

S.P. 17/26



**St Helena
Government**

**ST HELENA GOVERNMENT
PROCEEDINGS OF LEGISLATIVE COUNCIL
WEDNESDAY, 18 JUNE 2025
FIRST SITTING OF THE TWENTY SECOND MEETING**

Laid upon the Table 19 March 2026

ST. HELENA

LEGISLATIVE COUNCIL

THE DEPUTY SPEAKER

The Honourable Catherine Harris - Cranfield

EX-OFFICIO MEMBER

The Honourable Acting Attorney General, Mr. Andrew Dawson

ELECTED MEMBERS

The Honourable Andrew James Turner
The Honourable Christine Lilian Scipio
The Honourable Dr. Corinda Sebastiana Stuart Essex
The Honourable Elizabeth Knipe
The Honourable Gillian Ann Brooks
The Honourable Jeffrey Robert Ellick
The Honourable Julie Dorne Thomas
The Honourable Karl Gavin Thrower
The Honourable Mark Alan Brooks
The Honourable Martin Dave Henry
The Honourable Robert Charles Midwinter
The Honourable Ronald Arthur Coleman

CLERK OF COUNCILS

Miss Anita Legg

PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Wednesday, 18th June, 2025

The Council met at 10.00 am
at the St Helena Community College, Jamestown

(The Honourable Deputy Speaker in the Chair)

ORDER OF THE DAY

1. FORMAL ENTRY OF THE DEPUTY SPEAKER

2. PRAYERS (Bishop Dale Bowers)

3. ADDRESS BY THE DEPUTY SPEAKER

Honourable Members, ladies and gentlemen and members of the public who are live streaming or listening to these proceedings via SAMS, good morning and a warm welcome to the first sitting of the 22nd meeting of Legislative Council. Firstly, we have apologies from the Speaker, he is off island on personal business. We wish him well and look forward to his safe return. We welcome back Councillor Andrew Turner, and we hope he's now feeling much better. Our grateful thanks are once again extended to Bishop Dale for delivering prayers, to Mr. Keith Brinston for kindly undertaking his ceremonial duties as Mace Bearer and SAMS who are broadcasting and recording these proceedings for us. Today's business consists of four sessional papers, one motion and the adjournment debate. Honourable Members, the weather is changing and becoming cooler but should you wish to remove your jackets, you may do so. *(Pause)* I now ask the Clerk to announce the first item of business, please.

4. PAPERS

SP 30/2025 – Hon. Minister for Treasury & Economic Development

The Hon. Mark Brooks -

Thank you Madam Deputy Speaker. Madam Deputy Speaker, I beg to present Sessional Paper, 30 of 2025, entitled St Helena Government, a Bill for an Ordinance, Communications Bill 2025.

The Deputy Speaker -
Thank you.

Ordered to lie on the table

The Hon. Mark Brooks -
Madam Deputy Speaker, I also have a certificate from the Governor for the urgency of this matter.

The Deputy Speaker -
Thank you, if you could bring that with you as well.

SP 31/2025 – Hon. Chief Minister

The Deputy Speaker -
The Honourable Chief Minister.

The Hon. Chief Minister -
Good morning, Madam Deputy Speaker, I beg to present Sessional Paper, 31 of 2025, entitled St Helena Government, English Law Application Ordinance 2005, Attorney General's Report to Legislative Council concerning enactments in England, 2024, and related matters.

The Deputy Speaker -
Thank you, Chief Minister. Attorney General, would you like to offer a comment on that please?

The Hon. Attorney General -
Thank you, Madam Deputy Speaker. It's probably fair to point out to this House that this is the first such report that this House has received since 2017. The English Law Application Ordinance requires the Attorney General to present such a report each year. I apologise, I should have got it to this House by the 31st of March, but at least I've got it to you, albeit a couple of months late. The purpose of the report is to highlight to this House what laws have been enacted in England so that we can consider whether they have application for St Helena or not. Now I have been very fortunate, because 2024 was a year with little legislation in England, little that was relevant to us, and more importantly, have had a General Election. So this is an easy report to have prepared, but in ordinary years, it isn't. But what it should be though, is a catalyst for all of us to look at what reforms we perhaps need to make. I also think the English Law Application Ordinance, in this regard, is a hark to a different era, before Ministerial Government, and we can question whether, in fact, it's appropriate for the Attorney General to make this sort of report at all. I think, on balance, it probably is. But I also think we need to have a look at that ordinance and make sure it's fit for purpose going forward and in particular, as I say, that it fits into our ministerial structure that we have. But I am more than happy that the Chief Minister is laying this report on the table, and I encourage all of you to consider it and look at the recommendations as to whether we should develop law in the way that England has. Thank you very much Madam Speaker.

The Deputy Speaker -
Thank you, Attorney General.

Ordered to lie on the table

SP 32/2025 – Hon. Dr Corinda Essex

The Deputy Speaker -

The Honourable Doctor Essex.

The Hon. Dr Corinda Essex -

Thank you. Madam Deputy Speaker. Madam Deputy Speaker, I beg to submit the Sessional Paper 32 of 2025, entitled St Helena Public Accounts Committee, Report to Legislative Council on the formal session of the Public Accounts Committee held on Thursday the 3rd and Thursday the 10th of April 2025 and, for the benefit of the listening public, I would like to add that this report relates to the performance audit undertaken, relating to the Fibre Optic Cable Network Project.

The Deputy Speaker -

Thank you Honourable Member. Honourable Chief Minister.

The Hon. Chief Minister -

Madam Deputy Speaker, as per Order 21 of Standing Orders, I would wish to suspend Standing Orders to make a brief statement on Sessional Paper 32/2025, entitled St Helena's Public Accounts Committee, Report to Legislative Council on the formal session of the Public Accounts Committee held on Thursday 3rd and Thursday 10th of April 2025.

The Deputy Speaker -

Thank you, Honourable Chief Minister. Do I have seconder? Honourable Minister Scipio.

The Hon. Christine Scipio -

Thank you, Madam Deputy Speaker, I beg to second.

The Deputy Speaker -

Honourable Chief Minister, would you like to explain your reasons for this?

The Hon. Chief Minister -

Thank you, Madam Deputy Speaker. I've taken the time last evening to read through this report from PAC, and although I'm supportive of it, there is some inaccuracies within it, which I think is of concern if it's going to be laid in the House today. Particularly, I'd like to pay attention to page four, and I think that is paragraph three, which starts 'the report focuses on the sub-sea cable.

The Hon. Andrew Turner -

May I rise on a point of order?

The Deputy Speaker -

Not until the Minister is finished speaking, please.

The Hon. Chief Minister -

So just to give Members, sorry could I continue speaking?

The Deputy Speaker -

Yes, please continue.

The Hon. Chief Minister -

The report focuses, I'll just read the statement so that the listening public and all and also Members in this House will know what I'm referring to. So the report focuses on the subsea cable, funded by the European Union and the proposed on-island network upgrade, which to the point of termination of the contract with Maestro, had been funded by the Economic Development Investment Programme (EDIP). It states that SHG partnered with Google and Maestro and invested approximately 16.3 million pounds to connect St Helena Limited to the internet, via the Equiano subsea cable. Therein lies the two inaccuracies. First and foremost, SHG did not partner with Maestro. It partnered with Google with the amount of 16.3 million, and it certainly had no reference to Connect St Helena Limited. I think I can see where the mistake is. It should state that the 16.3 million was to connect St Helena to the internet. So that is one of the inaccuracies I would like to bring to this House attention. And then on page nine, just bear with me a second Madam Deputy Speaker, yes, this is a small error, not as significant, I would suggest, as page four, and this is the last paragraph on that page, the penultimate sentence, which starts Cube Ultra served as an interim project manager from the contract to start November 2022, with More House Consulting. More House Consultancy was who SHG utilise, and they are spelled M, O, O, R House and its consultancy. This is just a small mistake, as I've said, but because of what I've laid out on page four, I would wish to have this report withdrawn and the corrections made prior to this being tabled. However, if the corrections can be made, I would really want to support it being laid before the dissolution of this Council. So it would suggest it would be retabled, if I can call it that, or at the next available sitting, which is due to be held on the 26th of June, Madam Deputy Speaker.

The Deputy Speaker -

Thank you, Honourable Chief Minister. Honourable Andrew Turner, you wanted to rise on a point of order?

The Hon. Andrew Turner -

Thank you Madam Deputy Speaker. I was a little confused by the process we just followed there, because although there was a motion to suspend Standing Orders in order to allow that speech that's just taken place, to take place, we didn't get to vote on it before it took place. Now I'm not saying I have issue with the contents of the speech, but if we're not following our own process, this isn't very good start, to what tends to be potentially a very controversial meeting. So can someone please explain to me what process we just followed there?

The Deputy Speaker -

Thank you. Attorney General are you able to advise?

The Hon. Attorney General -

Madam Deputy Speaker, you caught me off guard, because whilst I was looking at all the don'ts in the earlier provisions, I would suggest that the speech we've just had from the Chief Minister would fall within your discretion to allow such a speech. I think under the circumstance that it is quite reasonable to ask that a paper that is going to be tabled where there are arguably substantial errors in it, have those errors corrected beforehand. I think Councillor Turner has a point in the sense of where there has been a motion to suspend Standing Orders, perhaps it would have been preferable had there been a vote on whether it was acceptable to do so, but under the circumstances, I think the procedure we have ended up following has been perfectly reasonable, but I would suggest there is a vote taken as to whether or not to allow the

report to be tabled. It may very well be that those representing the Public Accounts Committee might actually take the view and volunteer to actually take it back, have the amendments changed, and then represent it next week. But either of those processes would be sufficient, in my judgment.

The Deputy Speaker -

Thank you. Thank you, Attorney General. So I'd like to put to the vote, those in favour say aye. Oh, I beg your pardon, Councillor Dr Essex?

The Hon. Dr Corinda Essex -

As a member of the Public Accounts Committee, I have no problem in withdrawing this and presenting it next week. I apologise for the errors, which arose from the AI transcription service which unfortunately does not very accurately reflect some of the speeches made in the Honourable House or indeed in Public Accounts Committee meetings. So I've got no problem with bringing it back at our next sitting.

The Deputy Speaker -

Thank you, Honourable Member. Honourable Members I put to the vote whether you would be content for this to come back to the House at the next sitting.

Question put and agreed

The Deputy Speaker -

Next item of business please.

SP 33/2025 – Hon. Chief Minister

The Deputy Speaker -

The Honourable Chief Minister.

The Hon. Chief Minister -

Thank you Madam Deputy Speaker, I beg to present Sessional Paper, 33 of 2025, entitled St Helena Government, Proceedings of Legislative Council, Thursday 13th February 2025, First Sitting of the Nineteenth Meeting.

The Deputy Speaker -

Thank you Honourable Chief Minister.

Ordered to lie on the table

The Deputy Speaker -

Honourable Members, in accordance with Standing Order 2, Rule 6, I put the question that if members are satisfied that the verification of the Clerk that the draft record of Proceedings of Legislative Council held on Thursday 13th February 2025, be confirmed.

Question put and agreed

The Deputy Speaker -

The Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you, Deputy Speaker, if I may, I wanted to ask an urgent question, which relates to the PAC report that's just been removed. However, the PAC report has now gone out into the public. So I think actually this question can still be asked, because whether, we now know why the PAC report's not going forward, but actually it's minor changes that actually don't affect this question or the recommendation. None of the recommendations in that report were brought out to be incorrect, so I would like to proceed with the question, if that's permissible?

The Deputy Speaker -

You may proceed.

The Hon. Karl Thrower –

Thank you. Will the Honourable Minister for the Treasury Economic Development give the House assurance that the recommendations made by the Public Accounts Committee in relation to the fibre optic cable network project, will be fully considered before our government enters into any new telecommunications licenses or contractual agreements concerning telecommunications?

The Deputy Speaker -

Thank you. Honourable Chief Minister. Honourable Minister Mark Brooks.

The Hon. Mark Brooks -

Thank you, Madam Deputy Speaker, and I would like to thank the Honourable Member for his urgent question. However, Madam Deputy Speaker, having just received a report this morning, I have not had a chance to read and digest its contents, unlike the Chief Minister here, who has been very proactive in skimming through the report. And she has highlighted a number of inaccuracies, which I also agree with my Honourable friend, Karl Thrower, does not change as the recommendations in the report. So however, I am happy to answer the question, Madam Deputy Speaker, and I can confirm that in principle, that we will take on board any relevant recommendations in the audit report that would have a positive impact on the ongoing license discussions. Thank you, Madam Deputy Speaker.

The Deputy Speaker -

Thank you Honourable Minister. Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you Deputy Speaker. I would just like to thank the Honourable Minister for his answer.

The Deputy Speaker -

Thank you. Could I ask the Clerk - Honourable Minister Scipio?

The Hon. Christine Scipio -

Thank you Madam Deputy Speaker. I am sitting

The Deputy Speaker -

Could you stand please.

The Hon. Christine Scipio -

.... until you give me permission to stand, so I'm going to ask the question. If I am allowed to ask a question, which may turn into a point of information, but I don't know, and that's why I

remain sitting, because I don't know if I can ask the question, because the question is seeking clarity. But if you give me permission to stand, then I'll ask the question, and it will call in place as to why I'm asking the question.

The Deputy Speaker -
You may go ahead.

The Hon. Christine Scipio -
Thank you Deputy Speaker.

The Deputy Speaker -
You could clarify why you need to ask the question?

The Hon. Christine Scipio -
Yes, I can clarify that the Honourable Karl Thrower made a statement that the report is now in the public domain. My understanding that the reports will only be placed in the public domain once it has been laid on the table. This report hasn't been laid on the table, so it shouldn't be in the public domain.

The Deputy Speaker -
Thank you Honourable Minister. Honourable Karl Thrower.

The Hon. Karl Thrower -
That's my mistake. I actually thought, because it was coming to the meeting it gets, once the Order Paper's published, it went into the public domain. So that's my fault. If that's the case, then that's my fault. And I do say, but the Honourable Minister does have it, so I think he can consider it still.

The Deputy Speaker -
I would agree that it is in the public domain because it was put up on the internet. It was published. I beg your pardon, and I've been advised that Minister Scipio you're correct in what you say. Okay thank you.

So now could we move on to the next item of business please. Thank you very much.

5. MOTIONS

Motion No. 1 – The Hon Minister for Treasury and Economic Development:

THE COMMUNICATIONS BILL, 2025

The Deputy Speaker -
The Honourable Minister for Treasury and Economic Development.

The Hon. Mark Brooks -
Thank you, Madam Deputy Speaker. Madam Deputy Speaker, I beg to move that the Communications Bill 2025, be approved in principle and referred to the Committee of the whole House. I also confirm that the Bill is presented on the recommendations of the Governor in accordance with section 73 (2) of the Constitution.

The Deputy Speaker -

Thank you. Is there a seconder? Honourable Chief Minister?

The Hon. Chief Minister -

Thank you Madam Deputy Speaker, I beg to second.

The Deputy Speaker -

Thank you. Honourable Minister Brooks, you may proceed.

The Hon. Mark Brooks -

Thank you Deputy Speaker, Madam Deputy Speaker, sorry. Madam Deputy Speaker, I am pleased to present the Communications Bill 2025, a significant step forward for St Helena. This Bill will enable a long-term development of telecommunications services and benefits for all consumers, while ensuring a strong, modern regulation for the sector. The existing Telecommunications Ordinance of 1989 no longer meets the needs of today's technology and expectations. With the arrival of the Equiano subsea cable, St Helena is now entering a new era of digital connectivity, moving away from satellite and embracing high speed fibre. This Bill ensures that our local frameworks keeps pace with that progress. Reliable and affordable communications are vital for our island's economic future. This Bill underpins by placing consumers at the centre of the decision making and provide a legal certainty needed to support investment and innovation. The direction we have taken following the policy for economic, sorry for electronic communications, networks and services, first endorsed by Executive Council in 2020 and then reaffirmed in 2022 and again in July 2024 by this Council, the policy was clear; St Helena must modernise its communication framework, and this Bill delivers on that commitment. At the heart of the Bill in part two, the objectives to build a high quality, sustainable and reliable services that support consumer welfare, attract investment and support the growth. To oversee this, the Bill established a communications regulator with powers to enforce compliance and ensure the sector operates fairly and transparently. It also introduced a modern licensing framework, providing clarity for consumers, operators and the government. This is essential, both to improve current services and to attract potential investors, including data centres and further satellite ground stations. We also address the management of radio spectrum, a finite and critical resource. We live in a global, connected world. Through this legislation, St Helena will meet its international obligation, including those set by the International Telecoms Union. This legislation also ensures St Helena has better control over critical national infrastructure, protecting St Helena now and into the future. Madam Deputy Speaker, some has raised concerns about the speed at which this Bill has progressed following public consultation earlier this year, but time is of the essence. I stated in my budget speech, SHG is actively exploring options to agree a new public telecommunications license. For this to happen responsibly, a modern regulatory framework must be in place. But let me be clear, Madam Deputy Speaker, any deal we make must serve the interests of all on St Helena, we will leave no one behind. We cannot achieve this, then we will proceed with a long-term license before, if we cannot achieve this, we will not proceed with a long-term license before the end of this Council's term. By approving this Bill, we unlock the full potential of the Equiano cable, connecting and enabling investment necessary to upgrade our local network and infrastructure. This is a major milestone for St Helena, a commitment to a digital inclusion, modernisation and sustainable development. Madam Deputy Speaker, I look forward to the Committee stage where the Honourable Attorney General will guide us through the detailed provisions of the Bill. Thank you, Madam Deputy Speaker, and I beg to move.

The Deputy Speaker -

Thank you, Honourable Minister. I put the question that the Communications Bill 2025 be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. Honourable Minister Henry.

The Hon. Martin Henry -

Thank you, Madam Deputy Speaker. I will start then. Madam Deputy Speaker, I rise and offer my support for the Communications Bill 2025 and to commend Minister Brooks and his team for the considerable work that has gone into this important legislation. Whilst I acknowledge Member's legitimate concerns about the pace of the Bill's progress, I believe that we must balance respect for the proper parliamentary process, with recognition of genuine legislation urgency that Members are aware of. The timing, though challenging, was driven by necessity, rather than convenience. This legislation establishes a robust framework that extends beyond spectrum management and licensing to deliver a fair pricing, consumer transparent and universal access. It codifies essential regulation, regulatory principles, technology neutrality, evidence-based decision making and proportionate enforcement, aligning St Helena with international best practice. The legislation balances public accountability with private sector viability, creating a resilient communications ecosystem responsive to local needs while meeting international standards. I urge Members not to let the legitimate concerns about the timing overshadow the strategic foresight this Bill represents as we debate it in the House today. Madam Deputy Speaker, this Bill provides the foundation that ensures connectivity for St Helenians now and in the future. I support the Bill.

The Deputy Speaker -

Thank you, Honourable Minister. Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you. Madam Speaker, Honourable Members, I rise today in support of the principles of this Communications Bill, which seeks to modernise and strengthen the legal and regulatory framework governing St Helena communications infrastructure. The bill introduces a number of long overdue reforms, many of which are essential. It establishes, for the first time, a Communications Regulator, independent, skilled and properly empowered to monitor providers, enforce standards and protect consumer rights. It mandates consumer codes of conduct, enshrines net neutrality and sets out universal service obligations, helping to ensure affordable access to services across our island. It also includes long overdue provisions to tackle market dominance, introduce price controls and promote open access, giving us the tools that we've lacked for far too long. These are welcome developments, and I fully support them. But Madam Speaker, while I support the intent and many of the outcomes of the bill, I cannot in good conscience remain silent on how the legislation has been handled. Let's be honest with ourselves. This is not a minor amendment. It's a 93-page bill, dense, technical and far reaching in its implications. It introduces sweeping powers in areas such as data interception, data surveillance and the establishment of a new Surveillance Commissioner. On Friday, we had a remote meeting lasting over three hours with a Legislative Drafter joined by Members of the House, including the Attorney General and the ministers who were directly involved in the bill's creation. The purpose was to help the Members of this House understand the bill and appreciate what it aims to achieve and the reasons for rushing it forward. There has also been considerable communication between us all before and after that meeting. Yet despite its scope, what consultation did the public really receive? A link to a download, a complex 93-page document, a press release, and 20 days to respond. So I know some of my colleagues feel that consultation did happen. But I asked, was it meaningful, was it inclusive, was it transparent

about the scope of the implications of that document that we were asking them to review? If we asked the public today, how many would even be aware, let alone fully understand, the scale in the changes proposed in the bill. How many understand the, particularly the current negotiations taking place with our incumbent provider. I respectfully submit that this was not proper consultation. In truth, it can't reasonably be called consultation at all. I am not alone in saying that. Also very concerning, we have received a formal letter from the St Helena Equity and Human Rights Commission, their concerns are serious and specific. They highlight that most controversial powers, surveillance, interception, search and seizure were not even mentioned in the exploratory note made available to the public. They have warned of potential infringement of rights protected under our Constitution, the right to privacy, to home and to property. They have warned of legal risks, constitutional challenges and damage to public trust. Most disturbingly, the EHRC has stated that they have not received a reply to the concerns they raised, not even an acknowledgement worthy of their role. Madam Speaker, as legislators, we are not here to simply process laws. We are here to ensure good governance, transparency, accountability and public inclusion. The House is not a rubber stamp, and our Constitution is not a document to be quoted anywhere inconvenient. It is there to be respected. And let us not pretend that the timing is inevitable. The urgency we face today is not a natural consequence of circumstances. It's the consequence of choices made, of timelines not managed properly. We all knew when this contract was ending, when it rolled over last time. We all knew it, over a year ago, we have spoken in this House many times about time frames to do with the telecommunications licensing. We could have done better, and we should have done better, but Madam Speaker, the bill is not just about regulation. It's about how we govern who we listen to and whether the public can trust our integrity. The stakes are high. We are deciding the digital future of the island for probably the next 10 years, how we connect to the world and how we safeguard the rights of our people. Let us move forward, but let us do so transparently, respectfully and with integrity. Thank you.

The Deputy Speaker -

Thank you Honourable Member. Honourable Dr Corinda Essex, your light was on after Karl Thrower, you may go ahead.

The Hon. Dr Corinda Essex -

Thank you, Madam Speaker, Madam Deputy Speaker. And on a point of information, I did not challenge the fact that you called Councillor Karl Thrower before me to speak.

The Deputy Speaker -

You actually made gestures, which I saw. Please go ahead with your debate.

The Hon. Dr Corinda Essex -

Yes, I did make gestures because I was anticipating getting up to speak. Madam Deputy Speaker, it has long been recognised that the 1989 Telecommunications Ordinance has passed its sell by date and is no longer fit for purpose. The Bill before us today is undeniably a vast improvement and largely a step in the right direction, which is in the best interest of St Helena. Telecommunications are of great national importance, and it is therefore imperative that the legal framework for their provision is robust, appropriate for the 21st Century and for the needs of St Helena, proportionate and enforceable. As I received the final draft of the Bill on Monday of this week, last week, and only had the benefit of collective discussion with the Attorney General last Friday and have now found multiple proposed amendments on my table this morning, which I have never had an opportunity to consider or look at previously, I am not yet totally confident that the Bill fully meets all these criteria. I hope that further clarification and

elucidation will emerge during our consideration of the Bill at the Committee stage later this morning. At this point, there are two very different key areas that are of concern to me. The first relates to the issue of exclusivity, and the second to surveillance powers. I have, as I think it is well known, never favoured any form of monopoly, and certainly not when a critical national service and its associated infrastructure is involved. But I also acknowledge that a single provider could be the best option, provided that the required checks and balances are in place to ensure pre-agreed service level delivery is maintained and restrictions are not in place that will hamper St Helena Government from maximising the economic benefits to be derived from actions - such as the sale of internet capacity to third parties - and mechanisms for ongoing, consistent performance monitoring, including associated sanctions if and when required, are in place. Some might argue that these aspects can be addressed within the license issued by SHG to a service provider but I contend, and I stand to be corrected by the Attorney General if necessary, that legal enforcement of a license relies primarily on the legislation that underpins it. If the latter is weak or flawed, so are the chances of effective and successful enforcement. SHG and St Helena have both suffered from this situation on several past occasions, and we must learn from those mistakes so that they are not repeated. Without detailed knowledge of the content of any proposed license, I cannot make an informed judgment regarding the extent to which the Bill provides all the necessary safeguards, but I trust that the belt and braces approach will be taken. My second area of concern relates primarily to section 18 of the Bill, which appears to give very wide-ranging powers to the Surveillance Commissioner and arguably has implications to potentially infringe the human rights of individuals. I accept fully that those using telecommunications for unlawful or prejudicial purposes should be identified and brought to justice, but there is a fine balance to be struck between facilitating this process and intrusive invasion of privacy. I would feel easier on this point if there had been more extensive public consultation and targeted engagement before bringing the Bill to the honourable House. There also needs to be greater clarity regarding the respective roles of the Surveillance Commissioner and the Royal St Helena Police Service. I am aware that when the concept of the Surveillance Commissioner was first discussed within the previous government, it was envisaged that it would be a police official who would actually be fulfilling that role. Perhaps the Honourable mover can indicate when he responds to the debate whether it is envisaged a public awareness campaign should accompany bringing the new ordinance into force. I am aware that this would be a decision for the next government, but at least a recommendation might be made. Madam Deputy Speaker, I reserve my right to change my mind following the detailed discussion of the provisions of the bill at committee stage, but I am not currently intending to vote it down, for one key reason, which is that despite my reservations about some aspects of its content, I consider its fundamental principles to be sound. Furthermore, I strongly believe that for St Helena Government to issue a new license to any service provider under the ambit of the 1989 Telecommunications Ordinance would present a high risk and be likely to prove extremely detrimental. Thank you Madam Speaker.

The Deputy Speaker -

Thank you Honourable Member. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Deputy Speaker. And can I also thank the Honourable Dr Essex for her comments. The first comment I need to make is to agree with her that the ordinance is very much important when it comes to the licenses, because the ordinance will provide what the law recognises as a complete regulatory code for the management of telecommunications. And what that means is that when the courts come to interpret the law relating to a complete code, they simply look at

those laws. So that will be this 130 odd section of ordinance, assuming it is passed in its form together with its subordinate legislation. So the Honourable Member is absolutely right. So when it comes to interpreting and policing the license, what's in the ordinance is absolutely crucial. The Honourable Member also mentioned part 18 in the bill to do with the public interest retention and interception of data and surveillance. And she's right to highlight that in the sense that there have been significant discussions in relation to these provisions. Can I reassure everyone to start off with, which, of course, is all of our laws have to be interpreted in the light of our Constitution, and it's always worth looking at the Constitution. It's why I go around carrying a copy of it, because it's always very useful to refer to it. And section 13 of our Constitution deals with protection for private and family life and for privacy of home and other property. And if I can quote section 13 (1), every person shall have the right to respect for his or her private and family life, his or her home, and his or her correspondence or other means of communication, and except with his or her own free consent, no person shall be subjected to the search of his or her person or property, or the entry by others on his or her premises. So you couldn't really get a clearer declaration in our Constitution of the fundamental respect that we all must have for each other's privacy. Now, as you would expect, because, of course, one has to have criminal enforcement and investigatory powers. There are caveats against section 31, in 13, (1) in the Constitution, and they come in Section 13 (2). And inevitably what it says is, providing what is done is proportionate and necessary in relation to a democratic society such as ours, then of course, you can authorise interceptions, for example, in the interests of defences, of public safety, of public order, public morality, public health. It goes on to talk about Town and Country Planning and mineral resources, where we might have a different view about those sorts of things. But crucially, in terms of communications, we are talking about public safety, public order, public health and public morality. Crucially, you can use these powers, if it's to protect the rights and freedoms of others. So you might have a situation where you need to investigate because someone is doing something which is unlawful or intrusive. So it is important that when we come to look at the bill, one presumes at the Committee stage that we always have in mind that fundamental part of our Constitution, the protection of the rights and freedoms, which is something which all of us have an absolute right to expect, lies at the heart of all of this. And there's one other point I do need to make, and this comes in relation to the English Law Adoption Ordinance. Now we know that we're going to see the proposed amendment to that Ordinance coming before this House next week. What's interesting, and it's the Chief Of Police raised this with me only this morning. The regulation of Investigatory Powers Act 2000 that is a piece of English legislation which applies here through the English Law Application Ordinance, is something which the police already use, and it's important for the police, and it's important, I believe, for the rest of us, that we don't do anything inadvertent that removes the police's ability to use those powers. So I will be recommending, that on the assumption that the amendment to the English Law Application Ordinance is made next week, that we make a notice that specifically says that if part 18 passes that it does not affect the application of we call it rip up at the regulation Investigatory Powers Act in St Helena. Thank you, Madam Deputy Speaker.

The Deputy Speaker -

Thank you, Honourable Attorney General. Honourable Andrew Turner.

The Hon. Andrew Turner -

May I just ask before I carry on, a point of clarity from the AG on his explanation, which was very detailed, and I just want to.

The Deputy Speaker -

You may do.

The Hon. Andrew Turner -

Thank you. So I just wanted to ask, obviously, that was a very detailed discussion about the interrelation between the Constitution and the piece of legislation that we're discussing today. But is it not correct that, essentially, the decision before us today is whether we believe that these provisions are proportionate as listed under the Constitution, and that potentially, if somebody thought they would not be that that could then be challenged and overturned in a court?

