

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 5th May 1998
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett), Hon C M Christian, Mr E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies For Absence

The President: We have apologies for absence from the hon. Mr Delaney, hon. members.

Expression Of Condolence To Hon Hazel Hannan MHK And Family

The President: Hon. members, this morning our proceedings are overshadowed by the recent news of the tragic death of the son of the hon. member for Peel, Mrs Hazel Hannan and Dr Malcolm Hannan. I am sure that we all wish that we extend our heartfelt sympathy to the family at this time.

Members: Agreed.

The President: Thank you, hon. members.

Submarine Cable Link With UK - Question By Mr Lowey

The President: Now, hon. members, turning to the agenda we come to questions and I call upon the hon. Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Council of Ministers:

- (a) *Does government support the proposal to install a submarine cable link with the United Kingdom; and*
- (b) *has any contract been entered into for the provision of such a cable?*

The President: The hon. Dr Mann, I think, to reply.

Dr Mann: Mr President, the government's present position in relation to this matter is as set out in the Tynwald resolution which was debated and approved at the January sitting of the Court. That resolution indicated support for the Manx Electricity Authority progressing the undertaking of all relevant studies and surveys and the seeking of planning and other consents in respect of its proposal for a 48-milliwatt single cable link with the United Kingdom. In accordance with a further part of that resolution the Department of Trade and Industry is due to report with the recommendations by not later than November of this year on the reinforcement and diversification of the Island's energy supply, including the authority's

proposal for a cable link with the United Kingdom. No contract has been entered into for the provision of this cable.

Mr Lowey: Mr President, would the member not agree that the recent statements made by the Chief Executive of the MEA indicating that it was a foregone conclusion - his statement today reiterates that it is only a feasibility study that is being undertaken and the decision to have a submarine cable is not government policy as of yet?

Dr Mann: Well, it has to come back, as I have said, to Tynwald following the completion of all of these surveys but, because of the limited time scale, if it was approved, although contracts will not have been signed, they will have at least reached a stage where they could be once Tynwald approved, but at this moment no contracts are signed until it comes back to Tynwald.

Mr Kniveton: Mr President, just to clear my own mind I would like to ask Dr Mann who would be funding such installation? In other words, will Treasury have any direct funding involvement?

Dr Mann: The funding, as I understand it, will be entirely within the resources of the MEA but, of course, arranged through the Treasury and with Treasury consent.

Mr Kniveton: Thank you for that.

Wheel Clamping Legislation - Question By Mr Lowey

The President: Question 2, the hon. Mr Lowey.

Mr Lowey: I beg leave to ask the Attorney-General:

When will legislation dealing with wheel clamping, as promised in 1997, be introduced to the branches?

The President: The learned Attorney-General to reply.

The Attorney-General: Thank you, Mr President. In response to the question from the hon. member I have researched *Hansard*, and in particular I have looked at the proceedings of Tynwald Court for Tuesday, 18th February 1997. In the course of those proceedings my learned predecessor, the then Attorney-General, in response to a question from the hon. member Mr Karran, said as follows, if I may, sir: 'My information is that there is no intention on the part of government or departments of government to introduce such provisions' - that is, provisions relating to clamping of vehicles illegally parked. 'It would therefore be in response to a request from local authorities or at the suggestion of a department that consideration would be given for such proposals, but to date no instructions or proposals have been indicated to Chambers.'

I am not aware that the situation has changed since that response from my learned predecessor, and I am therefore unaware as to what promise, if any, was given in 1997 as to legislation dealing with wheel clamping.

Mr Lowey: Would the learned Attorney, Mr President, not agree that at the Legislative Council meeting on Tuesday, 22nd April, when I tried to amend the Statute Law Revision Bill, a clear indication was given at that particular time by my hon. friend Dr Mann, who led the charge against my proposal at that particular time, clearly saying it was a pressing matter and

that it could be dealt with by the statutory authorities and not in the way that I prescribed at that particular time by amending the Statute Law Revision Bill. So I think that was a clear indication that something would be done about the problem and a year on nothing has been done and, from what the learned Attorney has said this morning, it has not even been addressed.

The President: I think this question is on very thin ice and I -

Mr Lowey: As always, sir!

Tax Credits - Transfer To Co-Habiting Couples - Question By Mr Lowey

The President: I would like to move to question 3 under the circumstances and call upon the hon. member to ask the question standing in his name.

Mr Lowey: I beg leave to ask a member of the Treasury, Mr Radcliffe:

Is the transfer of tax credits available to couples co-habiting and, if not, why not?

The President: The member for the Treasury, Mr Radcliffe, to reply.

Mr Radcliffe: Mr President, I assume by tax credits that the hon. member is referring to personal allowances and that he has in mind the current situation where a married couple living together as man and wife may transfer unutilised personal allowances but a couple who are living together and are not married may not. If this is what he has in mind, then I can advise him that his assumption is correct. The income tax system only permits the transfer of personal allowances between married couples. It does not allow it to single people to do the same, irrespective of how cozy and close their relationship may be.

The Treasury has already given consideration to this issue which, I believe, has resulted in the question from the hon. member, and sees no reason for changing the existing system. Two people who decide to live together and not to be married are exercising their right to remain single, in which case they should be taxed as single people. From a purely practical aspect, it would be virtually impossible, for tax purposes, to arrive at a satisfactory set of rules which would determine whether or not two people are co-habiting, cozy, close together, or simply sharing accommodation together.

A further factor is the way the income tax system combines the income of a married couple into one assessment. It would again be very difficult to arrive at a true liability for two single people, particularly - and it is not unknown - for people who drift in and out of a relationship more than once in a tax year, and we probably all know examples of that.

Being perhaps a little pious, I would say that the hon. member may well be approaching this question from the wrong angle. Surely the concept of marriage, particularly where children are involved, is something which should be encouraged, in which case it is only right that there should be some incentive provided. The hon. member may find, on reflection, that what he has in mind is the apparent anomaly whereby the social security system can, for benefit purposes, treat a co-habiting couple as though they were married, whilst for income tax purposes they are not. This is not in fact as strange as it may seem because the two systems are designed for two entirely different purposes. One is designed to meet an immediate need, and sometimes it is immediate and sometimes a short-term need, and therefore it is important

to take account of relationships which may already contribute toward that need. The other system, of course, is designed to raise revenue.

Mr Lowey: Obviously not a cozy answer, but it is the one I expected, Mr President, from the Treasury. Would the member of the Treasury not agree that it is unfair when two people who are co-habiting are penalised by the social security system for so doing and yet, when there is an advantage, when it comes to the tax, the self-same people, when there are children involved, how this system assists those children, and it is, I think, a pious situation indeed when people are actually penalised twice by the state because they are not, if I may best use the word, conforming to a set of principles which I do not believe it is the Treasury's position to be actually enunciating.

Mr Radcliffe: Mr President, I am well aware that this is not the answer that the hon. questioner was looking for, but facts are facts and that is the situation as it is at the moment. I fail to understand a statement in his supplementary that people are penalised by social security and the system there. There may, I suppose, be a perceived unfairness in adopting the approach that is adopted, but I can assure the hon. member that Treasury does reflect seriously on this, not just annually but throughout the year, before the proposals for the new tax year come into being, and we will bear in mind - or I will certainly bring it to Treasury's attention - the points that the hon. member is belabouring here this morning.

Mr Lowey: Can I, with your permission, sir, just explain where the anomaly comes in -?

The President: No, sir.

Mr Lowey: I cannot? Well, I will do that privately and publicly and perhaps shame the Treasury into getting a fair deal for people who are co-habiting.

Government-Owned Land In Malew - Development - Question By Mr Lowey

The President: Question 4, the hon. member Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Council of Ministers:

What plans are there to develop land in government ownership in Malew?

The President: The hon. Mrs Christian to reply.

Mrs Christian: Mr President, so far as I am aware, specific plans exist to develop two areas of land in government ownership in the parish of Malew. These are in the area of Ronaldsway Airport, where the Department of Transport is well advanced with its redevelopment programme, and the Turkeyland Quarry, where the Department of Local Government and the Environment proposes, subject to planning consent, to use an area for the deposit of bottom ash from the all-Island incinerator energy-from-waste facility. In relation to Turkeyland Quarry, it will be necessary for an environmental impact assessment to be carried out and it is hoped that that will begin shortly based on a scoping report which has been developed by the department in consultation with interested parties.

Mr Lowey: Thanking the member for her reply, could she perhaps reply why government bought 19 acres of land four or five years ago on the outskirts of the village and there are no plans to develop that in an area where people want to live, where industry wants to develop?

Mrs Christian: Mr President, can I just confirm that the hon. member is talking about the Crossags Farm site?

Mr Lowey: I am.

Mrs Christian: DoLGE has carried out a detailed survey on the site and has a number of thoughts about possible development in that area. It is seen as important by DoLGE, with a potential to provide a number of developments and it is also important because of the pressures on Onchan and Douglas and Braddan as far as development is concerned. Unfortunately the Crossags Farm site cannot proceed to development at this stage because the Department of Transport has advised that there is insufficient capacity in the sewerage system to serve any new development. DoLGE and the Department of Transport have been in close discussion recently to find a mutually acceptable way forward and the Department of Transport has been asked by the Chief Minister to undertake a technical and financial evaluation of this and three other sites within the next two months.

Mr Lowey: I thank the hon. member for her reply.

Mr Kniveton: Mr President, just following on from Mrs Christian, as a member of the Department of Transport, will Mrs Christian agree that the department is not in favour of stand-alone sewage treatment works but awaits the arrival of the IRIS arrangement?

Mrs Christian: Yes, Mr President, that is the stance of the Department of Transport. However, there are these conflicting pressures and this is why DoLGE and the Department of Transport have been asked to discuss this matter in recent times, in order to find what is a mutually acceptable way to proceed.

Police Powers And Procedures Bill - Consideration Of Clauses Continued

The President: Moving on, hon. members, to item 2 on the agenda paper, I call upon the learned Attorney-General to take clauses in respect of the Police Powers and Procedures Bill and, as I understand it, sir, we are now moving on to part III and clause 27.

The Attorney-General: Yes, I am much obliged, Mr President, thank you. I am aware that this Bill is a complex Bill and that perhaps in my presentation at the last sitting but one it was not convenient to deal with the clauses in such big blocks. So if I may, Mr President, perhaps I could suggest that I try to deal with part III in more manageable sections, and if I could perhaps endeavour to deal first of all with clauses 27, 28 and 29 together?

