Main Briefing Paper for MHKs

Local Government (Amendment) Bill 2023 – Clause 5
Constitutional, Financial, Democratic and Procedural Concerns

1. Purpose of this briefing

This paper explains why Clause 5 of the *Local Government (Amendment) Bill 2023* raises serious concerns that remain unresolved following Legislative Council scrutiny, and why responsibility now rests with the House of Keys to intervene before final passage.

It draws on:

- Legislative Council Hansard (December 2025),
- public statements by Members of Legislative Council,
- written evidence submitted by local authorities *(Port St Mary Commissioners letter attached for reference),*
- the Minister's letter to Legislative Council regarding the Clueit amendment,
- and Legislative Council's own published standards on scrutiny and post-legislative review.

2. What Clause 5 does

Clause 5 empowers the Department of Infrastructure, by regulation, to:

- impose duties on local authorities,
- amend existing enactments to convert discretionary powers into mandatory obligations,
- specify minimum service standards,
- require local authorities or joint boards to make financial contributions to services delivered by others.

This includes a Henry VIII power, allowing amendment of primary legislation through secondary legislation.

Relevant evidence: see Appendices C and E.

3. 2018 Department of Infrastructure Local Authority Transition Review: Policy conflict with Clause 5

A 2018 Department of Infrastructure 'Local Authority Transition Review' explicitly concludes that wholesale or compulsory reorganisation of local government has historically failed and that successful transition depended on consent, capacity, and funding. The Review rejected 'one size fits all' approaches and found no unified appetite among local authorities for taking on additional responsibilities. Clause 5 represents a constitutional departure from this settled policy position by enabling compulsory transfer of functions by regulation, without funding guarantees or consent.

Relevant evidence: see Appendix O

4. Public interest and Government's own standards

The Attorney General's Chambers' Annual Operating Report emphases that new legislation creates increased demand, risk, and cost across the public system, and that effective governance requires those impacts to be planned for in advance. The Report consistently promotes risk-based, proportionate regulation and front-loaded scrutiny as essential to maintaining public confidence in the exercise of public power. Clause 5 of the Local Government (Amendment) Bill 2023 departs from that approach by creating a broad, discretionary power capable of imposing financial and operational burdens on local authorities, and therefore ratepayers, without a defined resourcing model or built-in safeguards. The issue is not whether the power might be used responsibly, but whether its design meets the public-interest standards government applies to itself.

5. Why Clause 5 is constitutionally significant
Henry VIII powers are widely recognised as requiring exceptional justification and scrutiny. They alter the balance between the legislature and the executive and are normally constrained by:

- narrow scope,
- clear limits,
- and strong parliamentary oversight.

Clause 5 is broad, open-ended, and permanent.

This is not a technical amendment; it represents a structural shift in the relationship between central and local government.

Relevant evidence: see Appendices E and F.

6. Legislative Council acknowledged Clause 5 was contentious
During Legislative Council debate, Rob Mercer MLC stated:
"Clause 5 of the Bill… proved to be a contentious issue for local authorities following its insertion into the Bill by the other place."

This confirms that:

- opposition from local authorities was known,
- it was Island-wide,
- and it related specifically to Clause 5.

Relevant evidence: see Appendix F.

7. Legislative Council admitted uncertainty about safeguards
Paul Craine MLC stated:
"I think how that is actually achieved is perhaps open to further debate… whether that is by the Department or post-legislative scrutiny I do not think matters too much."

Mr Craine's admission confirms that:

- safeguards were not clearly defined,
- oversight mechanisms were unresolved,
- and the clause was approved despite this uncertainty.

For a Henry VIII power, this represents a serious deficiency.

Relevant evidence: see Appendices F and E.

8. Transparency and scope of the Bill
The long titles of the Local Government (Amendment) Bill 2021 and the Local Government (Amendment) Bill 2023 are word-for-word identical. Neither long title refers to the creation of a power enabling a Department to impose new duties on local authorities by regulation, to amend primary legislation, or to compel financial contributions. Clause 5 therefore introduces a significant constitutional and financial power that is not reflected in the Bill's stated scope. This lack of transparency is material as Members, stakeholders, and the public rely on a Bill's long title to understand its purpose, reach, and constitutional effect. The insertion of Clause 5 represents a substantive constitutional change that was not signalled in the Bill's description and therefore did not attract the level of scrutiny normally expected for such a power.

Relevant evidence: see Appendix J

9. Financial impact reduced to consultation only
On cost implications, Mr Craine stated:
"The consultation now has to include financial and operational matters."

Consultation, however:
- does not guarantee funding,
- does not prevent unfunded mandates,
- and does not protect ratepayers.

Local authorities cannot raise income tax or VAT. Their only mechanism for funding new duties is rates. Clause 5 therefore enables cost-shifting from central taxation to households.

Relevant evidence: see Appendix C.

10. Treasury consultation
A recent Treasury consultation on amendments to the Rating and Valuation Act 1953 provides important context for Clause 5. That consultation proposes removing the requirement for Treasury to fund rate rebate schemes in all cases, explicitly normalising scenarios where local authorities may be expected to absorb costs through rates. It also reframes rates as a tool for delivering national policy objectives. When read alongside Clause 5, this demonstrates a wider cross-government direction of travel; central government retaining policy control while increasing reliance on local rates to fund delivery. This reinforces concerns that Clause 5 enables unfunded mandates and exposes ratepayers to increased costs without statutory safeguards or cumulative impact assessment.

Relevant evidence: see Appendix K

11. DOI Minister interview, Attorney General's Chambers' guidance and Treasury rates consultation
In a Manx Radio interview on 10 March 2025, the Minister distinguished between the long-standing, widely consulted elements of the Local Government (Amendment) Bill and the amendment introducing Clause 5, which she attributed to an individual Member and treated separately. The interview places emphasis on continuity, speed

of delivery, and proceeding with existing office-holders rather than awaiting newly elected local authorities. While such considerations may be relevant for technical legislation, they are constitutionally inadequate justifications for a provision with clear constitutional effect. Clause 5 alters the balance of power between central and local government and enables the amendment of primary legislation by regulation and such a change requires explicit consultation, transparency, and scrutiny irrespective of electoral cycles.

When read together, the Minister's public statements, Attorney General's Chambers guidance on the exercise of public power, and Treasury's current consultation on rating reform reveal a consistent direction of travel. The Minister has publicly justified proceeding with Clause 5 at pace, prioritising continuity over engagement with newly elected local authorities. Attorney General's Chambers guidance makes clear that public powers must be exercised proportionately, in the public interest, and with proper regard to downstream cost and governance impact. Treasury, meanwhile, is consulting on reforms that weaken central funding guarantees and normalise the absorption of policy costs through local rates. Clause 5 operates as the legal mechanism that connects these strands and it enables central direction of services while financial responsibility increasingly rests with ratepayers. This gives Clause 5 a clear constitutional and fiscal effect that extends well beyond technical local government reform

Relevant evidence: see Appendix J, K and M

12. Waste strategy (position after Treasury rates section)
The Isle of Man Waste Strategy 2025 - 2035 provides further critical context for Clause 5. The Strategy explicitly anticipates the introduction of service standards, performance requirements, and intervention mechanisms in relation to local authority waste services, while confirming that household waste collection and related services remain local authority responsibilities funded through rates. It envisages expanded services, rationalisation, and enforcement without committing central government funding. Clause 5 therefore operates as a constitutional mechanism by which strategic policy objectives, such as those set out in the Waste Strategy, may be converted into binding local authority duties through secondary legislation rather than primary legislation. This significantly elevates the constitutional and financial implications of Clause 5 and reinforces the need for clear safeguards, funding certainty, and democratic scrutiny

Relevant evidence: see Appendix L

13. Sufficiency of existing law
The Local Government Act 1985 already provides:

- intervention and enforcement powers,
- minimum standards,
- support for failing authorities,
- reorganisation mechanisms,
- and procedural safeguards.