The Deputy Speaker -

Thank you Honourable Member. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Deputy Speaker. I thank the Honourable Councillor Turner for his comment. A former Attorney General, I am believed, always said that effectively, the Constitution trumps all. I don't think I would have used those expressions myself, but it is our fundamental law. And when it comes to the courts interpreting what's in an ordinance, they will always interpret it as being compliant with the Constitution. Now, when it comes to Honourable Members deciding how they want to vote in relation to either the entirety of the bill or any particular provision, it's only really what's between your ears, as it were, which will determine how you're voting and on what basis. And you can be quite, quite, quite correct to say one of your tests is going to be, is this reasonable and proportionate? It's worth actually, just pausing there and perhaps I should have said this a moment ago, when it's come to drafting this particular bill, there has been an awful lot of work done by an awful lot of people over many, many years. One of the things that has been uppermost in the mind is, does this bill satisfy what are called the principles of good regulation, and there are five of them. They're all quite simple, is it transparent, is it accountable, is it proportionate, is it consistent, and is it targeted? And I would suggest that when you are coming to vote on the individual measures in the Committee stage, that you have those principles in mind, because that's the sort of regime we are seeking to create. We do believe that the draft does conform to those principles, and if you believe it doesn't, well, I suggest that you make that point clear at the Committee stage. Thank you madam.

The Deputy Speaker -

Thank you Attorney General. Honourable Minister Ellick. Honourable Andrew Turner.

The Hon. Andrew Turner -

Thank you, Madam Speaker, I'd just like to thank you for that point of clarity. If I may carry on with my speaking to the bill. Is that permissible now?

The Deputy Speaker -

Okay, you may.

The Hon. Andrew Turner -

Thank you. So, Madam Deputy Speaker, today we face a pivotal moment for our island debating this 2025 Communications Bill. There's an awful lot to talk about, so I want to try and structure my remarks in three parts, essentially, the good, the bad and the ugly of what we're doing here today. Let's start with the good, because there's a lot of it. First and foremost, after years of sluggish, unreliable internet, this bill finally demands accountability from telecoms

providers. The provisions in this bill will allow the government to set service quality expectations, rules on complaint handling, privacy safeguards, consumer protections and service quality are fundamental to ensuring fair and equitable access to communication services. It is commendable that we are finally asserting control over our digital infrastructure, rather than just accepting the substandard offerings we have become so accustomed to. There is an extremely important section on universal service obligations, which can be used to force licensees to deliver basic internet and voice services island wide at affordable rates, even in our most remote corners. No Saint should be left in digital darkness. I also welcome the provisions on net neutrality, which would prevent a provider blocking or throttling lawful content and traffic management for safety or genuine network health. I think we can all agree that the internet must remain a level playing field. Now everybody knows I dislike, if not despise, government mandated monopolies. They're one of the bluntest tools used to suppress innovation in the private sector. However, as they seem to be inevitable, I really do welcome the provisions in this ordinance to limit how monopoly licenses work and the grounds under which they can be issued. In particular, if this government does intend to consider such a license, I would hope they would make good use of the powers for price controls and to curb exclusivity only to the areas where it's really necessary. Of course, a law is only as good as its enforcement, and I am looking forward to the establishment of a Communications Regulator that will be empowered to license, investigate and enforce these standards on telecoms providers. I have previously cautioned that the government's inclination to consider a long-term extension with the current internet service provider, an entity that has consistently prioritised its own interests over those of the community, was a reckless course of action. However, with the establishment of a robust regulator, the implementation of the consumer code, the assurance of net neutrality, the universal service obligation, interconnection requirements, and so much more, the scenario becomes a lot easier to live with. The bill establishes a framework that holds providers accountable, prevents exploitative practices and safeguards the rights of consumers. Without these measures, individuals and businesses alike could easily suffer from unreliable services, opaque pricing structures and ineffective complaint resolution. The strong regulatory foundation is essential for fostering competition, driving innovation, and ensuring all members of society, regardless of location or economic status, can access modern communication networks. Now, unfortunately, I have to move on to the bad because while there are some elements of this bill I'm not convinced will work, I am happy to try it out, because, like many of these things, you simply won't know until you try and there's very little that actually causes any real harm. However, Madam Deputy Speaker, one of the sections of this bill, I think, threatens to cause a great deal of harm, both to our citizens and potentially to the government as well. And I of course, refer to the brand new Surveillance Commissioner, which has some extremely heavy handed powers, including the ability to issue retention notices, to keep your personal data for up to 24 months, to sign interception warrants, enabling them to listen in on calls or intercept emails and messages and to authorise directed or even intrusive surveillance of private homes or vehicles. Now, let me remember here, these powers are not necessarily sitting with a court, a Chief Justice, someone who has had to prove time and time again that they are fair and responsible to make these grave decisions. The power is sitting potentially, with one individual whose only requirement, as far as the bill is concerned, is that they cannot be a police officer. In fact, the bill makes it clear that these powers can be simply exercised at the commissioner's discretion, essentially on a whim. Now, these measures tread on core constitutional rights, privacy, protection from search and seizure, free expression, yet there's almost zero external oversight or meaningful recourse, who can challenge a commissioner's warrant, under what test, how do we prevent the abuse of these powers? I want this bill to pass for the good that I outlined above, but I cannot see how any of us, in good conscience can pass the section until these questions have been thoroughly answered.

Therefore, I intend to move an amendment to remove the Surveillance Commissioner provisions, not because no oversight is never justified, but because the framework as it stands is too sweeping, too under scrutinised and in dangerous constitutional safeguards. As a Councillor, I must uphold the Constitution and the rights that affords our people, and I'm going to call on colleagues to join me in demanding thorough debate on robust checks before vesting such powers in a single office. And it's that need for debate and meaningful engagement before infringing on constitutional rights, which brings me firmly to, frankly, the ugly side of how we got to be here today. It's clear this bill has been brought before us with undue urgency and inadequate consultation. I think I've made it very clear from my speech so far, this is not just a small adjustment to regulatory framework. It's a comprehensive restructuring that reaches deep into matters of licensing, telecommunications governance and, most worryingly, surveillance, having severe implications on the rights of people on this island. Now, some have already claimed consultation took place, but I must ask, where the transparent consultation was necessary for a bill of this magnitude. The public were in seat of a single press release, a complex, near 100-page document made available with 20 days for review. How many among our constituents were enabled to fully understand the implications? In fact, because this session was only announced essentially less than 48 hours ago, how many even know this legislation is before us today? To ask my Honourable colleagues questions from earlier, was it meaningful, was it inclusive, and was it transparent? No, it was not. We're legislators, and we need to uphold the good governance to ensure that our laws are shaped not just here and corridors of power, but in open dialog with those whom they will affect most. Yet despite its profound implication for privacy, property rights and civil liberties, the Communications Bill 2025 was uploaded to a website with no substantial efforts to ensure public understanding. Instead, the only accompanying material, an explanatory note, offered a selectively favourable overview, conspicuously omitting mention of the introduction of a Surveillance Commissioner, as well as the sweeping powers of surveillance, search, seizure or property destruction. Now, whether by design or oversight, this omission has led to a consultation process that has effectively concealed critical provisions from public scrutiny. Is this the standard by which we legislate? Madam Deputy Speaker, it's understandable that the public will question why this bill has been brought forward with such urgency at this late stage. Throughout the years we are debating here today because we've left it too late, and we're in an extremely difficult position. For years, there has been ample opportunity to address this issue properly, yet here we are just weeks from dissolution, rushing through vital legislation without the thorough scrutiny it deserved. That is not how good governance should operate. In summary, I will vote to move the communications bill to committee because there is so much good within it. We need consumer safeguards, competition powers and an empowered regulator, but I cannot support it in its present form, while the Surveillance Commissioner regime stands unamended. We must strip out or substantially rewrite these sections to preserve the constitutional rights, and I hope that future governments learn from this that democracy isn't served by last minute dashes or paying lip service to consultation. It thrives on rigorous, inclusive debate. Madam Deputy Speaker, I commend the spirit of these reforms, but we must prepare the process and curb the overreach before putting our names on this document. Thank you.

The Deputy Speaker -

Thank you, Honourable Member. Honourable Minister Ellick.

The Hon. Minister Ellick -

Thank you, Madam Deputy Speaker. I rise in support of the bill. I will not echo everything my colleagues have said, but I was unaware that the Attorney General was going to stand up and say various things. So I'm pretty much down the same road as the Attorney General, so it's just

pretty much reinforced what the Attorney General said as well. So I would wish to touch on some aspects. Currently, we have an antiquated piece of law there's no longer fit for purpose, and that does not, in my view, provide the best protection and confidence to our community, as well as providers of telecoms. I'm also pleased with perception on public interest, retention and interception of data and surveillance, as there has been much debate by this government on this and there is in my view, a balanced approach where people have protection for private and family life and for privacy of home and other property. This, however, is not an absolute right, and some exceptions being in the interest of defence, public safety, public order, public morality, public health and for the prevention of crime. This has to be done proportionately. There are processes for law enforcement agencies and courts to follow to ensure they comply with the Constitution. However, we have ensured that there is clear separation, and the process is through a Surveillance Commissioner and the Court who will be independent of any law enforcement agency, so there is objectivity. And I know that Councillor Essex raised that before, but we make sure that we would not have a situation where we will have a police officer being the commissioner. The Bill will also go towards achieving our objective of making St Helena a more attractive place for people to live, work and do business. Madam Deputy Speaker, I support the Bill and beg to move.

The Deputy Speaker -

Thank you Honourable Member. Honourable Robert Midwinter.

The Hon. Robert Midwinter -

Thank you Madam Deputy Speaker. Madam Deputy Speaker, I rise in support of the motion. As my Honourable colleagues have noted, the current ordinance is simply no longer fit for purpose. Madam Deputy Speaker this Bill has been a long journey for the current Legislative Council and a bumpy one at that, which started in May 2022, just over three years ago, when we were advised by the Chief Minister that we would be reviewing provisions of the new Communications Bill at our Elected Members meeting to be held that following Friday, the 27th of May, 2022. Of course, since then, despite that particular version of the Bill having been passed in the House, the Ordinance itself was then not enacted, and the provisions contained within the Bill were changed significantly, particularly as a result of feedback and concerns raised at that time. Madam Deputy Speaker, since the latest round of consideration, the amount of consideration of the draft Communications Bill started in March of this year, we have seen several versions of this document, and Elected Members have met twice to run through the provisions of the bill, paragraph by paragraph, firstly on the fourth of April, and then again last week. Councillors have been shared about half a dozen different versions, all of which I took time to read, cover to cover, consider the implications thereof, and question where I felt appropriate. But each of these did not change significantly in terms of content and more particularly, the policy intent of the previous version. Madam Deputy Speaker, I am therefore simply glad that we have finally got to where we are today, and I hope that colleagues feel the same relief that I do when I say that I now fully support this Bill. Thank you, Madam Deputy Speaker.

The Deputy Speaker -

Thank you Honourable Member. Honourable Ronald Coleman.

The Hon. Ronald Coleman -

Thank you, Madam Deputy Speaker. We've heard that the existing ordinance is out of date, but I think also the license to the provider is out of date, which nobody has mentioned. Today we are considering the Communications Bill. Our government owns a cable that costs in a region

of 16 to 17 million pounds, an amount of money not to be sneezed at. So let's think wisely. Let's use this cable wisely for the benefit of our people, businesses and our investors, and our island as a whole, with all its benefits. The bill allows for the government to license a provider or providers now to deliver the service Island wide. There's also provision for individual licenses. There are safeguards and data protections. There is a regulator and the duties and responsibilities, which is so important for good delivery. We also provides for a Surveillance Commissioner but questions its wide powers. There needs to be powerful reasons to also give exclusive rights. I don't like monopolies, but we don't also want to be without a provider as well. For the success of the island communications, I hope the license will be fair and with this government in charge and customers reaping real benefits. I was happy to hear that in developing this digital network and communications framework, consumers were at the centre of the decision making and leaving no one behind was also heard. Fair pricing I also heard, I am very happy to also hear that if this government cannot achieve what was intended, they will not enter into a long-term license. We were also promised with this cable that it's going to be bigger, faster and cheaper. So I'm watching this space. Thank you, Madam Deputy Speaker I beg to support.

The Deputy Speaker -

Thank you, Honourable Member. Honourable Gillian Brooks.

The Hon, Gillian Brooks -

Thank you, Madam Deputy Speaker. Madam Deputy Speaker, I support the principles of this Bill. I did initially have reservations of it being presented here today, but the Bill has been in the public domain since March of this year. And I know that there is divided opinion around this but I hope that as many as possible did get the chance to actually sight the Bill and endeavour to go through the Bill and raise their concerns. It is quite an extensive document, but this is evident that a lot of work has gone into it, and rightly so, in order to bring forward a Bill where the attention has to be focused on putting in place an updated Telecommunications Framework that is robust and protective to St Helena, not just for now, but also for the future. At the latter part of last week, we collectively met, giving us the opportunity with legal guidance, to go through the details of the Bill, enabling any pertinent questions, concerns or misunderstandings to be clarified or where necessary to be amended. This has helped to alleviate some of the initial concerns I had, and I know we do have an opportunity going forward from this, and gave a clearer understanding as to why it is necessary to have this updated Bill in place as soon as possible. So Madam Deputy Speaker, I do support the bill and thank you.

The Deputy Speaker -

Thank you Honourable Member. Honourable Minister Scipio.

The Hon. Christine Scipio -

Thank you Madam Deputy Speaker. Madam Deputy Speaker, I rise today to speak not only as a representative for the people of St Helena, but as a member of this community, because what we are discussing today, Madam Deputy Speaker, touches the very heart of life on St Helena. For decades, the people of St Helena have navigated their daily lives on the legal framework crafted in 1989, designed for a world that barely resembles the one we live in today. Back then or back in the day, as we St Helenians normally say, our needs were different, our technologies were limited. While the existing legislation once served as a guiding framework, it has now become a constraint on our progress. Today reliable communication is no longer a luxury. It is the thread that ties together our families, our businesses, our healthcare, our education and our

voice in the world. From young people trying to complete their studies, to small business owners trying to grow, to families staying connected with loved ones overseas, connectivity is at the core of our hopes and our daily activities. To unlock the benefits of modern communication, we must create a legal framework that puts people first, especially my old lady down the hill, one that protects our rights as consumers, support sustainable investment in our island's future and ensures fair access for everyone, not just those with deeper pockets. The introduction of a new Communications Bill is so vital, Madam Deputy Speaker. It's not just a document of law, it is a promise, in my opinion, a promise that our government, regulators, service providers and the community will be part of a shared mission to create a fairer, more connected St Helena. I beg to move.

The Deputy Speaker -

Thank you Honourable Minister. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Deputy Speaker. I guess I should be using a caveat similar to that used by Minister Ellick, being the last to speak, I think quite a lot of what I'm going to say has already been said, but I'll utilise this as an opportunity to speak directly to our community as well. Madam Deputy Speaker, I rise in support of the Communications Bill. It has most certainly taken years to get us to this point, which is a significant achievement, and more importantly, a much needed achievement. Thank you to you, Minister Brooks and your team, for all the hard work that you've done to get us thus far and let's see what happens here today. The existing Telecommunications Ordinance dates back to 1989 and despite some amendments throughout its history, it is simply not fit for purpose, for a number of reasons, not least because it was not written with today's technologies in mind. The communication services provided on St Helena are now supplied by network capacity from the Equiano submarine cable, which was the key to unlocking the opportunity to the realisation of improved internet connectivity. The move from satellite to submarine fibre has started the process of transformational improvements for our island. Madam Deputy Speaker, this government has worked tirelessly on projects and areas that are best described as critical national infrastructure, CNI, during our tenure and communications, in my opinion, fall squarely into this category. We have recognised that further economic development on St Helena is conditional on affordable and reliable communication services. We also recognise that the delivery of an enhanced access network within a modernised Communications Legal Framework is crucial to economic growth. The Telecommunications Ordinance, 1989 of which we currently operate, does not provide sufficient mechanisms through which to protect consumers. The current framework has not kept pace with the rapid developments in technology and business models in the communications industry, and is also affected by various gaps and inconsistencies, which is to be expected, noting that the legislation is now 30 plus years old. In these circumstances, regulation is justified in order to achieve the optimum level and scope of services at appropriate prices, quality and reliability for all consumers. The need to update the Ordinance of 1989 to support St Helena's digital modernisation has been supported by this government and the previous government. A policy for communications networks and services was developed and approved following public consultation in 2020, to set the framework by which to update the ordinance. This policy was endorsed in October 2020 by the previous Executive Council, and in May 22 by the current Executive Council, with some minor amendments. The policy was reviewed once again and came before us as Executive Council on the 8th of July, 2024 and was reapproved for the third time, during which instructions were given for the drafting of a new Communications Bill. Madam Deputy Speaker, the mover has appropriately set out the concepts of the draft Bill that are worthy of note, but noting how important it is that the public

fully understand the benefits, I will highlight a few of these again. This Bill, if approved, will see the introduction of a Communications Regulator, who will be responsible for regulating, supervising and enforcing compliance with conditions put in place for licensees and compliance to adhere to the provisions of the Bill. This will also include provisions on spectrum management and consumer obligations, as they will be expected to investigate breaches and take targeted action if deemed necessary. One of the primary functions of the regulator is to ensure licensees act in the best interest of its consumers with relation to price, quality and innovation, which, as mentioned earlier, is the key to unlocking opportunities. If approved, this Bill will introduce a licensing framework that is intended to provide all stakeholders, including consumers, competitors and the government, with a clear understanding of what license operators are and are not permitted to do. Licenses provide certainty for investors, and with it, the confidence needed to commit the investment required to continually maintain and upgrade infrastructure. Madam, Deputy Speaker, the inclusion of a Universal Service Obligation holds SHG to account to ensure that people and businesses on St Helena have access to services irrespective of their geographical location and at a price that does not prohibit access. This can only be achieved through mandatory service obligations placed on licensed providers of public electronic communication services. Furthermore, this Bill will see the introduction of consumer safeguards and quality of service standards within license agreements. This means that licensees will be obliged to establish consumer complaints handling procedures, with the regulator investigating unresolved complaints not engaged in misleading or deceptive conduct, protect the privacy of users communications, subject to lawful interception and warrant, protect the confidentiality of user's personal information and publish a consumer code that is approved by the regulator. Just as importantly, a license must contain quality measures, and licensees will be obligated to provide services that meet stated minimum quality reliability standards and will be expected to report and publish performance against those standards. A very important aspect of this Bill, Madam Deputy Speaker, is the power to impose price controls. Price controls provide consumer protections against unfair pricing and aim to balance consumer access with provider incentives in non-competitive markets. Another important element of this Bill is the introduction of exit provisions in publicly available electronic communications licenses. The draft law states that to protect service users and ensure the continuity of service provision, there must be detailed provisions covering the exit of a licensee and transfer of services. These provisions must include requirements for an exit plan, which will detail how the transferable assets, contracts and data will be transferred over in the event of a change in licensee. And finally, Madam Deputy Speaker, the Bill introduces clear requirements for information provision and penalties in the event information is not provided. This, I sincerely hope, will demonstrate to this House, but just importantly to the wider community, why it is important that this Bill is passed through this House today, Madam Deputy Speaker, it is for these reasons and the safeguards that they provide that I support the Bill.

The Deputy Speaker -

Thank you, Honourable Minister. Honourable Mover, you may respond.

The Hon. Mark Brooks -

Thank you, Madam Deputy Speaker, and I would like to thank those who spoke to this motion. I noted, Madam Deputy Speaker that everyone that spoke to this motion did support the Bill. However, there were concerns in areas of this Bill by some of my colleagues in the room, so I hope that as we go through the detailed provisions of the Bill, some of those concerns can be either corrected or clarified that will help Members as we go through. I'm not going to, there's a lot has been said here in response to this motion, so I'm not going to repeat what my colleagues have already said. I'm just going to touch on a few areas. Dr Essex did mention to me about

my intentions going forward, and I can confirm Dr Essex, it was always intentions that if this Bill passed in the House today, there would be strong communications plans and public awareness that will follow in the coming months, as we prepare to enter a new era of digital transformation. And I would just like to assure everyone listening, the intended license, or any license, will ensure regulated pricing and service provisions. Madam Deputy Speaker, the other thing I would just like to point out is there was some concerns about public consultation. The public was also invited to send in comments to my team, and if any requests were made for face-to-face meeting, I know that myself and my team would accommodate that quite welcomingly. So, Madam Deputy Speaker, I know that there's been a lot of concern around the timely, the timelessness of this Communication Bill. I do take that into account, and I know that a lot of work has happened over recent years in terms of getting this Bill to a place where we felt comfortable with it for taking telecommunications forward in the future, of course, taking into account the ever-changing environment in the sector. So Madam Deputy Speaker, I would like to thank everyone that supported the Bill, and I look for a meaningful discussion in the committee stages. Thank you.

The Deputy Speaker -

Thank you, Honourable Minister. I put the question that the Communications Bill 2025 be approved in principle and referred to a Committee of the whole Council.

Question put and agreed.

The Deputy Speaker -

Mover.

The Hon. Mark Brooks -

Thank you, Madam Deputy Speaker. I move that this Council do resolve itself into a committee and to consider the detailed provisions of the Bill.

The Deputy Speaker -

Thank you, Honourable mover. Is there a seconder? Honourable Chief Minister.

The Hon. Chief Minister -

Madam Deputy Speaker, I beg to second.

The Deputy Speaker -

Thank you, Honourable Chief Minister. I put the question that the Council do resolve itself into committee to consider the detailed provisions of the Bill.

Question put and agreed.

Council in Committee

The Hon. Mark Brooks -

Madam Deputy Speaker, may I invite Susanna Nightingale, kind of to the table, but remotely as she's not here. And of course, the Attorney General is also sitting at the table, who will be taking us through the main details of the Bill, but for clarity, Susanna has been the author of

the drafting of the policy, so we might be able to assist in some of the Member's concerns during the committee stage.

The Deputy Speaker -

Thank you Honourable Minister. (*Pause*) Honourable Minister.

The Hon. Mark Brooks -

Madam Deputy Speaker, this might be a slightly unusual request, but in the essence of time and for the committee stages to flow more freely, may I suggest that the amendments that I propose, that I intend to propose, which is about nine amendments, that I seek the support of a seconder for all nine amendments.

The Deputy Speaker -

Thank you, Honourable Member. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Chair. I beg to second and this is as per Standing Order 13, Rule 12.

The Deputy Speaker -

Thank you. I put the question that the title, enacting clause and clause one do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Clause two, Interpretation. Attorney General, would you like to give a comment on that, provide a ...?

The Hon. Attorney General -

Thank you, Madam Chairman. So as is in the state with most modern legislation, so much that it falls with regard to the definitions, and as you can see, section two sets out more than 60 separate definitions, and we may find it necessary as we go through the remaining provisions that we have to keep referring back to section two. So there's nothing we need particularly to draw to your attention, other than saying we need to be aware of all 60 plus definitions when considering the following provisions.

The Deputy Speaker -

Thank you Honourable Attorney General. Any Member wish to speak? No? I put the question that clause two, interpretation be approved in principle. No, I beg your pardon. I put the question that clause two, interpretation, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now turn to Part two, objectives and regulatory principles. Attorney General, would you like to?

The Hon. Attorney General -

Thank you, Madam Chairman. With your permission, and pursuant to Order 13, rule 12, I'd like to be able to move through in parts where it's appropriate to move through in parts, as opposed to in sections. And part two is one of those parts that I think we can take together, so part two, as you can see, is simply sections three and four. It's important to say to you that section three, the objectives and section four, the regulatory principles, are like our Constitution, the guiding light behind everything that's in this ordinance. So as you can see at section three, it's all about setting the objectives. What do we intend for this ordinance to do? And as you can see, it is for the long term benefit of end users, enabling the development of the electronic communication services and the like, and facilitating and the crucial word is cooperation between government and licensees, which assists in achieving the strategic goals. I'm sure that's what we probably all want. And in terms of the regulatory principles, these are worth really understanding. The ordinance is to be implemented as far as is reasonably practical in accordance with the following principles. The first is that the regulations, what have you, are technologically neutral. In other words, we're not mandating you will be mandating any particular format or technology. The Governor and the regulator at all times have to act in a proportionate, transparent, fair and non-discriminatory matters when exercising their duties. I'd like to think the Constitution would have said that anyway, but effectively, you've got the commitment that things will be done properly and fairly to the extent that it's appropriate and proportionate. Actions are only taken after inquiries, investigations or public consultations. Decisions and actions have to be evidence based and published together with reasons. Now these reflect the good regulatory principles I referred to earlier on, but the important thing to say, and the reassurance for everybody is, there are fetters and controls and management on the exercise of discretion, and that's very, very important. Section four, two deals with having to take into account the financial impact on licensees if the regulator wishes to take action, and it's only if there's public interest grounds that outweigh the financial impact on the regulator, can the regulator act without taking account of those financial effects on the lightning licensee. Thank you Madam Deputy, Madam Chairman.

The Deputy Speaker -

Thank you, Attorney General.

The Hon. Karl Thrower -

Yeah, sorry, Attorney General, can you just explain, so it is one thing, but I think also we need to discuss it slightly, or at least get the explanation for it. Under five, two, if the office of the regulator is vacant due to illness.

The Deputy Speaker -

Hang on, we not

The Hon. Karl Thrower -

Oh sorry, have I jumped? Sorry, I'm finding this document a bit.

The Deputy Speaker -

Okay. Honourable Andrew Turner.

The Hon. Andrew Turner -

I have just a question, because obviously this section lists very specific public interest grounds. Now I just want to seek some clarity from the AG that these are the same. Basically wherever in this ordinance there is a public interest test that these are the categories that that public interest test will be based on?

The Deputy Speaker -
Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman, and thanks to the Honourable Councillor Turner. As you can see, section four, subsection three, gives you the definition of public interest grounds, but crucially, it's the words before it, "for the purposes of this ordinance". So it's exactly the point that you've made, that this is the test for determining what the public interest is, and you can see the list of (a) through to (h), of the different factors that are can be taken into account, for determining them.

The Deputy Speaker -

Thank you Attorney General.

The Hon. Andrew Turner -

If I may, then on that basis, there is one there. I think it's (g), which is maintaining the continuity of electronic communications and investment in the market? I wonder if you could please explain what that means in real terms.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Thank you very much. That's a sort of a question you perhaps like a day's notice of but sorry, that's my goodbye. So obviously you can see the key word there is continuity at the beginning of the provision. So making sure that we are not without communication. So don't forget, this is a public interest test ground, and clearly it's in our public interest to ensure that we have continuity in communications. And the second thing, of course, is a reference to investment in the market. And one can see how you may lose continuity through losing investment or not making sure there is an active market. And so what it's pointing out is that maintaining that continuity maintaining interest and investment in our communications market is an important public interest factor that needs to be taken into account.

The Hon. Andrew Turner -

Thank you. So my only worry, and I'm sure you'll be able to allay my fear very quickly, is that if these are the public interest tests that are used throughout the ordinance, and these are the public interest tests this are used when deciding whether, for example, surveillance is necessary on public interest grounds. And my worry with that is, do we really want to be issuing government mandated surveillance because something might be a threat to the market, i.e., somebody might be planning a competitor product, might be planning a business move that would put the monopoly telecoms provider at risk, is that really proportionate grounds?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

So whilst we have a test for public interest grounds within the regulatory principles in section four, that, as I say, does apply throughout, it doesn't necessarily mean that each of those factors would be relevant to all situations that we'd have coming forward. So as you rightly raised, it

would be difficult to argue that there would be need for, for example, intrusive surveillance on the basis of ensuring investment in the market. I would be relatively horrified by that, and I'm sure you would be too. But on the other hand, I would consider that intrusive surveillance as an example for national security, detection of crime, prevention of disorder, promotion, protection of public safety and promotion, protection of public health, or reducing deaths or injuries as a result of public emergency, would be the sorts of grounds that we would be looking to deal with. So I do take your point. But the other practical point to make to you is, just because we've got a definition of public interest grounds that includes subparagraph (g), does not mean that when we're testing something later in the ordinance, as I'm sure when we get to part 18 and the particular grounds that we're talking about, it doesn't mean it's necessarily applicable under those circumstances, and that's also why you we have whether it's a Surveillance Commission or the Chief Justice or anybody else you know, granting warrants that will come on to due course, they will be testing all this, not only against what's defined in the ordinance, but also against the Constitution as well. So I hear what you say, I don't see it as a concern.

The Hon. Andrew Turner -

Okay. So the Surveillance Commissioner will essentially decide which of these public interest grounds they would make a warrant under or not?

The Hon. Attorney General -

If it's necessary for them to do so, yes.

The Hon. Andrew Turner -

Thank you. It's not quite allayed my fear, but it has at least explained it.

The Deputy Speaker -

Thank you Honourable Member. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Chair. I think just to support the AG in his, what he's just explained, my understanding from working with this also is this is very generic, not specific to any particular part of the whole Bill. But I think it is also to ensure noting we're talking about telecommunications 1989 and how out of date it is, and now it's 30 plus years, I think it's also maintaining the continuity of the electronic communications, and it's highlighting the fact that we'd want to see investment continue so that the technologies don't fall behind like has happened to date. So I just wanted to make that clear. It's very generic at the stage, not specific to any particular part of the Bill.

The Deputy Speaker -

Thank you Honourable Chief Minister. Honourable Dr Corinda Essex.

The Hon. Dr Corinda Essex -

Thank you, Madam Chair. In (h) it makes reference to "any other matter specified by the Governor in regulations". What is the actual interpretation of "Governor" within this Ordinance?

The Deputy Speaker -

Thank you. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. And thank you Councillor, Honourable Councillor Essex, for your question. I would interpret that as referring to ExCo. So in other words, the regulations inevitably would have to go through ExCo. So it's the Governor on the advice of ExCo for these purposes.

The Deputy Speaker -

Thank you, Attorney General. Councillor Essex.

The Hon. Dr Corinda Essex -

Thank you, Attorney General, for that response. Is there any merit in actually really clarifying that perhaps in the interpretation sector, so it's not open to different interpretations at different points in time?

The Deputy Speaker -

The Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. The short answer is, with respect, no. In most times, most circumstances, inevitably, when you see Governor, will always be on the advice of ExCo. There can be exceptional powers and I'm grateful to the Chief Minister for whispering in my ear, such as in emergency situations where the Governor is having to act in default, or because there is a national emergency. And therefore one would take perhaps a different view on interpretation. But when it comes to making secondary legislation, you would inevitably see that passing through ExCo and it is important that we have full democratic accountability in relation to these matters.