The President: Is that agreed, hon. members?

Members: Agreed.

The President: Thank you. Proceed, sir.

The Attorney-General: Thank you, Mr President. Part III of the Bill deals with powers of arrest. The royal commission, when dealing with this subject, said 'there is a lack of clarity and an uneasy and confused mixture of common law and statutory powers of arrest, the latter having grown piecemeal and without any consistent rationale.' The commission said it had two main objectives in its proposals, namely to restrict the circumstances in which the police can exercise the power to deprive a person of his liberty to those in which it is genuinely necessary and to simplify, clarify and rationalise the existing statutory powers of arrest.

Clause 27 provides that the power of arrest for arrestable offences applies (a) to offences for which the penalty is fixed by law - for example, murder and treason; (b) to offences carrying a penalty of five years or more years of imprisonment; and (c) to offences listed in sub-clause (2). The power of summary arrest for arrestable offences includes also conspiracy to commit, attempting to commit, or inciting, aiding, abetting, or procuring any such offence - that is clause 27(3).

Clause 27(4) to (7) sets out the circumstances in which arrests without a warrant may be effected on reasonable suspicion that an arrestable offence has been committed, is being committed, or is about to be committed. Powers of arrest are divided into two categories: those which anyone, including a constable, may exercise, and those that can be used only by a constable. Anyone may arrest without a warrant (a) a person who is in the act of committing an arrestable offence, or (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence - that is clause 27(4). Where an arrestable offence has been committed, any person may arrest without a warrant anyone guilty of the offence or anyone whom he has reasonable grounds for suspecting of having committed the offence - this is clause 27(5). Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence - clause 27(6). A police officer may also arrest without warrant anyone who is about to commit an arrestable offence or anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence - clause 27(7).

Clause 28 deals with offences generally - that is, not restricted to arrestable offences. Clause 28 confers upon the police a general power to arrest for any criminal offence if it appears to a constable that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied. It will have been noted that the Bill at various points gives the police special powers that relate to arrestable offences or serious arrestable offences. All other offences are now to carry a limited power of arrest under clause 28 if a constable has reasonable grounds for suspecting that any offence has been committed or attempted, or is being committed or attempted, and it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions are satisfied. The thinking behind the clause is that the police should be able to make an arrest for an offence normally not arrestable where either he does not know the person's name or address or it is necessary to prevent or stop one of a list of particular social evils.

The general arrest conditions are set out at clause 28(3). The first general arrest condition is that the officer does not know and cannot readily ascertain the name and address of the suspect, or he reasonably believes the name and address he has been given are false, or he doubts whether the suspect has given a satisfactory address for service of a summons, either because he has given no address at all or because it is doubtful whether he will be there long enough to accept service and there is no-one else who can do so - that is clause 28(3)(a), (b) and (c). The second condition in sub-clause (3)(d) is that there are reasonable grounds for believing that the arrest is necessary to prevent the suspect (i) causing physical injury to himself or any other person; (ii) suffering physical injury; (iii) causing loss of or damage to property; (iv) committing an offence against public decency in circumstances where members of the public going about their normal business cannot readily avoid the person to be arrested;

and (v) causing an unlawful obstruction of the highway. The third condition in sub-clause (3)(e) is that there are reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person.

Clause 29 provides for the repeal of virtually all statutory powers of arrest by constables without a warrant. With the enactment of the general power of arrest in clause 28 these are no longer required. The Bill does not, however, repeal all other statutory powers of arrest. Those preserved are listed in schedule 2. They include, for instance, powers of arrest in connection with drink/driving offences and terrorism legislation. Mr President, I move that clauses 27, 28 and 29 do stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

Mr Waft: I wonder whether, Mr President, the Attorney-General could clear what looks like an apparent anomaly with regard to clause 27(5)(a): 'Where an arrestable offence has been committed, any person may arrest without a warrant - (a) anyone who is guilty of the offence'. On the premise that you are innocent until proved guilty, how does that sentence there reconcile the situation and for what reasons has it been termed in this way?

Mr Radcliffe: Just a brief point but it seems to be very open that 'any person. . .' Now, do I take it correctly that 'any person' is any member of the public and can arrest a person without a warrant? It seems very wide. It is specific in other places in the clause that the constable may arrest, but it is quite open, I would say, that any person may arrest without a warrant. I presume that it is a citizen's arrest or something like that. If a person takes the trouble to pursue and perhaps catch somebody, is his supposition - call it what you will - strong enough to stand up in court? There is a difference between myself or any other member of the public and a police constable giving evidence. How strong is that case? Is it worthwhile, in other words, the person chasing the criminal to catch him?

Mr Kniveton: Just one question for the Attorney-General, if I may, sir, please? What happens, what is the situation in respect of a constable who believes he had reasonable grounds but in fact is quite incorrect? He makes an arrest. He certainly grossly embarrasses the arrested person. Does the arrested person have any recourse of action against the constable? Thank you.

The President: Would you care to reply, Mr Attorney?

The Attorney-General: Thank you, Mr President. In answer to the question from the hon. Mr Waft, the references made to clause 27(5)(a), 'Where an arrestable offence has been committed, any person may arrest without a warrant - (a) anyone who is guilty of the offence', one can see there that the person - that is any member of the public other than an officer - who arrests someone runs a certain risk because if, in fact, an arrestable offence has not been committed, even though the arresting member of the public believed that an arrestable offence had been committed, the member of the public who actually effects the arrest is running the risk that the person who is arrested can accuse the person later on of carrying out an unlawful arrest. In other words, this clause 27 makes it quite clear - and perhaps this also covers the point made by the hon. member Mr Radcliffe - that although members of the public do have powers of arrest, if it turns out in fact that an arrestable offence has not been committed, even though it appeared an arrestable offence was being committed, the member of the public who carries out the citizen's arrest is liable to action in the courts for damages if

he arrests the person. I do not think that that power of arrest given to the member of the public actually conflicts with the presumption of innocence. If you see somebody climbing down the ladder outside somebody's house with a sack of jewellery over his shoulder and you are the owner and you say, 'I've got you,' that, you may think, is a perfectly proper citizen's arrest and you can haul him off to the police station and he must face his consequences but, of course, that person is still innocent until he is proved guilty in proper court proceedings.

I hope that that will have actually answered the question from the hon. member Mr Radcliffe as well as dealing with citizen's arrest. It might well be very worth while for someone to attempt a citizen's arrest but only in those limited circumstances where it is absolutely clear that an offence has been committed.

Mr Waft: Mr President, I thank the Attorney for his reply. I just wondered if the phraseology does not look correct and perhaps something more on the lines of 'anyone who was believed to be guilty of the offence' rather than 'guilty of the offence'. It is just the determinism of the phrase looks very sacrosanct and it does not look as though it is believed to be guilty but rather guilty.

The Attorney-General: Well, Mr President, I think that (5)(a) and (5)(b) are two alternatives. If someone other than a police officer, or indeed a police officer, sees someone who has committed an arrestable offence, the offender can be arrested by either the member of the public or by the police constable. The protection is that if you have got reasonable grounds for suspecting that the person is guilty of the offence - so in other words, the person who is climbing down the ladder with the sack of jewellery over his shoulder you have obviously got reasonable grounds for suspecting is guilty of theft - you can arrest him. If, on the other hand, somebody is simply running along the street and you think he might be up to no good but you have not got reasonable grounds for arresting him, if you do in fact arrest him then you run the risk that you are going to be challenged in court later for unlawful arrest.

Mr Lowey: Mr Attorney, through you, Mr President, why then have that in - 'anyone who is guilty of an offence'? You have got to read that in conjunction with (5) 'Where an arrestable offence has been committed, any person may arrest without a warrant,' and then if you like go for (b) 'anyone whom he has reasonable grounds for suspecting. . .' - that is as you have described - but how can you have anyone who is guilty of the offence? How can he be guilty of an offence? Who has decided he is guilty of an offence?

The Attorney-General: I think, Mr President, that the theory behind that is that if it is proved in due course that someone is guilty of an offence -

Mr Lowey: That is back to suspected, reasonable grounds.

The Attorney-General: - then the person concerned may be arrested even though there may not be reasonable grounds for suspecting him to be guilty. If someone is actually guilty of an offence he is liable to be arrested for it even though you have not got reasonable grounds for -

Mr Lowey: I may look shifty and I can be arrested.

The Attorney-General: But if you are guilty of the offence, that is the point, Mr President, it does not matter how you look; if you are objectively guilty of an offence you are liable to be arrested not only by a police officer but also by a member of the public.

Mrs Christian: Mr President, if someone witnesses an offence being perpetrated, surely that person is guilty of carrying out the offence?

Mr Lowey: By whom?

Mrs Christian: The witnesses to the offence.

Mr Lowey: No, you have got me confused.

Mrs Christian: If I throw a brick at you, Mr Lowey, would I not be guilty of an offence, if I am seen to be throwing a brick at you? *(Mr Radcliffe interjecting) (Laughter)*

The Attorney-General: Mr President, in all cases under (5)(a) the person must be proved to be guilty of the offence in due course in the court of law, but what we are saying here is that if it appears to everybody that is quite clear that the person is guilty of the offence he may be arrested.

Mr Lowey: Mr President, we are writing the law down here and it is not how we believe it will be interpreted, it is how it is written down and it will be taken literally, and therefore we have got to be very careful when we are writing it that it means what it says, and that precisely means what it says: you are guilty of an offence. Now, we may think they are guilty of an offence. However, I want to know who it is that deems you are guilty or not guilty except a court.

Mr Waft: You see, the chap coming down a ladder may have lost his key or the other chap that the hon. member mentioned may be throwing a stone for the dog and unfortunately caught another man!

The President: Hon. members, I think if you wish to resolve this you have to table an amendment.

The Attorney-General: All I can say, Mr President, is that this wording is adopted from the legislation in England which has been tried and tested. It is designed to reflect best practice and I would suggest that the clause should remain as drafted.

The President: Would the hon. members wish these clauses to be put separately?

Mr Lowey: I would, yes, because it does not make sense to me, and if it does not make sense to me, sir, I will be voting against it.

The President: I will put the clauses separately. First of all I will put the resolution that clause 27 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The next resolution is that clause 28 do stand part of the Bill. Will those in favour of that clause standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it.