No evidence has been presented demonstrating that these powers are insufficient. Local authorities have consistently argued the issue is resourcing and capacity, not legislative deficiency.

Relevant evidence: see Appendices A and C.

14. Absence of formal evidence-gathering and a compressed Clauses Stage
Clause 5 progressed through Legislative Council with:

- It would appear, no formal call for evidence during the evidence gathering stage, e.g. Treasury impact assessments
- no structured oral evidence sessions free from executive involvement,
- no written justification explaining why existing powers were inadequate,
- and a highly compressed Clauses stage.

This is inadequate scrutiny for a Henry VIII power.

Relevant evidence: see Appendix A and E.

15. Executive consultation instead of independent scrutiny
Legislative Council engaged directly with the Department of Infrastructure during scrutiny, including collaborative discussion of amendments.

This approach:

- resembled executive consultation rather than legislative scrutiny,
- relied heavily on departmental reassurance,
- and limited adversarial testing of evidence.

For a clause expanding executive power, this could undermine confidence in independence.

Relevant evidence: see Appendix D.

16. Executive intervention in the evidence session
During the Legislative Council oral evidence session:

- Dr Michelle Haywood MHK (Bill mover), and
- Lawrie Hooper MHK (Clause 5 mover)

were permitted to attend and intervene, challenging local authority witnesses.

This is highly unusual in Westminster-style systems, where Ministers normally appear as witnesses, not participants, in scrutiny of their own legislation.

This intervention:

- blurred the line between advocacy and scrutiny,
- placed witnesses under political pressure,
- and undermined the integrity of the evidence-gathering process.

Relevant evidence: see Appendix H.

Officers not permitted to attend Legislative Council oral hearing with Chairs (opposing MHKs apparently denied same right to attend as Bill mover and Minister)
During the Legislative Council oral evidence session, local authority Chairmen were not permitted to be accompanied by their professional officers, despite officers being

responsible for advising on legal, financial, and operational matters central to Clause 5. At the same time, the Bill mover and the Clause sponsor were permitted to leave a sitting of the House of Keys to attend the oral evidence session and intervene in proceedings. Members of the House of Keys who opposed the Bill were apparently not afforded equivalent access. This combination of restrictions and permissions created an imbalance in expertise and access that is unusual in evidence-based scrutiny and raises legitimate concerns about procedural fairness and equality of arms.

The process of the Legislative Council oral evidence session further illustrates the imbalance identified elsewhere in this briefing. Local authority witnesses were required to give evidence without their professional officers present, while executive Members were permitted to attend and intervene. This limited witnesses' access to technical support while enhancing the executive's ability to shape the evidential narrative. When combined with post-evidence executive rebuttal and reliance on assurances of intent, this procedural asymmetry weakens confidence that scrutiny was conducted independently and on an equal footing.

Relevant evidence: see Appendix N

17. Letter from Dr Haywood MHK to Legislative Council – 21.11.25
Following the Legislative Council oral evidence session, the Department of Infrastructure submitted a written letter responding to selected points raised by local authorities. While framed as a factual clarification, the letter selectively extracts and reframes oral evidence and relies primarily on statements of departmental intent, procedural assurances, and existing Standing Orders. It does not substantively engage with the central constitutional concern raised by multiple authorities and by the Lord Bishop, that Clause 5 alters the relationship between central Government and local authorities by enabling compulsion through secondary legislation rather than partnership through primary law. The absence of independent assessment or opportunity for witnesses to respond reinforces concerns about the balance and robustness of the scrutiny process.

The Department's post-evidence letter illustrates a broader concern identified throughout the scrutiny process that constitutional objections raised by local authorities were repeatedly met with reassurances of intent rather than examination of legal effect. The letter responds to oral evidence by asserting how the Department would expect powers to be used, rather than addressing what Clause 5 permits as a matter of law or how future Ministers might exercise those powers. This reinforces the concern that scrutiny focused on managing risk through reassurance, rather than resolving risk through limitation.

Relevant evidence: see Appendix M

18. The Minister's letter and *"marking Its own homework"*
In her letter to Legislative Council regarding the Gary Clueit MLC amendment, the Minister stated:
"It is likely that any report would be viewed as the Department 'marking its own homework' and would not provide the level of independent scrutiny…"

This admission directly supports local authorities' concerns that:

- Department-led review lacks credibility,
- reliance on executive self-scrutiny is inadequate.

Yet Legislative Council relied heavily on such review mechanisms when allowing Clause 5 to proceed.

Relevant evidence: see Appendix G.

19. Post-legislative scrutiny is not a substitute for pre-legislative scrutiny
The Minister's letter also proposes post-legislative scrutiny several years after enactment.

Post-legislative scrutiny cannot undo:

- higher rates,
- loss of local autonomy,
- or exercised regulatory powers.

Legislative Council itself has stated post-legislative scrutiny is important, but not a substitute for scrutiny before enactment.

Relevant evidence: see Appendices E and G.

20. Democratic and Human Rights concerns
Local authorities raised concerns under the Isle of Man Human Rights Act 2001, including:

- Protocol 1, Article 3 – democratic participation,
- Protocol 1, Article 1 – property rights (via rates),
- Article 6 – procedural fairness,
- Section 6 – duty on public authorities.

These concerns were not substantively addressed in debate.

Relevant evidence: see Appendix A.

21. Consequences if Clause 5 proceeds unamended
If enacted as drafted, Clause 5 risks:

- higher rates for households,
- erosion of local democratic autonomy,
- increased legal exposure for local authorities,
- concentration of power in the executive,
- and weakened public confidence in legislative scrutiny.

Relevant evidence: see Appendix C.

22. Why responsibility now rests with the House of Keys
Legislative Council:

- acknowledged the seriousness of Clause 5,
- admitted uncertainty about safeguards,

- relied on reassurance and future review,
- and permitted executive involvement in scrutiny.

This leaves the House of Keys as the only body able to:

- ensure proportionality,
- protect ratepayers,
- uphold democratic and human rights standards,
- and restore confidence in the legislative process.

Relevant evidence: see Appendices B, E, G and H.

23. What Local Authorities are asking
Local authorities ask MHKs to:

- Remove Clause 5, or
- At minimum:
  - require consent rather than consultation,
  - guarantee funding for any imposed duties,
  - remove the Henry VIII power,
  - introduce independent oversight and appeal mechanisms.

Relevant evidence: see Appendix B.

24. Lord Bishop question in Legislative Council – ". . .does this affect trust"?
During the Legislative Council oral evidence session, the Lord Bishop asked whether Clause 5 would affect the relationship between central Government and local authorities. In response, the Minister stated that Government would need to *"force the change"* to achieve its objectives. Local authorities unanimously rejected this approach, arguing that Clause 5 replaces partnership with compulsion, undermines trust, and alters the constitutional balance between central and local government. This exchange crystallises the core issue that Clause 5 is not an administrative tidying-up measure, but a constitutional shift in how local democracy operates in the Isle of Man.

25. Closing position
Clause 5 introduces sweeping executive powers that were acknowledged as serious, opposed unanimously by local authorities, insufficiently scrutinised in Legislative Council, and raise unresolved financial, democratic and human rights concerns. The House of Keys must now intervene before final passage.

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APPENDIX A

Conflicts and omissions between Port St Mary Commissioners' evidence and Legislative Council debate

Purpose

To identify material conflicts and omissions between the additional written evidence submitted by Port St Mary Commissioners to Legislative Council and the manner in which Clause 5 of the Local Government (Amendment) Bill 2023 was debated and resolved in Legislative Council.