The Deputy Speaker -

Thank you AG. There's no further questions? I will put the question that part two do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I now put the question that part three of the Bill do stand, sorry, part three of the Bill, do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So as we can see, part three goes from section five, the Communications Regulator, through section six, the objectives for the regulator, section seven, the duties of the regulator, part eight, section eight, the general powers of the regulator, section nine, the annual report, and section 10, the policy directions that are potentially available. So this is a very important part, and as you debated previously, the importance of having a Communications Regulator is recognised. This legislation, as you probably know, is based on laws and regulations that are in existence in many other Overseas Territories. I happen to be personally familiar with this sort of approach, because I personally have fulfilled several of the roles that are referred to in here, elsewhere. What we have here is establishing the regulator and what he or she can do. It's worth me observing that section five, two, provides that in default of an appointment of a Communications Regulator, the functions devolve upon the Attorney General, and that's the role, that's the approach that's taken elsewhere as well. If there's, I can't think of a better encouragement to, for ExCo in future, for the Attorney General

to actually say, do you mind awfully appointing somebody because I'd rather not have all these burdens upon me from day one. But of course, that will be the situation if this Ordinance is passed and brought into force later on this month. So it's important that we see that we have a Regulator, and you can see it in section five, five, that it is the obligation on all of us, but on government to provide the regulator with sufficient resources. It refers to financial and human resources to make sure he or she can undertake their duties. You can see it in section six, the objectives of the regulators, and as you can see, in relation to the promotion of interests of users in St Helena, in other words, the community at large, the objectives of the regulator are, and now you have a list of (a) through to (h) of what those objectives are. And objective (a) to ensure that all end users have affordable access, (b) to ensure protection for end users in their dealing with licensees, to promote the provision of clear information by licensees, particularly with regard to tariffs, to ensure universal access to communication service, to encourage the maintenance and improvement in networks and services, to look out to the special needs, special needs groups, to maintain integrity and security in the system and to promote the ability of end users to have choice in terms. If I move on then to subsection two, there are further objectives for the regulator, so moving away from the consumers, they are to promote the market, the efficient use of the electromagnetic spectrum, to promote investment in innovation. And I know some of you here are very anxious to see St Helena's unique environment used for experimentation. This is where the regulator has the power to promote such matters, to promote the interests of end users, with regard to quality and ongoing improvement in electronic communications. Again, I'm sure you all recognise the importance of that information security is there too and ensuring resilience. I'm sure you find all of those things appropriate. I'm going to abbreviate my precis on section seven and eight, because the duties of the regulator, I'm sure you can all read them, and they will actually be reflected in material that we come on later. You can see the general powers at section eight in terms of what the regulator can do. Obviously, we'll look at more specific issues when we arise, we go later on through the ordinance. One of the things I want to raise specifically for your attention is section nine, or clause nine, I should more accurately say, the annual report, and this is where this House will be able to see what the regulator has been doing. For the regulator to submit an annual report, and for the regulator to report on what he or she has done and how they've exercised their powers. And finally, then at section 10, the Governor, on the advice of ExCo, may give policy directions, as you can see, but Madam Chairman, I think that's all I need to say for the moment about Part Three.

The Deputy Speaker -

Thank you, Attorney General. Honourable Andrew Turner.

The Hon. Andrew Turner -

Thank you. I just had one question on the section under general powers of the regulator, and it's section one (j) which is to confiscate and, if necessary, destroy radio communications apparatus, etc. I just wondered, under what grounds, what's the sort of the test for the necessary part? I assume this would be in case there's a piece of equipment that just couldn't simply be turned off.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Well, before I answer the question, can I always remind you, because think back to our Constitution, what our Constitution says and what provisions in the

Constitution to do with the respect for property, and also, of course, sections three and four, which talk about the objectives and the proportionality that must be applied. So you have all of that matrix overlooking all of this, and we've also got the general principles of good regulatory practice. I would not expect any regulator to act in a high-handed dictatorial manner. I would expect the dialog before anything draconian was undertaken. But I think the most telling example, perhaps, is interference, radio electromagnetic interference. There's nothing, we all know there's nothing worse than interference that actually prevents new communications taking place. That's the sort of scenario that I could envisage someone going out and confiscating and you could particularly imagine if you're getting interference on, say, police radios or something like that, those are the circumstances when I would expect there to be immediate action if it was required. There are clearly more sensitive issues, such as with regard to, let's assume somebody has got an unauthorised, unlicensed internet receiving service, and a license would be required under this ordinance, the question necessarily arises whether or not the general power is to confiscate that person's equipment. Well, the power is there, and more importantly, if you accept the provisions of this ordinance, there will be an expectation, and I would imagine the expectation would come from a licensee that the law will be applied and enforced. I'd like to think the law would be applied and enforced in a reasonable, proportionate manner. And when we come on later to deal with offenses, I hope we deal with them today rather than tomorrow, or today we'll be getting towards the end, you have to bear in mind, in relation to offenses and the prosecution of offenses, that whether we're talking about the Crown Prosecutor, we have a Crown Prosecutor here, or we're talking about the Constitution, where all criminal offenses are brought in the name of the Attorney General, you would always have to apply both an evidentiary test, what's gone on, but more importantly, and I would see it happening here, a test in the public interest. Is it in the public interest to do whatever is contemplated? So in the example of causing interference, and particularly if it's causing interference with nationally critical infrastructure, I would expect the regulator to use their force powers. If it comes to something that someone is not complying fully with the law, or doing something which would require a license without, I would expect a dialog before confiscation or destruction took place, but necessarily the right, the powers are there. So, you know, I cannot say, and I will not promise, that the powers will not be exercised in that direction.

The Hon. Andrew Turner -

Thank you. That's very helpful in the clarification of the intent.

The Deputy Speaker -

Thank you. Honourable Robert Midwinter.

The Hon. Robert Midwinter -

Thank you, Madam Chairman. Just to clarify, Attorney General, do those powers already exist as a result of the press release that was issued on 6th of December 2023?

The Hon. Attorney General -

You'll have to forgive me; I don't know the reference that you are referring to. There's often the case that you'll have overlaps of powers, duties, responsibilities, from one ordinance to another, but that you may recall in my opening remarks, I refer to this being a complete code, and so in relation to telecommunications matters, I would expect, (*pause, laughter*) as you'll appreciate, I did not draft, nor had I any part in that but as you would expect, this is a complete code, so this is where I would expect the regulator to look for their powers. I mean, as an example, the Chief of Police isn't in the room that I can see at the moment, but the Chief of

Police and I have had a discussion. You wouldn't be looking in the Communications Ordinance for police powers you'd be looking at under other legislation to deal with that.

The Deputy Speaker –

Thank you Attorney General. Honourable Dr Corinda Essex.

The Hon. Dr Corinda Essex -

Going back to clause five, one, where they've referenced specifically a qualified person with preparatory skill, knowledge and expertise, where will the present criteria be contained? In regulations or ...?

The Hon. Attorney General -

Thank you, Madam Chairman, and thank you Councillor Essex. From my point of view, that would be for a determination of regard with, on the advice of ExCo. I would imagine that we'll have a proper job specification drawn up in the fullness of time, and that will be approved by ExCo. I'd like to, I mean, the reason, and the importance of having a suitably qualified person with appropriate skills, knowledge and expertise is to make sure we get the right person that, you know, that's the whole thrust of this, isn't it? And we know that telecommunications, as many people around the table know, is a very specialist and an expert area and as someone who has acted as a Comms Regulator elsewhere, being the Acting Attorney General in that other territory, I can tell you that whilst I might have an intellect for law, I'm not necessarily the first person you'd come to when it comes to determining technological matters, and it is important that we get the right person, and I would hope that the job spec would be sufficient to ensure that.

The Deputy Speaker -

Thank you Attorney General. Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you, Chairman. So my concern is, maybe you can explain it Attorney General, with 5(2) and 5(3). So 5(3) ensures and states the regulator is not subject to the direction or control of any person or authority, when carrying out the duties of administration or enforcement and enforcing the audits, which is absolutely fantastic. My problem kind of is that if anybody is going to have legal action taken against them, it would be the government, and you are the government, also the AG is the government's legal counsel. But under Section 5.2 it says that, basically, if the office of the regulator is vacant, you take over as the regulator. Now we all know that on St Helena, key personnel often go missing for months. So my concern is how you would handle if during that time when you're sitting as regulator and doing your job as your independent role, then somebody who's got a telecommunications license starts to start legal proceedings against the government? How would that result? And also, then, if that's the case, I'm guessing you're going to say, well, I would have to appoint somebody else but actually, should you be appointed? If you've got a court case against you, or you know, you're representing the government in a court case, and you also get to choose who the new regulator is, wouldn't you be likely to choose a regulator who would benefit your court case?

The Deputy Speaker -

Ohh, I would say

The Hon. Karl Thrower -

Because that's what I'm asking. Because you remember, whereas our Attorney General isn't always going to be yourself, and we have had some different levels of skills in the Attorney General's throughout the years. And I was just wondering if there was a way to make that the officer designated wouldn't be by the Attorney General's position, but maybe by the Executive Council or by the Governor.

The Deputy Speaker -
Honourable Attorney General.

The Hon. Attorney General -
Gosh, well, there's so much in

The Hon. Karl Thrower -
Yeah.

The Hon. Attorney General -
... in what you said, not, I don't necessarily agree with the premise that you take. So for example, the Office of Attorney General survives, in addition, irrespective of the individual that's occupying the position. And the view that the Governor takes, and I share it with him, is that it's important that we always have an Attorney General available. Doesn't matter where the AG is, whether it's here, UK or elsewhere, the AG is available, the AG is available. If the AG is not available, we have an Acting AG and when you have someone who's acting, they have the full powers of the substantive role. So taking a current example, let's say I, I am going to be flying to the UK later this month, when I'm in the air, I can't be Attorney General. I'm not contactable, you know, and that there will be an Attorney General, an Acting Attorney General, during that situation. When I come, when I surface again, I will be available, and I will resume my full powers and responsibilities at that stage. We haven't got a deputy regulator established, because the deputy, as you can see in section five, two, is the Attorney General. The Attorney General is the default. Now, one of the curiosities in St Helena is the fact that government as such is referred to in our Constitution, and it has encouraged people to think that government actually has legal personality. Can I say to you quite clearly as your Attorney General, it's my view that the government does not have legal personality of any kind, and it's one of those reasons and you possibly touched on this Councillor, in the sense that when it comes to litigation, litigation isn't brought against the government, litigation is brought against the Attorney General, as the representative for whichever element of the government.

The Hon. Karl Thrower -
Okay.

The Hon. Attorney General -
So the Attorney General has a legal personality and I can assure you, I am a legal person in all senses of the word. I exist or my function, my office exists specifically to deal with the litigation that occurs, amongst other things. Now, in terms of, you touched on how officers may act, in terms of, you know, whether you appoint somebody particularly to favour a case or not. I don't think we're in that territory at all, and I've not seen anything to suggest that any appointments would be improper.

And I think it's right to think that everybody would set out to do the right thing, and it's one of the reasons why, of course, decisions are collective and predominantly on a democratic basis. And it's why it's ExCo. It's the Governor on the advice of ExCo. So it's the Governor with Ministers that will be appointing the regulator. It's the democratic accountability is important,

and also, when you've got more people involved, you're most likely to get the right answer, both in terms of the capabilities and competence, but also to make sure there is no impropriety. Let's not forget, all of us around this table are guided by the Nolan Principles, and I would have an awful lot to say if those principles were not being adhered to on a continuing basis.

The Hon. Karl Thrower -

Okay, thank you.

The Deputy Speaker -

Thank you. Okay, so there's no further questions. I put the question that part three do stand part of the Bill?

Question put and agreed.

The Deputy Speaker -

I now put the question that Part Four, do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So Members, you can see that Part Four is section 11, Licensing and permits; section 12, the cable landing station; section 13, the Power to grant licenses and section 14, the enabling Power for regulations to be made. I think this is perhaps the most uncontroversial part of this particular bill. It relates to the Equiano landing station and as you can see at section 12, the fact that the cable landing station vests exclusively in the government. This is LegCo through the ordinance declaring, as we all know, the situation is that this is a key piece of government property. You can see that, you know, at section 11, a license or a permit would be required before anybody else fills a different landing station. It's ExCo, the Governor on the advice of ExCo and section 13 that has the power to grant the licenses and as you can see, to the extent it is necessary that regulations may be made. And crucially, you can see, again, reinforcing the overarching principles of the ordinance, regulations may promote the principle of open, regulated access through specific license conditions. We want to be an inclusive place for business. We want to encourage people to come here. And that's the thrust of this part. Thank you.

The Deputy Speaker -

Thank you.

The Hon. Karl Thrower -

So AG, under 12, obviously it says that the ownership of the Equiano cable landing station is government, and then section two alludes to what that is. But when we were in the public session of the PAC, we were hearing about just how much control Google have over entry and things like that. So does this match? Does this take into account enough that part of it, because they seem to have phenomenally strict control over that building? I understand that we own it, but do we have the, could we do this without the say so? Could this be enforced without the say so of Google because of the agreements we've got in place with Google?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Thank you and thank you for the question. So let's just look carefully at section 12. It's the ownership of the landing station that invests exclusively in government, which clearly it does. Now there are, as you've already alluded to, separate agreements with the likes of Google with regard to the ownership, operation, supply of data with others through that particular cable. So we're claiming the infrastructure down at Rupert's. That's governments' that's what we are saying and as you can see, it's 12 (2). The government's responsible for management and control of the landing station. We wouldn't be trying through this to interfere with the contractual arrangements we have with Google or others, and this is all about us being clear with regard to anybody who might have uses or connections associated with it as to where our responsibilities begin and end.

The Deputy Speaker -

There's no further questions. I put the question that Part Four do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part Five to stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you very much. Now, Honourable Members, this is an opportunity for us to look back at section two, Licensing of Electronic Communications Networks and Services. So let's just go and have a look into our definitions and you can see it's on page 10 of my version of part of section two. We have a definition of electronic communications networks and of electronic communication services. It's worth bearing those in mind when we look at these provisions. So Part Five, as you can see in Section 15, this part applies to all electronic communications, networking services, other than the publicly available ones. Now the publicly available ones are in Part Six, and we're going to obviously come to that after we've dealt with Part Five. You'll see that the provisions in Part Five are very similar to Part Six. I would suggest, if you're going to decide which ones you want to concentrate on more, that we have a longer debate on Part Six than we do on Part Five. For example, it's Part Six that our current telecoms provider would have their licenses granted under. It. So this is effectively private electronic communications, networks and services. So what section 16 does is require that if you have such a provision, you require a license, and it's referred to as "the license requirement". (*Excuse me, coughs*), section 17 exemptions from license requirements. These are important. We have the same exemptions effectively in Part Six, so we can debate it in either or both, as you will see fit. But as you can see, who doesn't need a license, so anything of a non-commercial nature done by or on behalf of the Crown, exemptions, as you would anticipate, for police, fire, sea rescue, ambulance, other emergency services is required. Anything done by government services essential to the safety and security of St Helena, including, but not limited to customs and excise, prison, law enforcement, harbour master and so on and so forth. And then you can see it exemptions in 1d, e and f, things which effectively exempt vessels coming into our harbours, into our territorial waters, aircraft flying overhead and what have you. We're not trying to interfere with people who've got access already. What you can also see at 17, two, is a specific carve out. We don't want any arguments to come that the sale or supply of connectivity services to do with the Equiano cable, we don't want arguments to say that that's commercial. And so whilst we've got the non-commercial nature in 17, one, we're deliberately making sure that everyone's clear that selling the services for Equiano is okay for government to do it. So regulator may grant licenses, that's part 18, nothing remarkable there. Nothing remarkable in 19 or 20 other than to say that licenses can be individual licenses. Licenses can

also be class licenses. In other words, regulator issues a license and covers a whole group of people without more. Section 21 deals with amendment. Section 22 suspension and revocation, 23 transfer, expiry and renewal. So as I say, we'll come across those sorts of provisions in Part Six as well, so I leave it to you, whether you want to raise any questions with me now or whether you want to leave those to Part Six.

The Deputy Speaker -
Honourable Andrew Turner.

The Hon. Andrew Turner -
Thank you, Chair. I want to raise it on Part Five because it's more, my thinking is more specifically in relation to five and six, to do this business of what constitutes a non-commercial nature. Is it, because I mean, certain things are obviously commercial. If we were to set up something we are selling to someone else, that is obviously commercial, apart from the bit at the bottom, where we say that it isn't. The bit I'm interested in is, would it count as commercial if, for example, we installed private networks to reduce our reliance on a company or a provider i.e. to save money. Would that count in theory, as a commercial operation?

The Deputy Speaker -
Honourable Attorney General.

The Hon. Attorney General -
Thank you, Madam Chairman. I think the basic situation would be, if for example government had surplus network capacity and decided it wanted to offer it for sale to businesses so it could benefit from the arrangements that government had, that that would fall foul, that would be considered to be of a commercial nature. Now, typically, strictly governments don't trade, you know. We shouldn't be doing things of a commercial nature. I know we get involved in many, many things here, but the broad position is it's not the government to do commercial anythings, government should be doing governmental matters. So I know the particular concerns in this area from an existing licensee do relate to government setting up in competition. And you've got to bear in mind, if you, if we do grant exclusive licenses, and we're going to come on to exclusivity in Part Six, you the licensee might have a legitimate expectation that government isn't having granted an exclusive license, isn't going to set up in opposition, and that's part of what this is trying to balance, along with Part Six positions, but it's useful example here. Where that line gets drawn and say, government shouldn't be trading, we shouldn't be doing things that are commercial, there is clearly an issue, and that's why 17, two, is there about is a license for tying into the Equiano cable. Is that actually commercial or not? Well, we can debate it, but we want to make sure it's not part of the debate. That's why it's clawed out in 17, two.

The Deputy Speaker -
Thank you AG.

The Hon. Andrew Turner -
Yes, that does remind me of a certain safe countries bill. Now, what the reason I'm asking this is because what I don't want to see is us limit the government from being able to essentially save money where possible by tying itself, if there is an exclusive provider, to a service this is inadequate for its needs. So assuming you have a monopoly service provider, would government be able to save money by essentially using a private network system to not have to use that provider? It's not quite the same as offering it to other businesses, but it would only be for its own internal savings or its own internal use.

The Deputy Speaker -
AG.

The Hon. Attorney General -

Thank you. So you've got several different moving parts there. One moving part is the ordinance, although hopefully when it's, hope it's enacted, that ceases to be a moving part. The other two bits you'll have, one, of course, would be the license. What are in the license terms? And third one is actually what is the contract between the provider and government.

The Hon. Andrew Turner -
Right.

The Hon. Attorney General -

Now, I would expect, whether through the license or through the contractual arrangements, those sorts of questions that you pose will be dealt with and answered. The government almost always reserved to itself the right and the power to sort things out in emergency. We'll see that coming on later in the ordinance. It would be totally ridiculous, wouldn't it, if we have an emergency, we lose connectivity of government powerless because of provision in the license or in a contract. And this ordinance will cater for that, as we say, we get onto it later. We've also got to bear in mind that if we've signed up on with a contract or even granted a license, it's incumbent on us to honour it. You know, we have a duty to uphold the rule of law. So it very much will come down to what have we agreed in negotiations, and have we done, have our negotiations been effective enough, have we hit the right bargain, and so on and so forth, and governments know better than anybody else. We are all entitled to make a bad bargain. We can all make mistakes when it comes to buying things. Certainly, if you live in the UK and you have Amazon, you make the bad mistakes its three o'clock in the morning. But notwithstanding my Amazon purchase habits in the UK, obviously it is incumbent on government to negotiate properly and effectively. And I think the point you make is a valid one. But I would pull back then to our procurement arrangements, whether, in fact, we ensure through procurement that we are getting the best value for money. What I wouldn't support would be government setting up as a relevant service provider, and that's why we are not exempt from licenses if we're doing something on a commercial nature. But if, as long as I'm around, I'm hoping we're not doing too much commercial anyway.

The Hon. Andrew Turner -
Excellent. No, that clarifies it brilliantly. Thank you.

The Deputy Speaker -
Thank you. I put the question that Part Five, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -
I put the question that Part Six do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So this is, I'm not saying it's controversial as such, but Part Six is where we end up with the licensing of publicly available electronic communications, networks and services. So this is what our current license provider, where their new license, if

they get new licenses, would be granted under. So Part Six is one of the most fundamental and important parts of this particular Bill. It's also one of our longer parts. We go from section 24, publicly available communications, network and services, section 25 licenses, 26 exemptions. Of course, that's very similar to the provision we've just debated. 27 is exclusive rights. I would imagine you may have something to say there. It's important to say, when we get to temporary suspension of exclusivity at section 28, there is a proposed amendment in relation to that which you have on your sheets. 29 price control, section 30 obligations to end users and also within section 30 there is another proposed amendment, which, again, you have on your sheets. Section 31 again, a very important provision, universal service obligation. 32, transfer of publicly available electronic communications, networks and services, effectively the way the government will control it. Decisions on acquisitions at 33, at section 34 we have another amendment, again, that's on your sheets in relation to an amendment of a service license. Section 35 is revocation, section 36 is appeal against revocation, section 37 is an expiry of licenses, and we will have to read part seven against part six, because part seven deals with what happens at the end of the license. So when we're dealing with these end provisions in part six, just bear in mind there's a bit more to come over the page, as it were. So let me go through in a little bit more detail, but I'm sure you've

The Hon. Karl Thrower -

This is where we go on to the supplemental booklet, if you read your page numbers. So the page number in the bigger booklet stops at 28 and jumps to page 37 and then this little booklet kind of sits in there. I don't know if other anyone was given one of these, or whether more people than myself has got one. Yeah, that's what I'm saying. So the booklet now comes in, that's all just to make it clear now. So we have some pages missing in our Bill. Only me? Oh, okay, only me, sorry.

The Deputy Speaker -

I think there may have been some misunderstanding. It might have just been you, Councillor Thrower?

The Hon. Karl Thrower -

Yeah, looks like.

The Deputy Speaker -

So it was only Councillor Thrower. Oh and Councillor Brooks too, two members had that little booklet to supplement the missing pages. Sorry, you can continue Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. I'm in your hands here. What I wonder is whether we should just take sections 24, 25 and 26 now and then pause, because I think we will probably have a debate on exclusive rights, which is section 27. So unless anybody has got any questions on section 24, 25 and the exemption 26, which we discussed the life provision in Part Five, it might be appropriate to put the question that maybe sections 24 to 26 stand part of the Bill, and then we can then move on to exclusive rights.

The Deputy Speaker -

I put the question that, as the AG has suggested, 24, 25 and 26 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

You may continue.

The Hon. Attorney General -

Thank you Madam Chairman. So section 27, exclusive rights. So as you can see, it's section 27, one. The Governor, on the advice of ExCo, may grant exclusive rights to a publicly available, electronic communication service licensee, a lot, another mouthful but we know what we're talking about. We're talking about publicly available telecoms, broadband and so on and so forth. Subsection two is important. Exclusive rights may be granted in respect of certain but not all, electronic communication services, and may include, but are not limited to, and you can see there's a list there of (a) through to (d), public fixed voice services, public mobile services, fixed broadband lease lines, the sort of things that you'd expect. Subsection three, any exclusive rights granted by the Governor, and the process for amending or revoking these rights shall be governed by the terms of the relevant license and ordinance, and we'll come on to what though that means a little bit later. Now, subsection four, exclusive rights may be granted only if there are compelling reasons to do so. So in other words, this is not a win. This is a requirement that people, that ExCo needs to be satisfied that there are compelling reasons for granting exclusivity. And in deciding whether exclusive rights are to be granted, then we have a list of factors, and you can see them there in subsection four, (a) through to (g) of the factors that must be taken into account, and obviously, these are the things that you'd expect to be relevant here in any event, the size of the market, the sustainability of competition, the level of capital investment required, what are the economies of scale that may result from exclusive rights. Is there scope in the market for more than one operator, the likely impact on consumer pricing, the likely impact of exclusive rights on the quality of service, and the likely impact of those exclusive rights on innovation. So in other words, as and when and if ExCo, Governor, on the advice of ExCo, decides whether or not to write a license on licenses, if exclusive rights are being granted, they are going to have to expressly consider those faculties in for (a) through to (g) and I would expect any ExCo memo specifically to detail how and why, and if each of those obligations has been met. So if you are looking for assurance or reassurance that exclusive rights aren't just going to be granted on a whim, this is where you get that reassurance. This is where you see what ExCo has to do before that's granted. And then subsection five can put terms and conditions on the license, as you'd expect. But I think Madam Chairman is probably, because this is such an important clause by itself, I think we just stop here and we have the debate on section 27.

The Deputy Speaker -

Yes. Honourable Karl Thrower.

The Hon. Karl Thrower -

So obviously, one of the things I have raised, I raised it in Friday's meeting is, is it under this section where hotels, cafes and that are allowed to offer hotspot services? Because we're talking about exclusive rights, and obviously that would be a breach of exclusive rights, if we say you've got the exclusive rights to all the buildings and that, but we want to allow, to encourage digital nomads and things. So we want, we're going to allow hotspots and things in commercial premises, even if you limit it to that?

The Deputy Speaker -

Honourable AG.

The Hon. Attorney General -

So there's again, several parts to your question. So we'll get on later, and what the various exemptions are from licensing generally. But as you'll appreciate perhaps more than most, that even your Wi Fi router will use the electromagnetic spectrum.

The Hon. Karl Thrower -
Yes, correct.

The Hon. Attorney General -
It will actually fall to be licensed, or should fall to be licensed, were it not going to be exempted in due course. So that's one part, the other part is that the license with the telecoms provider, assuming one is granted, will almost certainly cover this area. It would clearly be both to the advantage of any exclusive provider as well as to any supplementary subsidiary visitors to be able to offer exactly the provisions that you are suggesting. And I would have thought it would be straightforward, and it wouldn't be a breach of the exclusive rights, because the license would provide for and permit an on-sale, as it were, of those rights. So your telecoms provider, your internet provision provider will be selling its services to the, for example, hotel, and the hotel would then be charging on, potentially using its hotspot arrangement. So I wouldn't see that as an issue as against the exclusive rights that we're contemplating here.

The Hon. Karl Thrower -
Okay. Thank you very much. And the other thing, how do we ensure continuity? So, for example, the size of the best addressable marketplace. Now, for example, I don't know, yourself might think that 2000 people is the minimum that you should have for exclusivity, whereas I believe it's 300. Now, you might be in power one year, I might be in power the, how do we ensure, is there any guidance for these kinds of broader statements of things?

The Hon. Attorney General -
Well, guidance may well emerge, and there are plenty of provisions in the ordinance whereby the government, the regulator and others, can issue guidance. The joy of being in government, or the joy of being in power, is the right to choose, as you might have heard that expression many other places. And depending on how long the license period is, and whether it straddles an election or a change of government, is a matter of caprice as much as anything else. Although I can tell you, as part of the negotiations which are ongoing, things are being staged, conscious of our election cycles, and more importantly, to make sure that people have got the opportunities to, or governments got the opportunity to make the choices away from a hard election date. As we all know they can be a little bit inconvenient when it comes to this sort of work. So continuity, it's a limiting fact. The continuity comes in the term of the license, you know, is it for four years, is it for 12? And you again, will come on to the provisions and say it's got to be between those two dates, two fields. That's where you get the continuity. You may get a discontinuity if you get a new government with a different mind-set, but that's politics, and that's democracy for you. And inevitably, the ability to influence or affect the license that's already been granted will be dependent on the application of these provisions. So it's will not be, if you disagree with what the previous government's done, that's absolutely fine. And if you, when you get into government, yes, you can undo, quote, 'the mess' that you might see was there, but that's just the normal run of the mill before government. There's nothing special that I'd be looking to see done, or I suggest you be done to preserve any form of continuity beyond the period in the license.

The Hon. Karl Thrower -
Okay. Thank you.

The Deputy Speaker -

So now, on I beg your pardon.

The Hon. Andrew Turner -

I'm sorry, just one question on this. Obviously, I'm very fond actually, of the principle of having a set number of categories under which the decision has to be made as to whether an exclusive license is granted or not. Is there any need for a requirement to publish once the decision is taken based against those categories? Perhaps a sensible government would do so anyway to explain their decision but is it needed to be a requirement?

The Deputy Speaker -

Honourable AG.

The Hon. Attorney General -

It's not directly a requirement, but I'm sure you're familiar, whether as a consequence of legislation or motions being passed in this House, or relation to other things passing ExCo, publicity and communication is a key function of what one does. It would always be open, of course, to the regulator in his or her annual report to report back on what's gone on in the year. And it might be that in that report, elements of what's in section 27, four, (a) through to (g) come out. What we don't know is whether there's sensitive commercial information, but what one would need to be careful about, so it's one of the reasons why there's no direct commitment to make public. Because you need to bear in mind that the commercial sensitivities are there, and I know that our current licensee is very anxious to ensure that it's commercial sensitive data is information, is kept confidential. So I'd like to think, I'm agree with you that I'd like to think that as much as could be, would be publicised, but there's no direct obligation to do so. But I think it's a natural function of government to be open and transparent, to get back to our Nolan principles. So I would expect there to be transparency. It's also back to sections three and four which we need to go back to the objectives and the principles by which the ordinance is deployed. So even though it's not said here, I'd like to think a lot of that information would emerge.

The Hon. Andrew Turner -

Thank you. That clarity is very helpful.

The Deputy Speaker -

I'm not sure if you want to just do this bit now, or do we carry on with the, because there's amendments to 28.

The Hon. Attorney General -

Madam Chairman, I suggest you put section 27 to the committee.

