if it was felt by relevant Committees or the SEDC themselves that this should be something that is applicable to fixed penalty notice. It also allows, therefore, the amount a fixed penalty notice is to be set for individual offences by regulation, so it may be that for parking the amount payable in a notice is a lot less than if it's used as a diversion for something more serious such as theft. It also allows for appointments under the Ordinances and other matters that are needed into it to bring into effect the system.

The Chairman –

Thank you. Any Honourable Member wishes to speak to Clause 9? The Honourable Christine Scipio?

The Hon. Christine Scipio –

Thank you, Mr Chairman. Can I ask the AG, if there is provision for the Governor in Council to make regulations?

The Hon. Allen Cansick –

Yes.

The Hon. Christine Scipio –

But the Ordinance does not have any teeth if we don't have the regulations in place, so what is the timeframe that the regulations will come into force?

The Hon. Allen Cansick –

Okay, you're absolutely right, they won't have teeth until they come into force. I'll defer that question to the Chair of the Committee.

The Hon. Christine Scipio –

Do I need to repeat it?

The Hon. Anthony Green –

Thank you very much, Mr Speaker. We need this piece of legislation to be able to enable **legislations** to be made. We already have preliminary discussions and once this Ordinance, hopefully is passed today, with your support, we will then get down to the detail.

The Hon. Christine Scipio –

And the detail will take approximately six months, three months?

The Hon. Anthony Green –

I think the detail, Mr Speaker, if I may, it really depends on the issues, parking, littering and other offences have been talked about, but we need to speak about it because it's about identifying which is practical to put into operation, but we will be able to give you a timescale as we go along. There's no intention of prolonging this now.

The Chairman –

Okay. Any other Member wishes to speak?

Clause 9.

Question put and agreed to.

Council Resumed.

The Speaker –

The Honourable Mover?

The Hon. Anthony Green –

Mr Speaker, I beg to report that the Criminal Justice (Fixed Penalties) Bill, 2020 passed the Committee with one amendment and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Thank you. Do we have a seconder, please?

The Hon. Derek Thomas –

I beg to second, Mr Chairman.

The Speaker –

Mover, you may speak to the Motion.

The Hon. Anthony Green –

Nothing further, but to thank Members again for their support.

The Speaker –

Honourable Members, I put the question that this Council approves the Criminal Justice (Fixed Penalties) Bill, 2020 and recommends to the Governor that it should be enacted. Honourable Members, you may speak to the Motion? No? Honourable Mover, you may wish to respond?

The Hon. Anthony Green –

Mr Speaker, there is no point to respond, but I will take the opportunity of thanking the Attorney General and particularly the Police, I think it is Chief Inspector, David Pryce, and my Committee for supporting this and moving it in a quick direction. Thank you.

The Speaker –

Thank you. Honourable Members, I put the question that this Council approves the Criminal Justice (Fixed Penalties) Bill, 2020, as amended, and recommends to the Governor that it should be enacted.

Question put and agreed to.

The Speaker –

Next item of business, please?

Motion No. 4 – The Honourable Lawson Henry.

**THE CONSUMER PROTECTION
(CONTROL OF SALES DURING LIMITED SUPPLY) BILL, 2020**

The Speaker –

The Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, I beg to move that the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020 be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Do we have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. The Honourable Mover wishes to speak to the Motion?

The Hon. Lawson Henry –

Mr Speaker, Honourable Members, this Bill, entitled The Consumer Protection (Control of Sales during Limited Supply) Bill, 2020 arises out of the unprecedented situation that the world today finds itself in as a result of the pandemic Covid-19. The Bill will allow the Government of St Helena to help protect its citizens if the pandemic affects the supply of goods to the island, including food and medicine. The powers and provisions in the Bill will only come into effect if the Governor in Council issues an Order that declares there is a limited supply of goods in St Helena and the reasons for that supply. Such an Order will then provide protection to the consumer in three ways. Firstly, it will allow the Governor in Council to make regulations that will allow for fair distribution of goods. This could involve the goods to be sold, the quantity to be sold per person, the price and even times of sale. If there was to be a shortage of goods, these regulations could be essential in preventing hoarding and making sure that the most vulnerable in society get their share of what is available. Secondly, it imposes a requirement on merchants to prominently display the prices of goods for sale. This will make sure that the consumer knows what they are paying and will help prevent selling of goods at different prices to different people. It will also help in making sure a merchant is not raising prices to profit from the limited supply of goods. Thirdly, it places a prohibition on merchants raising prices to profit from the limited supply of goods. This will help protect society from the danger of profiteering in such circumstances. Offences are created for contravening the regulations and prohibitions in the Bill the penalties for which includes fines up to £20,000 and imprisonment. These significant penalties have in mind the gravity of the situation St Helena would find itself in if it had to make the Order to bring the provisions into effect. The Bill also allows Governor in Council to appoint or establish an authority to ensure compliance with the Bill. Although the Bill is made with the threat from Covid-19 in mind, it is constructed in such a way that it could be used to address other periods where supplies are limited. This could include a limit on supplies as a result of other diseases, conflict, civil unrest, a global lack of goods or just the lack of effective means to bring supplies to the island. Finally, I would like to pay tribute to the Attorney General's Chambers for the speed in which he and his staff was able to carry out

the work that has allowed us to bring the Bill before the House today. Mr Speaker, I beg to move and commend this Bill, that is the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020, to the House. I beg to move.