A1. Human Rights engagement

Port St Mary Commissioners raised:

- Port St Mary Commissioners raised:
- democratic participation (Protocol 1, Article 3),
- property rights via rates (Protocol 1, Article 1),
- procedural fairness (Article 6),
- public authority duties under the Human Rights Act 2001,
- legal certainty and legitimate expectation.

Legislative Council debate:

- contained no substantive discussion of the Human Rights Act 2001,
- did not refer to Protocol 1, Articles 1 or 3,
- did not confirm that a human rights compatibility assessment had been undertaken,
- did not explain how Convention rights would be protected.

Conflict:
Formal human rights concerns were submitted in writing but were not meaningfully addressed in debate.

A2. Existing statutory safeguards

Port St Mary Commissioners argued:
the Local Government Act 1985 already provides mechanisms for:

- intervention,
- minimum standards,
- support for failing authorities,
- reorganisation,
- accountability,
- all with defined procedural safeguards.

Legislative Council debate:

- proceeded on the assumption that a legal "gap" existed,
- did not analyse whether existing powers were sufficient,
- accepted the need for new powers without testing proportionality.

Conflict:
Evidence that existing law already provides safeguards was not examined or rebutted.

A3. Procedural fairness
Port St Mary Commissioners warned that
Clause 5 removes:

- defined intervention triggers,
- notice requirements,
- rights of representation,
- appeal mechanisms,
- replacing them with discretionary regulation.

Legislative Council debate:

- treated 'consultation' as a sufficient safeguard,
- did not address loss of appeal rights or independent adjudication.

Conflict:
Consultation was treated as equivalent to due process, despite evidence explaining why it is not.

A4. Legal risk to Local Authorities
Port St Mary Commissioners highlighted:

- local authorities are public authorities under the Human Rights Act 2001,
- they could be compelled to act in ways later found unlawful,
- despite having no discretion to refuse.

Legislative Council debate:

- focused on departmental intent and reassurance,
- did not address the transfer of legal risk to local authorities.

Conflict:
Legal exposure identified in evidence was not examined during scrutiny.

A5. Legitimate expectation and legal certainty
Port St Mary Commissioners argued:

- long-standing statutory arrangements create legitimate expectations,
- Clause 5 allows these to be overridden by regulation.

Legislative Council debate:

- treated Clause 5 as a neutral enabling power,
- did not acknowledge disruption to settled expectations.

Conflict:
A recognised constitutional principle was not considered.

A6. Absence of confirmed Human Rights advice

Port St Mary Commissioners asked:

- whether formal human rights advice had been obtained,
- whether compatibility had been assessed.

Legislative Council debate:

- provided no confirmation that such advice existed,
- offered no certification of compliance.

Conflict:
A direct question raised in additional evidence remained unanswered.

Conclusion

There is a clear disconnect between:

- detailed, rights-based written evidence, and
- the scope and depth of Legislative Council debate.

This gap must now be addressed by the House of Keys.

APPENDIX B

Targeted questions for Members of the House of Keys

Purpose
Provision of clear, focused questions arising directly from Legislative Council debate and unresolved evidence.

B1. Human Rights compatibility

- Has a formal human rights compatibility assessment been undertaken for Clause 5?
- If so, will it be published before the final reading?
- How does Clause 5 comply with:
- Protocol 1, Article 3 (democratic participation)?
- Protocol 1, Article 1 (property rights)?
- Article 6 (procedural fairness)?

B2. Financial impact

- What protection exists to prevent unfunded mandates being imposed on local authorities?
- How will ratepayers be protected from increased rates resulting from Clause 5?
- Why does the clause require consultation on costs but not funding guarantees?
- Were Treasury impact assessments undertaken? Where's the evidence?
- What financial modelling has been undertaken; transfer of duties, shared-service frameworks, transitional funding, ratepayer burden (especially in a retracting economy)?
- Was the Auditor General engaged in an independent costing exercise?

B3. Consent vs consultation

- Why does Clause 5 require only consultation rather than consent?
- What mechanism exists if all affected local authorities object?
- How does consultation alone safeguard democratic accountability?
- Were is the evidence of stakeholder engagement (this includes ratepayers)?
- Was the Local Government Team consulted? What were the findings?

B4. Procedural safeguards

- Why does Clause 5 remove procedural protections found in existing local government legislation?
- What appeal or challenge mechanism exists for local authorities?
- Who provides independent oversight if disputes arise?

B5. Existing powers

- Which specific problems cannot be addressed using existing powers under the Local Government Act 1985? What statutory deficiency does Clause remedy? Which of the existing mechanisms of the current Act are insufficient?
- Why was a broad Henry VIII power chosen over targeted amendment?

B6. Oversight and scrutiny

- Why was the Bill taken through Legislative Council by the Chair of the committee responsible for scrutinising DoI policy?
- How will future scrutiny of Clause 5 powers be perceived as independent?

B7. Post-legislative Review

- Why is the review mechanism 'laying only'?
- Why is there no automatic suspension, sunset, or renewal vote?
- Why is review led by the Department itself?

B8. Accountability

- If rates rise as a result of Clause 5, who is politically accountable?
- How will MHKs explain this to constituents in an election year?

B9. Risk assessment

- Are there documented risk registers, equality impact assessments, human rights assessments, safeguards and implementation plans?

B10. Evidence, due diligence and governance – legal drafting and oversight

- Was the Attorney General's Chambers consulted during drafting?
- Is there written confirmation that the Clause complies with the Local Government Act 1985, the Isle of Man Human Rights Act 2001 and administrative law principles of fairness, proportionality and reasonableness?

Conclusion:
If any of these are absent or answers aren't available, Clause 5 is premature and should be delayed or thrown out and drawn up again following proper consultation, research and impact assessments.

APPENDIX C

Legal and governance risk summary for Local Authorities

Purpose
To summarise the risks to local authorities if Clause 5 is enacted without amendment.

C1. Financial risk
- Exposure to unfunded mandates.
- Pressure to increase rates (rate payers pay twice).
- No statutory funding protection.

C2. Legal risk
- Compulsion to implement directions potentially incompatible with human rights.
- Increased risk of judicial review.
- Reputational risk from enforced decisions.

C3. Democratic risk
- Erosion of local decision-making.
- Reduced accountability to residents.
- Centralisation via secondary legislation.

C4. Governance risk
- Weak oversight mechanisms.
- Department-led self-review.
- Structural conflicts in scrutiny arrangements.

Conclusion
Clause 5 introduces systemic financial, legal, democratic, and governance risks that were identified in written and oral evidence but not resolved during Legislative Council scrutiny. These risks now require urgent consideration by the House of Keys.

APPENDIX D

Legislative Council engagement with the Department of Infrastructure – scrutiny process concerns

Purpose
To explain why the manner in which the Legislative Council engaged with the Department of Infrastructure during consideration of the Local Government (Amendment) Bill 2023 raises legitimate concerns about the independence and robustness of the scrutiny process.

D1. Expected role of Legislative Council in scrutiny
In the Manx constitutional system, the Legislative Council acts as a revising and scrutinising chamber, particularly where legislation:
- introduces Henry VIII powers,
- alters constitutional relationships, or
- materially affects democratic accountability and public finances.

In such cases, best practice requires that:
- the executive is questioned at arm's length,
- evidence is tested through structured questioning, and
- amendments are developed independently of the sponsoring department.

D2. Direct consultation with the Department during scrutiny
The Legislative Council Hansard records that:
- Members engaged in direct discussions with the Department of Infrastructure and the Minister during the week the Bill was being scrutinised,
- amendments were shaped following those discussions,
- and those amendments were then presented to the Council as solutions to stakeholder concerns.

This approach resembles executive consultation rather than legislative evidence-gathering.