The Deputy Speaker -

Okay. I therefore, I put the question that 27 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

So we now turn to, should we go straight on to 28 would you suggest that, Attorney General? Sorry, I interrupting this.

The Hon. Attorney General -

Madam Chairman, I do beg your pardon. I'm being pulled in more than one direction at the moment. So section 28, is where we come to our first amendment in subsection two. And as you can see, the amendment to lead into the end of subsection two is that we insert the words 'and is unlikely to be able to do so within a reasonable time'. Without wishing to give sensitive commercial negotiations away, I'd like, I think it's important to say to the House that this particular section was agreed without much debate at all with the current licensee. So bear in mind the impact of this. This is a temporary suspension of their exclusivity, and you can see the reasons why. In circumstances where, let's say the cable breaks, we need to make sure we've got alternative provision. And so under those circumstances, another license can be granted to allow alternative service provision. And I say it is a testament to the current licensee that they recognise the importance of ensuring continued communication, and that's why section 28 is in the form that it is. And it's that the amendment we wanted, section 28, two, as I say, is and that it's unlikely to be able to do so within a reasonable time. Madam Chairman, what I would have request that you do is that you put section 28 to the committee with the amendment read in, as we have on amendment number one on our sheets.

The Deputy Speaker -

Thank you. Honourable Minister Mark Brooks.

The Hon. Mark Brooks -

Thank you, Madam Deputy Speaker. And I would like to propose an amendment to clause 28 and if you cast your mind back to beginning, we've already, I've already got a seconder for all of the clauses. May I proceed? So Madam Deputy Chair, in Clause 28 (2) after subject of the exclusive license, insert 'and it is unlikely to be able to do so within reasonable time'.

The Deputy Speaker -

Thank you, Honourable Minister. Honourable Chief Minister.

The Hon. Chief Minister -

I can second the amendment if it's required. But again, for completeness, I wonder if we should just read the whole of the proposed amendment as to how clause 28 (2) would then read, especially for those in listening to this broadcast. So we are asking for an amendment of 28 (2) so that it reads in its entirety, 'a temporary license may be granted under subsection (1) where the holder of the exclusive license, due to circumstances beyond their control, is unable to provide the services that are subject of the exclusive license and is unlikely to be able to do so within a reasonable time'. So that would be the full wording. Thank you Madam Chair.

The Deputy Speaker -

Thank you Honourable Member, Honourable Chief Minister. I put the question that clause, sorry, I beg your pardon, put your light on.

The Hon. Karl Thrower -

Sorry, can I ask question about this. So my concern is by adding a reasonable time, you're adding uncertainty. So for example, what would, say the regulator I'm guessing what would make that decision, decide is an unreasonable time? Because wouldn't that be open to legal challenge? So if you say reasonable time in modern communications is quite literally hours, but actually I say, well, come on, we're in the middle of nowhere, it's going to take me a minimum of, even if I pay 45,000 pounds for a flight, it's going to take at least a day to get

here, aren't you open, wouldn't it be better to have more definition in there? Or do we have a definition for reasonable time somewhere else? I'm just worried about the potential legal challenge to why you're taking somebody's exclusive license off them, under that circumstance?

The Deputy Speaker -
Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman, the reason lawyers like the word reasonable, is it catches everything and more importantly, it takes into account all the prevailing circumstances at the time. And as you already hinted, isolation would be a factor for us, the ability to get new components in, or whatever else placement components would be, it would be a factor. I don't think there's too much of an issue here. You're right of course, it brings in an element of assessment of objectivity and subjectivity, your reasonable isn't my reasonable necessarily your and there is a degree of variability. But when it comes to assessing reasonableness for the purposes of the court, they will try to be objective and look at all the different factors necessarily would come into play. So for example, we'd all recognise that a temporary power cut that takes a particular piece of kit out would be a frustration, but we wouldn't see it as a necessary justification for the exercise of any of these particular powers. On the other hand, complete rupturing of the cable requires, you know, ships to come out to repair the cable, which is going to take weeks to mobilise, and so on and so forth. We all know that we cannot be without communications for that sort of period of time. And the word reasonable allows us to judge what it is that we're dealing with under the circumstances. So I'm happy for it to stay in but I do hear the force of your remarks as it were, and it's really about trying to give some certainty and comfort to a license holder. This is not going to be something that's exercised on a caprice, you know, it's to make sure there's a proper justification. And we've got to bear in mind, we are trying to encourage investments. We don't want people to think that we're just going on a whim. Just go, you've had a packet, you've had a mass failure, whatever it is that you've had that we're going to immediately make alternative provision, so that's what it's directed to. But the reasonableness test does allow for some subjectivity and objectivity.

The Hon. Karl Thrower -

Okay. And the other thing is, do we need something in there as well about the amount of time that that license would be granted? So if I say to you, as the current provider with my exclusive license, it is going to take me 48 hours to get the part here, would you only grant the new license under the temporary license for, say, 72 hours? Yeah, that's why I'm trying to say, it's as soon as, but you've got to understand you're talking normally about hours. I mean, the idea of somebody going through the subsea cable, actually that would be fixed within seconds, because you would always have an active backup running off a satellite system. So, but my question is really based on the engineering of this, how likely is it that you would get somebody else you need to license so quickly for such a short time, or would actually the government take it over, which, in case, under the previous section, they don't require a license?

The Hon. Attorney General -

So there are, let's take the internet as an example. We know there's more than one way of receiving the internet here, you could get provision from the low earth orbiting satellite as an example, and under the ordinance, assuming it's all substantially passed in the format that it's in now, the ability to receive low earth orbit into the internet provision would require a license. So what you would need is a license authorising that service to be used. Now, if you look at

section 28, subsection three, a temporary license granted under sub one must be expressed to come to an end as soon as the regulator and the holder and exclusive license are set aside, that the provision of the service is able to resume. So the crucial thing there is the need for both the regulator and the exclusive licensing to be in agreement. So we're not solely at the whim of the commercial enterprise, the regulator has a function, absolutely but the key thing is, we mustn't be without services. Communication for us is the overarching issue, and that's why section 28 is so important.

The Deputy Speaker -

Thank you. Councillor Turner.

The Hon. Andrew Turner -

I'm not suppose, I'm not sure whether this is to be asked now or after the amendment, because it is specific to this section, but not specific to the amendment, which I fully support. So I don't know whether I should ask that now or deal with the amendment first and then ask about subsection two in more general terms.

The Deputy Speaker -

We'll do the amendment first.

The Hon. Andrew Turner -

I'll have to do anyway. Thank you.

The Deputy Speaker -

I therefore put the question that the amendment, as stated in clause 2, after subject of exclusive license insert 'and is unlikely to be able to do so within a reasonable time' do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Councillor Turner, you may now.

The Hon. Andrew Turner -

Thank you, Chair. I just wanted to seek some clarity about the circumstances beyond their control part. Obviously, that's pretty, you'd think, pretty self-explanatory. It's an anchor drag through the cable, who knows. But what I want to know is, is there any provision for if there is an act of, for example, negligence, that would allow us to tempor. So through an act of negligence, our provider somehow disconnects us from the rest of the world. Do we have any power or any provision to issue a temporary break from the exclusivity, exactly as we would as if a ship had dragged its anchor through the cable?

The Deputy Speaker -

On sorry, AG.

The Hon. Attorney General -

So it's an interesting question and you raise an interesting question as to whether the wording of subsection two should be changed because it deals with circumstances beyond the control of the licensee, as opposed to kind of circumstances which would have been ... licensee, as

you hint through negligence. And the answer to that question is, we look at that through different provisions.

The Hon. Andrew Turner -
Right.

The Hon. Attorney General -
Because that would bring us into suspension or revocation or substantial breach or breach of the license conditions. I would not read this as, I wouldn't read subsection two as being a fetter for low earth orbit satellite alternative coming in to support situation where, for whatever reason, whether beyond control or otherwise, the network's gone down. I think the practical issue is the provision stopped, we need communication, let's get it. But you've got a circumstance where the robustness of them and the of the network is compromised through licensing failure, we will be looking at other provisions, and the regulator will be looking at taking other action associated with it, because the continuity of the system is so important as well, isn't it. And that's why the license conditions will provide for that, and that's why we'll also have the power both to change license conditions as required, but also to take enforcement action as required.

The Hon. Andrew Turner -
As long as it's somewhere I'm happy.

The Deputy Speaker -
Thank you. So we now move on to clause 29 and, (*pause*) you finished 28. Oh, I beg your pardon. Sorry, I just realise I've only done the amendment for section 28 but I now put the question that section 28 as amended, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -
Now we move on to clause 29. Attorney General.

The Hon. Attorney General -
Thank you, Madam Chairman. Mercifully, section 29 is one of the shortest sections in the ordinance, and it's all about price controls. I'm sure you can ask the question, should you need to do so but I think I probably said enough.

The Deputy Speaker -
Thank you, Attorney General. Honourable Karl Thrower.

The Hon. Karl Thrower -
I would say for the listening public, I agree we went through this, but could you just explain what this allows you to do?

The Hon. Attorney General -
And here was I trying to be economic with time. That's a proper challenge, more than happy to respond. So, as you can see in section 29 (1), a license to be granted may include servicing provisions, imposing or providing for the imposition of price controls. I'm sure that's something that's very, very important to the community at large. And subsection two regulations may prescribe matters to take into consideration when introducing or amending price controls as

required, but it's an important thing for our economy and for the ability of all to access internet provision.

The Deputy Speaker -

Thank you Attorney General. I put the question that clause 29 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that clause 30 do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Again, it's just worth highlighting that the Honourable Minister Brooks will be putting amendment number two to effect a change at 30 (2) (n) where we're going to insert 'to charge interest on overdue sums'. That's there. So section 30 is the obligations to end users. Again, this is one of those provisions where I think everybody should look on this and think, yes, thank goodness this provision is here. It uses the word must and must is, thou shalt. You know, there aren't alternatives to it. A license granted under this part must include provision setting out the obligations of the licensee in relation to end users and potential end users. And then at subsection two, we get a list of (a) through to (r) of factors that must be taken into account with it when granting the license. And a lot of things here that you would, I'm sure you'd automatically accept, it's all about making sure that the licensee is providing what the end users actually want or need, and it's also to ensure, ultimately, fairness in terms of the provision as well. But you'd expect the license itself will go into great detail. I mean, all the different factors that are here. You know, look at to be the prohibition on the licensee refusing to provide a service except in specified circumstances or specified grounds, as part of anti-discrimination and capricious behaviour, for example, by a licensee. You know, it's all designed to make sure that everyone gets fair access, and, more importantly, that their licensee, the licensing treats people fairly and appropriately.

The Deputy Speaker -

Thank you Attorney General. Honourable Minister Mark Brooks.

The Hon. Mark Brooks -

Madam Chair, may I propose amendment in this section. So in clause 30 2 (n) after charge for services, insert 'to charge interest on overdue sums'. And may I invite the Attorney General to read that clause in his contacts of the actual section, so its all clear to Members, how it would follow.

The Deputy Speaker -

Thank you. I haven't asked for a seconder, as it was seconded at the beginning, so it isn't necessary for that. Honourable AG.

The Hon. Attorney General -

Madam Chairman, I think the Chief Minister is to second this particular amendment, but to follow up on what Minister Brooks has said, clause 30 (2) (n) will now say, 'allow the licensee to charge for services, require or permit end users to pay deposits, to pay charges in instalments, to make payments in advance on account or and to charge interest on overdue sums'.

The Deputy Speaker -

(Inaudible) Yes, I think so, according to our amendment list. No not been agreed.

The Hon. Attorney General -

I do beg your pardon. I'm glad there are people checking up that I know what I'm talking about. So let me try again. So section 32 (n) now says, 'allow the licensee to charge for services, to charge interest on overdue service, require or permit end users to pay deposits, to pay charges in instalments, to make payments in advance on account'. Apologies for my error.

The Deputy Speaker -

No problem. Thank you Attorney General. Honourable Andrew Turner.

The Hon. Andrew Turner -

Thank you Chair. I have a bit of a, well, a general issue with this section, in that I'm not a big fan of musts, because it does rather limit our powers to negotiate a contract that we would see fit. But in particular in terms of interest, if we're going to create an obligation that we 'must' allow a provider to charge interest, not saying that the provider will, that really does limit us if, for example, we want to deal with cases of digital poverty and debt management, etc. So if it's, I'm bit confused as to why this has to be a must, and I'm very uncomfortable when we're talking about allowing, we must allow them interest and not putting any kind of limitations on that. I mean, even if we just said must allow interest capped at a reasonable rate, would be at least a bit more favourable to stop the interest rates being charged by provider under a license to be unreasonable.

The Deputy Speaker -

AG.

The Hon. Andrew Turner -

We're leaving a lot to chance in the licence.

The Hon. Attorney General -

Thank you Madam Chairman.

The Deputy Speaker -

There's two people. I'm not sure whether the Honourable Minister Mark Brooks would like to respond, or the AG.

The Hon. Andrew Turner -

I had asked the AG, if that's all right.

The Deputy Speaker -

Okay, he would like an answer from the Attorney General. Thank you.

The Hon. Attorney General -

Thank you very much. So you've got to read 13, section 13, clause 30, in its entirety. So the license must include provisions and in particular, without limitation, the license 'must' and use the word in your mind, address. In other words, we have to address the factors (a) through to (r), now you've picked up one of the factors in clause 30 (2) (n), and we've just had the amendment to charge interest and overdue sums. That doesn't preclude the license from saying, with regard to a commercial enterprise that has not paid its bill, interest can be charged. I think all of us around, yeah, would accept that that's perfectly reasonable. The license negotiations

might also make different provision in relation to others who haven't paid bills, for example. Now that's a matter for negotiation of the license, but the crucial thing is, the ordinance is directing those who are negotiating the license to make sure that these things are considered.

The Hon. Andrew Turner -

And so how does that factor into the, in particular but without limitation, we must allow them to charge interest. That surely limits us to say that we must allow them without any limits, to charge interest.

The Hon. Attorney General -

No, forgive me. It would be down to the negotiation with regards to license and the Financial Secretary's, he's in the House at the moment, he's watching proceedings, and he is part of the negotiation team, and he will have read 32 and he will have read all of the requirements to go in the license, and he will have a view, along with the rest of the negotiation team, as to what it is appropriate to charge interest for. What 32 is doing is directing that the licensee must, the license must address these factors. It doesn't tell them, tell us how those things should be addressed. So it could be that the negotiations over the license agree that 0% interest is charged, but one would have, one would have honoured the obligation in 32 by having addressed the point. How it's addressed is a different issue. Now, I would have an issue like, I'm sure you would if, for example, the license agrees, yes, you can charge, for example, 10% interest on overdue debt. That wouldn't be appropriate. But it's ultimately down to the commercial negotiation. But crucially, the negotiation must address the issue.

The Hon. Andrew Turner -

So, I'm sorry, I'm struggling to hear you over the conversation to your right, but I'm trying to understand how the wording says we must allow it. What if we didn't want to allow it? Do we still have that power, even though the law says we must allow it? If it said we must address it in the license, then I understand entirely what you're trying to say, but it says we must allow it, so it's not giving us that room.

The Hon. Attorney General -

What I think you've got here as the normal commercial situation for the supply of goods and services. So as you can see, the start of clause 30 (2) (n) is to allow the licensee to charge for services. It would be somewhat remarkable if we didn't, okay, and we've just talked about price controls, so obviously we're going to allow the licensee to charge for the supply of services subject to the price controls. Now being a normal course of events, we're all familiar with the fact that not everybody pays their bills, and not everybody pays their bills on time, and this is a factor that is of concern to the current licensee, and I would suspect any future licensee, and what they're seeking to ensure is that through the license we allow them, as needs be, to charge interest. However, the license will be able to control the extent to which that's permissible, and that's why section 31 and 32 are in, so the important thing is, you know that when ExCo grant the license, they mustn't grant the license unless the license has addressed the factors from 32 (a) through to (r) and that's one of the tests. If you want to hold people to account, does the license cover all of those issues, yes or no, and it has to cover the charging of interest, whether it's reasonable or not, will be down for the negotiations with the negotiation team, but I'd like to think that they've been negotiating sensibly and provably, and as you hinted before, in relation to the people who are the poorest in society, and making sure that they are not unduly penalised for what occurs. So the, I think the thing to take away from this is the license has to address the issue. What it's not mandating is how it is addressed, but crucially, it must be addressed. Okay? So in other words, it's not left to the caprice of the licensee in his or her

contractual terms and conditions to impose an interest rate that people might find offensive. Crucially, this is directing our negotiating team to make sure they factor it in, in the license conditions.

The Hon. Andrew Turner -

Thank you for that explanation.

The Deputy Speaker -

Thank you. Honourable Rob.

The Hon. Robert Midwinter -

I do have a question, Madam Chair, it's not in relation to that particular clause, it's, well, it's further up in relation to 2 (e) relating to provide for liability of the licensee to persons in respect of loss or damage incurred in connection to the provision of services, which may include provisions dealing with failure of service, provisions limiting liability. So would this then in relation to an end user, if that end user has, for example, a hacked email account, would it also protect their data, that if there was inadvertently their email address was shut down by the provider, that they would have some come back on the provider for doing that and the loss of data incurred?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

So it's very similar to the answer I gave with regard to 30 (2) (n), what 30, (2) (e) is doing is requiring the license to address the issue. It's not determining how the issue should be determined. So, as you'll be familiar, most commercial enterprises seek to exclude all manner of liability, either both generally or certainly in these sorts of circumstances, to direct losses only. Now this would allow, if that's what the negotiation team want to agree, that the licensee can exclude liability, either completely, or more likely, for anything other than direct losses caused. One of the things that most commercial enterprises run away from are consequential losses, the idea that you know you have a particular reliance on their equipment or their service for a particular reason, you might be investing, and you lose the opportunity to invest, and the chance to make that million pounds is just gone because the internet fell away. Well, you're going to have certain, you're going to have terms and conditions which say they're not liable for the fact that you lost that opportunity because there was a collapse in the in the network. And what 30 (2) (e) is doing is saying the license has to deal with this, has to provide for this. It's not saying how it should be dealt with. And I don't want to give those who are negotiating on the opposite side to government any ideas, but I would suggest that that's likely to be their suggestion to confine liability to direct losses only.

The Deputy Speaker -

So I put the question that 30 (2) (n) as amended do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I also put the question that clause 30, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We will now pick up where we left off in the committee section, in the committee and that is starting at clause 31. I now put the question that clause 31 do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you very much, Madam Chairman. So as I said to you when I was going through clause two with the definitions, we'll need to refer back to them from time to time, and indeed we do for Universal Service Obligation. So if you just bounced back to the definitions, it's the penultimate definition, and the universal service obligation means a minimum set of prescribed services, which services are to be of equality and affordability to be specified by the regulator, and which are available to all end users, regardless of their location. So as you can see, picking up on that definition, we have section 31 and subsection one says a license under this part must include provision requiring the licensee to comply with that universal service obligation. This is one of the fundamental ways in which we will be seeking to ensure that everyone has accessibility to broadly the same set of services across the entirety of St Helena. Subsection two deals with regulations may be made to flesh out further what is in the universal service obligation, and crucially, at subsection three, the regulator must monitor the performance against those universal service obligations. You'll see its subsection (b). The regulator must publish such information as the regulator deems appropriate about the results of the monitoring and enforcement and publish any funding of the scheme as required. So in other words, you have its own little code all about the universal service obligation in section 31. Thank you.

The Deputy Speaker -

Thank you Attorney General. Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you very much, Chair. AG, how do you foresee one? So my question is based on about actually the hardware used. So would you look for somebody, say, at the most remote house to be able to get a certain speed for a certain price? Or are you saying that if I've got fibre in Jamestown, you expect fibre to that remote location?

The Hon. Attorney General -

Well, fortunately, I hope I won't be the regulator for very long, and I hope ExCo managed to appoint somebody that isn't me, because it's the regulator that will define what is that universal service obligation. And as you say, there will inevitably be a differential, if it is that you can provide faster services in Jamestown when you're whether you're Blue Hill or wherever else, you're further away, and you may struggle, but the universal service obligation will, no doubt, set a minimum standards that can be achievable everywhere, what have you. And it's important that this is really a baseline that everybody can expect, at least this universal service obligation. It's also crucial that not discriminating against people as well. You know, there's a basic level of service that must be available to all, and that's what this is aimed at. And as I say, fortunately, that's for the regulator, not for me.

The Hon. Karl Thrower -

Okay, thank you.

The Deputy Speaker -

Okay, I put the question that clause 31 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that clause 32 do stand part of the Bill.

The Hon. Attorney General -

Can I also request that you put section 33 as well, please?

The Deputy Speaker -

Okay, I put the question that section 32 and 33 do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. I want to deal with sections 32 and sections 33 together. So section 32 is all about the transfer of the publicly available electronic communications network service license. We might be happy with the licensee on day one. I would like to think so, because otherwise we wouldn't have granted the license. But it's always possible that the licensee be acquired, be sold, become bankrupt, become whatever in relation to anything, and we need a situation where we have some control on the transfer of the license through the public service, available electric communications network provider. So we can all list or think about our favourite or most hated countries, or countries where we would consider it would be inappropriate for us to have relations with them, for example, countries that are sanctioned by the UK, for example, would be inappropriate for us to have our licensee owned by an entity in one of those countries. And what you have in Section 32 is the mechanism by which the Governor, and almost certainly on the advice ExCo, well the basis for the Governor to take a decision whether the transfer is acceptable or not. So that's section 32. And section 33 as you can see, deals with the decision on the acquisition, and the Governor can direct the regulator conducts an investigation. And section 33, two deals with how the regulator goes about the investigation that they may need to do, and then reports back on their findings to the Governor. So in broad terms, it should be uncontroversial in terms of being part of our ordinance. I would imagine if we are ever called upon, or the Governor and the ExCo ever called upon to exercise the powers in section 32 it will be controversial at that point.

The Deputy Speaker -

Thank you. Honourable Karl Thrower.

The Hon. Karl Thrower -

If I may, under that section, if, say, transferring from a licensee to a new licensee, would you envision that normally, all of the contracts would also transfer?

The Hon. Attorney General -

The answer to that question is down to the skill, care and diligence of the lawyers and others that are involved in the arrangements. I'd like to think that the license would itself cater for circumstances when there is transfer, often when there is an acquisition, the contracts do automatically follow, but tends to have to be, I think parties agree to agree that the contract has been transferred or via to the new entity. But in terms of the detailed answer, it will be down to negotiations both at the time the license is granted, and I suspect if one was considering a transfer, that would be another opportunity to have another go on the commercial relations and argue for changes or otherwise. So let's take one minor example. Let's assume that the licensee is just undergoing a corporate restructuring. They're just happening to swap corporate entities

around. You would imagine it would be a quite straightforward process. It becomes a little bit more fraught if the licensee holding company or entity has gone into administration, liquidation, whatever else, we would either be dealing with this provision or we'd be dealing with some of the other provisions we'll come on to later. But the important thing is, if we've got somebody buying the licensee from an administrator, for example, we want the ability to intervene. So whether that would be part of a contract, part of a commercial negotiation at the time, and all connected to the license negotiations, the answer will be, it all depends. Because if you end up in a situation where you have administration or liquidation, contracts tend to fall away those points.

The Hon. Karl Thrower -

Then, obviously I'm thinking about the fact we did have handover. Obviously we went from Cable & Wireless to SURE, which was both sides agreed, and it moved forward. But under those circumstances, would the clause that we talked about earlier, where they can't provide a service kick in?

The Hon. Attorney General -

The short answer is, potentially, I mean, there are also other powers which we are going to come on to as well, which may need to fall, to be invoked. For example, we may have such circumstances where government wants to acquire the network itself or parts of the network. So the answer is, it depends, and so many different moving parts associated with those sorts of issues.

The Hon. Karl Thrower -

But you are happy that's covered in here.

The Hon. Attorney General -

I'm happy that there are lots of different ways to intervene. Yes.

The Hon. Karl Thrower -

Okay, thank you.

The Deputy Speaker -

Okay, I put the question that clauses 32 and 33 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that section 34 sorry, clause 34 do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. And again, if I can just give advance notice, that section 34 is one of those sections where we have proposed amendment. It's amendment number three on your sheet. And I hope the Minister, when he proposes it nicely, reads out all the different parts in relation to the change. So it's worth looking at section 34 in isolation, because it deals with the amendment of an existing license. And as you can appreciate those of us involved in the negotiations with the current licensee, there has been considerable focus on this section. And there's been focus on this section for a couple of reasons. One is, if you are the licensee, you want to be sure that any amendment is going to be made only for the most appropriate of reasons. And so what you can see there is the original section 34, one, has paragraphs (a) to

(d), and what the amendment will do, as you'll see in a moment or two, is to drop subparagraph (d). So a license can be amended if the license change has been requested by the licensee, and that would make sense, the licensee has asked for the change. We're agreed. The government's agreed, it's changed. And likewise, if the change has been requested by the regulator, the licensee agrees it could be changed. (b) if you're the licensee, perhaps a little bit more controversial, there's been a material change in circumstances since the license was issued. So that's not nothing trivial. Material change in circumstances means it's got to be something that is really sensible material, not something that's trivial; and (c) crucially, for the benefit of St Helenians, that the amendment would benefit end users. Now, because such a decision would potentially be so important, you can see that subsection two directs that an amendment can only be made subject to an exception I am coming on to, following the public consultation procedure. In other words, this is something that will involve lots of people being asked lots of questions and giving their feedback. However, we do not have to go down through the public consultation procedure if ExCo, Governor, on the advice of ExCo, is satisfied, it would be disproportionate or otherwise inappropriate in the circumstances. And then, notwithstanding that, before taking action, the governor must give the licensee a reasonable opportunity to make representation. So that's the rule of law. That's giving everybody opportunity to be involved, and so on and so forth. So section 34 as I say, in terms of negotiations with the licensee, is perhaps one of the more controversial sections, just because it's one of the things they're most concerned about, that is appropriate, proportionate and balanced. And I can say to you, from my view, that section 34 does try to strike that balance, to give the licensee the appropriate certainty the licensee needs, that changes aren't going to be made on a capricious basis, but equally, the right, the power has been reserved to make changes where it is justified or necessary. Thank you.

The Deputy Speaker -
Thank you AG.

The Hon. Karl Thrower -

If I may, this is the section when we spoke on Friday that I was probably the most concerned about was actually 34 (1) (d) and I think that we should actually decide whether to simply remove it, yeah, to make the amendment and just remove it. I think the problem is that that would cause a very serious issue for any licensee from, and I'm not just talking about a potential internet service provider on the island. But you know, I think we have to take into account the amount of money that satellite parks and that cost, and I think the others are perfectly fine, because I can control that. I know if I'm not being nice to my end users and that, but for any other reason, really concerns me that it's there. So I would propose we make an amendment and we simply remove (d) so it's just reads (a), (b), (c).

The Deputy Speaker -
Honourable Minister Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair, and I think my Honourable friend would be happy with my suggested proposed amendments, if you wait for it one second for it to come. So Madam Chair, I propose amendment to clause 34 and clause 34 is amended as follows: in section 34 (1) (b) insert 'or' after the comma; in section 34 (1) (c) for 'or' substitute a full stop. This is the part I think you're waiting for Councillor Thrower.

The Hon. Karl Thrower -

Yes.

The Hon. Mark Brooks -

Omit section 34 (1) (d) and in section 34 (4) for subsection (1) (b), (c) or (d), substitute subsection (1) (b) or (c).

The Deputy Speaker -

Thank you, Honourable Member. Could I have a seconder please? Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Chair, I beg to second.

The Deputy Speaker -

Thank you. Honourable Dr Essex.

The Hon. Dr. Corinda Essex -

Thank you. Although I fully agree that any potential licensee would be overjoyed to have (d) removed, I do have concerns about the proposed amendment, because what would happen in the event that a need arose to actually propose an amendment to the license that does not come under a, b or c?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

You raise an interesting question, and I'm conscious that there are plenty of listeners to what I am now about to say, including perhaps the current and future licensee. What I'd point to is (1) (b), there has been a material change in circumstance. You wouldn't be looking to make a change to a license on a whim or a caprice, as I said before, but if there has been a material change in circumstances, it's right for it to be considered. And I'd rather just leave my comments at that point.

The Hon. Dr Corinda Essex -

I ask the question as to why (d) was included in the first place.

The Hon. Attorney General -

Without sounding facetious, would you like a job as a legislative drafter because I would tend to agree with that observation.

The Deputy Speaker -

Thank you Attorney General. Honourable Karl Thrower.

The Hon. Karl Thrower -

I think I would also just say that actually (a) as well, gives me a lot of confidence in that as well, because obviously the idea of this whole thing is that the regulator is our conscience, if you want on these things. And I think the fact that the regulator can request under, technically, under any, it doesn't limit what the regulator can request the change on.

The Deputy Speaker -

Okay. Oh I beg your pardon, Minister Ellick.

The Hon. Jeffery Ellick -

I just want to check Chair, if everybody got the amendments paper. (*inaudible*) Oh okay.

The Deputy Speaker -

Okay, I think just, I just want to say Honourable Karl Thrower, I think what it was, was to do with a printing issue. I just sort of clarifying that for you.

The Hon. Karl Thrower -

So no, I'm fine. It was all explained to me before. Yeah that's fine.

The Deputy Speaker -

Okay. So can I put the question now that clause 34 as amended, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I now put the question that clause 34 as amended, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now move to clause 35.

The Hon. Attorney General -

Can I suggest we do 35 and 36?