The Speaker –

Thank you very much, Honourable Member. Honourable Members, I put the question that the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020 be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. Any Honourable Member wishes to speak? The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Thank you, Mr Speaker. Mr Speaker, I welcome this Bill at this uncertain time to protect the general public to ensure that everybody receives their goods. One thing this exercise has highlighted to me, Mr Speaker, is the lack of Consumer Protection laws in St Helena and I think that piece of work has to, at some point, given our priorities, come to the surface again and we can put in realistic measures to ensure that importers do not take advantage of the St Helena public. Thank you, Mr Speaker.

The Speaker –

Thank you very much indeed. The Honourable Jeffrey Ellick?

The Hon. Jeffrey Ellick –

Mr Speaker, I rise in support of the Consumer Protection (Control of Sales during Limited Supply) Bill. The Bill is necessary, especially in the current climate where there is uncertainty of future supply of essential commodities all across the world and it is there to ensure that the less fortunate in society are protected and have the opportunity to obtain essential goods. Mr Speaker, I support the Motion.

The Speaker –

Thank you very much indeed. The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker. First, let me declare my interest as President of the Chamber of Commerce and in this instance, I do not think I need to declare my interest as an importer and retailer, because the type of items that I sell are not those that are covered by this piece of legislation. So, having put that on record, I will now make my comments regarding the Bill. I support the Bill because we are all fully aware that within any society there are the haves and the have nots and it is very important that when goods are in short supply they are not, in fact, cleared off the shelves by the more fortunate within our society who can afford to do that and that they can be distributed fairly across everyone within our society. I am afraid in times of crisis some people are selfish in what they do, although that is very regrettable, but it's a fact of life and if there is not legislation to provide necessary protection I am sure that there would be certain individuals who would try and take advantage of the crisis and stock their larders full with all the most essential commodities without stopping to think that there are people on Basic Island Pension, on IRB and on low incomes who could not afford to do just the same thing. So, I think that given the situation that we are facing with the Covid-19 virus, this piece of legislation is really essential to enable all members within our community to have the same level of access to whatever goods, of the nature described within this Bill, are available on the island. Having said that, there are certain issues for clarification that I will raise when we go through the more detailed provisions of the Bill in order that the public can have a better

understanding of precisely what the Bill covers and what it doesn't and I give advance notice that I will be asking for more clarification regarding Clause 6 –Profiteering and how profiteering will be defined, and, indeed, determined, because it could be that if, for example, goods were having to be sourced from a different location or by a different means there could be perfectly justifiable hikes in price and it would be extremely unfair to the business community if they were then going to be penalised and accused of profiteering, because an item that's now, say, £2.00, they were then having to sell at £3.00. Thank you, Mr Speaker.

The Speaker -

Thank you very much indeed. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Mr Speaker, I rise in support of this Bill, it is a sensible Bill and it goes towards the preventive, sorry, Mr Speaker, I had my mic switched off, so I'll say it again, I'll repeat again, I rise in support of this Bill, it is a sensible Bill, it makes provision for Governor in Council to put in place regulations and is part of the many measures that the Government need to put in place as a result of the Coronavirus, we all know that there's likely to be uncertainty of the regular supply of goods and should the need arise, regulations can be put in place to control the supply of goods and we don't have people who can afford to bulk buy bulk buying and the most unfortunate people in our society, the ones on income related benefits, basic island pension, are only able to shop from week to week, so this Bill will enable sensible regulations put in place to ensure that we are able to supply all of the community should the need arise. Thank you.

The Speaker –

Thank you very much indeed. The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I rise in support of this Bill because I think it is a necessity at this time of need and this time of the pandemic, so therefore I will give my full support to this Bill.

The Speaker –

Thank you very much indeed. Any other Member wishes to speak? The Honourable Anthony Green?

The Hon. Anthony Green –

Thank you, Mr Speaker, I think this is a sensible preparation. I trust that the fact that if this Bill is passed it will actually deter people from actually doing what this is intended to prevent and hopefully that the market will regulate itself. I support the Bill.

The Speaker –

Thank you very much indeed. The Honourable Russell Yon?

The Hon. Russell Yon –

Thank you, Mr Speaker. I rise in support of this Bill; I think this is a sensible and timely Bill in addressing the sale of goods in the adverse climate we find ourselves in now and for the future and also to avoid profiteering by merchants. I support the Bill.

The Speaker –

Thank you very much indeed. Any other Member wishes to speak? The Honourable Clint Beard?