Finally the resolution is that clause 29 along with schedule 2 do stand part of the Bill. Will those in favour of that resolution please say aye; against, no. The ayes have it. The ayes have it.

We move on, learned Attorney, and am I right in assuming you are going to take clauses 30 to 34 inclusive?

The Attorney-General: If I may, Mr President, thank you.

Mr President, clause 30 deals with the fingerprinting of a person who has been convicted of a recordable offence but who has never been in police detention. As will be seen, the main provision relating to fingerprinting is in clause 64, which is principally concerned with the investigation stage, but clause 30 gives the police power to take a person's fingerprints without his consent if he has been convicted of a recordable offence. Within one month of the conviction, provided at least seven days' notice is given, a constable may require such a person to attend a police station at a specified time in order to obtain his fingerprints. The power is backed by a power of arrest if the person concerned has failed to comply with the request to attend within seven days at a police station. Clause 30(4) gives the department power to specify those offences which are recordable offences by regulation which must be approved by Tynwald.

Clause 31 deals with the information which must be given to a person who has been arrested. The clause implements the common law rule that an arrested person must be told that he is under arrest and the grounds of his arrest. When the arrest is by a police officer, but not otherwise, the requirement to inform the suspect that he is under arrest and the grounds applies regardless of whether the fact of the arrest or the grounds for it are obvious. It does not apply, however, if he escapes before the information can be communicated to him - that is clause 31(5). Sub-clause (3) makes the lawfulness of the arrest dependent on the arrested person having been informed at the time of arrest or as soon as practicable thereafter of the fact of and the grounds for the arrest.

Clause 32 deals with the situation where a person voluntarily goes to a police station to help with an investigation. One often reads in the newspapers of persons who are 'helping the police with their inquiries'. In law a person is either under arrest or he is not. If he is not technically under arrest he is free to go. Clause 32 specifies that where a person attends voluntarily at a police station or at any other place for the purpose of assisting with an investigation he shall be entitled to leave at will unless he is placed under arrest and he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.

Clause 33 deals with the situation where a person has been arrested at any place other than a police station. Clause 33 provides that where a person is arrested away from a police station he shall be taken to a police station as soon as practicable. However, the effect of this provision is somewhat weakened by sub-clause (7), which allows the police to delay taking the person to a police station if the presence of that person elsewhere is necessary to carry out investigations of an offence. If there is delay in taking a person to a police station after his arrest, the reasons for it must be recorded on first arrival at the station - that is clause 33(8). The clause does not, however, affect the special powers of the police to hold persons elsewhere than in a police station in immigration and terrorism cases. Normally in accordance with clause 33(1) a person who has been arrested must be taken to a designated police station, but he may be taken to a non-designated station if any of three alternative conditions is satisfied. The first is where the officer is working in the area of a non-designated police station unless it appears that the suspect will have to be held for longer than six hours - that is clause 33(3) and (4). If he is being held in a non-designated station he must be moved to a designated station if he is to be held more than six hours. The second is where the person is arrested by a police officer acting on his own, no other officer is available to help him, and it

appears to the arresting officer that he will not be able to take him to a designated station without the detained person injuring himself, the constable or some other person. The third situation in which he may be taken to a non-designated station is where the officer has taken the person into custody from someone other than a police officer - for example after a citizen's arrest - and again there is no other officer to help him and taking him to a designated station creates a risk of a suspect causing someone injury. If the officer is satisfied before the arrested person has reached a police station that there are no grounds for keeping him under arrest he must release him - that is clause 33(5). Where someone is released in this way a record of the fact must be made - clause 33(6).

Clause 34 addresses the situation of someone at a police station in connection with several offences and provides that he must be told afresh if there are grounds to arrest him for any second or later offence. Each time that he is notionally arrested again he must be so informed. I move that clauses 30, 31, 32, 33 and 34 do stand part of the Bill.

Dr Mann: I beg to second.

The President: Thank you.

Mr Waft: Mr President, it mentions in the greater part of these clauses what the constable must do. Can I take it as read that the rights of the person being arrested by a constable or some other person do not change with regard to the constable or the other person? They are virtually the same rights the arrested person has, i.e. access to a telephone, the time involved in the police station and the time involved getting to the police station? They are all the same as if it were a constable or another person?

The President: Would you like to reply, Mr Attorney?

The Attorney-General: Yes, I am pleased to confirm it that it is so, Mr President. The arrested person has exactly the same rights of access to friends and all the other rights which are available to him regardless of whether the arrest is by a police officer or by a citizen.

Mr Waft: And if the arrested person fails to get what he is entitled to by way of the person who is doing the arresting, the civilian, for want of another word, what rights has that arrested person then? Is it against the police or against the person who arrested them?

The Attorney-General: Mr President, if the arrested person is unlawfully arrested, whether it is by a police constable or by an ordinary citizen so called, then that arrested person would have a claim for unlawful arrest and that could result in a claim for damages against the arresting person. However, once the person is actually in police custody, as we will see from a later consideration of the Bill, the arrested person comes within the jurisdiction of the custody officer and if the custody officer and his colleagues at the police station are guilty of some misconduct or an offence against the arrested person, then there would be a claim against the police authorities.

Mr Waft: So the time between the civilian arrest and arriving at the police station is the dangerous time that the person who is doing the arresting to be taken to court.

The Attorney-General: Absolutely, yes.

Mr Waft: Thank you.

Mr Lowey: Could the learned Attorney tell me in clause 30, when taking fingerprints after they have been convicted - and I know the regulations have not been drawn up yet so they could be for anything at all once you have been convicted of an offence, and it says the department will draw up regulations stipulating those offences - how long do they stay on a record? For ever? And where does it show that they can be destroyed or disposed of after a given time if that is so? And the other one is of a general nature, really, following on from Mr Waft: who tells the person of their rights? The arresting officer? And, if they do not, is he being guilty of an offence? People who I am concerned about are people who get into these situations for the first time and it is a completely strange and confused position to be in and, unless there are guidelines down for people to be told what their rights are at the start, not at the end when they have been subject to investigation by the investigating officers who are trained to get information from people, it does seem to me an uneven balance, so on those things, on the fingerprints, do they stay on file for ever and is that right? And secondly, who tells the person of his rights?

The Attorney-General: Mr President, under clause 68 of the Bill we have a provision dealing with destruction of fingerprints and other samples. If I can perhaps just refer to clause 68, sir, if fingerprints are taken from a person in connection with the investigation of an offence, and he is cleared of that offence they must be destroyed. That is obviously a sensible offer. Similarly, if someone has his fingerprints taken, it is decided that the person should not be prosecuted for the offence, he has not admitted it and it has been dealt with by way of caution, then again the fingerprints must be destroyed. Similarly, under 68(3), if a person is not suspected of having committed the offence even though fingerprints have been taken in the course of the investigation, then again they must be destroyed, but once someone has been convicted of an offence it is the rule that those fingerprints should form part of the records available to the police which could be useful in the detection of subsequent crime. So, so far as I am aware there is no intention that the Bill should alter the general rule that the police may have recourse to their records, including fingerprint records, which would assist them in the prevention and detection of crime.

In so far as the rights of the arrested person are concerned, codes of practice will be introduced which will impose upon the custody officer a duty to inform the arrested person of his rights, and we will see in the further consideration of the clauses in this part that there must be constant review of the arrested person's state, constant review of the rights which he is enjoying, and constant review of the access to the arrested person whilst he is in custody. So the duty will be actually encapsulated in codes of conduct which will be made by the department.

The President: Hon. members, the resolution is that clauses 30 to 34 inclusive do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 35, sir.

The Attorney-General: Thank you, Mr President. Clause 35 deals with search after an arrest somewhere other than at a police station and gives the police a power to search someone arrested where there are grounds for believing that he may present a danger to himself or to others - clause 35(1).

Sub-clause (2)(a) permits a search of the arrested person for anything that might be used to effect an escape or which might be evidence relating to any offence. In addition, sub-clause

(2)(b) gives the police the power to enter and to search the premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he was arrested. Unlike the power to search under clause 21 it is not limited to arrestable offences, nor need the premises be occupied or controlled by him. The power of search under sub-clause (2)(b) only exists if there are reasonable grounds for believing that the search might prove productive of something for which a search is permitted - clause 35(5) and (6). Random or automatic searching is therefore not lawful. Also, a person searched in public cannot be required to take off anything other than his coat, jacket, headgear or gloves, but elsewhere than in public he could be required to do so provided reasonable grounds for a more extensive search exist. The powers conferred by the clause do authorise a search of a person's mouth.

Where the person is arrested in a block of flats or other premises consisting of two or more separate dwellings only the premises in which he was present when arrested or immediately beforehand and any common parts such as landings, stairways, yards et cetera shared with other occupiers may be searched - clause 35(7).

Sub-clause (8) empowers the constable to seize and retain anything found in the course of a search under sub-clause (1) if there are reasonable grounds for believing that it might be used to cause injury.

Sub-clause (9) empowers the constable to seize and retain anything other than an item subject to legal privilege if he has reasonable grounds for believing (a) that he might use it to assist him to escape, or (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

Sub-clause (10) prevents the section limiting the specific powers in the Prevention of Terrorism Act 1990.

Mr President, I move that clause 35 do stand part of the Bill.

Mrs Christian: I beg to second.

The President: Hon. members, I put it that clause 35 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 36, sir.

The Attorney-General: Thank you, Mr President. Clause 36 of the Bill contains an important power whereby the police may request a justice of the peace to issue a warrant to arrest a person outside of the Island who is suspected of having committed an offence within the Island. If there are reasonable grounds for believing that evidence should be secured or preserved or to obtain evidence about an offence which the person is suspected to have committed, then a person outside of the Island may be arrested and brought to the Island.

Sub-clause (2) extends the operation of section 82(3) of the Summary Jurisdiction Act 1989, which provides that a warrant to arrest a person may be executed if the warrant is not in the possession of the constable. The sub-clause makes it clear that this power under section 82(3) will extend to various specified legislation. Mr President, I move that clause 36 of the Bill do stand part of the Bill.

Dr Mann: I beg to second.

The President: I put the resolution, hon. members, that clause 36 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The Attorney-General: Mr President, part IV. I would suggest, if it is convenient to the hon. members, that I deal with clauses 37 to 43 inclusive, dealing with detention.

The President: Is that agreed, hon. members?

Members: Agreed.

The President: Thank you. Proceed, sir.