The Deputy Speaker -

So we move to clause 35 and 36. I put the question that clauses 35 and 36 do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So section 35 and 36 stands together, because section 35 deals with the nuclear option, as it were, of revoking the license that would have been granted, and that's a very, very serious matter, as we'll all appreciate. And in relation to the decision to revoke, there necessarily has to be a proper appeal mechanism, and that's what section 36 deals with. So let's look at Section 35 so crucially, we have the regulator and the Governor in harness. So it says, subject to subsection two, which we'll come on to, and on the advice of the regulator, so the regulator has to be on side, the Governor may revoke a license if the licensee is or has been in substantial breach. And the follow up to what's in substantial breach, substantial means exactly what it says. So again, this is not a trivial issue, this is something that is really material and of great significance. So the licensee is in substantial breach of any of the terms of the license, so whatever is being negotiated, any of the codes of practices, directions, decisions, statements, instructions, etc., issued by the regulator or automatically applied. Crucially, we're going to come on to this later, the consumer code of conduct. Consumer code of conduct is a key piece that will defend the interests of, as you can imagine, the consumers and any of the obligations under the ordinance. So let's just pause and reflect again for a moment that the revocation comes on the advice of the regulator, then the Governor is satisfied that there is substantial breach of the license, codes of practice, etc., consumer code of conduct or

obligations of the ordinance. The rest of the section deals with the mechanism for dealing with it, so you have a minimum, no less than six weeks before making a revocation. The Governor must serve details on the licensee and notice specifying the revocation itself, the reasons for it, the rights to make representations, and the proposed date on which the revocation will take effect. The revocation could be proposed to take effect in a couple of years' time. This could be a mechanism by which the regulator and the Governor or ExCo all decide to apply pressure if there's been a substantial breach, but they want to make sure there's an opportunity to remedy. They could say, here we are, we'll revoke in two years' time, perhaps, say we'll revoke in two years' time, unless you do A,B,C,D, that's all part of what you can do. Crucially for the rule of law and the rights for people to be heard, the Governor must consider representations made by the licensee. You give the licensee a notice giving the full details of what's going on, and importantly, at subsection four, rights of the licensee and so on and so forth are unaffected by the revocation of the things that have gone on before. So much so standard in relation to that. Again, revocation of the license is a very, very serious matter, and so the right of appeal is to our Supreme Court, and that's why it's deliberately pitched there. And also you can see at section 36, two, that the appeal must be brought no later than 21 days after the Governor's issued the requisite notice. So it's going to be quick, you know, let's not hang around, if you're serious about appealing, get on with it. And then the rest of section 36 is all really about what the Supreme Court wants to do. So what you can see at subsection three is the lodging of an appeal has the effect of suspending the revocation. That's important because it means that everyone has certainty that the license continues until the Supreme Court decides the appeal. Inevitably, there will be lots of negotiations that will be going on in the background, was there an ability to change, what's gone wrong, is there a need for a change of ownership? There will be lots of commercial discussions going on. Lots of people will almost certainly be desperate to ensure that continuity of services is maintained and that we get a licensee going forward that's appropriate for our needs. If we don't get those commercial negotiations producing a success, you have at subsection five, the Supreme Court can dismiss the appeal, set it apart in whole or in part, or send it back to the Governor with other directions as required. For the lawyers amongst us, you'll be glad to see the Supreme Court can grant costs of orders, and crucially, just shouldn't really have to be stated, but stated to give confidence to all, the Governor must comply with the direction of the Supreme Court, which shouldn't be stated, but it's there for completeness. Thank you.

The Deputy Speaker -

Thank you, Attorney General. Any member wish to speak? I put the question that 35, clauses 35 and 36 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Section 37. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. We'd be glad to know this is the last clause in this particular part. The reason I didn't take it in, is it actually deals with a slightly different subject, which is the ordinary expiry and renewal of license. Again, there's nothing particularly controversial in here at all. As you'd appreciate, the license comes into effect the way in which it's issued or any later date, but specified in the license. Well, that's basic law, in any event, it continues in effect unless it's revoked or until it expires. So much so obvious. Unless it's been revoked, the licensee may apply for the renewal of the license that will be dependent on the law, if it's there.

ExCo may prescribe any fees applicable to the renewal of the license, and then, in subsection four, it can run the license on the same terms or on different terms. So as required subsection five, a public license remains valid until the regulator has made a decision on the application for renewal, but there we are.

The Deputy Speaker -

Thank you. Anyone wish to speak? Thank you. I put the question that clause 37 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now move to Part 7. There's an amendment on that proposed amendment for 39 but I'll ask that clause 38 do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Madam Chair, with your permission, I'd like to deal with the entire part.

The Deputy Speaker -

Okay.

The Hon. Attorney General -

Obviously we need to deal with the amendment to clause 39 going forward. So as Members can see, Part 7 is all about the end of a license period for the network and what happens next. The important issues, section 38 describes when this part is in effect. And as you can see, it's when the service license is due to expire and has not been renewed or is otherwise ending through termination or revocation. So what we're trying to avoid here is a disorderly exit. You know, we can anticipate that a licensee will change, that a business will be sold, and so on and so forth. Let's try and have an orderly transition. And that's what Part 7 is all about. It's trying to avoid crashing out with an arrangement. Obviously Part 7 wouldn't apply if the licensee has gone into administration or into liquidation, but on the assumption that everything is continuing as is, let's plan an orderly exit. And that's why you get at section 39 the requirement for a preparation of a comprehensive handover plan. And as you can see in subsection 39, two, the plan must be provided to regulator no later than 18 months before the end of the license. The technical details required are in 39, subsection three, and you can see subsection 39, four, there is a requirement for the licensee provide appropriate access as required. It's all geared to the full cooperation and making sure that, as I say, we have an orderly transition. Now, I can just mention the amendment to set, clause 39, (7) (a), and we have a substitution of 39 (7) (a), and in its place we read; maintain all licensed services, roman one (i), until such services are fully transferred to the transferee. And little two (ii), in accordance with all quality of service requirements contained in the license, and that is where it stops. The proposed amendment removes a possible requirement for a licensee whose services are being transferred to a new licensee to continue providing services beyond the date of their license period. If it had been envisaged that such a requirement would only occur if something had been substantially delayed, or otherwise would affect the transfer of the service in some way, that the transfer wouldn't be completed by the end of the original license. And you can see at the end of section 39, we have little eight (8), the regulator must conduct a review to ensure that all regulatory requirements have been met. So in other words, we're having a comprehensive handover plan, and we've got the plan being implemented, and the regulator testing and checking. As part of all this, we have section clause 40, the asset inventory. And you can see it's subsection one, the

licensee shall prepare a comprehensive inventory of all assets categorised as essential facilities, commercial transferable assets and removable equipment, and we specify it to the inventory, shall include but not be limited, the following details for each asset: physical description, original cost, book value, location, remaining useful life, maintenance history, current condition and any encumbrances. In other words, any lease finance or charge on it. The key thing being those sorts of key parameters are the essential background information that anyone acquiring this kit will need to know. And you can see that at subsection three, we have the definition of essential facilities, and they are those assets that cannot be commercially or practically duplicated and are necessary for the provision of the licensed services to the public. So having got that definition of essential facilities, we then have at section 41, the transfer arrangements. And you can see there, the licensee shall transfer those essential facilities no longer than the date of the end of the license, either to the Government or the Regulator to a transferee. So that would be either the government's acquiring them or the regulator is directing that they be given, handed over, purchased, whatever the right word is to the successive body. That's probably what is referred to as the transferee. I'm saying probably that's what's being contemplated. The transfer value is to be determined under two mutual agreements, which would always be the case and the failing agreement by an independent valuation panel, payments be made within 90 days. The costs of the valuation panel are set out of subsection four, met by the government, where the potential facilities are coming to government, and where essential is being transferred to an entity other than government, by that other entity. Commercial transferable assets are dealt with in section 42. The transferee, so that's almost certainly a commercial entity shall have first right of refusal to purchase any commercial transferable assets of fair value. Again, that makes sense in the context. It's very difficult to mandate good faith negotiations, but we are attempting to mandate it in section 42, two, the licensee is required to enter into good faith negotiation for the transferee not less than 12 months prior to license expiration, and we got a definition of fair market value in subsection four. Section 43, equipment removal, the licensee must remove all removable equipment within six months following license expiration, or within such extended period, as granted by the regulator. And the way in which equipment is to be removed is specified in subsection two, to comply with all environmental law, safety regulations, to restore whatever it is that you've disrupted to its original condition, fair wear and tear accepted, minimize disruption to public services and infrastructure conducted a licensee sole expense not to detrimentally affect the provision of any transferred services. So this is all part of decommissioning. Prior to the license exploration, the licensee shall in accordance with the terms of the license, so don't forget, this is part of negotiation, provide a financial guarantee in the form of a performance bond, sufficient to cover the removal costs, plus 25%, so in other words, 125% of those removal costs as provided for through the negotiations in the license. Section 44, clause 44 deals with the consequence of non-compliance. And you can see there, there are penalties that can be imposed, such an impose, a penalty of 10% of the value as required. The cost of removal, you can see, is there too. And then finally, in section 45 in this part, we have the additional enforcement measures that are provided for there. Crucially, the regulator may record the non-compliance, use the noncompliance when determining future licensing applications, disqualify the licensee from participating in any licensing process for up to five years, and publish the non-compliance as well. So what you've got here, we believe, is a comprehensive way of looking at and seeking to ensure an orderly transfer of assets at the end of a particular license period. Thank you.

The Deputy Speaker -

Thank you AG. Honourable Mark Brooks.

The Hon. Mark Brooks -

Thank you, Deputy Chair, and following in line with the AG, I would propose to make an amendment to clause 39, so clause 39, section seven, (a) substitute, 'maintain all licenses services', (i) until such services are fully transferred to the transferee and (ii) in accordance with all quality of service requirements contained in the license.

The Deputy Speaker -

Thank you. Can I have a seconder please?

The Hon. Chief Minister -

Madam Chair, I beg to second.

The Deputy Speaker -

Thank you, Chief Minister. Honourable Members. Councillor Karl Thrower.

The Hon. Karl Thrower -

Yeah, I'd like to look at 39, (2), the comprehensive handover plan must be provided to the regulator no later than 18 months before the end of the license. 18 months, if you're a large network, is a long, long time. So I've just very quickly, and I didn't notice it before, I will say that very clearly, if you're asking for a handover plan 18 months before the end of the license, it is very likely that it will be out of date by the time that the license ends. So I would propose the following amendment that we change to read this; 'the comprehensive handover plan must be provided to the regulator no less than 18 months before the end of the license, and an updated version of the handover plan must be submitted no later than one month before the end of the license'. That would ensure that the handover plan is up to date just before the license terminates. Eight, I guarantee you 18 months, a lot of the things you're asking for below, this in the next section will have changed. You've got to imagine; you're going to have a regulator putting pressures on to do things. I'm going to build more equipment to meet the demands. You have to think 18 months in the terms of large-scale internet system is a long time of development and changes. You've got things like personnel. Well, we know that people change, staff change all the time, so I just think it would be better to put a provision in that they must submit an updated plan one month before the termination of the contract, to help the people that they're handing over to.

The Deputy Speaker -

Councillor Rob Midwinter.

The Hon. Robert Midwinter -

Sorry, Madam Chair, there's (a) might already covered further down, section five, where it says at any point during the handover, the regulator may where they deem necessary, request additional information to be included in the plan, modify the plan, impose specific conditions to protect other end user interests.

The Hon. Karl Thrower -

It is, but I think in that case, you could, there's no need for the 18. I just think it really firms it up that one month before the end of the contract, you're going to have an updated plan no matter what, that's all.

The Deputy Speaker -

Honourable Minister Brooks.

The Hon. Mark Brooks -

Just to help with the debate, I think we would still need the 18 so that the licensee is fully aware of the expectations that is required under this ordinance.

The Hon. Karl Thrower -

And I'm not suggesting, I'm simply, I agree with you that you need the 18, which is why I'm simply saying that they, you're not removing that. You're actually saying, and one month before the term, the contract you want another updated version.

The Hon. Mark Brooks -

Sorry, I thought that was covered in what Honourable Rob Midwinter's

The Hon. Karl Thrower -

Only of the regulator asks for it. Now, what happens if the regulator simply misses something? And you've got to remember, as a regulator, you wouldn't know. So if you're the regulator, how do you know how I've changed my network in 18 months? You haven't required me to provide you that information. So you, this way you're asking for, you're using the knowledge of the licensee to create the plan, not the knowledge of the regulator to create, to ask, to know what to ask for.

The Deputy Speaker -

Honourable AG, can you assist? Oh, I beg your pardon, Honourable Chief Minister.

The Hon. Chief Minister -

I just wanted to reiterate which what Honourable Robert Midwinter spoke about. But I think we are potentially looking at this section in parts instead of in its entirety, because then it's then followed up in six and seven talking about the handover being monitored and managed by the regulator throughout. So I'm sure if the license service was going to hand over or remove themselves, then obviously, over the period the regulator would be in contact with them. Because as you go right down to eight, it then talks about the regulator must conduct a review of the transfer to ensure that all the regulatory requirements have been met. So I think in its entirety, it is there. I am a little reluctant to put any more dates or months in the section, because it then could mean that a one month before a handover is not adequate time to be able to get a review done as well. So I think it leaves flexibility the way it is for communication to be ongoing within the 18 month period. Because I'm sure if people were planning to remove themselves, that kind of conversation would happen a lot earlier than one month.

The Deputy Speaker -

Honourable AG, did you have anything further to add to?

The Hon. Attorney General -

I agree with the remarks made by the Honourable Chief Minister in relation to it. I would disagree with one month, because we all know how quickly one month goes by, when information will be received, I would ponder three months perhaps, as being a better period, if one was going there. But I think the point has been well made that it's for the regulator to be on top of it. So the regulator can request additional information, modifications to the plan, so and so forth, and updating the plan pursuant to subsection five. I think we're all agreeing that it's a good idea, it's just a matter of, do we agree the mechanisms? And I agree with the Chief

Minister, as I say, that I think that the mechanisms are there, but I certainly agree with Councillor Thrower's sentiment.

The Hon. Karl Thrower -

I think my answer to that is very simple AG. As somebody who's going to be the regulator, how busy are you at the minute, and how busy are you generally, and how busy have all the AGs been and how much attention do you think they can put into the finalisation of a licensee with the rest of your workload? Or would it be better simply to put a provision in there that puts the emphasis of supplying that update onto licensee and just making it an easier path for you? I agree maybe one month is too short. I would suggest three months. But I'm just very conscious that also, people, and this is from experience, people towards the end of telecoms licenses may not be so nice when they're handing over.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

I can certainly agree with that latter remark. And I also refer the Honourable Member back to section, clause five, subsection five, the regulator must be provided with sufficient financial and human resources to enable the regulator to perform the functions under the ordinance, and those resources are to come out of a consolidated fund. In other words, it's an onus on government to make sure that the regulator, whoever he or she is, and that would include even the AG in default, has sufficient resources and bandwidth to be able to do this.

The Hon. Karl Thrower -

Okay, thanks.

The Deputy Speaker -

Thank you. Honourable Andrew Turner.

The Hon. Andrew Turner -

I don't know if this also helps, but if you're looking at potential changes in the network, the next section on 40 requires the asset inventory to be maintained, which would at least give some indication there's been changes to the network, and give the regular, the regulator would necessarily need to be quite so clairvoyant to know magically that the provider changed their network. I think the asset inventory changing would give them a pretty good clue.

The Deputy Speaker -

Honourable Minister Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair. So we did start this debate on this particularly, this particular section, with Honourable Councillor Thrower offering to propose amendment. Do the Honourable Councillor Thrower still want to propose an amendment?

The Hon. Karl Thrower -

Yes, you know I do, and I think I will do it on three months, as the AG suggested, and then it's not on my head when somebody who's experienced with handovers of telecoms has provided information. So I propose that we change it to read: 'the comprehensive handover plan must be provided to the regulator, no more, no later than 18 months before the end of the license,

and an updated version of the handover plan must be submitted no later than three months before the end of the license’.

The Deputy Speaker -

Is there a seconder to that proposal? Honourable Andrew Turner.

The Hon. Andrew Turner -

I'll happily second.

The Deputy Speaker -

Thank you.

The Hon. Attorney General -

Madam Chairman, could I just intervene and suggest that a shorter drafted version would be, ‘the comprehensive plan must be provided to the regulator no later than 18 months before the end of the license, and the date three months before expiry’.

The Hon. Karl Thrower -

Yes, I would accept that. AG, yes.

The Deputy Speaker -

Thank you. So can I put that amendment to members? Now I need to read that amendment out.

The Hon. Attorney General -

Do you want me to?

The Deputy Speaker -

Yes, please.

The Hon. Attorney General -

If that would assist. So 39, clause 39, two, would read ‘the comprehensive handover plan must be provided to the regulator no later than 18 months before the end of the license, and updated three months before expiring’.

The Deputy Speaker -

Thank you AG. Honourable Members, I put the question that 39 (2) be amended as just read out.

Question put with mixed results.

The Deputy Speaker -

We'd like to take a count please.

Councillor Andrew Turner - Yes.

Councillor Karl Thrower - Yes.

Councillor Robert Midwinter - No.

Councillor Elizabeth Knipe - No.

Councillor Dr Corinda Essex - Yes.

Councillor Ronald Coleman - No.

Councillor Gillian Brooks - No.

Minister Mark Brooks - No.
Minister Jeffery Ellick - No.
Minister Martin Henry - No.
Minister Christine Scipio - No.
Chief Minister - No.

The Deputy Speaker -

Thank you, Honourable Members. That's nine no's and three yes, therefore the proposed amendment falls away. Thank you. We now turn back to the proposed amendment to 39 (7) (a). Am I correct Minister Brooks?

The Hon. Mark Brooks -

Yes, you are correct Madam Chair. It's that, it's clause 39 (7) (a) and (a) maintain all licensed services, (1) until such services are fully transferred to the transferee and in accordance with all quality of services requirement contained in the license.

The Deputy Speaker -

Thank you. Any member wish to speak? So I'll put the question that 39 (7) (a) be amended as stated.

Question put and agreed.

The Deputy Speaker -

I now propose, I now put the question, I beg your pardon. I put the question that clause 39 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Now we go on to.

The Hon. Dr Corinda Essex -

Madam Chair, I think it should be "clause 39 as amended", because we accepted Minister Brooks' amendment.

The Deputy Speaker -

Thank you. So would you like me to say it again?

The Hon. Dr Corinda Essex -

Please, just for clarification.

The Deputy Speaker -

Thank you. I put the question that 39 as amendment do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now turn to Part Seven, I now put the question that the whole of Part Seven, do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Madam Chairman, I thought I'd been through the remainder of Part Seven. I'll happily take any questions should there be any.

The Deputy Speaker -

Honourable Members, any questions? Thank you. I put the question that Part Seven, as amended, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part Eight do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So this Part Eight encompasses sections 46 and 47 and it's all about interconnection and regulated access. And this is about effectively, not compelling completely, but requiring a licensee to allow somebody else to interconnect. Now we have a typographical error, but it will be dealt with as an amendment within section 46. We're in section 46, two, the word 'only' on the first line needs to be replaced with the word 'if'. And it's important because it's right to give for licensee a right to refuse interconnection if it would be technically infeasible to provide it in the manner requested, or it could be reasonably expected to impair the quality of the service being provided, or it would threaten the integrity security and interoperability. The rest of 46 deals with the way in which this system is to be operated, and it's all about trying to encourage people to reach agreement. But having said that, we have at section 47 the obligation to provide regulated access. And again, there's another amendment that we need to do, we need to substitute subsection two, in section 47, and 47 (2) should read 'a request under subsection one may be refused only if the regulator agrees it would be technically impossible or economically unfeasible to provide it in the manner requested, and the onus to prove that it's technically infeasible and possible or economically unfeasible rests on the regulated access provider'. It's trying to make sure that we don't legislate for impossibility. It's not appropriate to make law that nobody can comply with. And likewise, if you've got a situation where it's not appropriate for technical or economic reasons, what have you, to compel interconnectivity, then it should be properly denied. But the essence of Part Eight is to make provision for interconnection, which may be of significant benefit going forward. But there we are. Thank you.

The Deputy Speaker -

Thank you AG. Honourable Andrew Turner.

The Hon. Andrew Turner -

I just think it'd be quite useful if you could explain a little bit on the practical applications of why this is useful. Because obviously, same thing has existed pretty much only under an exclusive license for a very long time. And I think it'd be worth just perhaps getting a little bit of an explanation of how this works in practice, because I understand there are other small islands that have multiple providers, but they share a lot of the physical infrastructure.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

I thank the Honourable Member for his question. I think you also answered the question in your own way that you put it. I think it's going to be quite unlikely, particularly if we just have an exclusive provider, there won't be anybody interconnecting with the exclusive provider, but there may be other services or provision where it comes about, and this is part of us future proofing as well. I tend to agree. I don't see circumstances in the immediate future where this is going to be called upon. I think that's absolutely right, but it's reserving the position should it be necessary,

The Hon. Andrew Turner -

And this would create an arrangement very similar to, well actually, Isle of Man has something similar, do they not, which is between Manx Telecom and Sure?

The Hon. Attorney General -

I think this is where I declare an interest as being a Sure customer in the Isle of Man situation. I don't know whether they share equipment in the Isle of Man, but I do know that equipment is shared in other jurisdictions.

The Hon. Andrew Turner –

Thank you.

The Hon. Karl Thrower -

If I may?

The Deputy Speaker -

Honourable Karl Thrower.

The Hon. Karl Thrower -

I believe the AG is actually wrong. There is interconnectivity already on the island, and strange enough, it's between SHG and Sure and one of the things identified during the public hearings on the PAC was the linkings in Jamestown. Now the definition of interconnection is, it's the linking, means the linking, whether direct or indirectly, by physical or logical means, by a combination of physical and logical means of one communications network to the other. So actually there are already a situation that's arisen that actually stopped a lice, a potential future licensing process from going forward. But also all the telegraph poles are also arguably, what happens in the future if SHG want to put, say, a link between Prince Andrew School and another building or a new school, potentially, but they have to use the utility providers poles. The simple fact is that the new provider, or the current provider with a new license is already on those poles with a telecommunications network, so you would be linking them to the same physical infrastructure. So I would just say that I agree that there's only one, the chances are moving forward, there might well only be one licensee. But the question is, SHG don't need a license, but you have to think, I think about the share. You know, even up the Run now, if you look at the Run, my understanding is that some of those cables are telecommunications cables. Some are Sure, and some belong to SHG. So there is already interconnectivity by reading the definition of interconnectivity on the island.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

I'm very grateful to the Honourable Member for his comment, and he has proved what I would long believe to be the case, which is the Attorney General should not be the Communications Regulator for any length of time. And I, having listened to his remarks, I consider you are correct in what you say. So yes, there is interconnection, but you're also correct that if it's internet connection with us or government, then we're exempt of licenses and so forth. And also, of course, existing interconnections would be potentially thought that this provision is looking largely to the future rather than the current situation, but maybe you should apply for the job of the Comms Regulator, certainly ahead of me.

The Deputy Speaker -

Thank you, Attorney General.

The Hon. Karl Thrower -

So can I just add it? Because if you read the note above, I know it's not number 46, but in the note above, it says this part creates obligations for licenses under Part Six where exclusivity is not being granted in light of what we were just speaking about. Is that statement correct? Or could we, it doesn't affect it, but it's a statement that's in the document.

The Hon. Attorney General -

You'll be glad to know that my Legislative Drafter will be dropping these boxes from the publicised version. They are mental health.

The Deputy Speaker -

Thank you. Honourable Minister Mark Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair. And as alluded to by the Attorney General, I would like to propose an amendment to clause 46. So in clause 46 (2) after only, insert if, sorry, instead of only. Now, yes, I am reading of a paper that you produced AG. So after only, insert the word if, so it reads 'only if'.

The Deputy Speaker -

Could I have seconder. Chief Minister.

The Hon. Chief Minister -

I beg to second Deputy Chair.

The Deputy Speaker -

Thank you. So, is there any further comments? I put the question that clause 30, sorry, clause 46, two, is amended by inserting only, sorry by inserting if after the words only.

Question put and agreed.

The Deputy Speaker -

Okay, yes, there is a further amendment. Minister Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair, I would also like to propose a further amendment in the section. And there is amendment to clause 47, (2), to substitute it with 'a request under subsection (1), may be refused only if the regulator agrees it would be technical, technically impossible or

economically unfeasible to provide it in the manner requested, and the onus to provide that it is technical, technically impossible or economically unfeasible rests on the regulated access provider.

The Deputy Speaker -

I think you, would you like to read it again?

The Hon. Mark Brooks -

Sorry.

The Deputy Speaker -

Just read it again, the proposal.

The Hon. Mark Brooks -

Well, I'm reading what I got in front of me, is different. Sorry, I did make a mistake when I was reading it Madam Chair. So shall I start from the beginning again? A request under subsection one may be refused only if the regulator agrees it would be technically impossible or economically unfeasible to provide it in a manner requested, and the onus to prove that it is technically impossible or economically unfeasible rests on the regulated access provider.

The Deputy Speaker -

Thank you.

The Hon. Mark Brooks -

Have I got it right that time?

The Deputy Speaker -

I think you did according to my version. Could I have a seconder please? Honourable Chief Minister.

The Hon. Chief Minister -

Madam Chair, I beg to second.

The Deputy Speaker -

Thank you Honourable Members. Any of you would wish to speak? No. So I put the question that clause 47 (2) be amended as stated, and do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I now put the question that Part Eight as amended do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Part Nine.

The Hon. Mark Brooks -

Are we missing a number in section eight?

The Deputy Speaker -

No, we not got to clause 49, we're all obviously tired now. That's okay. I put the question that Part Nine do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. As our Members can see, Part Nine is all about critical national infrastructure, and it comprises just two sections, section 48, the declaration of critical national infrastructure. The Governor, through ExCo, may, by notice, publish in the Gazette, designate certain electronic communication networks and facilities associated with those networks is critical national infrastructure. So far, so straightforward. And then we get at section 49, clause 49, circumstances for the forced sale or transfer of that critical national infrastructure. So you can see at subsection one, ExCo may initiate the forced sale of that critical national infrastructure under the following circumstances; imminent threat, systemic failure of the operator, persistent noncompliance with obligations imposed in terms of the critical national infrastructure protocols and national emergency, and where the licensee enters into receivership liquidation, or takes action for its voluntary winding up, or for the operational failure of the owner. Now I can tell you we are going to have an amendment in relation to clause 49 (2). And 49 (2), as you have it, is to be substituted, and the new 49 (2) is to read: the Governor, on the advice of the Executive Council, shall initiate the forced sale or transfer process by (a), issuing a formal notice of potential for sale or transfer; (b), providing detailed justification for the intervention; (c), specifying the critical national infrastructure that will be subject to the sale or transfer, and (d), outlining the process and timetable to be followed. As you can see, its subsection 49 (3), the government, a governor, on the advice of ExCo has to appoint an independent valuation panel, the transferee is to be paid, but the fair compensation determined within six months of the date, sale or transfer. And for the purpose of the section, current market value means the price and asset would sell for on the open market at the time of valuation. Thank you very much.

The Deputy Speaker -

Thank you, Attorney General. Any Member wish to speak?

The Hon. Karl Thrower -

Yeah, can I just ask? So in 49 (1) in (b), it actually uses the term network operator, and yet it uses the licensee. Is, could you explain what the reason is for that variation? Because that's one of the first times we've actually seen the term network operator in a context to somebody taking over critical national infrastructure.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Forgive me, Madam Chairman, I'm actually thinking (*Pause*). I would tend to agree with you. I think the words network operator perhaps should be replaced by licensee, or what have you, under the circumstances, because that is clearly what it is directed to. I don't see it as an issue, though, because if you ask the question, how would this be interpreted, I would say network operator would be interpreted as licensee. But we do have in (e) a reference for the licensee there, so I would see no issue if it said, was a systemic failure of the licensee which was used instead of network operator.

The Hon. Karl Thrower -

Sorry, so I actually, I was asking that to get clarity. But I think I know the reason, I wasn't there, I actually wanted it to actually be able to talk about this. So if you, if once your license is gone, you could potentially not be a licensee, because I no longer have a license, but I can still own a network, and doesn't that ensure that even, say after the licensee, the license is lost, that we can still take over the network to protect the island.

The Hon. Attorney General -

You may very well be right. I just think you're writing your application form to be the comms regulator.

The Hon. Karl Thrower -

Yeah, I just think it's important to, because we've been talking about what happens if worst case scenarios.

The Hon. Attorney General -

As a lawyer, I wouldn't get too hung up on these words, issues, because I know when I fall to interpret the provisions as against a particular prevailing set of circumstances, I would flex whatever was required under the circumstances. So it wouldn't matter to me one iota if I was dealing with someone whose license had just expired and they were owning a kit, I would interpret it to mean that's what you were intending to do. Whilst we try to cover everything impossible in an ordinance, as we are trying to do here, there will be circumstances where you have to flex the interpretation. I'm so grateful that you did answer the point on network operator, you're probably right. I mean, this has been through so many different iterations of versions that we do have the support of people who are much better versed in comms as a technical thing than I am, and this wording, has survived. So we do have Susanna on the line if you want to hear from her?

The Deputy Speaker -

Could I ask Susanna to provide some help here please Susanna?

The Hon. Chief Minister -

Susannah, go ahead.

Susannah Nightingale, Communication Consultant -

Thank you. Yeah, could you just repeat the exact query? Because the line is quite difficult to hear, so I want to make sure I've got the correct response.

The Deputy Speaker -

Yes please. Karl.

The Hon. Karl Thrower -

Sorry, in 49 (1) (b) it says systematic failure of the network operator, whereas in (e), it refers to where the licensee so I was just asking for clarity on why one says network operator, and in the rest of the document, mostly it refers to the licensee.

The Deputy Speaker -

Go ahead Susannah.

Susannah Nightingale, Communication Consultant -

Yeah, I don't think, I think in this case, I'm probably in agreement with the Attorney General that with his response that this isn't necessarily a matter of concern, in that it's, there's no real difference. It's just drafting, I think, on this particular point. And I think what it's trying to do is distinguish between the fact that there may be, at some point in time, a difference between network operator and a service operator. So we were just trying to catch both in the future.