The Hon. Clint Beard –

Mr Speaker, I support this Bill, I think it creates a medium whereby everyone on St Helena will be able to obtain goods. I believe that we all need to work together as a community, everyone, to make sure that we look after everyone on this island. Thank you.

The Speaker –

Thank you very much indeed. The Honourable Mover then may wish to respond to the debate?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I would just like to say thank you to my colleagues who rise in support of the Bill and I look forward to its path through its Committee stage. Thank you.

The Speaker –

Thank you. Honourable Members, I put the question that the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020 be approved in principle and referred to a Committee of the whole Council.

Question put and agreed to.

The Speaker –

The Honourable Mover?

The Hon. Lawson Henry –

Mr Speaker, I beg to move that this Council resolves itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Do we have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member.

Question that Council resolves into a Committee, put and agreed to.

Council in Committee.

The Chairman –

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, nothing unusual, standard, Mr Speaker, so nothing to add there.

The Chairman –

Okay, any other Member wishes to speak on the Title, Enacting Clause and Clause 1?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Chairman –

I put the question that Clause 2 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Mr Speaker, that's the Interpretation section. It includes two definitions, one for "goods" and one for "merchant". Members will note that for "merchant" it means a person who sells goods by both retail and wholesale and there is a typographical error at the end of "merchant" where there is a semi-colon which should be a full stop instead, that won't be changed by way of amendment, it will be changed by ways of the Attorney General's powers before publication to change that to a full stop.

The Chairman –

Okay, thank you. Honourable Members, any questions on Clause 2?

Clause 2.

Question put and agreed to.

The Chairman –

I put the question that Clause 3 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Mr Speaker, Clause 3 allows Governor in Council by Order to appoint a person or establish an authority to ensure compliance with this Ordinance. It doesn't mean that it has to be done, but it gives the possibility of it being done.

The Chairman –

Okay. Honourable Members, any questions on Clause 3?

Clause 3.

Question put and agreed to.

The Chairman –

I put the question then that Clause 4 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Mr Speaker, Clause 4 deals with the issue of how to address a limited supply of goods to the island. Beginning with Clause 4 (1), you'll see that there first of all needs to be an Order by Governor in Council and Governor in Council must in that Order declare that there is a limited supply of goods and the reason for the limited supply of those goods before regulations can be made. It's been left that this is Governor in Council who will do that and it's in regard to just

there being a limited supply and the reasons and not going any further. It's thought that any further test could limit the future circumstances in which an Order could be made and although the Bill arises from the threat of Covid-19 limiting the supply of goods potentially to the island, in the future the Order could be made for other circumstances and to go into more detail of when it could be issued would potentially add or prevent it being used then. Secondly, it was thought inserting any sort of further test or obligation could invite legal challenge that the test is not made out, which, in these circumstances, we felt are very difficult, and, most importantly, this does provide some protection, the Order isn't made by an individual but it's made by Governor in Council, it must be made when there is a limited supply and Governor in Council must agree and they must specify the reasons for that. Once that Order's been made, we move on to what can be prescribed in those regulations. The first is the goods that are to be sold and the second is the manner in which those goods can be sold. What is meant by the manner in which goods can be sold is for the allowance of sales to be done by, for example, tokens or booklets for payment, limiting sales at a particular time to a particular group in society, for example, a time could be set aside for those over a certain age or for those working the emergency services, similar voluntary in the UK have been done by the supermarkets there. In addition, it would allow shop, it would allow the prevention of goods being sold outside of shops and it could allow it to mean that it has to be sold in that shop itself. The next thing a regulation can do is prescribe the quantity of goods to be sold at a given time to a person, I should specify here that "person" has the interpretation under the Interpretation Ordinance to include companies and organisations wherever they've been incorporated or are unincorporated as well. It also allows for the price at which goods are to be sold to be prescribed in those regulations as well as the period prescribed in those regulations. In regard to 4 (1) (e) for that period there is another typo here which will be, again, amended by the Attorney General's powers rather than an application for an amendment. It should read (a), (b), (c) and (d) and after the semi-colon have an "or", but that will be amended by the AG's Chambers before publication.

The other specific power for prescription that the regulations give is the manner in which the price of goods to be sold is to be subsidised if the price of the goods is required to be fixed below the current market value of the goods, so this is in regard to the situation where the amount that these goods are going to be sold for means that a merchant would, in fact, be losing money selling them at that price, so this allows a regulation to show how a merchant selling at a reduced amount will be subsidised by the St Helena Government.

Clause 4 (2) specifies that a merchant may limit the quantity of goods to be sold to a person when he considers that appropriate after giving, consideration is given to the stock available, that's in addition to, as long as it doesn't conflict with the regulations in 4 (1). There's an amendment I would like to propose here and that is to delete where in Clause 4 (2) it states "during time prescribed under section 4". The reason for that suggested amendment is I don't want there to be any confusion that outside of an Order being made merchants are free to limit supplies if they feel that rationing is appropriate. That's something that's been taking place at present due to the delay of the MV Helena and I wouldn't want this to be read as preventing them doing so outside of an Order having been issued, so the application for the amendment is that Clause 4 (2) be amended by deleting the words "during time prescribed under section 4".