D3. Difference between evidence-gathering and consultation
There is an important distinction worth noting:
Evidence-gathering involves:
- structured questioning,
- testing of assumptions,
- challenge to assertions,
- weighing competing viewpoints,
- and independent evaluation by legislators.

Consultation, by contrast:
- allows the executive to frame issues,
- prioritise its own concerns,
- and shape outcomes before formal debate.

In this case, the Department was engaged in a way that allowed it to:
- influence the drafting of amendments,

- shape the narrative around ‘safeguards’,
- and pre-emptively address criticism on its own terms.

D4. Impact on scrutiny independence
By consulting directly with the Department rather than:
- calling it as a witness,
- questioning it formally,
- or requiring written justification for Clause 5,

the Legislative Council:
- reduced the adversarial testing of executive power,
- relied heavily on departmental assurances of intent,
- and accepted explanations without independent verification.

This approach is inconsistent with the Council’s constitutional role when examining legislation that expands executive authority.

D5. Consequences for Clause 5
The result of this process was that:
- the core power in Clause 5 remained intact,
- safeguards focused on reporting rather than limitation,
- financial risks were acknowledged but not constrained,
- and unresolved issues were deferred rather than resolved.

These outcomes align more closely with executive preference than with the concerns raised by local authorities and other stakeholders.

D6. Perception and public confidence
Even where procedures are technically compliant, public confidence depends on visible independence.

Where:
- the executive is consulted during scrutiny,
- amendments are co-developed,
- and challenges are muted,

there is a risk that the process is perceived as:
- insufficiently independent,
- overly deferential to government,
- and lacking democratic rigour.

This perception is particularly damaging where legislation affects local democracy and household costs.

D7. Relevance to the House of Keys
Because Legislative Council scrutiny relied on consultation with the Department rather than independent evidence-testing, key questions remain unanswered, including:
- why existing statutory powers were insufficient,
- how ratepayers will be protected,

- whether human rights compatibility has been assessed,
- and how accountability will function in practice.

These are questions that can now only be addressed by the House of Keys.

D8. Informal Cross-Branch Engagement During Scrutiny
Hansard records an exchange in which a Member of Legislative Council, Tanya August-Phillips MLC, referred to *'talk'* taking place regarding the likely rejection of an amendment in the House of Keys before that House had formally considered the matter. The Member then sought to ask the Department whether its position had shifted in light of that discussion.

This exchange suggests that informal engagement was occurring across branches during the scrutiny phase, with executive views being actively monitored and factored into Legislative Council proceedings.

D9. Effect on the Integrity of the Scrutiny Function
Scrutiny requires distance from both executive preference and anticipated political outcomes. Where legislators adjust or frame scrutiny by reference to informal discussions about how the executive or the other branch may act, the distinction between scrutiny and consultation is eroded.

In the context of Clause 5, which expands executive power and shifts financial and democratic risk to local authorities, such informality undermines confidence that the legislation was examined independently, rigorously, and solely on its merits.

D10. Conditional Scrutiny and Reliance on Future Executive Agreement
LegCo Hansard (16.12.25) records a statement indicating that Legislative Council was prepared to pass Clause 5 on the basis that further amendments could be negotiated later in the House of Keys in collaboration with the Department and the Minister.

This approach reframes scrutiny as an iterative negotiation with the executive rather than a decisive revising function. It risks allowing constitutionally significant powers to be enacted before appropriate limits are secured, contrary to established principles of legislative scrutiny.

Conclusion
The Legislative Council's decision to consult directly with the Department of Infrastructure during scrutiny, rather than subjecting it to structured evidence-based questioning, weakened the independence and effectiveness of the scrutiny process.

This is not a matter of intent, but of constitutional function.

As a result, the House of Keys now bears responsibility for ensuring that:
- *executive power is properly tested,*
- *stakeholder evidence is fully weighed,*
- *and unresolved financial, democratic, and human rights risks are addressed before final passage.*

APPENDIX E

Inadequate evidence-gathering, compressed clauses stage, and inconsistency with Legislative Council's own scrutiny standards

Purpose

To explain why the absence of formal evidence-gathering and the highly compressed Clauses stage for the Local Government (Amendment) Bill 2023 are wholly insufficient for legislation of this constitutional, financial, and democratic significance, and why this represents a departure from Legislative Council's own stated approach to scrutiny and post-legislative review.

E1. Absence of evidence-gathering on Clause 5

Clause 5 introduces:

- a Henry VIII power,
- a rebalancing of authority between central and local government,
- the potential for unfunded mandates,
- and impacts on democratic representation and ratepayer costs.

Despite this, Legislative Council:

- appeared not to issue a formal call for evidence on Clause 5,
- appeared not to invite <u>independent</u> oral evidence from affected local authorities (Minister and Bill mover allowed to attend and impede),
- did not require written justification from the Department of Infrastructure explaining why existing statutory powers were insufficient,
- and did not test competing evidence in a structured manner.

Instead, engagement with the Department occurred through direct consultation, rather than adversarial or inquisitorial scrutiny.

> For legislation of this magnitude, this represents a significant deficit in process.

E2. Extremely short Clauses stage for a constitutional change

The Clauses stage in Legislative Council was completed within a very short timeframe, despite the Bill having been amended in the House of Keys to insert a provision that fundamentally alters the relationship between central and local government.

There was:

- no adjournment to allow Members to reflect on oral evidence,
- no referral to committee,
- no staged consideration of alternatives,
- and no pause to allow further submissions following the evidence stage.

> For a clause that enables primary legislation to be amended by regulation, this level of scrutiny is disproportionately light.

E3. Contrast with Legislative Council's own approach to post-legislative scrutiny
This handling stands in contrast to Legislative Council's own published work on post-legislative scrutiny, as set out by the Standing Committee on the Business and Functioning of the Council.

In its First Report for the Session 2024–25, the Committee states that post-legislative scrutiny is:
'An essential tool in ensuring the effectiveness of legislation, and an established feature of legislative scrutiny in many other parliaments.'
As cited in the Standing Committee on the Business and Functioning of the Council Report – Post-Legislative Scrutiny – 28.10.25
https://www.tynwald.org.im/spfile?file=/business/hansard/20202040/c251028.pdf

The Committee further explains that scrutiny should involve:
structured inquiry,
- identification of unintended consequences,
- engagement with affected stakeholders,
- and independent assessment of whether legislation achieved its intended outcomes.

E4. Inconsistency between principle and practice
The Committee's report demonstrates that, where Legislative Council considers scrutiny important, it will:
- establish a working group,
- issue a public call for evidence,
- receive and publish written submissions,
- hold oral evidence sessions,
- test assumptions against real-world impact,
- and report findings transparently to Tynwald

None of these steps were applied to Clause 5 of the Local Government (Amendment) Bill 2023, despite:
- its constitutional nature,
- its financial implications for households,
- and its effect on democratic governance.

This represents a clear inconsistency between:
- the standards Legislative Council articulates for good scrutiny, and
- the process actually applied in this case.

E5. Reliance on post-legislative review is not a substitute for proper pre-legislative scrutiny
Legislative Council has previously emphasised that post-legislative scrutiny:
- reviews how a law has operated after enactment,
- does not reopen policy choices,
- <u>and cannot undo harm already caused</u>.

In the case of Clause 5:
- once powers are exercised,

- once rates are increased,
- once local autonomy is overridden,

post-legislative review cannot reverse those outcomes.

Using future review to justify minimal scrutiny at enactment stage is therefore inconsistent with the Council's own understanding of the limits of post-legislative scrutiny.