The Deputy Speaker -

Thank you, Susannah. Honourable Karl Thrower, are you happy with that response?

The Hon. Karl Thrower -

Yes, I think it's as far as we're going to get. I think I'll talk to (*inaudible*).

The Deputy Speaker -

Thank you. I almost forgot where we were now. 49, so are there any further comments from amendments? No? So Honourable Minister Mark Brooks.

The Hon. Mark Brooks -

Yes. Thank you, Deputy Chair and if there's no further comments, I would like to propose a memo to clause 49 (2). So if we could substitute 49 (2) to read, 'the Governor, on advice of Executive Council, shall initiate a forced sale or transfer process by – (a) issuing a formal notice of the potential forced sale or transfer; (b) providing detailed justification for the intervention, and (c) specifying the critical national infrastructure that will be subject to sale or transfer; and (d) outline the process and timeline to be followed.

The Deputy Speaker -

Thank you. Could I have a seconder? Chief Minister.

The Hon. Chief Minister -

Sorry, Madam Chair, I beg to second.

The Deputy Speaker -

Thank you. Honourable Members I put the question that clause 49 (2) be amended as stated.

Question put and agreed.

The Deputy Speaker -

I put the question that Part Nine as amended, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Part 10, I put the question that Part 10 do form part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Hopefully this is one that we can deal with quite quickly. This is acquisition of control, and also in relation to dealing with war and emergencies. Section 50 deals with acquisition of control by the government, with the circumstances in which are set out in subsection one. So it says the section applies where license under this Part has been revoked or terminated, and another license for the same network of services has not yet been granted; or a licensee ceases to operate, or in a reasonable, justified opinion of the governor is

about to cease to operate; or for any other reason that the Governor considers it's necessary in the public interest to acquire control and provision of the network. The purposes of one (a) license is not deemed being terminated if it expires at the conclusion of the license period in accordance with the conditions of the license. So in other words, we're looking for a termination or a revocation on what I might tell, hostile grounds, as opposed to just deflection of time. Subsection four, the Governor may take any steps he considers appropriate to assume control over the network or communication services or both, and he can, by order, provide for the declared assets to vest in the government and appoint staff to act and regulations can be made under subsection five. One isn't anticipating that the power under section 50 will be exercised often or at all as one of those reserved powers that we hope never forced to be exercised. And if that's true for section 50, it's all the more true for section 51 which is war and emergency. So section 51 gives emergency powers for the Governor to take effectively, to take control of whatever is required. And if he does take control, subsection two, the Governor will, to the extent he considers reasonable in the circumstances, pay compensation to effective licensees. Thank you.

The Deputy Speaker -

Thank you, Attorney General. Members, do you wish to speak? No? So I put the question that part nine. Just need to make sure I'm right. I put the question Part 10, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 11, do stand part of the Bill. Attorney General, thank you.

The Hon. Attorney General -

Thank you, Madam Chairman. So Part 11, as you can see, is entitled, consumer protection, and we get it in clause 52, the consumer code of conduct. And you can see subsection one, the regulator must monitor compliance with all terms of all licenses issued under the ordinance. And then it goes on to provide and you can see at subsection four, there is to be a consumer code of conduct, and it must include provisions relating to standard of service, quality of service, safety of end users, handling of complaints, prohibition on the use of the services to make unsolicited communications, confidentiality, privacy protection for end users, fair use policies, telephone directories, and the like and provision for the disclosure of the information for purposes of directories, all the sorts of things that you'd want to see. And don't forget the regulator's prime functions when testing and checking the licensee will be 'has this consumer Code of Conduct been complied with'? Moving on to clause 53 it's all about network neutrality. And as you can see, the licensee must not block access to end users. Must not implement discriminatory network practices. Now, of course, there has to be exceptions to this, and for example, if one is offering a different standard of service, necessarily you are expected to provide that standard of service. If you're providing a service to somebody and they've got a package that's 10 megabits per second, you can have the package at 10 megabits per second. You're not discriminating. If you're also selling a package for 100 megabits per second, and you're supplying that to somebody on that basis, but it's all about trying to ensure there's no outrageous inappropriate discrimination, making sure access for all, and that the licensee is being fair to all. Thank you.

The Deputy Speaker -

Thank you, Attorney General. Any Members wish to speak?

The Hon. Karl Thrower -

So one of the things that's get raised the most by people on the island is that, actually, I see you've got Fair Usage policy, which is great, but is the use of the term 'up to' when regarding speed. This will, just for the record, this will protect people from things like the misuse of terms, like 'up to' as well.

The Hon. Attorney General -

It can, and it depends, and it can, and it depends on what's in the consumer code, the attitude of the regulator, and what's in the licensee. I tend to agree with you. I do not like 'up to' for all of the reasons that you're hinting at. It gives uncertainty, and it allows what you might consider to be substantial lack of performance to be got away with. So one hopes that the arrangements that will be put in place, and this is the framework for the arrangements, as distinct from the arrangements themselves, will ensure that those sorts of practices are minimised or eliminated.

The Deputy Speaker -

Thank you. Okay, I put the question at Part 11, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 12 do stand part of the Bill. I'm sorry having to call on you all the time, Attorney General, but I have no choice.

The Hon. Attorney General -

It goes with the territory Madam Chair, it goes with the territory. And we've all realized why I should not be the comms regulator for any length of time, which is the important part for me. Part 12 is all about Broadcasting Services. So we've got a change of pace here. We're dealing with a completely different part of the electromagnetic spectrum, or the services that are provided by or can be provided by it. So a person must not provide any free to air broadcasting service, or re-broadcasting service, or DTH, a direct to home broadcasting service from within, or to St Helena intended for reception here, except in accordance with a sound broadcasting service license or television broadcast and service license granted under this part. So that's our starting point. The requirement for a license, section 54 continues to provide the arrangements that you'd expect for a license. Section 55 sets out the exemptions from a license requirement. And as you can see, anything done by the Crown of a non-commercial nature, is exempt for these purposes. We also have an exemption in relation to anything done by an amateur. An amateur means a person who's interested in radio technique solely for personal reasons, without any commercial or financial interest or promoting what have you. Section 56 deals with amendments and revocation of broadcast service license, very much boilerplate type provisions that you'd expect for this sort of issue. Renewal of broadcasting services licenses is dealt with in section 57 and just in case there were any technical matters that need to be dealt with, then the regulator's given power through section 58 to deal with those sorts of issues. Thank you.

The Deputy Speaker -

Thank you Attorney General. Honourable Andrew Turner.

The Hon. Andrew Tuner -

Thank you Madam Chair. This is obviously the area, particularly the exemption on anything done by an amateur that I've been seeking some clarification on for some time, because I want to understand how this inter relates with amateur or ham radio operators and what licensing

they would require, because I understand it would still need some licensing, it just wouldn't be under this.

The Deputy Speaker -
Attorney General.

The Hon. Attorney General -

I have to declare another interest here. I have an amateur radio license, my 'alpha whiskey delta'. It was issued in the Falkland Islands to me when I wasn't. I have a particular interest in amateur radio, not because I am a particular amateur radio fan, but because I did an awful lot of work trying to understand the legal issues.

The Hon. Andrew Tuner -
It's always a ground

The Hon. Attorney General -

It actually is, many bottles of red wine later I'll tell you the story. The important thing is, obviously, if you are an amateur radio enthusiast, you will be broadcasting. You will also be using parts of electromagnetic spectrum, which we'll also be coming on to in part 13. We also have part 14 radio communications licenses. So the issue of amateur enthusiast will, falls within the next two or three parts to look at in particular, and it will be through and I think it's part 14 that the license will ultimately be granted for them. We don't want to do anything which makes life more difficult for amateur radio enthusiasts, as an example than it needs to be or should be. And you'll see when we come on that there is proper provision made for them. So I don't see it as an issue within broadcasting services, per se, but obviously there's an exemption for them. They don't need a broadcasting license because we accept, they're amateur so they're not getting a license under Broadcasting Services, but they will be licensed by one of the other parts, as you'll see.

The Deputy Speaker -
Thank you Attorney General.

The Hon. Andrew Turner -

Would that exemption also apply to somebody setting up a non-commercial radio station purely for their own enjoyment of it? If I got an FM transmitter, could I sit out, hang it outside my bedroom window, for example, and start broadcasting as an amateur? Would I need a license elsewhere?

The Hon. Attorney General -

Well, the example you've given, I think, would fall squarely within the exemption, would be fine. You know, if you were doing it for solely for personal reasons, I mean goodness knows who would want to listen, but that's a different story, and you were doing it for personal reasons. If you had no commercial or financial interest or motive, it would fall squarely within the exemption.

The Hon. Andrew Turner -

I fully agree AG, by the end of today, many people will be sick of my voice. Some probably are already.

The Deputy Speaker -

Thank you. Any further, questions, comments? Thank you. So I put the question that Part 12 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 12 do stand part of the Bill. Honourable Attorney General.

The Hon, Attorney General -

I think Madam Chairman, you meant to say Part 13.

The Deputy Speaker -

Oh, I looking at 13. I do beg your pardon. I will say that again. I put the question that Part 13, do stand part of the Bill.

The Hon. Attorney General -

Thank you, Madam Chairman. I think I heard the Governor say a couple of days ago that the electromagnetic spectrum was one of Saint Helena's most valuable resources. And Part 13 is where we start to ensure that government regulator, ExCo, whichever one you want to look at it is in a position properly to manage the spectrum, our spectrum surrounding St Helena. So you can see at Part 13, the words of section 59 and I'm glad to say you're seeing some of my personal influences in here, we are referred to the custodian of the radio frequency spectrum. At one stage, an earlier draft suggested ownership, and I wasn't quite sure one could own a spectrum, but anyway, that's why we are the custodian of the spectrum surrounding us, and the regulator is responsible for the management and assignment of the radio frequency spectrum. And as you can see, international agreements which affect us or we're party to, then we actually have to take the guard and apply them. And you can see that at section 59 subsection three. So section 60, clause 60 gives, sets out the duties of the regulator in carrying out the radio frequency spectrum functions. And you can see the regulator's got to look at what part of the spectrum is available for use or further use. What's the demand? What's it now? What's it going to be, and what existing licenses already are there? More importantly, if we're to make best use of the spectrum, you have the obligations in 62, the regulator must also promote the efficient management and use of part of the radio frequency spectrum. Regulator must also promote the economic and other benefits that may arise. We talked about experimentation before, the regulator must also promote the development of innovative services and the source of growth competition, the provision of all electronic communication services subject to the grant of any exclusive rights. So that the function, the role of the regulator is to maximise the benefit for all and to maximise the use of our spectrum.

We have at clause 61, the St Helena Frequency Allocation Table, and you will expect to see a publication by the regulator. The regulator will have his or own website with the lead, in due course, where we'll publish who's got what part of the spectrum and what has been allocated for going forward. You can see the regulator is under an obligation to keep the frequency allocation table under review, make revisions as required, and publish the table. I have to say this is one of the functions that the Attorney General is competent to do, because I have done that. In the absence of an allocation table, we'll default to ITU, Region One. And there is a definition of premium radio frequency spectrum bands, and you can see that definition is those bands for which demand exceeds availability. The discretion to allocate and assign a radio frequency spectrum is given to the regulator in his or her discretion. That's clause 62, one, and again, when doing so, the regulator must ensure that the spectrum for radio communications are allocated under procedures which are objective, non-discriminatory, transparent and

proportionate, respect the international agreements, maximise efficient use and take account of national policy. Clause 63 deals with the procedures for dealing with harmful interference. And I'm sure you will all see that they're very important things to have. And we touched on interference earlier this morning, but you can have an enforcement order, which must be in writing, specify the interferences caused, specify the actions to be taken and the time during which those actions must be taken, as well. The regulator has ability to impose restrictions concerning lecture communications, and they're all set out at clause 64. Thank you, Madam Chairman.

The Deputy Speaker -

Thank you, Attorney General. Honourable Karl Thrower.

The Hon. Karl Thrower -

AG can I just ask for some clarity? And this is actually in relation to a point that was raised with me at the weekend, by some of the boat owners on the wharf. First of all, when you say St Helena in this context, it does include the territorial waters of St Helena?

The Hon. Attorney General -

Yes, that's the normal legal definition. Whenever you're defining the land, you also include the 12 miles beyond the territorial sea.

The Hon. Karl Thrower -

So it's 12 miles, but it's not the 200 miles?

The Hon. Attorney General -

Yes.

The Hon. Karl Thrower -

Okay, so I think that's one point. So this could, in relation to why they were talking, was they were asking me if I could listen to the amount of rubbish that people had on the VHF on Channel 16, which is normally used for like the ferry boat operators and that. So would this give you the right to also monitor if somebody says, you know, I know we talk about harmful interference normally when it broadcasts across frequencies and that. But would you also, under this be able to ensure the proper use of the channels that are, we do a lot to things like harbour control and things like that?

The Hon. Attorney General -

So it's not necessarily under this part, but you bring into a different element as well. You also bring in the marine requirements there, and there would be an overlap in the law in the regulations. The regulator will have the opportunity to intervene, and you'll see later, when we deal with offenses, there may be issues that you were describing before within the offenses. Unfortunately, the decisions with regard to offenses do rest with me as the Attorney General under the terms of the Constitution, that's a different issue. There will also be marine safety requirements there, and so there will be a combination of people who could intervene, should there be an issue, if there was abuse. I mean, what you're saying is probably no more than the usual idle chatter that you'd expect to hear whenever you're on a boating frequency. Sometimes it can overstep the mark, most of the times it doesn't. But if it was an issue, I believe there are sufficient powers, not necessarily in this part, but elsewhere and with the marine authorities, to take action.

The Hon. Karl Thrower -

Thank you.

The Deputy Speaker -

Thank you. So I put the question that Part 13 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question at Part 14, do stand part of the Bill. Please, Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. So this is the more vanilla ice cream part of the ordinance in terms of radio communication licenses, more generally, and this, I believe, is where your amateur radio enthusiasts would be licensed directly. But more importantly, what you see in section 65 is the general prohibition on radio communications activities. So I think, it might be one of those situations where we need to go back to section two. And radio communications - so here we are - means the emitting or receiving of electromagnetic energy, which is either you've got (a) or (b), and it refers to broadcasting or receiving as necessary. So subject to exemptions, which we're going to come on to, no person may use the radio frequent spectrum, or establish the station, or install or use any apparatus for radio communications. Total ban unless it's licensed. Now, the conclusion, important thing, is that there will be class licenses, individual licenses and exemptions. So nobody's going to ask at the moment that your wi-fi router is going to require a license, because it's going to be exempted. But the basic position is, unless you have a license or it's exempted, it's bad. So section 66 deals with the grant of radio communication licenses, terms and conditions, very, very simple section. Section 67 deals with power to delegate, so if the regulator is too busy, they can get somebody else to issue the radio communication licenses. And I'm certainly very grateful that with some of my colleagues in Chambers elsewhere that were granting the licenses rather than me personally, it would be difficult to do it. So section 68 deals with the conditions that can be included in relation to a license. All of this is boiler plate. Nothing here is remarkable in any manner, shape or form. It's what you tend to see the world over, or certainly the UK, Commonwealth, what have you. Section 69 deals with the application for the grounds for refusal of a radio communications license. Section 70 is again boiler plate, it deals with the amendment or revocation of a license. Section 71 deals with a renewal. Section 72 deals with a register. The regulator must maintain a register of who is licensed, and it's quite interesting, if you're going to look through who's got what call sign, so and so forth. Crucially, at section 73, clause 73 we have the exemptions. So as you can see it, 73, one, receive only radio communications, such as your radio receiver listening to sounds of so and so forth. You will not require a license to do that, and that's why we have these sorts of exemptions here. You are exempt if you don't have the capacity to transmit radio signals on the server and so forth. That's why it's important. Section 74 deals with transfer of rights, section 75 variation as required, and section 76 in terms of regulations. So if you're not a major player, if you are just dealing, you're just an amateur, or something of that order, or you're doing something that's experimental, or what have you, you're going to be under Part 14 to get your license. And it's very much the typical sort of licensed regulatory regime that you tend to see. It's just one which is neutral, allows the regulator to exercise discretion and grant exemptions and so on and so forth.

The Deputy Speaker -

Thank you, Attorney General. Any member wish to speak? Honourable Andrew Turner.

The Hon. Andrew Turner -

So I'm going to go back onto the ham radio subject, just a little bit because it is a fairly popular hobby around there, certainly several operators around that I think would be quite interested to know if and how licensing environment will change. So, I particularly want to pick up on the line where, I understand the regulation of the use, but there's also about to install any apparatus for radio communications. So what happens, well first of all, I assume that means you have to get your license first before you can put your mask up, and then second, what happens if your license expires or the license holder passes away and the apparatus is still installed?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

You may remember I refer to public interest tests and so on and so forth. So nobody in their right mind, I believe, would initiate any form of enforcement of proceedings or circumstances that you describe, that deceased person's area or whatever the mask remains in situ, and nothing but kindness and consideration should follow in those circumstances, as far as I'm concerned, unless there's an issue that requires it to be removed in due course. The basic situation is, why section 65 is worded the way it is. You're trying to catch everything, you know, you could also say, but it doesn't say you can't import the equipment, you can't possess the equipment, but it doesn't say that. You are allowed to import in this under this ordinance, there may be restrictions, but what you can't do is set it up. That's what it's really driving at. If you're there and you inherit that's to say it's a different scenario, and you you've been given discretion with the exercise, obviously. So it's trying to make sure that there's not too much wiggle room for people to say, oh, well, you know it was here already, of course, I'm allowed to use it. The answer is, no, you're not. You're not allowed to set it up and go forward on that basis. But as I say, you will have situations where old equipment is erected, it is in situ and I would assure, I'm sure that just a gentle word of the order's necessary.

The Hon. Andrew Turner -

I think it was an earlier draft that had the issues around making it unlawful to own equipment, which I always thought was a bit draconian, but I'm glad to see that's been removed.

The Hon. Attorney General -

Well, you'll be glad to know that there are other Overseas Territories where, when you fly in, you have to fill out handling cards declaring whether you're importing satellite equipment.

The Hon. Andrew Turner -

I was more thinking of radios but.

The Deputy Speaker -

Thank you Honourable Member. There's no other Members who wish to speak? I'll put the question that Part 14 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 15, do stand part of the Bill. Honourable Attorney General, thank you.

The Hon. Attorney General -

Thank you, Madam Chairman. I think this is probably one of the most uncontroversial parts of the ordinance. It's all about the + 290 country code, and it's also about our.sh high level domain, upper level domain names. So as you can see, it's clause 77, the government, on behalf of St Helena, manages the + 290 country code. The regulator has to have a National Numbering Plan, and the remainder of clause 77 deals with the rules for the National Numbering Plan. Clause 78 deals with other numbering obligations, and the regulator has to follow public consultation procedures before varying the plan, the National Numbering Plan. Domain name administration for the.sh top level domain is provided for in clause 79 and you can see a clause 79 (2), it's the responsibility of the regulator to manage, allocate and assign.sh domains. Clause, subsection three, the regulator must, in relation to top level domains comply with, ICANN requirements again, which what we require, maintain a central registry and comply with international best practice. And then finally, at clause 80, domain name registration rules, ExCo may make regulations and determine fees for registering.sh domain names. Thank you.

The Deputy Speaker -

Thank you, Attorney General. Any Member wish to speak? I'll put the question that Part 15, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I now put the question that Part 16 do stand part of the Bill? Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Part 16 is close to the Financial Secretary's heart. It's all to do with fees. So clause 81 provides for the making of financial, of fees regulations I beg your pardon. Clause 82 deals with collection and destination and as you can see, fees paid end up in the consolidated fund. And if you don't pay, clause 83 deals with recovery, and clause 84 deals with the calculation from the basis of interest, which charge for late payments. Thank you.

The Deputy Speaker -

Thank you. Any Member wish to speak? Okay. I put the question that Part 16, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 17, do stand part of the Bill. Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Part 17 deals with the use of land, and you can see clause 85 deals with the entry onto land for exploratory purposes. I'm sure most of us will appreciate certainly, that when it comes to communications, it's often necessary to use private land for the siting of equipment, and obviously, clause 85 provides for entry on to land on reasonable notice, as you can see, it's subsection one for the purposes of making investigations in terms. As you'd expect when you're claiming the rights to go onto somebody else's land, it's important that there is an obligation to remedy any damage or harm that's caused, and that comes in clause two, sub clause two and pay compensation. And you can see at 85, three, wherein, in

consequence of the exercise of the right any person is disturbed in their enjoyment of land, again, licensees to pay compensation in relation to that disturbance is paid for in regulations. If you're going on somebody else's land, you must act in accordance with good engineering practice and protect the environment, protect the safety of everybody involved, and ensure that public utilities, roads and the like, and interference with them, is kept to a minimum. So section 85, is again, what you'd expect. I say, there will be circumstances when entry onto private land is necessitated. Clause 86 deals with entry onto land for construction and operational purposes, and it's a very short section, a person authorised by a publicly available electronic communications network. In other words, a licensee may enter land for the purposes of constructing, installing, operating, removing equipment, apparatus, as you can see. Clause 87 provides for the making of regulations, and it sets out quite detailed requirements, what those regulations can provide for when you can see, when you turn over, onto sub clause three, and that there are separate requirements if there's the shore or the sea bed is used and there's a public interest test and requirement involved at the end of that as well. Whilst the entrance on to private lands can be controversial, these provisions themselves are not.

The Deputy Speaker -

Thank you. Any Member wishes to speak? Honourable Karl Thrower.

The Hon. Karl Thrower -

Thank you. Just for clarity, AG, and once again, it's something actually came up when we were looking at the DBT project, when we did the previous ordinance that then never came to fruition after it was passed, but obviously one of the things was, because it's got references to construction, I think it's important for the public to know this still means any construction would still have to go through planning and therefore through an LDCP, etc.

The Hon. Attorney General -

Can I just apologise. My mind has been taken on to an email which I was trying to read. So could you be kind enough to repeat it for me please.

The Hon. Karl Thrower -

Yeah, just for clarity because there was a concern raised previously when we were talking about entry onto land and construction and that. Any construction under this would still have to comply with the full planning process, land development control, plans and everything.

The Hon. Attorney General -

Absolutely. The only gloss to say in relation to that is some operations do not require development permission. Some might be part of permitted development rights and the like, but they would be subject to the, all the planning requirements that we impose in Saint Helena. They all would have to be dealt with but as I said some of them could be permitted development.

The Deputy Speaker -

Thank you.

The Hon. Karl Thrower -

I know you weren't here. Some of the farmers kind of thought that somebody would go on one day, they'd wake up and they'd be a long line of poles across their best land kind of thing, so.

The Hon. Attorney General -

Fortunately, that's why we have a regulator, or will have a regulator, and he or she be making regulations, or expert will be making regulations to avoid that sort of thing happening.

The Deputy Speaker -

Thank you. I put the question that Part 17, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 18, do stand part of the Bill.

The Hon. Attorney General -

Forgive me, Madam Chairman, can I just intervene for a moment? I find it beneficial to have a 5/10, minute break, not in the least, because I've got a host of emails relating to the work that we're doing that I need to read. I'm also conscious that it's heading up towards four o'clock. I think we potentially close enough to finish today, but we might also decide that today, that now is a good time to pause and come back tomorrow. I just raise it as a suggestion.

The Deputy Speaker -

I would put that to Members to get their opinion. Who would support that?

The Hon. Chief Minister -

Sorry, I am speaking, I think, on behalf of the whole Ministerial team. I have shared with you all, all the meetings that we have now up until the time we finish, if we take out another day tomorrow, meetings that are scheduled for tomorrow will then have to roll over, and roll over to where I really don't know, because we just don't have time. It includes meetings with FCDO, etc., and it's ensuring that we move forward with the Capital Program. I'm being really open and honest here now, because we really need to give direction as to how we wish to spend the 13.5 million, unless we'll lose three months of good work, and we've got cabinet meetings in preparation for ExCo again next week, which really needs to be done. So we're down to the wire when it comes to giving up another day tomorrow.

The Deputy Speaker -

Thank you, Honourable Chief Minister. Honourable Robert Midwinter.

The Hon. Robert Midwinter -

I would be, I literally just took a comfort break, Madam Chair, but I would be in favour of a comfort break, but then plugging on and trying to clear this today.

The Deputy Speaker -

It would need to be completed by six o'clock. So could we take a 15-minute break? Thank you.

(Break)

The Deputy Speaker -

Honourable Members, we will now resume at Part 18. I put the question that Part 18 do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman, and thank you also for giving us that short adjournment. So Part 18, I suspect, will produce some sort of debate amongst this, but I do believe we're in the home straight in terms of getting to the conclusion of the Bill. So Part 18 is about public interest retention and interception of data and surveillance. Part 18 has the following sections: section 88 surveillance commissioner; 89 retention of electronic communications data; section 90 disclosure requirements; section 91 interception warrants; section 92 directed surveillance; section 93 intrusive surveillance; section 94 practicability of requirement. And as you will see on your amendment, Chief, Madam Chairman, there is an amendment proposed to insert a new section, a new 95 ahead of what is currently numbered 95 and if you will forgive me, I will read out what is intended to be inserted in 95 and this is a section which will be headed, 'Warrants generally'. When issuing in a warrant pursuant to this part, the surveillance commissioner or the court, as the case may be, may authorise: the entry into premises, land, buildings, vessels, vehicles, equipment, apparatus, and similar, the placement of equipment or apparatus, and the disturbance or interference with equipment or apparatus, direct that the persons executing the warrant be accompanied by a police officer or other named official. And for the purposes of that previous subparagraph, it is sufficient that any named official has identified either (a) by their office or job title and their office address, or (b) by name and their office or home address. A warrant issued by, under this part by the surveillance commissioner or court, as the case may be, may be executed in conjunction with a warrant issued to the police or to any other person or lawful authority. Regulations concerning warrants made pursuant to this part may also provide for securing premises, buildings, vessels, vehicles and the like, after entry or interference has been affected, and requiring the payment of compensation if harm or damage is occasioned. Now Madam Chairman, if that amendment is agreed to insert a new section 95, it necessarily means that what the clauses that are currently made at 95 onwards, 95 to clause 131 will become clauses 96 to 132. Now, as you can see from your amendment sheet, there will be, as a consequence, that a wholesale series of amendments where there have been cross references to, or from the sections that follow 95, and that's what you've got on the bottom of page four, all down page five and on the top of page six. I will leave it to you, Madam Chairman, as to whether or not you want all of that to be read out. But they are only consequential changes and amendments. They are nothing substantive in effect. So if the insertion of clause 95 is accepted, what is now numbered 95 will become 96 and that section relates to the capability to intercept and retain data. Currently 96 but will be 97 requirement to disclose protected information is the final section of this particular part. Perhaps I've said enough for this part, because I'm sure, as I say, there will be a debate, and it may be easier if I simply answer any questions to me that come as a consequence of that.

The Deputy Speaker -

Thank you, Attorney General. Honourable Andrew Turner.

The Hon. Andrew Turner -

Thank you, Madam Chair. Obviously I made it quite clear in my exposition to the Bill that I have very grave concerns over this section. I think the AG's explanation earlier today really helped highlight some of them and actually made it very clear what the test is, is whether these measures, albeit necessary, are they proportionate? And I am not convinced that they are. Nevertheless, there's also, I think, even if they are to go ahead, a great need for much more engagement on this issue so people can actually understand what we're intending to do in terms of their rights to privacy. So I have potentially two ways of going about this. I have basically drafted about four, make that five pages of amendments that would, I think, bring it into line, much more, into a much safer way, with the constitutional values, etc. But I wonder if it might not be more prudent, considering that this particular section is rather controversial and it's not

strictly necessary for the urgent matters that Minister Brooks spoke about in terms of the negotiations with service providers, whether it might not be wiser to essentially park this section until some further consultation, some further work on it can be done, you know, so that we're not still going through line by line, trying to fix something that I think potentially needs a much wider overview. So I would be inclined if the AG, perhaps, advise on how best to do this, to do an amendment that would essentially remove this particular part.

The Deputy Speaker -
Honourable Attorney General, are you able to?

The Hon. Attorney General -
I think the simplest answer is, if that's what you wish to do, you simply move an amendment to delete Part 18. Before you do, if I can just make a couple of comments in relation to the discretion and otherwise which will be exercised. I won't repeat my remarks I make regarding the Constitution, but please do bear in mind the Constitution stands behind. If you look at clause 91, subsection two, it says the Surveillance Commissioner acting in their discretion, or a court may grant a warrant only if satisfied that it is necessary on public interest grounds and it is proportionate for the purpose for which it is required. Yes, and you'll see that the same wording is in 92 three again. But as I say, if you wish to move an amendment to delete Part 18, that would be the simplest way.

The Hon. Andrew Turner -
Perhaps, to highlight some of the concerns, because it is around that motion, it's because it is an either or that I still have the concern. If it had been weighted in favor of the court and it had been at the discretion of the surveillance commissioner in terms of emergency or national security, etc., that would have allayed by fears. Because it's an either or, because it can still be at the discretion of a single individual whose qualifications we don't yet know, because they would be decided later on by ExCo, I am not comfortable that that is an adequate protection for the constitutional rights of our citizens.

The Deputy Speaker -
Honourable Chief Minister.

The Hon. Chief Minister -
The only comment I would make with regards to this is, obviously it's talking about Executive Council. But Executive Council would, although we would probably help or support the ToRs of any of these positions, because it says so in legislation, it wouldn't be down to Executive Council to do the whole recruitment process, etc. But because of that, I think that we need to think more holistically and realise that as a government, not just as Executive Council, we wouldn't be employing someone who would not be upholding the Constitution. So I think, I can't tell you who the person is going to be, I haven't got a clue as to who that is, but I do think we need to think about the fact that if somebody was operating, working for the government and wasn't upholding the Constitution, that would be something that would be addressed quite seriously. So I'm just saying that I hear what you're suggesting. I can't give you any more assurance, because we don't know who the Surveillance Commissioner will be at this time, but I think we have to be careful that we are not getting down again into too much of the detail at such an early stage.