The Chairman –

Anything to go in or just the delete?

The Hon. Allen Cansick –

Just delete.

The Chairman –

Just deleting the words. Do we have a seconder, please?

The Hon. Dax Richards –

I beg to second, Mr Chair.

The Chairman –

Thank you. Honourable Members, it's been proposed and seconded that under Clause 4, subsection (2), that we delete the words after 'sold to a person' delete the words "during time prescribed under section 4" as the merchant considers appropriate after consideration is given to the stock of goods available for the sale. Any Member wishes to speak to the amendment? The Honourable Lawson Henry?

The Hon. Lawson Henry –

Only to agree with the Attorney General.

The Chairman –

Thank you. Okay. Any other Member wishes to speak to Clause 4? No?

The Hon. Christine Scipio –

So, Mr Chairman, just to clarify, can you just read out what the revised Clause 2 will be then....

The Chairman –

Subject to....?

The Hon. Christine Scipio –

Mr Chairman in the interest of the listening public, may I ask the AG to state what the revised Clause 2 would be.

The Chairman –

Oh, the AG, sorry.

The Hon. Christine Scipio –

Just for our listeners?

The Chairman –

Thank you. Attorney General?

The Hon. Allen Cansick –

It's subject to subsection (1) a merchant may limit the quantity of goods to be sold to a person as the merchant considers appropriate after consideration is given to the stock of goods available for sale. Yeah?

The Hon. Christine Scipio –

Thank you.

The Chairman –

Okay.

The Hon. Dr Corinda Essex –

Just for clarification, Mr Chair, and I'm not in any way suggesting that the current Governor and Council would ever act in any other than a responsible manner, but what protection is there going forward if this legislation is passed, to ensure that Clause 4 does not get activated for trivial reasons?

The Chairman –
Attorney General?

The Hon. Allen Cansick –

Yes, Councillor Essex, the protection is Governor in Council, it's not one person. The protection would be that the Legislative Council had chosen those members to represent them in Governor in Council and they would have to specify the reason.

The Hon. Dr Corinda Essex –

So, would there be any potential legal redress if, for example, the business community felt that their decision was incorrect and had been taken on trivial or unfounded premise ?

The Hon. Allen Cansick –

Yes, they could certainly attempt to bring a Judiciary Review that there wasn't a limited supply of goods and that the reason wasn't justified.

The Hon. Dr Corinda Essex –

So, there would still be recourse through the Courts?

The Hon. Allen Cansick –

Yes, potentially.

The Hon. Dr Corinda Essex –

Because there's no appeal provision or anything like that within this legislation.

The Hon. Allen Cansick –

No, it would only be for the normal Judicial Review provisions, it would have to be shown it's irrational and un-proportionate.

The Hon. Dr Corinda Essex –

Right. Thank you.

The Chairman –

Thank you. The Honourable Christine Scipio?

The Hon. Christine Scipio –

Thank you, Mr Chairman. Mr AG, under your special powers for typos, should the title of Clause 4, the word "supply" be a capital "S".

The Hon. Allen Cansick –

Yes, I thought I had spotted all the typos, but it seems you've found another one, so, yes, it should be with a capital "S".

The Chairman –

Thank you. Any other Member have any questions on Clause 4, as amended? The Honourable Anthony Green?

The Hon. Anthony Green =

Thank you, Mr Chair. It's just as a point of clarification and information really for the Attorney General, because while this will go legal force for merchants to limit the quantity of goods they sell, a lot of shopkeepers now do that voluntary, so I just want to make sure that this doesn't prevent that, this is just an additional measure if Government thinks it's necessary and we applaud people actually continuing to do that themselves?

The Hon. Allen Cansick –

That's absolutely right, Councillor Green. Merchants are free to continue in the such circumstances limiting the quantity of goods sold to individuals, as I know has been done recently with the delay of the MV Helena. Only if there was an Order made under this Ordinance, with particular provisions would merchants have to abide by that, but outside of that they could still take into account the shortages of supply limit goods. The amendment proposed to 4 (2) is to make sure that that was clear and there was no misunderstanding.

The Chairman –

Are there any other questions then for Clause 4, as amended?

Clause 4 (as amended).

Question put and agreed to.

The Chairman –

I put the question then that Clause 5 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, this is in regard to the displaying of prices by merchants in periods where an Order has been made by the Governor under Clause 4 (1). The reasons for that were, the, were explained by the Committee Chair. You'll see that it states a merchant must ensure that the prices of goods for sale by the merchant are prominently displayed. Clause 5 (2) contains the penalty and that is a fine of up to £5,000 and imprisonment up to three months, or both.

The Chairman –

Any Member wishes to speak? The Honourable Christine Scipio?

The Hon. Christine Scipio –

Thank you, Mr Chair. Mr AG, what is the rationale for imprisonment, can't we just have a maximum fine of £5,000, why imprisonment or both, what would be the rationale for imprisonment?