The Attorney-General: Thank you very much, Mr President. Part IV of the Bill establishes a framework for the detention of persons at a police station and in particular in relation to time limits, supervision by a custody officer and record keeping.

Clause 37 provides in essence that detention in a police station must be in conformity with the provisions of the Bill. Sub-clause (2) states that the custody officer must order the release of anyone whose continued detention by the police cannot be justified under the Bill. Sub-clause (5) requires that release in such a case be unconditional unless further investigation in the matter is needed or future proceedings may be taken against the detained person, in either of which cases the release may be subject to bail. Police detention is defined in clause 81(2), as where someone has been taken to a police station after being arrested or is arrested at a police station after attending there voluntarily. A person at court after being charged is no longer in police detention for the purposes of the Bill.

Clause 38 provides that the chief constable shall, with the approval of the department, designate those police stations which are to be used for the purpose of detaining arrested persons.

Clause 39 provides for there to be a custody officer at every designated police station. The appointment of the custody officer must either be by the chief constable or by such other police officer as the chief constable may direct - clause 39(2).

Clause 39(4) provides that an officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

Clause 39(5) makes it plain that at designated police stations the investigative and custodial functions shall be basically distinct.

If a suspect is taken to a non-designated police station, clause 39(7) states that the functions which would be those of the custody officer in a designated police station must be carried out by someone not involved in the investigation if such an officer is readily available. If no such officer is readily available the functions may be carried out by the officer who took the person concerned to the station or any other officer. When this occurs, such an acting custody officer must as soon as practicable notify an officer of the rank of inspector or above at a designated police station, or the officer in charge of a designated police station who is at least the rank of sergeant, that this is the case.

Custody officers have many duties in regard to prisoners, and the chief purpose of clause 40 is to ensure that a person brought to the police station is charged if there is enough evidence to charge him but that if there is not sufficient evidence he should be released unless

the custody officer has reasonable grounds for believing that his detention is needed to preserve or obtain evidence of the offence for which he was arrested.

Sub-clause (1) of clause 40 states that, where someone is arrested without a warrant or on a warrant not endorsed for bail, the custody officer at any police station to which he is taken must first consider whether there is sufficient evidence to justify a charge for the offence for which he was arrested. The duty laid on the custody officer by sub-clause (1) to consider whether there is enough evidence to justify a charge must be carried out as soon as practicable after the suspect's arrival at the police station or where he was arrested at the police station after the arrest - clause 40(9).

Under sub-clause (2), if the custody officer determines that he does not have enough evidence to charge the person detained, he must be released on bail or unconditionally unless he has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him. If so, further detention may be authorised - clause 40(3).

Sub-clause (4) requires that as soon as practicable the custody officer must make a written record of the grounds of detention, and under sub-clause (4) this should normally be done in the presence of the suspect, who must be told the grounds by the custody officer. This would not be required, however, if he is not in a fit state to be told - that is sub-clause (5).

If there is enough evidence to charge him, he must either be charged or released with or without bail - sub-clause (6). If no decision has been made as to whether he will be prosecuted he should be so informed. If he is not in a fit state to be charged, he may be detained until he is in a fit state. Such detention cannot, however, be for more than 24 hours and must cease when he is in a fit state if that is earlier. This follows from the general prohibition on detention for more than 24 hours, which is dealt with in clause 44.

Sub-clause (10) deals with arrested juveniles, who are defined in sub-clause 13 as persons who are under the age of 17 who have been arrested with a warrant or without a warrant on a charge of homicide.

Sub-clause (10) places upon the custody officer a duty, so far as practicable, to identify the person responsible for the welfare of an arrested juvenile and, after identifying him, to inform that person of the arrest and the nature of any offences which it is alleged that the arrested juvenile has committed. The persons who may be responsible for the welfare of an arrested juvenile are (a) his parent or guardian, and (b) any other person who has for the time being assumed responsibility for his welfare. If there is a supervision order in force in respect of an arrested juvenile, the custody officer must also give the information relating to the arrest and the nature of the alleged offences to the person responsible for the arrested juvenile's supervision as soon as it is practicable to do so.

Clause 41 establishes the principles on which the custody officer must decide whether to keep someone in custody after he has been charged.

Sub-clause (1) provides that where someone who has been arrested without warrant or under a warrant not endorsed for bail is charged, the custody officer must release him with or without bail unless any of the detention conditions apply: firstly, his name or address cannot be ascertained or there are reasonable grounds for doubting whether a name or address given

is the real name or address; secondly, if detention is necessary for his own or other people's protection or to prevent loss of or damage to property; thirdly, if there are reasonable grounds for believing that he requires to be detained in order to prevent him from committing an offence; fourthly, if there are reasonable grounds for believing that the suspect would fail to appear in court or not answer to bail or would interfere with the course of justice; and fifthly, in the case of a serious arrestable offence, if there are reasonable grounds for believing that an application will be made by or on behalf of the police for the suspect to be remanded in custody. If the suspect is a juvenile, he can also be detained in his own interests.

Sub-clauses (3), (4) and (5) require that a written record be made of the grounds for detention in the presence of a suspect who must be told the grounds unless he is not in a fit state. Where the custody officer authorises an arrested juvenile to be kept in police detention, he must, unless he certifies in writing that it is impracticable to do so, make arrangements for the arrested juvenile to be taken into the care of the Department of Health and Social Security and detained by that department. A certificate made under sub-clause (6) must be produced to the court before which the juvenile is brought.

Clause 42 concerns the responsibility of the custody officer for the proper treatment of detained persons.

Sub-clause (1) requires the custody officer to ensure that anyone detained at his police station is treated in accordance with the requirements of the Bill and of any codes of practice made under it. It states that the duties of the custody officer include responsibility also for seeing that everything required to be recorded in the custody record is in fact recorded. If the custody officer transfers custody of the suspect to the investigating officer, his duties in this regard are taken over by the person who has custody of a suspect. When he returns the suspect to the custody officer's custody, the officer investigating the offence must report to the custody officer as to the manner in which Clause 42 and the codes of practice have been complied with - that is clause 42(3). If an arrested juvenile is handed over to the local authority under clause 41(6), the custody officer's responsibility ceases. The Department of Health and Social Security, however, has a duty to provide him with such advice and assistance as may be appropriate in the circumstances.

Sub-clause (6) requires that if there is any conflict between the custody officer and the investigating officer and the investigating officer is of a higher rank than the custody officer, then the custody officer must refer the issue at once to an officer of the rank of chief inspector or above. This makes it clear that the custody officer is directly responsible for the welfare of the suspect.

Clause 43 recognises the need for detention to be reviewed periodically.

Sub-clause (1) therefore provides that reviews must be made periodically of the detention of persons detained by the police. Where the person has already been charged, the review is by the custody officer. If not, it is by an officer not involved in the investigation of the rank of inspector or above. The person performing the function is known as the review officer - clause 43(2).

Sub-clause (3) provides that in the case of a person who has not been charged, the first review must be made no later than 12 hours after the person's detention was first, authorised. The second review must be conducted no later than 12 hours after the first, and subsequent

reviews must be conducted at intervals of no more than 12 hours. In the case of a person who has been charged, the review periods are eight hours for the first review, eight hours thereafter for the second review, and thereafter at intervals of not more than eight hours. It is to be noted that time is measured from the time that detention was first authorised, not from first arrival at the police station.

A review may be postponed if, having regard to the circumstances, it is not practicable to carry out the review at the specified time or the suspect is actually being questioned at the time and the review officer is satisfied that interruption would prejudice the investigation, or if no review officer is readily available - this is clause 43(4). The review must, however, be conducted as soon as practicable after the latest time specified for it. The reasons for any postponement of a review must be recorded in the custody record. Moreover, when there has been delay, the next review must take place within the time limit as measured from the time when the prior review should have taken place, not when it did in fact take place, otherwise the suspect would be penalised by the fact of the delay - that is sub-clause (6).

Sub-clause (8) provides that if the person whose detention is being reviewed has not been charged, the review officer must determine whether any of the conditions allowing detention to continue laid down in clause 40 apply. If they do not, the person must be released, but if they do, the review officer may authorise detention to continue. Sub-clauses (1) to (5) of clause 40 are applied to reviews.

Sub-clause (9) requires the review officer to determine the state of a person who has been detained because he was not in a fit state for a decision to be made as to whether he should be released or charged. When he is in a fit state, he can be dealt with accordingly.

Sub-clause (10) makes provision similar to sub-clause (8) for the case where the detained person has been charged, applying the relevant provisions of clause 41.

Sub-clause (11) requires the review officer to refer to an officer of the rank of chief inspector or above any directions from an officer of a more senior rank than the review officer if those directions are at variance with any decision made by the review officer.

Before authorising continued detention, the review officer must give the suspect, unless he is asleep at the time, or any advocate representing him who is available at the time the opportunity of making representations - that is sub-clause (12). The review officer can refuse to hear oral representations by the suspect himself if he considers that he is unfit to make such representations by reason of his condition or behaviour. In that case he cannot, however, refuse to hear representations from an advocate.

Mr President, I move that clauses 37 to 43 inclusive be read as part of the Bill.

Mr Lowey: I have said at the start of this Bill that I have got concerns. I certainly have concerns on these particular clauses. They are very important. I cannot comprehend how a custody officer, a sergeant in a police station, can be classified as a friend of the defendant, as has been tried to be portrayed by the learned Attorney. It is a serious situation, I think, when we have a position where we say it is so important it has to be at the rank of a sergeant, and then immediately allow junior ranks to act as custody officers and operate there if and when there is not a sergeant available. The opening remarks of the Attorney were meant to be reassuring that the custody officer will set free the detainee if he feels that there is not likely to

be an arrest, but then of course it goes on with a lot of ifs and buts. In other words, he prescribes those duties in favour of his fellow officers who are doing the investigation. Now, there is a contradiction. There is an automatic contradiction in terms. I agree with the Attorney in that respect, that there has to be a prosecution of officers trying to get at the facts and a duty officer who he is alleging in this case would be a friend for the defendant.