The Hon. Andrew Turner -

Well actually, Chief Minister, I think that rather highlights my concern is that there it says the specific qualification criteria for the surveillance commissioner must be determined by Executive Council. We have no knowledge as to what that specific criteria will be. It may not even be this government or the next one that ends up deciding what that criteria is. I think, because this is in potentially, necessarily infringing, still infringing on some very strict constitutional protections, very stringent and important constitutional protections that are relevant to the daily lives of our citizens. I would have much preferred, and in fact, one of my five pages of amendments includes listing some qualifications, or at least, what's the word I'm looking for, traits for the Surveillance Commissioner. But as I say, I'm trying to avoid having to go through all of these particular amendments and having to have votes, etc, on each because I think actually probably what might be the most prudent thing to do, as there are still so many questions around it, is to park it for today so that we can do the bits that I quite agree we really need to do quickly and bring this back when we can all be a bit more assured that it is correct.

The Deputy Speaker -
Honourable Minister Henry.

The Hon. Martin Henry -
Thank you, Madam Chair. Just, I don't want to get into too much depth of the entire workings of the government, etc., but just for clarity, members of the executive don't just show up to the Executive Council with a piece of paper and just saying that we want something. It goes through a formal process. The process is done by the professionals within our portfolios, that is, that counts as a memo, it goes through a whole entire system, including HR, the structure, the lot before it will be presented to Executive Council. So I just don't want Members to believe that Executive Council just brings a piece of paper with TRO's on it and say that this is going to be the grounds for this particular member. It goes through a whole formal process before it even gets anywhere near a Minister. Thank you.

The Hon. Andrew Turner -
With great respect, I'm not alleging that in the slightest.

The Deputy Speaker -
Thank you. Sorry, go ahead, Chief Minister.

The Hon. Chief Minister -
I think that's just some of the detail which I didn't wish to get into. But I'm just talking about the fact that if we're going to start scrutinising the recruitment process today on a piece of legislation, we could be literally, you know, because we're talking about the need to recruit somebody who will be integral to this piece of legislation, and the fact that we're questioning whether they will uphold the Constitution or indeed the Nolan Principles that I know the AG made reference to earlier, that is all part of that process to ensure that is done. And if somebody isn't living up to the expectation of the Constitution or the Nolan Principles, that would be seen as a very serious offense for recruitment. That's all I was saying. I wasn't accusing anybody of anything. I was trying to keep it at that level, to remove that happening I think.

The Hon. Andrew Turner -
I do accept the point the Chief Minister makes. However, this is about more than just a recruitment practice. This is about in terms of legal powers we are giving an office regardless of the person in it, what protections do we have to ensure that these powers aren't abused, that they are enforced correctly. And frankly, while we've done that incredibly well for the

regulator, we've not really done it properly, I would have said for the Surveillance Commissioner. Hence, why I say I really think this particular section needs a piece of work, and why I am proposing an amendment that we essentially pull it for today. Otherwise it is going to be matter of trying to go through each section now to try and fix it as best we can.

The Deputy Speaker -

I would suggest then you propose an amendment.

The Hon. Andrew Turner -

So, yeah, I will happily propose an amendment for the deletion of section 18. Would that be correct wording Attorney General? At 18.

The Deputy Speaker -

Do you have a seconder?

The Hon. Karl Thrower -

I will second it, Madam Chair. If I may, I'll say why, and it is, although I do agree with the concerns raised by my colleague, I'm also very concerned with, I agree with Minister Henry, you know that, but there is no suggestion of anything, just that we do know that pressure as well. I am more worried about clarity on certain things, and that's clarity that I you know, I alluded to it on Friday, where I'd like to understand more about how this works with the police and things. But also, I am concerned with the letter that we received from the Equity and Human Rights Commission. And I'm not getting into the they said, we said, what concerns me is, if we pass this today, and the Equity and Human Rights Commission comes out tomorrow and says that we, they, and they are a key I mean, let's face it, we just agreed in the budget to give them more money for a post, so we can't say we don't value your opinion very much, because we just agreed to pay them another 19,000 pounds for a post. So I would just say parking this for now allows all the Members to get, we can sit down and, you know, I'm thinking of a meeting like what we had on Friday, where I found it so useful just to have all the relevant people in the room. I would like to do that with this. And also I would ask, what is the negative side of following the proposal by Councillor Turner, this won't affect your licensing on what you need to do. The current safeguards that we have in place will stay in place and the attorney, I would have the clarity of that off the Attorney General that not allowing this, if we pass this Bill today, and we remove this section, it doesn't mean that our people will be completely unprotected. Well, yeah, so if I get that clarity that would be great.

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Thank you. Obviously, the ordinance is not enforced now. If it is passed today, it won't be enforced today. It will need to wait for assent, and then, of course, it will also, the relevant parts will need be brought into force. So there's a whole series of steps and delays. In practical terms, the earliest any part of this ordinance will come into force will be the 30th of June, or maybe the first of July. We'll come on a little bit later, presuming we do finish tonight, to deal with what is currently clause 127 where there is an intention not to bring it into force straight away. Well, I mentioned that just in in passing, if the Bill loses part 18, it won't be the entire code that we would like to see, because this is all about being able to direct people, particularly people who are integral to our communications networks here. So licensees take people who are providing our broadband so and so forth, or internet provision. A lot of these surveillance for

powers are too able to direct those organizations that love licensees to retain data, to intercept data and so on and so forth. Of course, this is not the only power that's out there. You heard me make mention to the Regulation Investigator Powers Act 2000 and we know the police use that power as part of the Adopted English Law going forward. And if this power to ease part of the bill, I will be wanting to see a notice declaring this is not intended to affect, for all the reasons I mentioned earlier on today. So we will not be bereft if this is removed, but it will remove an integral part of the complex whole, which is designed to ensure electronic communication safety and surveillance. So the world won't end if it's not there, but I'll be disappointed, and the tools for investigating issues will have been diminished, or not enhanced, to the extent that Part 18 is offering. From my point of view, what you're suggesting is not intrinsically unreasonable, but it's not my preferred course of action. My preferred course of action is to see Part 18, part of St Helenian law.

The Deputy Speaker -

Thank you Attorney General.

The Hon. Andrew Turner -

I think I've proposed the amendment now.

The Deputy Speaker -

Could you remind me of the amendment?

The Hon. Andrew Turner -

So the amendment would be to delete Part 18 as in its entirety.

The Deputy Speaker -

Thank you. Honourable Members I put the question that Part 18 be deleted as proposed. Those in favour say, aye. Just put your light on. Thank you, Doctor Essex.

The Hon. Dr Corinda Essex -

Standing Orders allows Members to speak to any amendment that's proposed.

The Deputy Speaker -

Yes.

The Hon. Dr Corinda Essex -

And I would like us to be able to exercise that before the vote is taken.

The Deputy Speaker -

Thank you. You may go ahead.

The Hon. Dr Corinda Essex -

Thank you. My preference would be to actually propose amendments now and include it in the document that progresses beyond this room today. However, as the Honourable Andrew Turner has said, that would take a great deal of time, which we don't have today, or indeed, until dissolution of the current Council. I personally have severe reservations about omitting it completely, although, as I mentioned earlier, there are aspects of the section that I do have serious concerns about, and which I think could be addressed through amendment. If the Council was not drawing to its end, and we knew that we would all be there in six weeks' time, when we could revisit this and make the necessary amendments, and the necessary proposed

amendment to a substantive ordinance, this ordinance, by that time, would be brought into force, I wouldn't have quite the same level of anxiety that I have, but I do have anxiety that if section 18 is amended, is excluded totally, none of us know who's going to be returned after the General Election. We might have a totally new government, and that totally new government might not do what would be our intention, which is to actually get a revised version of Part 18 put back into the ordinance. So therefore, while I do understand the motivation behind the suggestion that we should omit Part 18, I think it could be a high-risk strategy and I think most people that know me, know that I resist high risk strategies, or indeed any sorts of behaviours that are likely to increase risk, that could have undesirable consequences. And there are aspects included here, like, for example, under 89, retention of electronic communication data, which would definitely be an improvement on the current situation, even though we're aware that police have powers to call for data and so on. So although I am not happy with section 18, Part 18 as it stands, I would be even more unhappy for it to be totally removed. Thank you, Madam Chair.

The Deputy Speaker -

Thank Honourable Member. I do apologise. I think it's getting tiring for me as well, which caused me to forget that aspect. Could I ask if any other member wish to? Honourable Robert Midwinter.

The Hon. Robert Midwinter -

Madam Deputy Speaker, I completely share, oh, sorry, Madam Chairman, I completely share my Honourable colleague, Doctor Essex's concerns. In particular I mean, we've come in with amendments this morning, and we were all given a copy of those amendments this morning. I have absolutely no idea what the Honourable Councillor Andrew Turner is proposing in this House, I've not seen anything. I share exactly the same concerns that Dr Essex does, and I would not be comfortable with removing this wholesale. And I would have preferred if we were going to consider further amendments, to have seen those in the same way we saw these ones this morning, so that we've had time during the day. We've had breaks during the day, I could have considered those during the lunch break. So I'm actually quite disappointed that that wasn't shared with the rest of us.

The Deputy Speaker -

Thank you Honourable Midwinter. Honourable Andrew Turner.

The Hon. Andrew Turner -

Sorry, I think I made it quite clear I'm proposing an amendment to remove section 18. If other amendments become necessary, then I will exercise my right to do them on the floor, as any Member has. Part 18, quite right Honourable Minister.

The Hon. Andrew Turner -

Thank you. Any Honourable, Honourable Minister Ellick.

The Hon. Jeffery Ellick -

I'm a bit confused here, Madam Deputy Speaker. I think what Honourable Andrew Turner is proposing is some changes in terms of the surveillance, the appointment of the surveillance. (*Interruption*) You want to move the whole thing?

The Deputy Speaker -

Can one speak at a time? As far as I understand, he's proposing that we remove the whole of 18.

The Hon. Jeffery Ellick -

His main concern is about the Surveillance Commissioner.

The Deputy Speaker -

Yes.

The Hon. Jeffery Ellick -

So I find that, but I because like, we have so many other bits of laws review, the Governor appoints various people, but they don't have fully set out, because that's part of the recruitment phase, and it gives that like appointment of Chief of Police and stuff like that. And I might be wrong, but at the moment, the Chief of Police has certain powers, probably under Ripa possibly. So we would be still in the same position.

The Hon. Andrew Turner -

I'm not sure how many times I can explain that this is not about the recruitment process or a recruitment issue. This is about the powers vested in the office, have the necessary checks and balances. You are absolutely right. The Chief of Police, for example, has powers under the UK for application order, believe what you call it was Ripa, to do a lot of these things. There are also many checks and balances within that for the circumstance under which you can't and the processes that have to be gone through, and the appeals and the protections that are afforded to the citizens so that these powers are not abused. There is also the oversight in theory, of the public Police and Crime Panel and all sorts of other bodies that the police have to ensure that their powers aren't abused. My point in the whole of this section is that we have put a lot of powers in but without the necessary protections.

The Deputy Speaker -

Thank you, Honourable Member. Honourable Minister Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair. Again, just to clarify this, my Honourable friend Andrew Turner, if I'm correct, is concerned about the powers of the Surveillance Commissioner and potential infringement on our human rights. So can I ask the Attorney General, does he see anything in Part 18 that he believes is an infringement on our human rights?

The Deputy Speaker -

Attorney General.

The Hon. Attorney General -

Thank you, Madam Chairman. Thank you, Minister, I will remember that. As I said this morning, everything in here is subject to our Constitution, and as I responded a little bit earlier to Honourable Andrew Turner, there are provisions in here which require the surveillance commissioner to take account of proportionality. So let me give you an example. Section 92, three, the Surveillance Commissioner acting in their discretion or a court may grant warrant only if satisfied, is necessary on public interest grounds. And we saw the definition of public interest earlier this morning, and again, it was Councillor Turner that drew that all to our attention. So it's necessary in public interest grounds and proportionate for the purpose for which it's required. So that's in 91(2), 92(3), it's also in 93(3). So it's constantly repeated. Now

let's presume, for example, we have an out of control Surveillance Commissioner. I don't believe that's at all likely, but it might be an allegation that's made, and if, therefore, if a warrant was issued, it would also be open for challenge through judicial review. And part of the judicial review test, leaving aside whether it was biased, irrational, or so on and so forth, would include whether there were proper public interest grounds and it was proportionate for the purpose for which it required. So an answer to the question that the Minister posed to me, do I see this as an infringement of our rights and all the rest of it? The answer is yes, there is an infringement, but the infringement is justified both in the law in this ordinance, and it's justified under the Constitution when its power is properly exercised, and I believe the powers are properly expressed in here to be proportionate, as I say. Thank you.

The Hon. Andrew Turner -

Can I ask for a point of clarity on that? Because obviously the, as you pointed out, the Surveillance Commissioner will have to justify that it meets the public interest grounds. Who do they justify that to?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

Well, justify it to a court, if they're challenged, and if, for example, you're on the receiving end of a warrant, you might be pretty cross. You might actually be going after the Surveillance Commissioner, or indeed suing government for breach of constitutional rights, and we know how expensive that can be, from other experiences. It won't be in anybody's interest, let alone the Surveillance Commissioner's interest, to do things which are not justified under law. They are justified under law. You have the provisions here. It's one of the reasons why this ordinance is so long and so detailed, is to actually give the clarity, to give the assurance and the reassurance that's required, that powers will be exercised with proper responsibility. It's one of the things I've been saying to the licensee is, please read our Constitution. Always bear in mind everything that we're seeing here is subject to what's in the Constitution.

The Deputy Speaker -

Thank you Attorney General.

The Hon. Andrew Turner -

So the person who ends up listening to Commissioner has to potentially justify it to the court. If they are challenged, that would presume that the person being surveyed would know that they are being so, but we have provisions in here for, well, I can't remember what the exact wording was off the top of my head, but it was for covert or discrete surveillance. That would not necessarily mean that you even are able to know that you are being monitored by your government.

The Deputy Speaker -

Would you like to respond?

The Hon. Attorney General -

But that's the same the world over. You know, not all criminals or those who are undertaking nefarious activities want to know, want the government to know that they're doing it, and it's inevitable that governments need to take covert powers to their own, so that they can have the better security of society taken into consideration and protected. I know we have the Chief of

Police with us in the House today, for example, he'd be quite horrified if he wasn't able to exercise a whole suite of powers to be able to intercept criminals before they undertake their nefarious activities. I don't think it's disproportionate at all. And in fact, in many ways, I would argue that, were it not for our ability to rely on the English Law Application Ordinance and Ripa, I'd be wanting to see a whole suite of additional powers for the police and for any other investigatory agency to make sure we have a proper basis for whether surveillance or anything else. I think we should see this more as a move to us becoming a more mature democracy, a more mature jurisdiction, where we want to have these powers properly set out so that there are mechanisms for people to challenge, and we'll come on in later parts of mechanisms for challenge, in addition to judicial review, which would lie under these circumstances, in any event. And if, for example, a warrant was executed without proper authority, of course, you'd have all the trespass and everything else that one would bring in to sue and seek a recovery for the harm occasion. But also, we know, a breach of the Constitution gives rise to a whole suite of public claims, and you can sue for your breach of your constitutional rights as well, powers that the St Helenian's have, which are a much fuller and wider extent than they are in England.

The Hon. Andrew Turner -

As the mechanisms for challenge are pretty crucial to my objection to this, I would actually appreciate that explanation now, because it might well render my point moot. I know the voice is going.

The Hon. Attorney General -

I hinted at JR, so JR is a special review you also will have. So let's assume there's interference with property, land, whatever else. So you've broken into premises, you've broken a door. I mean, the Chief Of Police would be, they're ultimately familiar with executing warrants on those basis, you know. So if you're a criminal, your door kicked in, you don't get compensation to have your door replaced. But up on the other hand, you're the ones been wrongly executed, you do get your door replaced, and most certainly, irrespective when your door's replaced, the premises are kept secure. But taking this in this example, if you have a situation where harm is occasion, losses occasion, you can see for that harm or loss. So just by way of example, part 20 is all about appeals. Those appeals relate to the regulator and what have you, and to the Governor. We also then have judicial review is dealt with and effective notice of appeals there, in there, we also have offenses, obviously, that would put you into court. Right, here we are, section 124, clause 124, Application to the Supreme Court, any properly interested party may make an application to the supreme court for an order for the effectual execution of any action obligation or duty under this ordinance. Now that's interesting and important, because let's say you are on the receiving end of one of those warrants and you felt it was not being properly executed. In other words, it wasn't, as I've quoted from clauses 91(2) 92(3) and 93(3), proportionate in the public interest, you have the power directly under this ordinance, under clause 124, as it's currently written, to go to the Supreme Court and your argument will be there hasn't been effectual execution of the action, because if the evidence is there, the surveillance commissioner has not been able to demonstrate that it was in the public interest and it was proportionate for the purpose. So you have an additional ability to claim that's in here. This is an additional protection beyond those which exist anyway, such as judicial review and all the potential civil claims that you could bring for harm, loss, damage, or whatever else would be occasional. So I'm quite satisfied that if there is an alleged improper use of power by an emanation of the state, by the surveillance commissioner, for example, you would be able to challenge it. But don't forget, just put surveillance commissioner to one side. The default surveillance commissioner is the Chief Justice. Okay? So you would still be able to challenge the Chief Justice, as it were, through judicial review for the issuance of an inappropriate

warrant. God forbid he did such a thing. I wouldn't believe it for a moment and that, if he's listening, I didn't mean it. The key thing is, we, you should expect to see someone senior and competent appointed as the surveillance commissioner. This is not a trivial role, as you rightly identify, and it's of the equivalent of the CJ, equivalent of the Chief Justice. So I think through all of these things, whether it's the recruitment criteria of the surveillance commissioner, whether it's the fact that it's the Chief Justice who is the default surveillance commissioner for these purposes, whether it's the way in which the legislation directs that the exercise of those powers have to be necessary on public interest grounds and proportionate, the fact that you've got your civil remedies, whether it's judicial review or going to court pursuing for the harm, the loss, the damage which has been reported, and you've got clause 124 which gives you the additional rights to go to the Supreme Court in any event. I think you've got an awful lot of protections, and that's ever before you turn to the Constitution and go, there's a breach of my constitutional rights of privacy, for example.

The Hon. Andrew Turner -

I am ecstatic to hear that the role is being considered as equivalent to that of the Chief Justice. Now, my understanding of this section is that until such time as the Surveillance Commissioner is appointed, sorry, it doesn't actually explicitly say that. It says that until such time as the Surveillance Commissioner is appointed, the role be taken on by the Chief Justice, which isn't quite the same thing, but I would like to ask, from a procedural, political perspective, what is the intention in how this office will be set up and when? Because I can, frankly, live with it being the Chief Justice for now, and I will withdraw my objection and amendments, but I would like to see some further education, particularly so that, we've had a really good discussion on this today, a really good explanation of this today. But I want the people to be able to understand as well as I've been made to about what powers they have to challenge this, and I would really like to see that done before the Surveillance Commissioner is appointed?

The Deputy Speaker -

Any Member can answer?

The Hon. Chief Minister -

This is exactly what I was trying to say before. Until this Bill is passed. obviously, Surveillance Commissioner is something new to St Helena, we wouldn't, we haven't even started looking at this position at this present time. Hence, as the AG is alluded to, the enactment date on any of this will have to be after it's approved in the House, whether it is. So we haven't done anything more at this particular time regarding this. That would be the work to be done after we know if we're moving in this direction or not.

The Hon. Andrew Turner -

But just to be clear from the AG, is it not the case that as this, if this bill passes today, which I hope it does, that the Chief Justice will, from the very enactment be the Surveillance Commissioner, and that there will be a certain time period, obviously, apparently, not yet planned for, between that date and the date of which the first proper Surveillance Commissioner is appointed, where we can flesh out some of these issues?

The Deputy Speaker -

Honourable Attorney General.

The Hon. Attorney General -

As the Honourable Councillor Turner has alluded to, clause 88, subsection 4, excuse me, explains that if the officer stands, commissioner is vacant, for whatever reason the functions are conferred upon the Chief Justice. So the starting position on day one, whenever Part 18, assuming it is passed and acted in, this assent is given, from moment one, it's the Chief Justice. It's like the communications regulator for moment one, it's the Attorney General. It's only when the regulator's appointed do you move on. But as I say, it all depend on commencement dates, and assuming that these provisions are passed.

The Deputy Speaker -

Thank you AG.

The Hon. Karl Thrower -

May I make a suggestion, Madam Chair?

The Deputy Speaker -

Yes.

The Hon. Karl Thrower -

How difficult is it to put in a date and say until the end of this year. That would give the new, sorry, no, I'm sorry, let me ask. What happens if we say it's the Chief Justice until the end of this date? That would allow the passing of the Bill, and it would definitely ensure that Councillor Turner's concerns can then be raised with the new government, and it would almost give that, force the new government to have time to consider exactly what he's asking. But it would allow the Bill to be passed, and it would actually alleviate what sounds like from everybody else's concerns, the problem.

The Deputy Speaker -

Honourable Chief Minister.

The Hon. Chief Minister -

This is exactly what I wouldn't wish for the government previous to me, to do to the next government coming in. If we put a date noting that we could have a new government, new Council as of third of September, we all know there's inductions, it would probably go into the next year before they have had the opportunity to look at this. For us to say, right, the Chief Justice will take over the post of surveillance commissioner until 31 December, I'm just using that as an example, that is really putting time limits in place that I don't think we as a government, or as a Legislative Council should be placing on a new government or a new Council, when we simply just don't know what will be the priorities when they get in. Because when we're in purdah, I don't have an idea as to what might hit St Helena during that period of time, and for that reason, that would not make me comfortable at all. I feel that the assurance that the surveillance commissioner's role until such time, will be performed by the Chief Justice should, based on what you were saying Honourable Andrew Turner, give you that type of assurance that you're looking for. If we put dates, we're committing a new government potentially to something that they may not be able to deliver on.

The Hon. Andrew Turner -

I actually completely agree with that. All I'm really looking for is some sort of commitment. Obviously, I know you can't say what the next government will do, but at least from this one, that this role won't actually be implemented until we've done at least some sort of educational and awareness campaign around the role of the surveillance commissioner, and actually had

some proper consultation of the rights that we're infringing upon, you know. And I don't think that's, actually by the sounds of things, because we've only got a few weeks to go, that's probably not a big ask, because there's not much time to get it done anyway.

The Deputy Speaker -

Thank you. Honourable Minister Henry.

The Hon. Martin Henry -

Just to make a comment, Madam Chair. Given the debate in the House today and the public listening to this right now, this has been a really, really in-depth debate about a particular role. I think the public is already halfway educated on to where we're going with this, and I would suspect that the public would hold the next government to account, based on the back of the debate we hav'in today. So I think what has happened today is actually part of the new government being held to actually look at this in detail, as given by Councillor Turner. Because I do agree that education around this, but it is crucially important, and we've already halfway here today. Thank you.

The Deputy Speaker -

Thank you. Minister Brooks.

The Hon. Mark Brooks -

As I said in my response to the motion, Deputy Speaker, we intend for a strong communications plan to be communicated to the public, if this Bill is passed here today. But we also got to remember that if this amendment, or this Part 18 is taken out, then we can't give that communication plan, including the surveillance and all the requirements that sit under there, because it will be no longer part of the Bill. So I would suggest, obviously, given all the discussion us had today and the fact that the Chief Justice will act as their surveillance, we can then talk about the requirements of the surveillance offer and the people's rights that sits within the section. So I would suggest, from my personal opinion, and as the mover, that this part stays in, but I've already said that we will do a strong communications plan and public engagement around them. But we could focus more in detail on the surveillance side of this.

The Hon. Andrew Turner -

Minister Brooks, that is exactly the kind of commitment I was looking for, and I will withdraw my amendment to remove Part 18.

The Deputy Speaker -

Thank you. So now we put the, yes the amendment sorry. Thank you.

The Hon. Mark Brooks -

Madam Deputy Speaker, I would like to propose an amendment by adding an extra clause after 94 and the clause will be 95, Warrants generally, but the AG has kindly read through the entire amendment. So in the essence of not repeating work, I would suggest, if everyone is satisfied with what the AG has said, that forms the amendment.

The Deputy Speaker -

Thank you. Members, do you agree that the consequential amendments need not be read out?

Council -

Yes.

The Deputy Speaker -

Thank you. So I think now we can put the question that Part 18, no, sorry, the amendment first. Oh, I beg your pardon. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Chair. I beg to second the amendment.

The Deputy Speaker -

Thank you. Now I put the question that the...

The Hon. Christine Scipio -

...Excuse me, Madam Chair, we've got two amendments on the table now?

The Deputy Speaker -

No, he's withdrawn his.

The Hon. Christine Scipio -

Yes, it's fine, as long as that's very clear.

The Deputy Speaker -

No, he made it clear. Thank you. I put the question that the amendment as proposed, do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I put the question that Part 18 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now turn to Part 18. I put the question. I beg your pardon. Here we go. I put the question that Part 19 do stand part of the Bill. Honourable Attorney General.

The Hon. Attorney General-

Thank you, Madam Chairman, apologies for the coughing. As you can see, Part 19 is entitled general procedure, inspections and enforcement. Section 97 is an important part of the democratic accountability. It's the public consultation procedure. You can see it's a mandate, the Regulator or the Governor, as the case may be, shall comply with the procedure set out in a section whenever specific reference is made to public consultation in the ordinance or a measure is likely to have significant impact on the market and you can see the provisions are there in section 97. Crucially, section 98 saw that publication, the regulator must make arrangements for the publication of regulator activity, if the regulator believes the action is of public significance. I expect we will see a website containing lots and lots of information, all about the regulator, communicating with the public, more generally. Something close to most members, of every member side, I'm sure, confidentiality, privacy and personal data, there are checks and balances in section, in clause 99 in relation to that. And we've had many a discussion about requests for information in other matters, and you can see that in, what's currently numbered for us as clause 100 but of course, with the amendments that we've just accepted, it

will actually be numbered 101 and if the regulator has sent out a request for information and there is no proper response, section 101, clause 101 is provided with, now 102 deals with the consequences of failing to reply. Section 102 is all about compliance investigations where the regulator has the power to investigate any actual or alleged suspected contravention of any part of the ordinance or a license. So if something's going wrong, the regulator can investigate. 103 enforcement orders, penalties and compensation awards, all pretty standard sort of stuff, but it shows this is where there is some of the teeth for the regulator and being able to control activities, and clause 104 deals with power of entry. And you can see if a court is satisfied that there are reasonable grounds to suspect that evidence of a commission of the offenses ordinances to be found on premise, a court may issue a warrant for a person authorised by the regulator to enter and effectively obtain that evidence. So all very much boiler plate provisions, I don't consider anything in here is particularly controversial. I stand to be corrected.

The Deputy Speaker -

Thank you. Any Member wish to speak?

The Hon. Karl Thrower -

Can I just ask the point? I'm not sure whether I should be asking Minister Mark Brooks or the AG on this. Obviously, AG, you alluded to the possibility of basically this coming into force on the 30th of June, and obviously we've just been talking about the agreement between Minister Brooks and Councillor Turner. But how ready are the Communications Hub to start meeting these kind of promises about websites and information and will it actually be done through the Communications Hub? Lets say, it's just a curiosity, but I'm just trying to get over when can the public start to see what we're promising right now?

The Deputy Speaker -

Minister Mark Brooks.

The Hon. Mark Brooks -

I can try and answer that Madam Chair. All communication should go through the SHG Communications Hub. As for how prepared they is, well, I can't tell you. We don't control the Public Service. We know that we are passing ordinance, all ordinances has a communications plan that goes out to inform the public. That is delivered through the Communications Hub, along with officers and in some cases, Ministers, although there will be no Ministers, there will be no government, so there will be no Ministers. But if we pass this Bill today, there are officers, and they are and sorry, there are officers that can on the government's behalf, go and communicate this to the public, and I'm sure as a member of the public, which I will be at that time, I will be sitting in those meetings, listening very careful as well.

The Deputy Speaker -

Thank you Honourable Member. Honourable Chief Minister.

The Hon. Chief Minister -

Just to reassure in some way, I am a bit like the Honourable Mark Brooks. I can't tell you how prepared, but it was requested when this was passed in Executive Council, that a communication plan be done, so that is minuted in the last ExCo before this came to the House. So that might give some additional assurance.

The Hon. Karl Thrower -

Yes. Thank you very much. It does.

The Deputy Speaker -

Thank you. I therefore put the question that Part 19 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

We now move to Part 20, if I can find it right, yes. I put the question at Part 20, do form part of the Bill. The Attorney General please.

The Hon. Attorney General -

Thank you, Madam Chairman. So this section deals with appeals, all different types of appeals and challenges. So very briefly, section number five deals with appeals against the decision of the regulator and the types of decision that are involved are listed in subsection one, (a) through to (i). A person affected by the decision of a regulator in one, above can appeal to the Magistrates Court, and the provisions 21 days to lodge the appeal. Section 106 deals with the disposal of the appeal by the Magistrates Court, and you can see that that Magistrates Court can dismiss the appeal, set it aside in whole or in part, or send a decision back, permit the decision back to the regulator to dispose of the matter in accordance with the court's directions. The court may make orders for costs. There's also a general disposal of other appeals in section 107 and again, other appeals of the nature referred to 105, one, if they're not otherwise specified, can also go to the Magistrate's Court. And you can see a section 108, the effect of notice of appeal. The filing of the notice of appeal against any of the following decision as listed automatically, this suspends the effect of the decision, and again, that's a standard way of dealing with, I don't like the decision that's come out and lodging the appeal, the effect of the decision is suspended, and then it's up to the court to decide whether that suspension continues, whether or not and where the appeal is. Now clause 109 deals with appeals against the decision of the Governor. Obviously, we're dealing with a different level over in terms of Governor decisions, and therefore, as you anticipate, rather than the Magistrates Court, the appeals or challenges go to the Supreme Court. Again this is how you tell, you'd expect in terms of the hierarchy set out and most importantly, in reinforcing some of the issues we've been talking about earlier. Clause 110, this part does not prevent an application to the Supreme Court for judicial review of a decision of the governor or the regulator. So the important thing is, it's all checks and balances, and these are the checks and balances for the decisions of the governor and regulator. All very much boilerplate provisions.