E6. Why this matters for the House of Keys

Because:

- evidence was not gathered in a formal way,

Clause 5 received only brief clause-by-clause consideration,
and Legislative Council departed from its own stated scrutiny standards,
the House of Keys is now the only forum capable of:

- testing the justification for Clause 5,
- examining human rights compatibility,
- assessing ratepayer impact,
- and determining whether unfunded mandates are acceptable.

Conclusion

For legislation that enables executive amendment of primary law and shifts financial burdens onto local ratepayers, the absence of evidence-gathering and the compressed Clauses stage were wholly insufficient.

This is particularly striking given Legislative Council's own published commitment to rigorous scrutiny and post-legislative review. The contrast between principle and practice reinforces the case for the House of Keys to intervene before final passage.

APPENDIX F

Legislative Council public statements and what they reveal about the scrutiny of Clause 5

Purpose
To analyse public statements made by a Member of the Legislative Council in a Manx Radio interview (02.12.25) and explain what those statements reveal about the nature and adequacy of Legislative Council scrutiny of Clause 5 of the Local Government (Amendment) Bill 2023.

This appendix complements Appendices A–E and focuses on admissions and implications arising from LegCo's own public explanation of its role.

F1. Public acceptance that Clause 5 is a Henry VIII Power
In the interview, it was stated that Clause 5:
"…has a Henry VIII clause in it that affects [local authorities] quite directly."

This is a significant public admission. Henry VIII powers allow the executive to amend primary legislation by regulation and are widely recognised as requiring exceptional scrutiny and clear limits.

> ***Implication:***
> *LegCo publicly accepted that Clause 5 is constitutionally serious. This directly conflicts with the very limited evidence-gathering and compressed Clauses stage that followed.*

F2. Public acknowledgement of Local Authority unanimity
The interview also acknowledged that local authorities were:
"…all very much on one page in relation to that particular clause."

This confirms that:
- opposition from local authorities was universal, and
- this unanimity was known to Legislative Council at the time of scrutiny.

> ***Implication:***
> *Despite recognising Island-wide consensus among affected bodies, LegCo did not materially alter or remove Clause 5. This reinforces concerns that stakeholder evidence was not given decisive weight.*

F3. 'Safeguards' framed as review, not restraint
The interview described Legislative Council's role as:
"…put[ting] some safeguards around the introduction of [the clause]… an extra layer of protection, the extra layer of accountability…"

However, the safeguards described consisted of:
- departmental review,
- reporting,

- and a ‘laying only’ process before Tynwald.

There was no reference to:
- limiting the power,
- requiring consent,
- guaranteeing funding,
- or preventing unfunded mandates.

Implication:
LegCo’s own public explanation confirms that its approach focused on monitoring future use, not preventing harm at the point of enactment.

F4. Reliance on post-legislative review to justify pre-legislative weakness
The interview stated that if the power went too far:
“…that can then be reviewed and put before Tynwald members in a laying only process…”

This aligns with LegCo’s broader emphasis on post-legislative scrutiny, but it exposes contradictions:
- Post-legislative review cannot prevent rate rises,
- cannot undo loss of local autonomy, and
- cannot reverse exercised powers.

Implication:
LegCo relied on future review mechanisms to justify passing a power that required robust scrutiny before enactment, contrary to its own stated principles (see Appendix E).

F5. Oversight presented as Department-led
The interview described the process as the Department:
“…go[ing] back, look[ing] at this section… and review whether or not it achieves what it was intended…”

This indicates that:
- review would be initiated and framed by the executive itself,
- not by an independent body,
- with no automatic debate or vote.

Implication:
This reinforces concerns that accountability under Clause 5 is self-referential, not independent.

F6. Complete absence of ratepayer impact in public explanation
Notably absent from the interview was any reference to:
- rates,
- unfunded mandates,
- household costs,

- or financial burden on communities.

Implication:
Public explanations of Clause 5 have focused on governance mechanics while omitting the real-world financial impact identified by local authorities. <u>This omission strengthens the case for House of Keys intervention.</u>

F7. Cumulative effect
Taken together, the interview confirms that:
- Clause 5 was recognised as constitutionally serious,
- local authority opposition was acknowledged,
- safeguards were limited to review rather than restraint,
- post-legislative scrutiny was relied upon to compensate for weak pre-legislative scrutiny,
- financial consequences were not addressed publicly.

This supports the conclusion that LegCo managed risk rather than resolving it, and that responsibility was implicitly deferred to the House of Keys.

Conclusion
The Manx Radio interview corroborates the concerns raised by local authorities: Clause 5 was passed on the basis of reassurance and future review, not firm limits or protections. <u>This strengthens the argument that the House of Keys must now apply the level of scrutiny that the Legislative Council itself accepted the clause warranted.</u>

F8. Indications of pre-emptive cross-branch discussion
During the Legislative Council debate on the 16.12.25, Tanya August-Phillips MLC stated:
'However, there has been some talk of the amendment by Mr Clueit being rejected in another place already, and I suppose, Mr President, with your leave, I would quite like to ask the question of the Department as to whether or not they still hold the same views that they held in Council or whether or not that view has shifted ***because there has been some degree of talk even this morning around all of that before it even reaches the other place.****'*

This statement is procedurally significant. It indicates that informal discussions were already taking place concerning the likely fate of a proposed amendment in the House of Keys before that House had formally reconsidered the Bill. The reference to *'talk… even this morning'* suggests that outcomes were being anticipated or discussed across branches while Legislative Council was still engaged in scrutiny.

F9. Implications for scrutiny independence
The request to ask the Department of Infrastructure whether its *'views had shifted'* (LegCo Hansard 16.12.25) reframes scrutiny as an exercise in gauging executive position rather than independently testing the merits of the amendment. This is inconsistent with the role of Legislative Council as a revising chamber, particularly

where legislation contains a Henry VIII power and affects democratic governance and household finances.

The exchange reinforces concerns that scrutiny was influenced by anticipated executive or political outcomes, rather than conducted in isolation and on principle.

F10. Relationship to wider scrutiny concerns
This exchange aligns with other features of the scrutiny process identified elsewhere in this pack, including:

- direct consultation with the Department during scrutiny (Appendix D),
- reliance on departmental reassurance and post-legislative review (Appendices F and G),
- and the absence of structured, independent evidence-gathering (Appendix E).

Taken together, these factors support the conclusion that Legislative Council used light touches with the progression of Clause 5 rather than subjecting it to fully independent scrutiny.

F11. Acceptance of deferred scrutiny and conditional safeguards
During debate on the proposed sunset clause, Gary Clueit stated:
'If we pass this today and it goes back to Keys, I, and I believe certain other Members, are certainly willing to work with the Department and the Minister on amending this in Keys to make it more palatable to both the Department and to this Chamber.'

This statement is constitutionally significant. It indicates acceptance that Clause 5 could pass Legislative Council without necessary safeguards in place, on the assumption that deficiencies could be addressed later through further negotiation with the executive in the House of Keys.

Such an approach defers scrutiny rather than exercising it, and places reliance on executive willingness to amend rather than legislative insistence on safeguards. For a clause containing a Henry VIII power and significant financial and democratic implications, this represents a material weakening of the scrutiny function.

APPENDIX G

Ministerial letter to Legislative Council on the Gary Clueit MLC Amendment – implications for scrutiny and accountability

Purpose
To analyse the Minister's letter to Legislative Council concerning the Gary Clueit MLC amendment and explain how it corroborates concerns raised by local authorities about scrutiny, accountability, and reliance on post-legislative review.

G1. Acceptance of the 'marking its own homework' problem
In her letter to Legislative Council, Dr Michelle Haywood MHK states that:
'It is likely that any report would be viewed as the Department 'marking its own homework' and would not provide the level of independent scrutiny…'

Why this matters
This statement explicitly acknowledges that:
- Department-led review lacks credibility,
- executive self-scrutiny does not provide independent accountability.