I am rather perturbed in all of this that I have discovered, although this Bill has been in preparation for such a long period of time, I would like to ask the Attorney, have there been any conferences held with the Isle of Man Law Society on this particular aspect of the Bill? And if not, if I get a negative on that, then I will be asking that these sets of clauses on this particular Bill should be sent to a committee of this House to at least confer with the Isle of Man Law Society on the ramifications of this particular set of clauses on detention. I find it very strange indeed that the custody officer is being put in an impossible position. He will be put in an impossible position; it is inevitable that he will be put in an impossible position because a police officer will be then having, in some instances, to countermand the wishes of his senior officers. Now, if this officer, this sergeant, wants to improve his lot in the service, I would have thought the last thing you would want to do is to be contradicting or countermanding your senior officers. So I do not believe that it can work in the way in which the learned Attorney has set out these set of clauses for us here today. I think it is flawed and perhaps, if the learned Attorney could inform me, has there been consultation with the Law Society? If there has, I will still be voting against these clauses. If not, I will be moving an amendment, Mr President, with your permission, that we send this set of clauses for consultation to the Isle of Man Law Society.

The Attorney-General: Mr President, perhaps I could deal with the last point first in so far as consultation is concerned. To my certain knowledge, the provisions of this Bill did in fact come before the legislation committee of the Law Society, I should think about two years ago. I was actually a member of the legislation committee at that time, although I did not actually concern myself too much with this particular Bill. So far as I am aware, there has been extensive consultation, not only with the Law Society but with all interested parties, although I am aware that there is a continuing dialogue from certain members of the Law Society to the home affairs minister. I feel sure that the provisions of this part IV, dealing with detention, in common with the other parts of the Bill have been well known to members of the legal profession for a long time now.

In so far as the position of the custody officer is concerned, I think, as I indicated at the start of the consideration of this Bill, there is always a balance to look at here. On the one hand the police obviously have a duty to prosecute the investigation of crime and they owe a duty to the public in that respect. Equally, they owe a duty to the detainee to ensure that he is properly looked after in accordance with best practice. Now, I think that the provisions of clause 37(1) headline the duty of the custody officer in that respect. It states quite clearly that a person arrested shall not be kept in police detention except in accordance with the provisions of this part and if, of course, the police - the custody officer and/or his colleagues - were to be guilty of a contravention of the provisions of this part or the codes made by the department, then he would be liable not only to disciplinary proceedings but also to civil proceedings as well.

The Bill certainly anticipates that there may be some conflict - or some friction, at any rate - between the investigating officers and the custody officers. One can very easily appreciate that an investigating officer who perhaps was of an overbearing nature might try to bring pressure upon the custody officer to ensure that the questioning went on for longer than was necessary or that the person was detained beyond the time limits and so on. It is perfectly clear from, I think, clause 39(5) that the functions of the custody officer must be separate and distinct from the functions of the investigating officer. It is also clear that if there is to be a conflict between the two, the investigating and the custody officer, then the matter must be referred to a senior officer, who again would owe a duty to ensure that the custody officer was not being overborne by the investigating officer.

The President: As an explanation, are you satisfied, hon. member?

Mr Lowey: No, I would like to pursue that very last point, if I may. What happens if there is not a senior officer available? Is the investigation still allowed to continue or does it cease until an adjudication has taken place by a senior officer? That is not written into the regulations.

The Attorney-General: Mr President, the whole tenor of this part is that it is the custody officer who has paramount jurisdiction over the detainee, and he would be perfectly entitled, in fact he would be duty-bound, to ensure that the questioning and detention did not go beyond that which is set out in the Bill.

Mr Lowey: That would be all right, Mr President, if the same set of clauses does not allow the adjudicating officer to actually hand over the suspect to the investigating officer who then assumes the responsibility for him. So therefore - this is the point I am making - there are so many ifs and buts; we get this comfort factor given to us and then there is an escape clause. I am unhappy with this; I really am unhappy.

The President: You indicated at an earlier stage, sir, that you might wish to table an amendment. Do you wish to do so or not?

Mr Lowey: Yes, I will pursue that and see what the mood of the Court is. I think it is so important that I believe that this Bill would benefit from some outside influence, even at this stage. It will not hold up this Bill more than a month and I think the Bill itself would be seen to have at least been scrutinised, even at this late stage of the proceedings, by an outside body and I think that is very important. So I would move: that this Bill be referred to a committee of this House for consideration with outside bodies on these particular clauses dealing with detention.

The President: Just a moment, sir. What exactly are you referring to here? We are dealing at the moment with clauses 37 to 43 and I have a proposed amendment from you related to clause 43.

Mr Lowey: Yes, 37 to 43.

The Lord Bishop: Mr President, could I just ask what does an 'outside body' constitute? What does the mover mean by an outside body?

Mr Lowey: Well, I do mean, first of all, there are two lots of people: the Law Society -

The Lord Bishop: We have heard that they have been involved anyway.

Mr Lowey: They have been involved. I would like an update, even at this stage. And the home affairs division, who are actually sponsoring this Bill - I can see no reason at all why we should not consult with those people at this time.

The Lord Bishop: Should that be specified rather than 'an outside body', sir? That is a fairly vague sort of statement, isn't it?

Mr Lowey: Is it? Well, that is what I mean.

The Lord Bishop: I am only asking -

Mr Lowey: I am quite happy to have those two bodies be the referees. Can the amendment be adjusted?

The President: I think your amendment needs a little bit of -

Mr Lowey: Indeed. I do feel this particular Bill, Mr President, is a very important piece of legislation and I take the point the Attorney-General said, it is about balance. I do not think this balance here at this moment in time bears scrutiny. I think the balance is not quite right, and the last thing I want to do is to put the police in a position where they can get kicked from both sides. I believe that their position should be clearly laid down, what their rights and their duties are. These particular clauses do not fill me with confidence and I believe that there are all the ingredients there at this moment in time for us to get the worst of both worlds instead of the best of both worlds.

The President: Now, I think the learned Clerk is drafting an appropriate amendment.

Mr Waft: Could I ask, Mr President, while we are waiting for that, with regard to the independence - for want of another word - of the custody officer, could I ask the Attorney-General, have there been any problems with the independence of the custody officer in the past? Have complaints been received to justify a worry about the concerns that are taking place?

The Attorney-General: Mr President, I think, strictly speaking, we do not have a custody officer as such at the present time. I think we are all aware of the station sergeant who traditionally would receive the detained person into custody and so on. Having said that, the police, I know, are trying to adopt best practice in advance of the implementation of this Bill and I think that they are trying to exercise the duties of a custody officer by nominated officers and I think that the necessary resources have been set aside in anticipation of the Bill going through, to employ and train custody officers. I am not aware of any formal complaints ever having been made in the courts as to maltreatment by station sergeants or anybody else in the police of detainees, but I cannot speak authoritatively on that.

The President: Now, hon. members, I have the amendment proposed by the hon. Mr Lowey now before me and the amendment reads:

That clauses 37 to 43 be referred to a special committee for consideration, including consultation with the Department of Home Affairs and the Isle of Man Law Society, and report.

That is the proposed amendment. Is there a seconder to that amendment?

The Lord Bishop: Yes, I would second that, Mr President.

The President: Does any hon. member wish to speak to that amendment?

Mr Radcliffe: Mr President, I am a little bit intrigued by the term 'special committee'. Normally a committee is the members of this House, I would have thought, but there is no number of members of that committee, whether it be two or three or whatever - just to clear in my own mind what the hon. mover is aiming for here.

The President: Ah, can I help there? The learned Clerk who drafted this indicated to me that in Council, instead of referring to a select committee we refer to a 'special committee.' It would be a select committee of Council. That, I think, is the answer you seek.

Dr Mann: Is there a standard number for a special committee? I mean, how many members are going to be involved.

The President: Three is the response to that, sir.

Mr Kniveton: Can I ask, sir, do we have to refer this to the other House now or can we just do this of our own accord? I am not familiar with -

The President: It is dealt with entirely by this Council.

Mr Waft: Could I ask, Mr President, with regard to who this committee could take information from, that it includes the DHSS with regard to the facilities for young persons, their destination within the DHSS. They may be able to refer to that?

The President: Yes, it says, 'including consultation with the Department of Home Affairs and The Isle of Man Law Society'. So it can include anybody to that extent.

Dr Mann: I think that this Bill was approved by the Council of Ministers for introduction and was seen as being a balance between the rights of the individual as against the rights of the police. I think it was also seen as a certain improvement on the existing provision. Now, of course one could always argue that the police are looking at themselves, as you might say, but at least this was seen to be an improvement on the existing set of circumstances. One could see this as being, as the hon. member has indicated, a source of possible friction in the future or it may not work quite as it is set out, but I think it was a genuine attempt. At the time it was considered to be an improvement and to indicate a balance between further powers of the police - because also included in this Bill are some further powers of the police - but in giving those additional powers to the police there would also be particular rights granted to, or additional safeguards to, the individuals who have found themselves in custody, and I think it is looking at that balance. I think if we are going to look at anything, it is looking at the balance between the two.

Mrs Christian: Mr President, I would query the value of the committee, given that I should have thought that, if there was a strong view on the part of the Law Society, if the provisions of these clauses were not right, we would most certainly have heard about that and I am not convinced that there is such a concern. It has been said that. . . well, I would consider that this represents a degree of improvement on the current position in terms of there being designated custody officers of an appropriate rank, and I think that in any legislation, whilst I understand the concerns of the hon. member Mr Lowey in saying that, having said that such officers should act, we then allow somebody else to act in their absence, I think that most legislation works on the principle there is a primary course of action, and that is the one to which we address ourselves primarily, but circumstances sometimes are such that you cannot meet that so you have to have a fall-back situation, and that is what that provision in the

clause allows, that some other officer might be in the circumstances handling custody issues, but I personally do not think that there is likely to be any real benefit from referring these clauses to a committee.

Mr Lowey: It has been said this particular piece of legislation has had a long gestation. It has had a very long gestation. We were talking about it when I was in home affairs 10 years ago, so it has been a long time coming, but the reality is, even at this stage, it has, in its present form, been before the branches now for the best part of nearly a year, almost 16 months. I believe there would be everything to gain, from this Council's point of view, from reviewing where we are and, at this particular time, have there been any developments and concerns? I believe, before passing this legislation, we should be seen to be taking every effort to make sure that it is as good as we can get, and I can see no harm at all in taking this small amount of time out to consult with those who are going to be involved.