The Hon. Allen Cansick –

There's no reason why Members today could decide that imprisonment wasn't needed. When this was being discussed before, it was thought, given the gravity of the circumstances, if this Order ever had to be made, imprisonment should be an option as a deterrent, but there's nothing wrong with Members today thinking that it could be removed or the amount of fine need to be reduced if that was the view of all Members.

The Chairman –
The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Chair. I find the amount of £5,000 for a fine to be excessive. If one looks at this fine in line with fines in other pieces of legislation which relate to more serious offences., I agree there should be a fine and I agree with my Honourable Friend that I don't think imprisonment is necessarily applicable here, but failing to display a price even at a time of crisis, I don't think should be classed as a serious offence. After all, the consumer can ask the price, they can be told the price, they don't have to buy without finding out what the price is first and if the shopkeeper was intending to swindle anyone they could have one price on the shelf and then sell items elsewhere or at a different time to individuals at a lower or higher price, so, quite frankly, I don't see that there is a need for a £5,000 fine or three months imprisonment for this offence.

The Chairman –
Attorney General?

The Hon. Allen Cansick –

Just to state and just for clarification, these are a fine up to that amount or imprisonment up to that amount, they are maximum, it would be up to the Judicial Authority to choose if they wanted to go that far or if it was a repeat offence, for example, or if it had been done in an aggravating way.

The Chairman –
Dr Corinda Essex, anything further?

The Hon. Dr Corinda Essex –

I would like to propose an amendment for the fine to be reduced to £2,000.

The Chairman –

Well, it's been proposed that the fine be reduced to £2,000, do we have a seconder, please, in sub clause (2)?

The Hon. Gavin Ellick –

I beg to second.

The Chairman -

Honourable Members, you may wish to speak to the amendment? The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Mr Speaker, whilst I do appreciate the direction which Dr Essex is heading, if such an individual does, indeed, make a profit exceeding £2,000 from this venture, we do wonder if it will be sufficient to deter this process.

The Chairman –
The Honourable Christine Scipio?

The Hon. Christine Scipio –

Thank you, Mr Chairman. My understanding according to the Interpretation law that the fine is up to a maximum of £5,000 so, you know, someone could be fined £2,000, £1,000, so it's a maximum £5,000, so it gives that flexibility to the Court, so I don't have any issue with agreeing to the maximum of £5,000, but what I was also going to propose is an amendment to remove the wording of "or imprisonment for 3 months, or both" because the penalties we're looking at here I don't think the offence asks for imprisonment in prison.

The Chairman -

Okay. Attorney General?

The Hon. Allen Cansick –

Nothing to add in regard to that. I explained the reason, the rationale behind having them there and it's very much a matter for Members what sort of way they want to look at this, for both a deterrent purpose and a fair purpose.

The Chairman –

Dr Corinda Essex?

The Hon. Dr Corinda Essex –

I would just like to respond to my colleague on my left to say that I don't think any merchant would actually be scoring money by not displaying a price, so therefore I don't quite follow his argument that they might be actually scoring more than £2,000. I fully accept that these are maximum, but I still believe that £5,000 is disproportionate as a maximum for this particular offence when one bears in mind other fines that are currently on the statute books for what are arguably considerably more serious offences.

The Chairman –

The Honourable Lawson Henry?

The Hon. Lawson Henry –

I just want to reiterate the point made by the Attorney General, this is the maximum limit and, you know, it's up to the Courts to decide what the gravity of the offence will be, so we're allowing the Courts that flexibility and I think also in relation to, if we remove the imprisonment we take away the Court's ability if the gravity of that offence was at the upper limit where they thought there ought to be imprisonment, so I think we should think very carefully.

The Chairman –

There hasn't been an amendment made for that yet, has it?

The Hon. Christine Scipio –

No, I said I would like to propose.

The Chairman –

You would like to propose, sorry.

The Hon. Christine Scipio –

I didn't ask, I proposed, Mr Chairman.

The Chairman –

Would you like to make a proposed amendment?

The Hon. Christine Scipio –

Of course, Mr Chairman, I propose that the wording “or imprisonment for 3 months, or both” is removed from Clause 5, section 2.

The Chairman –

Do we have a seconder for that proposal, please?

The Hon. Dr Corinda Essex –

I beg to second.

The Chairman –

Thank you. Honourable Members, there are two proposals, one to reduce the fine from £5,000 to £2,000 and to delete the words “or imprisonment for 3 months, or both”. You may speak to the amendments. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. I don’t support these amendments, reducing the fine or taking away the ability for imprisonment. The fine is a maximum fine and when we start doing this then we taking away the ability of the Courts. There are likely to be the upper end of the scale in relation to this particular offence here and the Court need to have the ability to exercise; these are only maximum fines, the fine can be £100, it can be £50, but the Attorney General alluded to the fact of reoffending, if there’s reoffending I would suspect the Court want to be taking a more serious view, so this is where the ability of, the Court may want to consider imprisonment, you see, so once we remove this a person can offend, reoffend, reoffend and the Court will be limited to what they can do. You know, these are maximum fines and, you know, and its ability there for imprisonment should the Court consider it is necessary to exercise that right. I don’t think we should be taking this ability away from the Courts, so I don’t support either of those amendments. I support what is being proposed here, £5,000 or imprisonment for 3 months, or both, that should be the flexibility and ability of the Court. Thank you.