This directly supports the position taken by local authorities that:
- *safeguards relying on Department-led review are inadequate,*
- *reliance on such mechanisms weakens scrutiny rather than strengthens it.*

G2. Post-legislative scrutiny used to justify weak pre-legislative scrutiny
The Minister further states that post-legislative scrutiny should occur several years after enactment, indicating scrutiny would commence only after Clause 5 had been in force and potentially exercised.

Why this matters
Post-legislative scrutiny cannot undo:
- increased rates,
- loss of local autonomy,
- or exercised regulatory powers.

Using future review to justify granting a Henry VIII power now conflicts with accepted scrutiny principles and with Legislative Council's own published standards.

This reinforces concerns set out in Appendix E.

G3. Acknowledgement that Clause 5 would be actively used
The letter sets out a hypothetical scenario beginning with:
'Let us imagine the scenario where the Department has decided to exercise its powers and a Local Authority is required to provide a service…'

Why this matters
This confirms that Clause 5 is:
- not merely a theoretical or reserve power,
- intended to be actively used where the Department deems it necessary.

This directly undermines arguments that Clause 5 presents minimal risk and strengthens the case for rigorous scrutiny before enactment.

G4. One-sided concern about certainty
The Minister argues that the Gary Clueit MLC amendment could create uncertainty for local authorities when planning services or investment.

Why this is contradictory
Clause 5 itself creates significantly greater uncertainty by:
- allowing new duties to be imposed by regulation,
- without funding guarantees,
- without consent,
- without appeal mechanisms.

Concern about uncertainty is therefore applied asymmetrically, protecting executive flexibility while exposing local authorities to risk.

G5. Procedural significance
The Minister's intervention:
- occurred mid-Legislative Council consideration,
- sought withdrawal of an amendment aimed at strengthening scrutiny,
- reframed safeguards after local authority evidence had been given.

This reinforces concerns that:
- scrutiny was shaped around executive preference,
- rather than independently evaluating stakeholder evidence.

Conclusion
The Minister's letter corroborates, rather than undermines, the concerns raised by local authorities. It confirms that:
- *Department-led review lacks credibility,*
- *Clause 5 is intended to be exercised,*
- *scrutiny has been deferred rather than applied,*
- *and safeguards prioritise executive certainty over democratic accountability.*

<u>*This strengthens the case for intervention by the House of Keys before final passage.*</u>

APPENDIX H

Executive intervention in the Legislative Council oral evidence session

Purpose
To record and explain the significance of ministerial and executive involvement in the Legislative Council oral evidence session on Clause 5 of the Local Government (Amendment) Bill 2023.

H1. Factual background
During the Legislative Council oral evidence session with local authorities:
the Bill mover, Dr Michelle Haywood MHK, and the Clause 5 mover, Lawrie Hooper MHK were granted permission, during the House of Keys stage of the Bill, to:

- attend the evidence session, and
- speak and challenge local authority representatives giving evidence.

H2. Why this Is procedurally significant
Legislative Council evidence sessions are intended to:

- gather independent evidence,
- test assumptions,
- and allow witnesses to speak freely to a revising chamber.

Allowing the Bill mover and Clause sponsor to intervene:

- collapses the separation between executive advocacy and legislative scrutiny,
- places witnesses in an adversarial position,
- undermines the independence of the evidence-gathering process.

H3. Impact on witness independence
Local authorities giving evidence are entitled to expect:

- neutrality,
- protection from political pressure,
- and freedom to provide frank and robust evidence.

Executive presence and intervention:

- risks a chilling effect on evidence,
- shifts the balance from inquiry to defence,
- and weakens confidence that evidence was weighed independently.

H4. Relationship to wider scrutiny concerns
This incident directly aligns with and explains:

- the consultative rather than evidential nature of scrutiny (Appendix D),
- reliance on executive assurances (Appendix F),
- absence of independent challenge to Departmental positions (Appendix E),
- and later acknowledgement that Department-led review lacks credibility (Appendix G).

It is a concrete example of the procedural weaknesses identified throughout this pack.

H5. Constitutional context
In Westminster-style systems, Ministers and Bill sponsors:

- normally appear as witnesses when scrutinised,
- do not intervene in questioning those giving opposing evidence.

The events described above are therefore highly unusual and reinforce concerns that:

- scrutiny did not occur at sufficient arm's length from the executive.

Conclusion
Executive intervention during the Legislative Council oral evidence session undermined the independence and integrity of the scrutiny process for Clause 5. This procedural irregularity strengthens the case that:

- Legislative Council scrutiny was compromised,
- stakeholder evidence was not tested in a neutral environment,
- and the House of Keys must now apply rigorous and independent scrutiny before final passage.

Conclusion
Local authorities gave evidence in Legislative Council in the presence of the Bill mover and Clause sponsor, who were permitted to intervene. <u>*That undermines the independence of the evidence stage and leaves unresolved issues that the House of Keys must now address.*</u>

APPENDIX I

LegCo Standing Orders: available but unused safeguards

Purpose
To identify the procedural safeguards explicitly available to the Legislative Council under its Standing Orders and published procedural guidance, and to explain why the decision not to use those safeguards in relation to Clause 5 of the Local Government (Amendment) Bill 2023 materially weakens confidence in the adequacy of scrutiny.

I1. Legislative Council's stated scrutiny role
The Legislative Council describes itself as a revising and scrutinising chamber, particularly concerned with the consideration of primary legislation. Its Standing Orders and published procedural guidance emphasise structured consideration of Bills through distinct stages, including a Principles Stage, an optional Evidence Stage, a Clauses Stage, and a Final Stage.

Where legislation alters constitutional relationships, affects democratic accountability, or has financial implications for the public, the Council's procedures explicitly allow for enhanced scrutiny.

I2. Evidence stage powers explicitly available
Under the Standing Orders, the Legislative Council may:

- hold an Evidence Stage,
- receive written evidence at any time,
- hear oral evidence from affected parties,
- adjourn consideration to allow further evidence to be gathered.

These powers exist precisely to enable structured testing of contested or complex provisions.

In the case of Clause 5, which introduces a Henry VIII power, shifts risk to local authorities, and attracted unanimous opposition from those authorities, no extended or structured Evidence Stage was used to test justification, proportionality, or safeguards.

I3. Power to Refer to a Select Committee
Standing Orders provide that the Legislative Council may, at any point, refer:

- a Bill in its entirety, or
- specific clauses or schedules

to a Select Committee for detailed consideration.

Referral to committee is an established mechanism for dealing with matters requiring deeper inquiry, stakeholder engagement, and careful balancing of constitutional and financial considerations.

Despite the significance of Clause 5, no referral to a Select Committee was made.

I4. Control of timing and Clauses Stage
The Council controls its own timetable and is not required to complete Clauses Stage within a compressed period. Standing Orders permit:

- adjournment between stages,
- staged consideration of clauses,
- time for reflection following evidence.

Clause 5 progressed through Clauses and Final Stage within a short timeframe, despite its late insertion and substantive impact.

I5. Rules governing appearances during evidence
Legislative Council procedures distinguish between:

- evidence-gathering, and
- executive advocacy.

While Members of the House of Keys may appear with permission, evidence sessions are intended to allow witnesses to speak freely and to be questioned by the Council, not challenged by Bill sponsors.

The participation and intervention of the Bill mover and Clause sponsor during local authority evidence therefore sits uneasily with the Council's stated evidence-gathering role.

I6. Final Stage Thresholds and Responsibility
Standing Orders require a higher threshold of support for amendments at Final Stage. This underscores that Final Stage is intended to resolve outstanding concerns, not defer them.

Statements indicating willingness to pass Clause 5 and *'work with the Department'* to amend it later in the House of Keys reflect a conscious decision not to insist on safeguards while the Council still had full revising authority.