I go in with an open mind. It may be, as the hon. member Dr Mann said, this is a balance, this is the best we can do. If that is the case, so be it, but when I read this, my two liner is it is fraught with dangers, this particular set of detentions; these particular ones are fraught with dangers - not for me but for the police themselves, and I do not want that to happen. I do not want to be an author of something that is going to actually cause friction, so I am asking at this particular time for this Council to review these particular clauses with outside bodies. If they were in the House I would question them now, but they are not, so I have got to take the vehicle that I have got. So that is the reason for it. But I go in with an open mind. If I can be assuaged, fine, but I am far from happy with those.

The President: The learned Attorney to reply.

The Attorney-General: Thank you, Mr President. Clearly the people who are going to be most affected by this legislation, if it becomes law, are the police officers, clearly the detainees, but also those who represent the detainees, the advocates. One obviously has anxiety about legislation such as this, but the anxiety, I think, has been weighed by the advocates and, far from being over-concerned about the legislation, they are in fact preparing to implement a very important part of it because they are, as far as I am aware, happy to man the duty advocates scheme without which, of course, the Bill is bereft of a very important part of its machinery. Of course, one always has one or two members of a profession who perhaps may specialise in this particular area and may be, dare one say it, over-concerned about the rights of the suspect when compared with the powers of the police in properly investigating crime.

One thing, I think, which does cause danger for all sides, however, is if we have uncertainty. At the moment we have a mishmash, if I may say it, of common law rules, judges rules which go back many, many years, we have dicta from the judges from time to time. This is designed to set out a code of best practice which has been worked in the UK, has of course been revised, has been criticised, but this is the best that has been possible to achieve, and I think it is far better to have a definite code in writing which one can all refer to, advocates, detainees and police, rather than to have the uncertainty which prevails at the present time. For those reasons, I would urge hon. members to vote against the proposed amendment.

The President: Hon. members, the resolution is that clauses 37 to 43 inclusive stand part of the Bill. To that resolution I have an amendment in the name of the hon. Mr Lowey that

those clauses be referred to a special committee for consideration, including consultation with the Department of Home Affairs and the Isle of Man Law Society, and report. Those in favour of the amendment standing part of the resolution please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs Lowey and Radcliffe - 3

Against: Mr Waft, Dr Mann, Mr Kniveton and Mrs Christian - 4

The President: The amendment fails to carry, hon. members, with 3 votes cast in favour and 4 votes against.

I will now put the resolution that clauses 37 to 43 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe and Mrs Christian - 6

Against: Mr Lowey - 1

The President: The resolution carries, hon. members, with 6 votes being cast in favour and 1 vote against. Now, your next grouping, sir.

The Attorney-General: Thank you, Mr President. May I take clauses 44 to 47 inclusive?

The President: Yes, certainly.

The Attorney-General: Mr President, Clause 44 deals with the limits on the period for which a person may be detained without charge.

Sub-clause (1) provides that, subject to later provisions of the clause and to clauses 45 and 46, a person may not be detained without charge in police custody for more than 24 hours. This is the basic rule. Unless his further detention is authorised, he must be released with or without bail and cannot be arrested for the same offence unless new evidence comes to light - that is clause 44(7).

Sub-clause (2) defines the time from which the period of detention is to be calculated - that is, the relevant time. In the great majority of cases, arrests take place locally for offences committed locally, and such cases are covered by paragraph (c). In such a case, time starts to run from the moment that the arrested person first arrives at the first police station after his arrest. Where the person is arrested outside the Island, the time starts to run from the moment that he arrives at the first police station to which he is taken in the Island, or 24 hours after the time of that person's entry into the Island, whichever is the earlier. In the case of a person who attends voluntarily at a police station, or accompanies a constable to a police station without having been arrested and is arrested at the police station, the period of detention runs from the time of the arrest.

Sub-clause (3) provides that in the case of somebody already under arrest who is then arrested for further offences under clause 34, time runs from the first offence for which he was brought into custody, otherwise time could be extended by the simple expedient of adding more and more arrests. If, at any stage of being in police detention, the detainee is taken to a

hospital for medical treatment, time involved in travel there or back or at the hospital counts only if he is actually being questioned about any offence, not otherwise - that is clause 44(4).

Clause 45 deals with the authorisation of continued detention and empowers an officer of the rank of chief inspector or above to authorise the detention of a person without charge beyond 24 hours and up to 48 hours if this is necessary for the effective investigation of a serious arrestable offence.

Sub-clause (1) empowers such an officer to authorise the detention of a person for up to 48 hours after the relevant time, which is defined in clause 44, if he has reasonable grounds for believing that certain conditions apply - namely, the offence must be a serious arrestable offence, the investigation must be expeditious and it is necessary to secure or preserve evidence or to obtain evidence by questioning.

Sub-clause (2) makes it clear that the officer may authorise continued detention on more than one occasion provided that in total the period does not exceed 48 hours.

Sub-clause (3) places limits on the time at which an authorisation of continued detention may be given. It may not be given more than 24 hours after the detention clock has begun to run, or before the second review of detention, required by clause 43, has taken place. The purpose of this latter limitation is to ensure that continued detention is not authorised prematurely.

Sub-clause (4) requires an officer who authorises continued detention to inform the person concerned of the grounds for such detention and to record them in the custody record.

Sub-clause (5) requires the officer, before reaching his decision, to give the detained person or his advocate an opportunity to make representations. Sub-clause (6) permits representations orally or in writing.

Sub-clause (7) provides that the review officer may refuse to hear oral representations from the detained person, not his advocate, if the person is unfit to make the representations - for example, because he has become violent.

Sub-clause (8) requires the officer to remind the detained person of his rights of access to legal advice and to have someone notified of his arrest if these rights have not yet been exercised, and to review any decision to delay their exercise.

Sub-clause (9) requires a person who has not been charged to be released not later than 48 hours after the detention clock has started to run, unless continued detention is permitted under clause 46, or he has been charged, in which case clause 49 applies.

Sub-clause (10) prohibits his rearrest without a warrant unless new evidence has come to light since his release.

Clause 46 deals with warrants of further detention. Clause 46 empowers the High Bailiff, including the Deputy High Bailiff, to issue a warrant authorising the further detention of a person beyond the period of 48 hours which may be authorised under clause 45. This provision caters for the very exceptional cases where an investigation cannot be brought to a conclusion within 48 hours because of the complexity of the case or the extensive nature of the inquiries that may be necessary. The High Bailiff will only be able to authorise detention

beyond this point, and for a maximum of a further 36 hours, after a hearing at which the detained person will be present and may be legally represented.

Sub-clause (1) therefore empowers the High Bailiff, on an application by a police officer and supported by written information, to issue a warrant for further detention if he is satisfied that there are reasonable grounds for believing that the detention is justified under sub-clause (2).

Sub-clause (2) provides for notice to be given to the detained person and for him to be brought before the High Bailiff.

Sub-clause (3) permits the detained person to be legally represented and for the High Bailiff to adjourn the matter pending the obtaining of legal representation.

Sub-clause (4) lays down the conditions that must be satisfied before a warrant of further detention may be issued. The test is the same as that imposed by clause 41(1) for the authorisation of continued detention.

Sub-clause (5) provides that an application for a warrant may be made at any time before the detention clock has run for 48 hours or, if it is not practicable for the High Bailiff to sit when the 48 hours expires, but he will sit within six hours of that period, up to six hours after that time. In some cases it will be necessary - for example, where forensic tests are being carried out - and the sub-clause permits an application at this stage.

Sub-clause (6) provides that if an application is made after the 48-hour period, the arrested person may be kept in police detention until the application has been heard, in which case the circumstances must be properly recorded.

Sub-clause (7) requires the High Bailiff to dismiss an application for a warrant of further detention if it has been made after 48-hours, unless there are good reasons why the police could not reasonably have made the application during the 48 hour period.

Sub-clause (8) provides that if the High Bailiff is not satisfied that the further detention of an arrested person is justified, he must either refuse the application or adjourn the hearing until a time before the end of the 48-hour period. The High Bailiff may wish to adopt this latter course, if an early application is made by the police and the court considers that it needs to review progress in the case nearer the 48-hour limit.

Sub-clause (9) permits continued detention during the adjournment.

Sub-clause (10) provides that a warrant of further detention must state the time at which it was issued and that its effect is to authorise the detention of the person concerned for the period stated in the warrant.

Sub-clauses (11) and (12) impose on the validity of any warrant a limit of 36 hours from the time the detention clock began to run in that case, and require the court to authorise detention for no longer than it considers justified on the evidence before it at the time.

Sub-clause (13) specifies the contents of the information in support of an application.

Sub-clause (14) provides that where an application is refused, except in the circumstances set out in sub-clause (15), the person must immediately be charged or released, either on bail or unconditionally.

Sub-clause (15) provides for the case in which an early application for a warrant of further detention is refused. The effect is that the person concerned need not be released until the time at which he would have had to be released or charged had the application not been made. The sole issue before the court concerns the need for detention beyond this period, and early applications should not be penalised.

Sub-clause (16) provides that where an application is refused, the police may not make a further application under the clause in respect of the same person unless they can support it with fresh evidence that has come to light since the first application was refused.

Sub-clause (17) provides that a person who has been detained under the authority of a warrant of further detention must be released on or before the expiry of the warrant, unless he is charged.

Sub-clause (18) prevents the rearrest of a person released on the expiry of a warrant of further detention unless new evidence has come to light since the release which would justify this.

Clause 47 deals with extension of warrants of further detention. Clause 47 makes supplementary provision for certain circumstances in which a warrant of further detention is granted for less than the maximum 36 hours but investigations take longer than expected. It allows the police to apply for an extension of the warrant up to a maximum of 96 hours after the relevant time when the clock starts to tick.

Sub-clause (1) empowers the police to apply to the High Bailiff for an extension of a warrant for further detention if the warrant expires less than 96 hours after the starting of the detention clock in that case. The application is to be *inter partes* and must be supported by an information.

Sub-clause (2) empowers the High Bailiff to grant an extension of such period as the High Bailiff thinks fit.

Sub-clause (3) specifies the maximum period of extension under a warrant. The period must not exceed 36 hours, nor end later than 96 hours after the relevant time.

Sub-clause (4) enables the High Bailiff to grant a series of extensions, but they must not end later than 96 hours after the relevant time.

Sub-clause (5) requires the endorsement of the warrant with a note of the period of the extension if the application is successful.

Sub-clause (6) applies sub-clauses (2), (3) and (13) of clause 46 to applications for extensions as they apply to applications for warrants themselves.

Sub-clause (7) requires the charging of, or the release of, a person on bail or unconditionally where an extension is refused.