The Deputy Speaker -

Thank you, Honourable Attorney General. Any Member wish to speak? I put the question that Part 20 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Part 21, I put the question that Part 21 do stand part of the Bill. Attorney General, thank you.

The Hon. Attorney General-

Thank you very much, Madam Chairman. So this is all about offenses, Part 21. So we have an offensive clause 111 of obstructing the regulator. We have at clause 112, misleading messages. And that might be part of what the Honourable Councillor Thrower was talking about earlier on today. It could be arising in that type environment, and this is where one can seek to

criminalise it. It shouldn't be necessary to do so. And you can see, in relation to misleading messages, I mean, it's crying wolf, you know, in terms of that. You shouldn't be misusing the airwaves but if you cry wolf, for example, you provide false or misleading information, you could be facing a 200,000 fine or imprisonment for up to two years. I mean, it's deliberately, the penalty is deliberately put at a high level because it's exactly that sort of convent one wants to entirely discourage. In terms of defending privacy and what have you, we have improperly obtaining and disclosing information into interfering with communications. It's an offense to do anything designed to obtain from the operator of a network, information what have you. You've got lawful authority. You don't have lawful authority, you most certainly do. Look at the fine, 625,000 pounds. It's a swingeing fine, again, up to two years imprisonment. Causing deliberate interference, maximum penalty, a fine of 10,000 pounds, but it can be extremely damaging, as you well appreciate. Providing false statements again, swingeing fine of up to 625,000 or imprisonment for two years. Providing services without a license, specified their fine of 125,000 or imprisonment for six months. Carrying on radio communications activities without a license, again, a large fine of up to 125,000 pounds or up to six months imprisonment. Causing damage or obstruction, the fine is relatively modest and up to 125,000 pounds but what you should look at is the imprisonment for up to 10 years. That's a very, very significantly. And of course, it's deliberate, you know, it's the causing and damage or obstruction. Divulging information for use or gain. Any person who does so, commits an offense a fine of 20,000 pounds in a period of imprisonment for up to six months. So these are all, this particular provision, of course, directed and ensuring that confidential information remains confidential. Offenses relating to electromagnetic spectrum and radio communication licenses are fine, but up to 25,000 pounds, that would still hurt. Offenses relating to power of entry, you mustn't obstruct someone executing a warrant. Failure to provide reasonable assistance is required, a significant fine of up to 10,000 pounds. And in relation to offenses by bodies corporate, the clause 122 has the usual sort of offense to pierce the corporate bail so nobody can stand behind their limited company and say it was the limited company, it wasn't me. You can prosecute director, manager, secretary, or similar official acting in the capacity who the offense has been committed with their consent, their connivance or attributable to their neglect. That formulation, as you will recognise, is standard throughout. You can sue, prosecute the individual, as well as the body corporate. Thank you.

The Deputy Speaker -

Thank you, Attorney General.

The Hon. Karl Thrower -

Can I just raise, so, 113 (1) it is an offense to do anything desired to obtain from the operating electronic communications network, information about the content, sender or intended recipients or electronic communication, or to disclose that information. Isn't that exactly what my security on my computer does when I receive scam emails? It traces the scam email to the source, so it's going through the networks doing exactly that, it gathers from the operator of the communication, information about the content, whether it's been multiply sent, where the sender was, and see if it's gone to a recipient. So that is slightly confusing to me, because actually that is the basis of a huge amount of our internet security systems on the island.

The Deputy Speaker -

Honourable Attorney General, will you be able to answer that?

The Hon. Attorney General -

I'm not sure there's much I can say, other than I welcome the observation made by the Honourable Councillor Thrower. Don't forget, again, in relation to offenses, it's the Attorney General that has the authority to issue proceedings. And again, you're up against the, not up against, you apply the Crown Prosecutors Code of Conduct in relation to determining whether or not to prosecute. So, whilst you might be describing a set of circumstances which are clearly lawful or intended to be lawful, which whether even if it was evidence that there had, that you had amounted to breach of this would never be prosecuted, because it will be accepted it was a lawful code of, lawful course of conduct. The situation would be that this is more general, wording is designed to capture stuff that is more nefarious, as it were. So it's an offense for me, for example, to try and intercept your network, to find out all the information that you're passing back and correct.

The Hon. Karl Thrower -
Yeah.

The Hon. Attorney General -
That's what it's game, it's aimed for, not what you've set up on your systems or you've got for the third party provider that you have provided lawfully. So I don't believe the Attorney General at the time would necessarily get too involved, because it would never get to the stage of investigation in any event. So it's really about somebody doing it nefariously.

The Hon. Karl Thrower -
Okay, thank you.

The Deputy Speaker -
Thank you. Any other Member wish to speak? I put the question that Part 21 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -
I put the question that Part 22 do stand part of the Bill. Honourable Attorney General, thank you.

The Hon. Attorney General -
Can I just say thank you to everybody, this is the last part. We've made it, and it's quarter past five, so there we are. So at the end of lengthy bills, and this is no exception, you often get miscellaneous bits and pieces and this miscellaneous section part deals with, for example, clause 123, it's all about regulations. The Governor, on the advice of ExCo, may make regulations generally for carrying into effect the provisions of the ordinance. That's a general power. And you can see at subsection two, without prejudice to that you can make regulations for everything else that's listed there. I touched on clause 124, earlier on today, applications to the Supreme Court. If anybody's got a complaint about the non-application of a part of this order list, you've got another opportunity to challenge it through the Supreme Court, through section, clause 124. The Honourable Financial Secretary will be delighted with clause 125, which is the payments that are made into the consolidated fund. Clause 126 deals with the amendment of legislation and again, all of that is to be expected. And then I come to clause 127, which is one of the clauses, which actually what we are going to have an amendment proposed in entirety for. And I'll assist the Honourable Minister by, I'll read out for him clause 127 to replace the one that's in the version of the ordinance, you've got it. So for clause 127

please substitute the following: one, all licenses issued to Sure South Atlantic under the Telecommunications Ordinance 1989 shall remain valid and in full force following the commencement of this ordinance until terminated. Two, unless such license has been terminated previously, the terms, conditions, rights and obligations contained in such license shall continue to be governed by the provisions of the Telecommunications Ordinance 1989, notwithstanding its repeal until the 31st of March 2026. Sub three, unless such license has been terminated previously, the Telecommunications Ordinance 1989 shall continue to apply until the 31st of March 2026 in relation to: (a) the interpretation of such licenses; (b) the enforcement of conditions in such licenses; (c) any modifications to such licenses as permitted under that ordinance and (d) any proceedings, enforcement actions or appeals in progress at the time of the transition. Subsection four, from the first of April 2026 such licenses, if not already terminated, will deem to have been issued under this ordinance. Clause five, subsection five, I beg your pardon, from first of April 26 other than section 25, three, (a), this ordinance will reply in relation to the interpretation of such licenses, the enforcement of conditions of such licenses, any modifications to such licenses as permitted under that ordinance, and any proceedings, enforcement actions or appeals in progress at the time of transition. And finally, a new subsection six, nothing in this section shall have the effect of lengthening the term of any license or altering any notice period for termination. So having just touched upon the amendment to what is currently termed clause 127, we have a clause 128 the transfer of spectrum licenses, the basic provisions for it. Clause 129 termination and migration processes. We have record keeping obligations at clause 130 and finally at clause 131 repeals and savings, including, for example, the repeal of the Telecommunications Ordinance 1989. Thank you, Madam Chairman.

The Deputy Speaker -

Thank you. Honourable Dr. Corinda Essex.

The Hon. Dr Corinda Essex -

Can the Attorney General please clarify the reference in the main section, sorry, my voice is going, 25 (3) (a)?

The Hon. Attorney General -

I most certainly can, and it's one of those which is in there because of my direct intervention. I felt it was absolutely necessary, because clause 25, three (a) says a license under this part, so this is under the new ordinance, which I hope you are about to pass, a license under this part must be stated to be valid for a fixed period of at least four years, but not more than 12 years. So we are deliberately saying that if the old license is continuing, we are under the new law. We are not deeming it to have a minimum period of four years or up to 12 years, because that would not be the intent.

The Hon. Dr Corinda Essex -

That was what I thought was the interpretation, but I just wanted that background.

The Deputy Speaker -

Thank you Honourable Member. Any other Member wish to speak? Honourable Ronald Coleman.

The Hon. Ronald Coleman -

Thank you, Madam Deputy Speaker. Can I just ask then that it is the intent that this license continue to Sure South Atlantic?

The Deputy Speaker -
Honourable Minister Brooks.

The Hon. Mark Brooks -

Thank you. I will try and answer my Honourable friend's question. If you read in the clause there's current license, or the license that is prescribed to Sure South Atlantic under the old communications ordinance, is intended to continue until the 31st of March 2026. Then the, if the license are not terminated before that, then the new ordinance will come into force, but the old license will still remain, but the old license will be governed under the new ordinance, if you know what I mean.

The Deputy Speaker -

Thank you. Honourable Attorney General.

The Hon. Attorney General -

Thank you. The position is, as I understand, the government's position, the government wishes to see a new license issued to the current licensee by the end of this month, and that can only happen if two things happen. One is that this ordinance is passed, and the other thing is that a license is agreed. There are three licenses. The licenses are agreed. Now, if that happens, clause 127 that's actually 128, does if we insert it in 95, but if that happens, the 127 is entirely irrelevant, drops away, and that's Plan A for everybody that this ordinance is passed, and the licenses are in place by the end of this month. We have to deal with the situation. What if that doesn't happen? And that's what clause 127 is about is actually to deal with the situation that, let's buy a little bit of extra time for the negotiations. And that's why you're seeing references to the existing licenses continuing, and then an end date being put for the interpretation of those licenses under the old law and a date when the licenses will be interpreted under the new law. That's the arrangement. So this is a sort of, you're seeing a plan B there. Now as part of the negotiations with the current licensee, I wrote a letter to them last night on the instructions of Ministers, effectively saying that when assuming that with this ordinance passes and receives assent, that the intention is not to bring what will now be, then will be section 128 into force directly. The rights to bring that section into force will fall to the new Governor, ExCo arrangements after the General Election, as needs be but the hope is that this is going to be one of the most important non implemented sections you'll ever pass. It's all about making sure we have a plan A and a plan B, and there are clear arrangements that are in place. It's also about making sure that the next government has the flexibility to arrange things, which is why the dates of March and April have been chosen. Obviously, plenty of time from a government being in place in September to be able to get to grips with these issues and deal with negotiations. The hope is that if we haven't got licenses in place by the end of this month that they will be in place by the 31st of March. So again, the whole arrangements become moot and not effective. It will be for the next Legislative Council and or ExCo to determine as and when and if there is a need, perhaps to amend what will then have become section 128, because if we get to 31st, of March, we haven't got agreements, I would imagine there will be pressure to look again at those provisions, but what we're trying to ensure is there's a proper process where there's certainty for people, there's time for people, if we can't get things done by the end of this month, and then there's an opportunity for the new government to take it forward. Thank you.

The Deputy Speaker -

Thank you. So Minister Brooks.

The Hon. Mark Brooks -

Thank you, Madam Chair. Following that long debate on this section, I propose that we make an amendment to clause 127. Madam Chair, this was the amendment I was looking forward to most in reading out, and not because it's the last one. However, the Attorney General has already read out and illustrated what the amendment would be. So there's again in essence of time, there's no need to repeat that if all Members are satisfied with the wording that the AG read out before, but also you have the amendments in front of you.

The Deputy Speaker -

Thank you. Do you have seconder? Honourable Chief Minister.

The Hon. Chief Minister -

Madam Chair, I beg to second.

The Deputy Speaker -

Thank you very much. I therefore propose that, I got to make sure I got the right clause here now, it is 127 given that the numbering changed?

The Hon. Attorney General-

Madam Chairman, I don't mind however you refer to it, because we've referred to it as 127 because that's the old wording. We know it will become 128 given the consequential amendments from before.

The Deputy Speaker -

Okay. Honourable Members I propose that clause 127 do stand, as amended do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

I then put the question at section 20 sorry, Part 22 do stand part of the Bill.

Question put and agreed.

The Deputy Speaker -

Honourable Members, we will now resume Council.

Council Resumed

The Deputy Speaker -

Mover?

The Hon. Mark Brooks -

Madam Deputy Speaker, I beg to report that the Communications Bill 2025 passed the committee with nine long amendments, and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted. Thank you.

The Deputy Speaker -

Thank you. Could I have a seconder please? Honourable Chief Minister.

The Hon. Chief Minister -

Madam Deputy Speaker, I beg to second.

The Deputy Speaker -

Thank you. I put the question that this Council approves the Communication Bill, 2025 and recommends to the Governor that it should be enacted. Does any member wish to speak? Honourable Andrew Turner?

The Hon. Andrew Turner -

Thank you, Madam Deputy Speaker. It's been a bit of a rough one, but I think we got a lot of really interesting and good information out today from this Bill. The questions have been important. I'll be honest, I haven't liked all the answers. I think there may still be some challenges to come when it comes to the implementation of this, but I want to really welcome the commitment made by Minister Brooks, particularly around the educational programmes and the work that still needs to be done before the particularly controversial role, the Surveillance Commissioner, is brought in. I'm glad it's sitting with the Chief Justice until then. So I think, as Minister Henry said, that has perhaps got a lot of information out to the public. I really hope that many people were listening in and that there'll be good media coverage, etcetera of this to follow, because, much as today feels like a very strong achievement, like this is not the end of the road, there's a lot more still to do, and I hope that we can get everyone on board on how we do it. But everyone's probably very sick of hearing my voice by now, so I will leave it at that.

The Deputy Speaker -

Thank you, Honourable Member. Any other Member wish to speak? Honourable Mover.

The Hon. Mark Brooks -

Just very briefly, Madam, Deputy Speaker, it is very late in the day. I would just like to thank everyone that supported the Bill. It was a very meaningful and informative debate, and I hope that the public out there who is listening in, did find some use in that and of course, will be attending the public awareness and reading the communications plan when that does come out in the near future. So I would just like to finish by also a big thanks to the AG. You can all hear that he's suffering from something he calls the man flu. I'm not too sure what that is, Deputy Speaker, but anyhow, we wouldn't have done this quite so informative and quite so well without the expertise of our Attorney General. And so a big thanks to everyone who listened in today. Big thanks to you, Madam Deputy Speaker who has sit through a very long meeting, and big thanks to all my colleagues in the room who has supported this Bill another and not, of course, leaving out all the officers which is still in the room (not), that has worked on this tirelessly for best part of the year, I would say. So thank you. I beg to move.

(Applause)

The Deputy Speaker -

Thank you, Honourable Member. I put the question that this Council approves the Communications Bill, 2025 and recommends to the Governor that it should be enacted.

Question put and agreed.

The Deputy Speaker -

Thank you, Honourable Members. We now have the final, the Adjournment Debate, I beg your pardon.

6. Adjournment Debate

The Deputy Speaker -

Anybody wish to speak? Oh, I beg your pardon. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Madam Deputy Speaker. I beg to move that this House do adjourn sine die.

The Deputy Speaker -

Thank you, Honourable Chief Minister. Could I have a seconder please? Honourable Minister Scipio.

The Hon. Christine Scipio -

Thank you, Madam Deputy Speaker, I beg to second.

The Deputy Speaker -

Thank you. Honourable Minister Ellick.

The Hon. Jeffery Ellick -

Thank you Madam Deputy Speaker. Today I rise in support of the adjournment and present my last debate. I'll be leaving St Helena this weekend for personal reasons. This is a debate of reflection and appreciation. Reflection and appreciation of the past near four years, and what this Council has achieved by all Members in this inaugural Ministerial system. I think we've moved forward in leaps and bounds since our inception to Council. We are in uncharted territory trying to put in some of the foundations. And at the same time, we had to also learn and master the system while still dealing with day to day business, along with the other mammoth tasks and challenges that were in front of us and the ones heading our way. The Public Service who are here to deliver and provide advice were also in the same predicament and did not have the correct capacity or capability to fully deliver on the system. Our population also had to deal with the transition, and it was clear that dealing with the unknown can be frustrating. It was a baptism of fire for all. When you find yourself in such a position, tempers can flare, people can be misinterpreted and misunderstood. This was a significant change for St Helena, and clearly there were teething problems. To exacerbate matters and with fear in the air and emotions running high, our first major decision was to open St Helena during the COVID pandemic, an unpopular decision. But that's what good leaders do. They make decisions that are for the better good of the community, and all can now see that the decision made was the right decision. As a result, we have now surpassed pre pandemic visitor levels. Followed by this was economic crisis because of the Ukraine war, which increased the cost of living. We also host the high-profile visitors, His Royal Highness, Prince Edward, Speaker of the House, Lindsay Hoyle, including hosting the first BIMR conference in St Helena. We all Members of the House were fully engaged with visiting parliamentarians. Every Member from the St Helena branch shone and were a credit to St Helena by raising the profile of the legislator as well as the profile of St Helena. All visitors were impressed, and at times, were taken back with our hospitality. Suggestions were made that we should be hosting more conferences and visitors, which is a testament to all Members. We managed to build a stronger relationship with

the UK Government, resulting in St Helena providing for the UK, a change from the norm, which has fostered a deeper and closer relationship. Together we put forward a case for increasing funding, and largely was successful for additional funding, albeit in different forms, and was able to reinvest the money into our people. This was only successful because we work as a team. We also, for the first time, received a visit from the Director General of the FCDO who scrutinised and challenged our case, so she had the ammunition to present the case to the UK Government on our behalf. Despite the challenges, I believe we managed to weather the storm and have sailed into calmer waters, placing foundations along the way for a better St Helena ahead. We have passed several pieces of pivotal legislation, including the one today, which again, is testament to this Council, bearing in mind the constraints we have. Success can only be achieved through teamwork and at times, it did not appear that we were even close to being a team. However, we are all different. We all have different personalities and different points of view. What we did was push each other, and as a result, the passion came through, resulting in healthy debates, but more importantly, better outcomes for St Helena. As a Council, our collective role is to deliver for St Helena. Anybody can talk and not anybody can talk and deliver. Collectively we, as a Council, have demonstrated, despite the challenges we face, we have delivered for St Helena. My tagline, along with Minister Scipio for an election campaign, was stronger together. Going forward, my advice to all is, if we truly want what is best for St Helena and the future of St Helena and its people, then we all need to come together, because that's when we are stronger. Sometimes we only see the negative when clearly there has been much positive in this term. We should be bolder and celebrate our achievements. Well done to you all. I would finally like to take this opportunity to thank all my colleagues on Executive and Legislative Council. It was a pleasure working with you all. You don't always agree, and sometimes we have locked horns. However, I bear no resentment. In fact, that's what make the role more interesting and challenging, which only goes to developing us as politicians. I thank the officers within my portfolio for delivering and producing policies and supporting me, the wider Public Service, FCDO, the Governor's office, and all in the community who supported me during this term. Thank you all. I enjoyed the ride. I beg to move.

The Deputy Speaker -

Thank you. Honourable Minister Henry.

The Hon. Martin Henry -

Madam Deputy Speaker, I rise in support of the Adjournment Debate and thank you, Madam Deputy Speaker, I know it's been a long day, thank you for letting me have my final few words in this Honourable House. Before I share my final few words, I would like to say thank you. Thank you to the community for trusting me with this opportunity. Thank you to the Chief Minister for allowing me to follow my passion for a healthier St Helena and be part of a team. To my colleagues, the Ministerial team, the Elected Members, and to the Public Service. To my Portfolio Director and the leadership team, it has been a privilege and to the staff, both in Health and Social Care, on the front lines and behind the scenes, you have my deepest respect. I do not stand here today to answer a question of public interest, or to defend another budget, or of course, in my case, yet to defend another overspent Supplementary Bill. Instead, I stand here to offer my farewell as the Minister of Health and Social Care. The past four years has been extraordinary. The lessons I've learned, the people I've met, and the emotions I've felt have exceeded all others by some distance. St Helena is more than a place. It is a people. It is a culture. It is a trip that connects an array of incredible events that has echoed across generations. Nevertheless, as I step away from this role, I do so with a deep awareness of the significant challenges we will still face, challenges that are not just economical or logistical, but deeply human. During my time in this role, I have often reflect on what may be holding us

back as an island, from truly thriving. My conversations have, my conversations with members focus on daily tasks and issues like benefits payments, or inefficiencies within SHG, but these are not at the heart of the matter, nor will they define the outcomes. That is not to say that they should not be challenged. This quest for understanding has taken me down many rabbit holes, from exploring our forge history, to testing my own DNA, to speaking with members of other small isolated communities, I have had the privilege to meet while doing this role. These experiences has only deepened my questions and at times, put me at the sharp end of many debates, especially when challenging deeply rooted beliefs. In all of this, I recently finished listening to a book called Tribal by Michael Morris, which has helped bring some clarity I like to share in my own words. In this book, the author speaks of three fundamental tribal codes he describes as codes that shape how we survive, evolve and behave in groups. These codes are especially powerful in tight knit communities. The peer code, the instinct to conform to what most people do. This keeps us safe, but it also can keep us stuck when unhealthy habits become the norm, or when silence replaces accountability, we risk normalising what should be challenged. The hero code, the drive to copy those we admire. This can inspire greatness, but only if we lift up to the right heroes, the world stage is full of such characters on both sides. Let's celebrate not just those who speak the loudest, but those who serve quietly, who care for others, and who put aside personal egos to build rather than divide. And importantly, the ancestor code, the pull to follow the ways of our forbearers. This gives us roots and a powerful connection to each other. But not only, but it also can make us resistant to change. We honour the past best by not repeating it, but by evolving it. By asking, what would our ancestors do if they stood in our shoes today? These codes are not flaws, they are features of our humanity, but only if we understand them and use them to build bridges, not walls. So how do we move forward? There are many, many areas which these codes can apply, but I will focus on three which are close to my heart. My codes: in health, we must embrace the new prevention strategy as it gathers pace over the next year, it is the most practical funded opportunity to challenge the trajectory of our health and wellbeing. It is not just a document. It is a lifeline. It's a call on us to act early, act together and act with courage against peer codes that have made some of our poor habits the norm. We must be honest about our finances. I will say it for the third time in three weeks. There is no endless pot of money, but there is an endless potential within us all as a people. If we invest wisely in ourselves, our workforce, our infrastructure and, most importantly, our community, we can build positive foundations for stability. And finally, we must confront the truth about our population. If we do not find a way to retain and attract people, especially young people, we risk becoming a museum of memories, rather than a living, thriving society. This is my greatest fear, and the departures over the past 12 months have made it deeply personal for me. As a government and as a people, we must not settle for managing our decline, but champion renewal. Let us not waste our precious time arguing over the 20% we disagree on but focus on moving forward with the 80% we agree upon. Change is painful. It challenges our deep-rooted codes. It is easy to turn a 20% disagreement into an 80% problem and rally support for it. I see this everywhere. We must rise above it. As I step away, I do so with gratitude, with the hope and with the ... conviction that St Helena's best days are not behind us, but they are ahead of us, but only if we choose to make it so. Let us not be held up by the codes of conformity, nostalgia or fear. Let us instead write new codes of courage, compassion and collective action. Madam Deputy Speaker, before I take my seat for the last time as the Minister in this government, I want to speak directly to a group of people who may not see themselves as change makers, but you absolutely are. To the increasing number of people, I pass quietly in the morning or late afternoons, walking along the roadside, lifting weights in the gym or attending your favourite physical activity. You are the quiet revolution. You are choosing health, not with slogans or policies, but with steady, hopeful steps. Each sunrise you meet, each routine you go and most importantly, sheer is reshaping our future,

quietly, powerfully and collectively. This is what grassroots movement truly looks like, not loud, not headline grabbing, but consistent and connected in the best possible way. So whether you walk, run, swim or simply choose one healthier meal each day, know this, you are not on the sidelines of our future wellbeing. You are the foundation. You remind us that leadership doesn't always wear a title, sometimes it wears trainers and show up each day without fanfare. And it is from this ground, your ground that the seeds of long-term change will grow. Madam Deputy Speaker, for the last time, I beg to move.

The Deputy Speaker -

Thank you Honourable Minister. Honourable Attorney General, would like to say a few words?

The Hon. Attorney General -

Thank you, Madam Deputy Speaker. I just want to respond to the very kind and generous words that the Honourable Minister Brooks directed to me and I just want to remind you all that I happen to be the chap who stands at the front of a team and a team that I am very, very proud of. And there are two people I want to single out, one is Jen. You all know how brilliant Jen is as a drafter, she's had to put up with a significant number of changes that I have been demanding, and so and so forth, and other circumstances have been demanding for a considerable period of time. We couldn't have done what we did today without her intense and dedicated hard work. And similarly, with regard to Susanna, who is present via the phone today, Susannah's expertise has to be seen to be believed. She is a fantastic asset, and I had immense pleasure of working with her in relation to the Communications Bill, what have you and of course, she and I both have the Falklands Islands in common. Whilst I wasn't her direct successor in the comms role, albeit through the AG default position, I was able to lean heavily on her work when she was in that role, as I have been here. So thank you so much for your kind words, Minister but as I say, I am merely the front man for a large team of very talented people. Thank you.

The Deputy Speaker -

Thank you Attorney General. Honourable Chief Minister.

The Hon. Chief Minister -

Thank you, Honourable Madam Deputy Speaker. I think we're all tired now. I think first and foremost, I would like to just explain to the community listening why we've only had a contributions from both Minister Ellick and Minister Henry. I think everybody would have loved to speak today. I think it's only fair that I relay that. But it is 10 minutes to spare, and we need to be finished with this sitting of formal LegCo. Both Minister Henry and Minister Ellick will depart our shores on Saturday. First, I would like to say to Minister Henry, go and fly the flag one more time for St Helena, please. It is all about St Helena. It is all about health and social care and forging through the future for St Helena with all the work that's been done within health and social care over the past four years, the work doesn't stop because we stop. Minister Henry is going there to represent St Helena and ensure that our story is told so that others can learn from it. We continuously talk about being a blueprint, and of course, there might also be some support, financial support that we gain from doing all the good work that we've done within Health. So first and foremost, Minister Henry, I'd like to thank you and your team at Health and Social Care for the work that you've done to get St Helena through the door. I mean, we've sat and stood here on many occasions, and talk about the blue and green agenda, getting St Helena's foot through the door. I think we're making progress in all the different areas and I think at this time, it's Health and Social Care's turn. And I certainly congratulate you all, I know it's been a team effort, so well done to you and I hope you travel well. I will do

the same for you Minister Jeffrey Ellick. I think we've all talked about the things that you've achieved. I thank you for all the detail that you've put but I'll talk about wishing you well as you go on this journey and I hope that all will go well for you, and that you'll return to us as soon as possible. And then I'd like to now go back a little bit and thank you, Minister Brooks, for you and your team and all involved in getting the Communications Bill, 2025 across the line. I am so super proud of the collective achievement with regards to this and I don't think I need to name everybody, because I guarantee at 10 to six in the evening, I'm going to forget somebody. But I'll talk about the AG's Chambers and the team, I'll talk about, as I said, Minister Brooks, but it's also the Telecommunications Board. It is the indeed, all those working still behind the scenes for the negotiations and ensuring that we have a good teamwork going forward as we forge forward now for the best interest of St Helena. I think today, as many has said, was a very hard and difficult day, but some good debates was heard in the public fora, which I think is what does well for the community to better understand the types of conversations we have. So I'm not going to go into everything that ministers Ellick and Henry talked about, but indeed, I think it was a taster of how emotional, no doubt next week is going to be. I think we've been so excited about seeing the end of the line that I don't think it has hit me until today, after listening to you two speak that next week might be quite emotional. So get ready, and I'm the last one to speak, which is never an easy thing, I have to admit. So but I will reflect on some of the things that you both said. I don't think we can recall sometimes what has been achieved in the last three to four years. We were the inaugural Ministerial Government come into play. There was lots to learn. And I think when we've been reflecting in our final In-scope programs as well how intense reopening the island was. And, you know, sometimes, because of the progress we've made up since then, I think it can easily be forgotten. And I like the idea of how you Martin mentioned about the tribal codes. I think they are so key to how we address life going forward. But I think throughout, the both of you, you both talked about raising the profile of St Helena, the high-profile visits. But it is not just the ownership of any Council to be doing that. We need St Helena, the entire St Helena, to ensure that we always raise the profile, because I do believe that we are stronger together as Minister Ellick has rightly said. When we get that message out there, and it's a consistent message, I do think we do get good results. And again, it was talked about the additional budgetary aid we've received this year, and indeed, the capital funding, we now need to ensure that that is utilized in the best, best way. I am going to leave it there, Madam Deputy Speaker, and I'll close on similar comments to what Minister Henry made when he said, the best days are ahead of us. Thank you.

The Deputy Speaker -

Thank you, Honourable Chief Minister. Thank you, Honourable Members. I don't have a long closing speech. I just want to say thank you for a very good discussion today, which I trust provided answers and clarity for you. And I would just like to say it showed democracy at work. I want to say a big thank you to the AG, who has been a huge help to me as well and not forgetting Susanna Nightingale, who has sat with us for the long session today, virtually. Thank you, Susanna. Minister Ellick, I wish you the very best, and we look forward to your safe return. I now put the question that this house adjourn Sine Die.

Question put and agreed.

The Deputy Speaker -

The House is adjourned. Thank you very much.

.....
Honourable Speaker

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Date