I7. Significance of These Omissions
The absence of:

- extended evidence-gathering,
- Select Committee referral,
- staged or adjourned Clauses consideration,
- insistence on safeguards before Final Stage

was not the result of procedural constraint. These safeguards were explicitly available under Standing Orders and published procedure.

Their non-use represents a choice.

Conclusion
Legislative Council's Standing Orders provide multiple mechanisms designed to ensure rigorous scrutiny of constitutionally and financially significant legislation. The decision not to deploy those mechanisms in relation to Clause 5 materially weakens confidence that scrutiny met the standards the Council sets for itself. As a result, unresolved constitutional, financial, and democratic issues now fall to the House of Keys to address.

Legislative Council Standing Orders provide a range of procedural safeguards designed to ensure rigorous scrutiny of constitutionally significant legislation. The table below contrasts those available safeguards with the process actually applied to Clause 5 of the Local Government (Amendment) Bill 2023. The comparison demonstrates that scrutiny mechanisms were available but not exercised.

Comparison Table: Legislative Council Standing Orders vs What Happened
LegCo Standing Orders – available safeguards vs actual practice on Clause 5

Standing Orders / Published Procedure Allow	**What Happened with Clause 5**
Extended Evidence Stage – Council may receive written evidence at any time, hear oral evidence, and adjourn to gather further evidence on complex or contested clauses.	No extended Evidence Stage for Clause 5. No adjournment to gather further evidence despite unanimous local authority opposition and constitutional significance.
Structured Oral Evidence – evidence sessions intended to allow witnesses to speak freely and be questioned by the Council.	Oral evidence from local authorities took place in the presence of the Bill mover and Clause sponsor, who were permitted to intervene and challenge witnesses.
Referral to Select Committee – Council may, at any point, refer a Bill or specific clauses to a Select Committee for deeper scrutiny.	Clause 5 was not referred to a Select Committee despite introducing a Henry VIII power and affecting democratic governance and rates.
Control of Timetable – Council controls its own business and may slow, adjourn, or stage consideration of clauses.	Clause 5 progressed through Clauses and Final Stage within a compressed timeframe following late insertion by the House of Keys.
Independent Scrutiny of the Executive – Executive normally questioned at arm's length; scrutiny should test, not consult.	Legislative Council engaged directly with the Department during scrutiny, shaping amendments through consultation rather than independent testing.
Final Stage as Point of Resolution – higher threshold for amendments; outstanding issues expected to be resolved before passage.	Clause 5 passed on the basis that Members might *'work with the Departmen'"* to amend it later in the House of Keys.

Standing Orders / Published Procedure Allow	What Happened with Clause 5
Clear Separation of Branches – each branch scrutinises independently before the Bill moves on.	Hansard records references to informal *'talk'* about how the House of Keys might deal with amendments before Keys reconsideration.

Appendix J

Attorney General
Public interest standards and Clause 5: Consistency with Government's own legal guidance

Purpose
To set out relevant public-interest standards articulated by Attorney General's Chambers and explain their relevance to Clause 5 of the Local Government (Amendment) Bill 2023.

J1. Public power and the public interest
Attorney General's Chambers' Civil Litigation Manual states that public powers are to be exercised in the public interest and not oppressively, and that taxpayers' money should not be exposed to cost without due cause and proper process. These principles apply explicitly to public law matters and are intended to protect public confidence in the exercise of statutory power.

Clause 5 creates a power capable of imposing duties and financial obligations on local authorities without consent, appeal, or guaranteed funding. While intent may be benign, public-interest analysis requires examination of the structure of the power and the risks it creates.

J2. Legislative design, risk, and cost
The Attorney General's Chambers Annual Operating Report emphasises that new legislation increases demand, risk, and cost across the public system, and that effective governance requires these impacts to be anticipated and managed in advance. The Report consistently promotes risk-based, proportionate approaches to regulation rather than blanket or open-ended powers.

Clause 5 departs from this approach by enabling broad intervention by regulation without:

- defined triggers,
- a resourcing model,
- funding guarantees,
- or independent oversight mechanisms.

J3. Timing of scrutiny and safeguards
Government legal guidance treats scrutiny, governance, and proportionality as front-loaded requirements and safeguards are expected to be built into powers before they are exercised. Clause 5 instead relies on consultation, executive intent, and post-legislative review after the power has been granted and potentially used.

Post-hoc review cannot reverse:

- increased rates,
- loss of local autonomy,
- or financial commitments already imposed.

J4. Public confidence and democratic accountability
Attorney General's Chambers places significant emphasis on transparency, restraint, and public confidence in government action. Clause 5 risks undermining confidence by enabling cost-shifting from national taxation to local rates through secondary legislation, without clear accountability or funding safeguards.

Conclusion
Measured against government's own public-interest standards, Clause 5 raises legitimate concerns about proportionality, cost, governance, and timing of scrutiny. These concerns do not depend on allegations of bad faith, but on whether the design of the power itself meets the standards government expects of its own exercise of authority.

Appendix K

Treasury rating policy and Clause 5 – cumulative risk to ratepayers

Purpose
To set out relevant proposals from Treasury's consultation on amendments to the Rating and Valuation Act 1953 and explain how, when read alongside Clause 5 of the Local Government (Amendment) Bill 2023, they demonstrate a cumulative policy risk of cost-shifting from central government to local ratepayers without adequate statutory safeguards.

K1. Treasury's stated direction on rates
Treasury's consultation proposes amendments that would remove the requirement for Treasury to fund rate rebate schemes in all cases, instead allowing circumstances where local authorities may be expected to absorb the financial impact through rates. The stated rationale is flexibility, but the structural effect is to weaken central funding guarantees while retaining central policy control.

Treasury explicitly acknowledges that rates fund essential community services and that changes may result in uncertainty and income risk for local authorities.

K2. Rates as a national policy lever
The consultation frames rates not merely as a local revenue mechanism, but as a tool to deliver national policy objectives, including behavioural change and enforcement outcomes. This represents a shift in how rates are conceptualised from locally controlled funding to an instrument of central policy. This is significant when considered alongside Clause 5, which enables the Department of Infrastructure to impose new duties and standards on local authorities by regulation.

K3. Absence of ratepayer affordability safeguards
While the consultation includes high-level financial modelling, it does not include:
- a household affordability assessment,
- an analysis of cumulative rate impact,
- or consideration of interaction with other legislative changes affecting local authority costs.

Clause 5 similarly contains no requirement to assess cumulative financial impact on ratepayers before duties are imposed.

K4. Combined effect with Clause 5
Taken together, the Treasury consultation and Clause 5 create a clear risk pathway:
- central government retains policy direction and regulatory control,
- funding guarantees are weakened or removed,
- local authorities are compelled to deliver services,
- costs are absorbed locally through rates.

This is not speculative, it reflects stated policy direction across departments.

K5. Public interest and democratic accountability
Local ratepayers are also national taxpayers. Where national policy objectives are delivered through local rates without corresponding funding or consent, the result is a form of double payment and diluted accountability.

Neither the consultation nor Clause 5 contains safeguards to prevent this outcome.

Conclusion
The Treasury consultation provides important contextual evidence that Clause 5 does not sit in isolation. Together, they demonstrate a broader shift towards transferring financial risk to local authorities and ratepayers while retaining central control. This cumulative effect reinforces concerns about unfunded mandates, affordability, and democratic accountability, and underscores the need for House of Keys scrutiny before Clause 5 is enacted.

Appendix L

The Waste Strategy 2025 - 2035 and Clause 5: From strategy to compulsion

Purpose
To explain how the Isle of Man Waste Strategy 2025 - 2035 interacts with Clause 5 of the Local Government (Amendment) Bill 2023 and why, taken together, they demonstrate a shift toward centrally directed, locally funded service delivery with constitutional implications.