Sub-clause (8) follows clause 46(15).

I move that clauses 44, 45, 46 and 47 do stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Could I ask - a lot of it is what I would call sensible for serious charges where a murder is committed and the likes of where things have got to go for forensic - I can

appreciate the extension time. Again, my worry is not so much with the extension of time as to where, in these clauses that the learned Attorney has presented to us, it actually states. . . He has used the phrase 'when the clock starts to tick' - whereabouts is this particular clock situated and where is the book that will have to record that particular time, or is it at the behest, again, of the custody sergeant? In other words, I do not see anything written down there that there is a book or there is a clock when we talk metaphorically of it. I can see the need sometimes to get an extension for serious crime. What worries me is that perhaps those who are in pursuit of what I would call the irritating, petty, annoying people will say, 'I have nearly got him, I want an extension of time'. In other words, it will not be just used for serious crime, it will be used for what I would best describe as the irritating, annoying, minor crimes, and nowhere does it suggest, although the Attorney has said that it will be used for serious crime, it will not be used in practice for what I would call less serious crime. Could he advise me: if I am held illegally for longer than the prescribed time, would any evidence that is then used against me be admissible as evidence in court or would that be inadmissible, bearing in mind that we have already agreed in previous legislation that the right to silence is being taken away, or could be interpreted if they are again on this balance of probability, is that evidence going to be admissible in a court of law?

Mr Waft: I think it is worth pointing out, Mr President, that clause 45 has been amended with regard to 'that time' becoming 'the relevant time' and that could have a bearing on the Attorney-General's point.

The President: Reply, Mr Attorney?

The Attorney-General: Thank you very much, Mr President. Yes, the relevant time is now set out at clause 45(2). Perhaps if I just go back to clause 44(2), which I think, deals with that as well -

Mr Lowey: I hope it is clearer than 45!

The Attorney-General: Clause 44(2), Mr President, specifies the various tests which have to be applied in determining when the clock starts to tick, which is the commencement of the relevant time and, as I say, much depends on where the person is arrested. Generally speaking, as I said, we are going to be concerned primarily with clause 44(2)(c) - that is, the clock starts to tick at the time when the person arrested arrives at the first police station to which he is taken -

Mr Lowey: Yes. Clause 45(2) - I mean, it is almost mumbo-jumbo; perhaps the Attorney could take me through it?

The Attorney-General: Yes. My notes, of course, Mr President, are sometimes a lot easier to interpret than the actual sub-clause. The intention of sub-clause 45(2) is that continued detention may be authorised on more than one occasion provided that in total the period of detention does not exceed 48 hours. So perhaps if I can just go through that sub-clause with the learned member, where an officer has authorised the keeping of a person in police detention for a period expiring less than 48 hours after the relevant time, so in other words, shall we say that he is authorised to be kept in detention for 12 hours, the officer may authorise the keeping of that person in police detention for a further period expiring not more than 48 hours after the relevant time - that is, after the time he has been brought into the police station - if the conditions specified in sub-clause (1) are still satisfied. In other words, in

the ordinary case the person is arrested, brought into the station, and the clock starts to tick. Now, if the officer is satisfied that the conditions in 45(1)(a) apply, the detainee may be kept in custody for a period not exceeding 48 hours from the time he was first arrested.

Mr Lowey: Yes, but what you are really saying there, Mr Attorney, is that 48 hours do not mean 48 hours; it means if he has done 12 hours, he can be held for another 48 hours?

The Attorney-General: No, the 12 hours has to be taken into account. Under no circumstances may it go beyond the 48.

Mr Lowey: Fine, that is really what I wanted to know.

The President: Right, hon. members, I will put the resolution that clauses 44 to 47 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now clauses 48 to 55, sir. Would that be convenient to you?

The Attorney-General: Yes, Mr President. Clause 48 deals with detention before charge, and sub-clause 48(1) requires the High Bailiff to sit in private to hear applications under clauses 46 and 47.

Sub-clause (2) provides that references in part IV of the Bill to periods of time or times of the day should be treated as approximate. This provision reflects the unpredictability of police work and the pressures on police station staff. It is also for the courts to determine what degree of time slippage will be allowed.

Clause 49 deals with detention after charge. Clause 49 provides for the production, in a court of summary jurisdiction, as soon as practicable, of persons detained after charge. To ensure the minimum delay in such production, the clause specifies the time within which the charged person must be brought before the court and requires the clerk to the court to arrange a special sitting if this is necessary. The effect of the clause is to ensure that a person appears before a court normally within 48 hours of being charged, excluding Sundays, Christmas Day, Tynwald Day, or Good Friday. While the person is detained awaiting the court hearing, his detention will be regularly reviewed and he must be released unless the conditions laid down for continued detention apply.

Sub-clause (1) provides that a person who has been charged with an offence and has been kept in police detention, or is a juvenile who has been detained by the DHSS, must be brought before a court of summary jurisdiction in accordance with the provisions of the clause.

Sub-clause (2) provides that a person is to be brought before a court as soon as is practicable, and in any event not later than the first sitting after he has been charged with the offence.

Sub-clause (3) requires the custody officer to inform the clerk to the court that there is a person to whom sub-clause (2) applies if there is no sitting due to be held on the day the person was charged or on the following day.

Sub-clause (4) requires the clerk to the court to arrange for the court to sit not later than the day following the relevant day, which is defined in sub-clause (5), once he has been informed, under sub-clause (3), that a person has been charged and is being detained, subject to the provisions of sub-clause (6) relating to holidays.

Sub-clauses (5) and (6) define the relevant day so that a person charged must be brought before the court no later than a day following the charge, Sundays, Good Friday, Tynwald Day and Christmas Day excepted.

Sub-clause (7) provides an exception for a person who is in hospital and is not well enough to be brought before the court.

Clause 50 deals with bail and makes supplementary provisions relating to police bail.

Sub-clause (1) provides that a person released on bail under part IV of the Bill may be granted bail with or without sureties - that is, a guarantor.

Sub-clause (2) provides that nothing prevents the rearrest of a person released on bail if new evidence justifying the arrest comes to light. The detention of such a person would then have to be regularly reviewed under part IV of the Bill.

Sub-clause (3) defines bail.

Sub-clause (4) empowers the custody officer to amend the terms of bail by a notice in writing to the person concerned, informing him that he need not attend at the police station as originally required. If developments in the investigations since the person's release on bail lead the custody officer to decide that the person's attendance is not necessary, he should have the power to alter the terms of bail, so avoiding any unnecessary inconvenience to that person.

Sub-clause (5) requires periods in police detention, prior to being granted bail, to be included in time periods which need to be calculated under part IV.

Sub-clause (6) treats persons who are on bail and are rearrested in the same way as a person who is arrested for the first time. This does not apply to those who are in breach of bail or have returned to a police station in accordance with bail conditions. The sub-clause deals with the early rearrest of a person before he has to return to the police station.

Clause 51 deals with amendments which are consequential on clause 50. It amends the Bail Act 1952 and the Summary Jurisdiction Act 1989.

Sub-clause (1) repeals section 11 of the Bail Act 1952, which is replaced by part IV. It also replaces section 12 of that Act. The new sub-clause allows a court of summary jurisdiction to extend the bail and for the enforcement of duty of a surety to attend at a police station in the same manner as he would be bound to appear before a court.

Sub-clause (2) amends section 83 of the 1989 Act to give statutory recognition to the practice known as 'doorstep bail'. This section, i.e. section 83 of the 1989 Act, at present provides that where a person is arrested under a warrant endorsed for bail he must be taken to a police station, where the officer in charge must release him, subject to the officer approving any surety tendered. This provision is amended so that it ceases to be necessary for the person to be taken to the police station. The person executing the warrant would be able to take the arrested person's recognisance without going to a police station and allow his release on bail there and then. The purpose of the amendment is to simplify current procedures for the execution of warrants and to prevent unnecessary journeys by those executing warrants and those on whom they are executed.

Clause 52 gives a constable a power of arrest without warrant of any person who fails to attend at a police station in accordance with the terms of the bail.

Sub-clause (2) treats such an arrest as an arrest for an offence for the purposes of part IV of the Bill.

Clause 53 deals with records of detention and requires the chief constable to keep records of the number of cases where persons are detained without charge for more than 24 hours, and provides that annual reports by the chief constable should contain information about such matters. The purpose is to allow the broad use of the powers provided for detention beyond 24 hours to be subject to independent scrutiny by the Department of Home Affairs.

Clause 54 contains savings and saves certain statutory provisions and prerogative remedies. Paragraph (a) provides that part IV of the Bill does not affect the powers of immigration officers under section 4 or schedule 2 to the Immigration Act 1971 of the United Kingdom Parliament. These powers relate to the administration of controls of entry, and it is considered that it would be inappropriate to make them subject to a statutory scheme which is designed specifically to regulate the detention of persons arrested for crime with a view to prosecution. Paragraph (b), for similar reasons, saves the powers conferred by or by virtue of section 12 of and schedules 2 and 5 of the Prevention of Terrorism Act 1990, which deals with control of entry and procedure for removal. Paragraph (c) provides that part IV of the Bill should not affect the duties of police officers under armed forces Acts. These provisions enable police officers to take temporary custody of deserters, absentees, and other persons under escort in certain circumstances. Again, it is thought to be inappropriate that a scheme regulating the detention of persons arrested for crime should be applied to powers of detention conferred for entirely different purposes. Paragraph (d) preserves the right of persons detained by the police to apply for, by means of a petition of dolence to the High Court, an order similar to a writ of habeas corpus or other prerogative remedy.

Clause 55 deals with children and young persons and provides that part IV should not apply in the case of children aged less than 14 who are arrested without a warrant for offences other than homicide. The detention of such children will continue, as at present, to be governed by the Children and Young Persons Acts.

Mr President, I move that clauses 48 to 55 inclusive be read as part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Mr President, I think this particular one just deals with clause 50. Could the learned Attorney tell me where it is altered from the existing law? He said that clause 51 actually enables people to give their sureties to the policeman at the door rather than going to the police station. I can see that being a great help to the millionaire but not to the ordinary man in the street. Does clause 50 actually alter the existing law for bail?