The Chairman –

Any other Member wishes to speak to the amendment?

The Hon. Lawson Henry –

Thank you, Mr Speaker. I wouldn’t support those amendments either for all the reasons my colleague to my immediate right has said, we have got to allow the Courts the flexibility pending the gravity of the offence, that is up or down. Thank you.

The Chairman –

The Honourable Jeff Ellick?

The Hon. Jeffrey Ellick –

Thank you, Mr Speaker. Just looking at prices, I do think we are somewhat missing the point. Price displaying seems quite minor, if we go in prison, have imprisonment in this here my concern is this here, we need to get essential commodities out to people, we can deal with it by

way of serious fines and hopefully that will deter people. This is not going to be happening on a regular basis that we want to limit the supplies, but I do have severe concerns, we can imprison, put people in prison, but then what's going to happen with the goods? Goods is probably going to be left there and nobody will get the goods. We have to have a balance, in my view, and I do believe £5,000 should stay there, because the Court can go up to £5,000, but to have an imprisonment I don't believe that is proportionate to have imprisonment.

The Chairman –

Okay. Any other Member wishes to speak to the amendment? The Honourable Anthony Green?

The Hon. Anthony Green –

Thank you, Mr Chair. I'm assuming you're dealing with the two amendments by two different Members as one?

The Chairman –

Yes.

The Hon. Anthony Green –

I do have sympathy for the both for what they say, but for me it's important to, sort of, take into account that while it seems simple that perhaps you could have a huge fine for a simple non display of price, you could have a major outlet with shops all-round the country so I think it is probably a bigger issue than it may be obvious, so I think the overall thing is to make this a deterrent and as we know that the Courts do actually have discretion, depending on the severity of the infringement, then I see no problem of actually leaving it as it is, because it must show as a deterrent, so I actually don't support the amendment.

The Chairman –

Okay, thank you. Attorney General?

The Hon. Allen Cansick –

So, I'd just add, it is there, as Councillor Green said, for deterrent purposes. It would be a very unique position if an Order was made in regard to this to ration, that's why it's quite significant. The reason for the offence itself of price display is so that it can be correctly identified or assist in identifying if somebody is profiteering and also for the public to know what price they're going to be paid. It is a maximum, the three months imprisonment, and that could be looked at if somebody was doing this to avoid being identified of profiteering or if it was being done in a way repetitively, so it gives that whole, sort of wide range of discretion to the Court.

The Chairman –

Okay. Any other Member wishes to speak? The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I need to ask the AG, Sir, in 4 (f) the manner in which the price of goods to be sold is to be subsidised if the price of the goods is required to be fixed below the current market value of goods. If you got that so why do we want to take the price display and failing that the big fine for that down there when you already got in there that we will be subsidising this here?

The Hon. Allen Cansick –

Two different things, Councillor. I mean, Clause 4 is in regard to where there's limited supply. This is to make sure that people are getting, you know, what their fair share of what's there. Clauses 5 and 6 are to address anybody taking advantage of that situation either to make gain themselves. 4 (f) you've pointed out, that is if the Government say you must sell something for a particular price and the merchant is therefore making a loss on that. That's to look at how they will subsidise the merchant in selling it at a loss, so it's a very different thing to when we get to 5 or 6, which is about the disservative of somebody profiteering from the position.

The Hon. Gavin Ellick –

Well, I, sort of, agree with my other colleagues here that at a time of this here why we want to put people in prison, I don't mind people paying a fine, but if you would need put people in prison, they'll be the only ones who not sick and you will need them in more ways than one, so I can't help thinking the fines is bit high for the price display. Thank you.

The Chairman –

Honourable Cyril Leo?

The Hon. Cyril Leo –

Mr Speaker, what concerns me here is many, many of our people are trying to get by with very low income and we need to support them with a deterrent.

The Chairman –

Anything further? Okay. Attorney General?

The Hon. Allen Cansick –

Nothing further from me, Mr Speaker.

The Chairman –

Alright then, I'll....sorry, Councillor Ellick?

The Hon. Jeffrey Ellick –

Just to add, Mr Speaker, you know, we have section 6 which actually deals with profiteering and has a really good deterrent, but for price display, I just think that's disproportionate. You know, we can go up to £5,000 but to put people in prison for price display, I think we're missing the point there, because we got profiteering down the bottom. If their price display is so high, then deal with them under profiteering. Thank you.

The Chairman –

Okay. Thank you. Attorney General, is it in order for me to deal with the two at once or should I deal with them separately?