L1. Role of Local Authorities in the Waste Strategy
The Waste Strategy confirms that local authorities remain responsible for household waste collection and related services. It identifies inconsistency of provision, variable standards, and governance gaps as challenges to be addressed.

The Strategy anticipates:
- enhanced service standards,

- performance monitoring,
- potential intervention where standards are not met,
- and rationalisation of service provision.

L2. Funding assumptions
The Strategy does not commit central government funding for expanded or enhanced services. Instead, it assumes that delivery costs will be met locally, primarily through rates.

This aligns with Treasury's consultation on rating reform, which weakens central funding guarantees and treats rates as a policy lever.

L3. Anticipated legislative mechanisms
The Strategy explicitly references the likelihood of:
- new legislation,
- regulatory standards,
- intervention powers,
- to deliver its objectives.

Clause 5 provides the precise legislative mechanism required to give effect to these intentions without returning to Tynwald for primary legislation.

L4. Constitutional effect of Clause 5 in this context
When read alongside the Waste Strategy, Clause 5:
- enables strategic policy objectives to be translated into compulsory local authority duties,
- allows primary legislation to be amended by regulation,
- shifts financial risk to ratepayers,
- and alters the constitutional balance between central and local government.

This elevates Clause 5 from a governance provision to a mechanism of constitutional significance.

L5. Scrutiny and democratic accountability
The Waste Strategy demonstrates that Clause 5 is not a dormant or precautionary power. It is a live enabling tool for implementing pre-existing policy direction.

Given this context:

- the absence of detailed evidence-gathering,
- the compressed scrutiny timetable,
- and the lack of funding guarantees
- are materially more serious.

Conclusion
The Waste Strategy 2025 - 2035 confirms that Clause 5 has practical, foreseeable application for the Department. It enables the executive to convert strategic policy into binding, rate-funded local authority duties through secondary legislation. This reinforces the case that Clause 5 carries constitutional and financial implications requiring explicit scrutiny and safeguards by the House of Keys before enactment.

Appendix M

Post-evidence executive rebuttal and its implications for scrutiny

Purpose
To examine the Department of Infrastructure's post-evidence letter to Legislative Council responding to local authority oral evidence, and to explain why the manner and substance of that intervention raise concerns about the adequacy, balance, and independence of the scrutiny process for Clause 5 of the Local Government (Amendment) Bill 2023.

M1. Timing and nature of the letter
The Department's letter was submitted after the conclusion of the oral evidence session with local authorities. It was not part of the evidence-gathering stage and was not subject to questioning, challenge, or independent evaluation.

This places the letter in the position of an executive rebuttal rather than evidence.

M2. Selective engagement with evidence
The letter responds to selected excerpts from oral evidence rather than addressing the submissions as a whole. In doing so, it reframes constitutional objections as misunderstandings or factual inaccuracies, without engaging with the underlying legal or democratic substance of those objections.

M3. Reliance on intent rather than law
A consistent feature of the letter is reliance on statements such as:

- what the Department "would" do,
- what it "expects" to happen,
- how it "intends" to exercise powers.

The letter does not address:

- what Clause 5 permits in law,
- how future Ministers may exercise the power,
- or what safeguards exist beyond consultation.

This approach substitutes assurance for protection.

M4. Failure to address constitutional change
Local authorities and the Lord Bishop identified that Clause 5 alters the relationship between central Government and local authorities by enabling duties to be imposed through secondary legislation. The letter does not substantively engage with this point, instead focusing on procedural mechanics and Standing Orders.

This represents a failure to engage with the constitutional dimension of the evidence presented.

M5. Absence of witness reply or independent assessment
Witnesses were not afforded an opportunity to respond to the Department's characterisation of their evidence. No independent assessment of competing claims was undertaken before the Bill proceeded.

This asymmetry risks creating the impression that executive interpretations are afforded greater weight than stakeholder evidence.

M6. Implications for scrutiny and public confidence

Even where procedures are technically compliant, scrutiny must be visibly independent. Where:

- executive rebuttals are introduced post-evidence,
- assurances of intent replace legal safeguards,
- and constitutional concerns remain unanswered,
- confidence in the scrutiny process is weakened.

Conclusion

The Department's post-evidence letter does not resolve the concerns raised by local authorities, it illustrates them. By relying on selective quotation, intent-based reassurance, and procedural assertion, the letter reinforces the case that Clause 5 did not receive scrutiny proportionate to its constitutional and financial effect. This places a heightened responsibility on the House of Keys to examine the unresolved issues before final passage.

Appendix N

Procedural asymmetry in the Legislative Council oral evidence session

Purpose
To document and assess procedural asymmetries in the conduct of the Legislative Council oral evidence session on Clause 5, focusing on witness support, access, and equality between executive and non-executive participants.

N1. Exclusion of professional officers
Local authority Chairmen were required to give oral evidence without the presence of their professional officers. Officers are responsible for:

- statutory compliance,
- financial management,
- legal advice,
- and operational delivery.

Their exclusion limited witnesses' ability to respond accurately to technical questions and contrasts with standard evidence-gathering practice.

N2. Executive presence and intervention
The Bill mover and Clause 5 sponsor were permitted to leave a sitting of the House of Keys to attend the Legislative Council oral evidence session. They were further permitted to speak and challenge witnesses during that session.

N3. Absence of equivalent access for opposing Members
Members of the House of Keys who opposed the Bill appeared not to be permitted to attend or intervene in the evidence session. This resulted in:

- executive advocacy being present,
- but parliamentary opposition being absent.

N4. Impact on equality of Arms of Parliament
Taken together, these arrangements:

- advantaged the executive position,
- constrained witness capacity,
- limited plural parliamentary scrutiny,
- and blurred the boundary between evidence-gathering and advocacy.

N5. Relevance to constitutional scrutiny
For legislation with constitutional and financial effect, scrutiny must be visibly neutral and balanced. Procedural asymmetry of this nature risks undermining confidence that evidence was weighed independently.

Conclusion
The exclusion of professional officers from the evidence session, combined with executive access and intervention not afforded to opposing Members, represents an unusual and imbalanced approach to scrutiny. This reinforces concerns that Clause 5 did not receive the level of independent and procedurally fair examination appropriate for a provision with constitutional effect.

Appendix O

2018 Department of Infrastructure Local Authority Transition Review: Policy conflict with Clause 5

Purpose
To demonstrate that Clause 5 of the Local Government (Amendment) Bill 2023 conflicts with the Department of Infrastructure's own evidence-based conclusions on local authority transition and reform.

O1. Rejection of compulsory reform
The 2018 Review records that repeated attempts at wholesale or compulsory local government reorganisation have largely failed and explicitly cautions against *'big bang'* approaches. Instead, it endorses incremental, negotiated transition based on local consent.

O2. Emphasis on consent and capacity
The Review recognises that local authorities differ significantly in size, capacity, and willingness to assume additional responsibilities, concluding that *'one size fits all'* approaches are inappropriate. Clause 5 removes this flexibility by enabling compulsory transfer by regulation.

O3. Funding and rates sensitivity
The Review repeatedly highlights funding and rate inequality as core risks in any reform process. Clause 5 contains no statutory funding safeguards, exposing ratepayers to increased costs without corresponding tax relief.

O4. Constitutional significance
By enabling compulsory service transfer through secondary legislation, Clause 5 represents a constitutional shift away from partnership-based governance toward executive direction. This shift is not supported by the Department's own review findings.

Conclusion
The 2018 Local Authority Transition Review demonstrates that Clause 5 is not a continuation of established policy, but a reversal of it. This evidences the need for heightened scrutiny and reconsideration by the House of Keys.