The Hon. Allen Cansick –

You should deal with them separately.....?.....

The Chairman –

Separately, okay. Right, then I'll put the question then that Clause 5, section (2) a fine of £5,000 be reduced to £2,000.

Question put.

The Chairman –
Anyone call for a.....

The Hon. Derek Thomas –
Division?

The Chairman –
Division?

The Hon. Dr Corinda Essex –
No.

The Hon. Derek Thomas –
But how can you determine, how can you determine the majority? I sitting here, Mr Chairman, I couldn't determine what the majority is, I hear Ayes, I hear Noes, but if you tell me how many, I can't say.

The Chairman –
Can you go around the table? Okay.

Ayes

Councillor Essex
Councillor Ellick

Noes

Councillor Scipio
Councillor Leo
Councillor Ellick

Councillor Buckley
Councillor Green
Councillor Thomas
Councillor Yon
Councillor Beard
Councillor Henry

The Chairman –
Okay, we have the Noes – 9 and Yes – 2. Okay, so the Noes have it, so the fine will stay as £5,000. Am I right, Attorney General?

The Hon. Allen Cansick –
Yes, Mr Speaker.

The Chairman –
Okay, thank you. Then I'll move on to the other one, I put the question then that Clause 5, section (2) it's been proposed and seconded that we remove "or imprisonment for 3 months, or both".

Question put.

Division Called.Ayes

Councillor Scipio
 Councillor Leo
 Councillor Essex
 Councillor Ellick
 Councillor Ellick
 Councillor Buckley

Councillor Yon
 Councillor Beard

Noes

Councillor Green
 Councillor Thomas

Councillor Henry

The Chairman –

8 Yes and 3 Noes, so the Ayes have it, the Ayes have it.

Clause 5 (as amended)

Question put and agreed to.

The Chairman –

I put the question that Clause 6 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, this is in regard to a prohibition on profiteering in regard to the raising of prices of goods so as to profit from the limited supply of goods available. An offence is created of the contravention of that which contains a maximum penalty of a fine of £20,000 or imprisonment for 6 months, or both. Councillor Essex earlier in the debate today raised some concerns over when this offence would be used and she gave an example of the increasing costs of goods. The offence is in regard to profiteering only, so if your goods were going up a pound to buy or the transport costs has gone up 20, 30p, the calculation that you needed to add for that wouldn't be taken into account. If a prosecution was ever to be brought for such an offence as this it would involve a fair amount of work from financial experts to show that what that person was doing was clearly profiteering by increasing the price to take advantage of the situation. You'd have to check before bringing such a matter to get it over the evidential burden that what they were doing was not just increasing the cost of what the real cost of supplying those goods now is.

The Chairman –

Any questions on Clause 6, Honourable Members? The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Just wondering, I know it is like when they say profiteering, but the price display and the amount in that, they all seem the same to me, so that's why I wonder why it is hiked up in £20,000 or imprisonment for 6 months. Should the fine not be something like £10,000 and down to 3 months?

The Hon. Allen Cansick –

Councillor, in regard to the, sort of, back to the price display, that's really just to ensure that merchants display their prices so we can see what's going on. Here, is in regard to a merchant or a seller of goods taking advantage of the situation, you have to show for this offence, which has a more serious penalty, that there is real significant wrongdoing here in taking advantage of the situation.

The Hon. Gavin Ellick –

But if you wasn't displaying the price, that would be taking advantage as well, so I just saying this, if you look at 4 (f) and 5 and 6, they all seem similar and, you know, you got £20,000 or six months imprisonment, maybe the goods couldn't even be worth £5,000, but, you know.

The Hon. Allen Cansick –

Again, they're maximum penalties, the Court would be able to give no imprisonment, would be able to give a fine for £20, £50 if that's how they wanted to mark it.

The Chairman –

Any other Member wishes to speak? Dr Corinda Essex?

The Hon. Dr Corinda Essex –

I don't have any particular issues with these penalties, because if a merchant is really ripping the public off at the time of crisis, then I think the punishment should be severe, so I don't have any issue with the penalties in this instance. My only concerns were about the evidential proof that enables a prosecution to be made and who would actually be responsible for collecting the evidence, so going back to Clause 3 who would be the authority for the person appointed under Clause 3 who would take the lead in determining if profiteering is actually occurring or would it be the Police Service?

The Hon. Allen Cansick –

If such an appointment was made and the terms for an appointment were to do so would fall to that person or that authority, without there being an appointment the only investigative body for this at present would be the Police.

The Hon. Dr Corinda Essex –

Thank you.

The Chairman –

Any other Member have any concerns? No? The Honourable Cruyff Buckley?

The Hon. Cruyff Buckley –

Just for clarity, AG, could you touch on the fact that the Chief Magistrate can only issue fines up to £20,000 and this power doesn't extend to JP's?

The Hon. Allen Cansick –

Yes, that's correct. If the JP's alone sitting without the Chief Magistrate their sentencing powers would be limited to £5,000. If they were going to sentence for £5,000 or less, they could continue to do so. If they thought it needed to be marked by more than that and the Chief Magistrate wasn't there, they'd need to commit it to the Supreme Court for sentence, but they

could still have their maximum powers of £5,000 without the Chief Magistrate, which, unless it was something incredibly serious, you would expect would be normally sufficient.

The Chairman –

Okay. Any other Member wishes to speak? Then I put the question that Clause 5, as amended, do stand part of the Bill. Sorry, Clause 6, I do apologise, do stand part of the Bill.

Clause 6 (as amended)

Question put and agreed to.

The Chairman –

I put the question that Clause 7 do stand part of the Bill. Attorney General?

The Hon. Allen Cansick –

Yes, Mr Speaker, this is the section which allows Governor in Council to make regulations for the further and better execution of the Ordinance. The one that is of particular relevance here is Clause 7 (b). As part of that power without setting anything out here, Governor in Council would by regulation have the power to create offences for breach of earlier parts of the Ordinance and give them penalties that it choose to do so, what 7 (b) does is limit Governor in Council if it creates any further offences to being able to give no more than maximum penalties of £20,000 or imprisonment for 6 months. It doesn't mean they will do in creating offence but it just limits them at that.

The Chairman –

Any Member have any questions on Clause 7? No?

Clause 7.

Question put and agreed to.

Council Resumed.

The Speaker –

The Honourable Mover?

The Hon. Lawson Henry –

Mr Speaker, I beg to report that the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020 has passed the Committee stage with two amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted. Thank you.

The Speaker –

Thank you. Do we have a seconder, please?

The Hon. Cruyff Buckley –

Mr Speaker, I beg to second.

The Speaker –

Thank you. The Honourable Mover may wish to speak to the Motion?

The Hon. Lawson Henry –

Thank you, Mr Speaker, only to say to thank the Members for their support to the Bill. Thank you, Mr Speaker.

The Speaker –

Thank you. I put the question, Honourable Members that this Council approves the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020, as amended, and recommends to the Governor that it should be enacted. Any Member wishes to speak further? No? Mover, you wish to? No?

Then, finally, I'll put the question that this Council approves the Consumer Protection (Control of Sales during Limited Supply) Bill, 2020, as amended, and recommends to the Governor that it should be enacted.

Question put and agreed to.

The Speaker –

Next item of business?

6.

ADJOURNMENT

The Speaker –

Right, since there's no adjournment, sorry.

The Hon. Cyril Leo –

Mr Speaker, as the original Order Paper for this formal meeting was made public, to avoid confusion, I would like to make a brief statement.

The Speaker –

Is that in order, Attorney General?

The Hon. Allen Cansick –

I think?.....adjournment debate.....?.....forbe able to speak, I think that would be acceptable.....?.....

The Speaker –

Yes, okay. Honourable Members, any objections?

The Hon. Dr Corinda Essex –

Just on a point of clarification, I don't think Councillor Leo was going to give an adjournment debate, I think he just wanted to rise on a point of information.

The Speaker –

Okay. Okay, I will allow it then, Councillor Leo.

The Hon. Cyril Leo –

Thank you, Colleague and Mr Speaker. As the original Order Paper for this formal meeting was made public, to avoid confusion, I would like to make a brief statement. I thank the Chairman of Public Health for his answer relating to the early detection of Cancer, however, I'm not content that the answer provides sufficient information to feed back to constituents. Accordingly, I have decided to withdraw the question today and will submit the question and also supplementary questions at the next formal Legislative Council meeting for oral responses from the Chairman of Public Health. Thank you, Mr Speaker.

The Speaker –

Thank you. Honourable Members, that concludes the business for today. Oh, sorry, the Honourable Derek Thomas?

The Hon. Derek Thomas –

Just to say, Mr Speaker, I provided the answer to the question. If the Honourable Member wish for me to answer supplementary questions as a result of that response, I'm quite happy to answer any supplementary questions that he may wish to have as a result of my answer.

The Speaker –

Can you answer, can you ask supplementary questions for a written response?

The Hon. Allen Cansick –

.....questions, I think it would be wrong to start doing that now. I think, as Councillor Leo stated, he has reserved that for next sitting of Legislative Council, so that will be the correct time to do so.

The Speaker –

Thank you, Attorney General. Dr Corinda Essex?

The Hon. Dr Corinda Essex –

On a further point of information, I would like to inform my constituents that I have reserved the three questions I had for oral answer until the following session, because I did not wish to have written responses, but I would like my constituents to know that I have already tabled them. As my colleague has said, they were published in the earlier Order Paper and I wouldn't like anyone to think that I've withdrawn them. Thank you.

The Speaker –

Thank you very much indeed. Honourable Members, that concludes our business for today and I now put the question that this Council do adjourn until 17th April 2020.

Question that Council adjourns until 17th April, 2020, put and agreed to.

The Speaker –

Thank you, Honourable Members.

Council Adjourned.