The Attorney-General: Mr President, the way I addressed that was that clause 50 makes supplementary provisions relating to bail. I think the existing rule is that if a person is arrested, he of course may be released either with or without bail. If it is with bail then, generally speaking, there must be a person known as a surety, or guarantor, who guarantees that the person who is released will attend the court or will attend the police station. Often the

surety stands to lose an amount of money if the accused person does not in fact attend when required. What this provision will allow is for the surety not to be required to have to go to court to check whether the person arrested has in fact turned up. It can all be dealt with at the residence of the surety. It is designed to be of general benefit, not only for millionaires but for everybody who stands surety.

The President: Hon. members, I will now put the resolution that clauses 48 to 55 inclusive do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, I have a suggestion to make, hon. members, and it would be that, in order to advance our agenda in a balanced manner perhaps we could rest our consideration of this measure at this stage, Mr Attorney, and move on to the Criminal Justice Bill, with the agreement of Council, for the second reading. Is that agreeable to everyone?

Members: Agreed.

The President: Thank you.

Criminal Justice (Money Laundering) Bill - Second Reading Approved

The President: In that case I call upon the hon. Mr Waft to take the second reading of the Criminal Justice Bill.

Mr Waft: Thank you, Mr President. The Island already has legislation covering money laundering where the funds laundered are the proceeds of drug trafficking or are terrorism funds.

Schedule 1 to the Bill, which amends the Prevention of Terrorism Act, simply updates the money laundering provisions already contained in that Act to bring them into line with those contained in the Drug Trafficking Act. In particular, it covers the giving of financial assistance for terrorism, the investigation of terrorism activities and the disclosure of information about financial assistance for terrorism.

Schedule 2 is far more reaching as it closes a gap in the law by making it an offence to launder the proceeds of criminal conduct other than drug trafficking and terrorism. The type of criminal conduct covered by this schedule is conduct that constitutes an offence serious enough to be tried at the Court of General Gaol Delivery. An offence is created under this schedule if a person (a) assists another to obtain the benefit of criminal conduct, (b) acquires, possesses or uses the proceeds of criminal conduct knowing them to be such proceeds, (c) conceals, disguises, transfers or converts the proceeds of criminal conduct, or (d) passes the information to anybody, knowing or suspecting that it is likely to prejudice an investigation into money laundering. No proceedings for any these offences can be commenced except by or with the consent of the Attorney-General. The involvement of the Attorney-General is an important filter mechanism to ensure that the decision on whether or not to prosecute is taken at the highest possible level.

The Department of Home Affairs is empowered to make codes for the purposes of preventing and detecting money laundering. Before making the code the department has to consult such persons or bodies that appear to it to be appropriate. Any code that is made has to be laid before Tynwald which, if it does not agree with the code, can resolve that it be

annulled, and in that event the code shall cease to have effect. There will be close consultation with the finance and business sector in the drafting of the codes.

There is a general provision to restrict the constable from disclosing any information that has been disclosed to him without the consent of the person from whom the information was obtained. There are certain exceptions to this restriction which enable information to be passed to persons either on or off the Island in the circumstances prescribed. When it is considered to be in the public interest to disclose information to a person outside the Island, the consent of the Chief Minister or the Minister for Home Affairs is required.

This Bill demonstrates the Isle of Man's continuing commitment to play a full part in defeating those who seek to launder the proceeds of criminal activities. Our legislation must be strengthened if the Island is to be recognised internationally as a centre of excellence. Other jurisdictions have reached the same conclusion, encouraged by international concerns and a general desire to thwart the efforts of money launderers. If the Bill is enacted, the Island will comply with the recommendations issued by the financial action task force to combat money laundering and should then receive a clean bill of health from that body.

At the first reading, the hon. member Mr Lowey asked us about the cost. We have no exact figures on this. There are no direct financial implications as such. There will be costs, of course. The Bill creates offences where previously there were not any before, for example, the offence of laundered money from serious crime. We cannot afford not to implement this legislation.

With regard to the enforcement which was also mentioned by the hon. member, the police, the fraud squad, in conjunction with the Financial Supervision Commission, working with other jurisdictions, will be looking after the administration and enforcement.

I therefore, Mr President, beg to move that this Bill be read a second time.

Mr Radcliffe: I beg to second, Mr President, and in so doing I would re-echo the words of the mover. The Isle of Man is acknowledged as a centre of excellence, we want to retain that name and this Bill will enable us to do that and, as the hon. mover has already said, we really cannot afford to be without this Bill and I would urge everyone to support it strongly.

Mr Lowey: I support the Bill, Mr President. The only thing that I would say is, looking at schedule 2 and the penalties, I notice the penalty in the High Court is up to 14 years, a fine, et cetera, which seems unlimited and which I would tend to agree with, but in the lower court it is six months or £5,000, and I would have thought the fine of £5,000, if it is to be meaningful at all in this context, should be increased. However, I do not know whether a minor court has the power to have an unlimited fine attached to it, but I just wonder. Again, the message I want to underline is the message that has gone out from the mover and the Treasury member - that we are here and we mean business, and if we catch you at it then you are not going to benefit from it, we will punish you and confiscate.

The President: Reply, sir?

Mr Waft: Thank you, Mr President. I note what the hon. member has mentioned with regard to the fines. I think this is the fine that has been recommended and the Attorney-General might be able to elaborate on the position with regard to the courts and their ability to

impose fines but, as has been said, we must appear to be like Caesar's wife and get this legislation through as quickly as possible. Thank you, Mr President.

The President: I will put the resolution, hon. members . . . Do you wish to speak at all, Mr Attorney, at this stage?

The Attorney-General: I think not, Mr President.

The President: Hon. members, I will put the resolution that the Criminal Justice (Money Laundering) Bill be now read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, the hon. member in charge has indicated that he would like to take the clauses and the third reading at the next sitting of the Council. Am I correct there, sir?

Mr Waft: Yes, Mr President.

The President: Thank you.

Criminal Justice (Exclusion Of Non-Resident Offenders) Bill - Second Reading Approved

The President: Moving on, then, to the Criminal Justice (Exclusion of Non-Resident Offenders) Bill, I call upon the hon. Dr Mann to take the second reading.

Dr Mann: Thank you, Mr President. The principal purpose of this Bill is to enable the criminal courts in the Isle of Man to order that offenders who are not resident in the Island shall be excluded from the Island for a specified period, and it confers the powers on the courts to impose an exclusion order on a person who is convicted of an offence for which custody is a penalty. Under an exclusion order the person to whom it applies is prohibited, for a period of five years, from being in or entering the Island. Now, there are also, of course, acceptances of the limitations of the Island's international obligations.

At the first reading there were no significant matters raised; the way in which an exclusion order should apply, if the original country of origin of the person refused to have them back, will be dealt with when we come to the actual clause-by-clause reading of the Bill. So I beg to move that the Criminal Justice (Exclusion of Non-Resident Offenders) Bill be read a second time.

Mr Lowey: I beg to second.

The President: I will put the resolution, hon. members, that the Criminal Justice (Exclusion of Non-Resident Offenders) Bill be now read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Again I take it, hon. member, you are happy to take the clauses and the third reading at the next sitting.

Agriculture And Fisheries (Miscellaneous Provisions) Bill - Second Reading Approved

The President: I turn now to item 5 and call upon the hon. Mr Kniveton to take the second reading of the Agriculture and Fisheries (Miscellaneous Provisions) Bill.

Mr Kniveton: Yes, thank you, Mr President. As I explained at the first reading of the Bill, it is promoted by the Department of Agriculture, Fisheries and Forestry and makes miscellaneous amendments to legislation relating to agriculture, sea fisheries and animal

welfare. Now, the particular point of interest is in clause 1, where it makes it an offence to make a false statement for the purpose of obtaining assistance from government for agricultural business or a fisheries business. The fine jumps to £5,000.

At the first reading Mr Lowey raised a point here when he commented and asked, was it not an offence previously to make a false claim and what action did the department take on receipt and evidence of a false claim previously? My response to that is, there are a number of schemes which lead to payment of grants or loans to applicants but which make no provision for the possibility of an applicant making a false statement in order to gain advantage, including money. No offence is stated under those schemes. The only remedy that the department itself would have had previously would be to seek immediate repayment of any grant or loan which had been made as a result of a false statement. The major remedy would have been the involvement of the police in treating the matter as a criminal offence of obtaining money by false pretences under fraud laws. The amendment simplifies the situation. A clear offence is established whatever the scheme, and there is a remedy at law which the government prosecutor can initiate on behalf of the department rather than having to involve the police, taking their time and resources in a separate investigation and prosecution. I hope, Mr Lowey, that satisfies the query which you raised previously.

If I may continue, clause 2 provides for the liability of directors and similar officers when a body corporate commits any offence as mentioned.

Going to clause 3, this amends the provisions of the Sea-Fisheries Act 1971 to clarify the licensing powers of the department, and the maximum fine jumps to £50,000, last revised in 1983. The powers of fisheries officers to detain fish, instruments, et cetera, are also amended.

Clause 4 contains an amendment to the Wild Animals Act, and this change concerns necessary alteration to the legislation in order to greater facilitate the importation of wild animals, particularly with the film industry in mind.

Finally, the final change involves a relatively limited adjustment to the Animal Health Act 1996. This adjustment has been found necessary, following recent subsidiary legislation, to meet our international obligations in transporting animals.

It is fair to say that there has been support and discussion with the Isle of Man Fisherman's Association. There has also been discussion with the internal audit division of Treasury where appropriate.

This is a Bill where it was intended to move other areas at this stage. The Bill has been delayed already in order to try to ensure agreement on these issues. There will be another miscellaneous provisions Bill in the future, when it is hoped to bring back some of those items which were unable to be brought forward in the Bill. The department feels it is worth delaying those areas in order to, hopefully, get through the essential legislation contained here.

Mr President, I would therefore like to move the second reading of the Agriculture and Fisheries (Miscellaneous Provisions) Bill and I am quite happy, sir, that the clauses stage be left over to the next sitting. Thank you.

Mr Waft: I beg to second, Mr President.

The President: I will put the resolution, then, hon. members, that the Agriculture and Fisheries (Miscellaneous Provisions) Bill be now read a second time. Will those in favour

please say aye; against, no. The ayes have it. The ayes have it. And with the hon. member's request that the clauses be held over, we will deal with those at the next sitting.

That, hon. members, concludes our public sitting this day. The Council will now sit in private.

The Council sat in private.

Corrigendum

Legislative Council, 7th April 1998.

Page C103, column 1, line 14, and footer, for 'Mrs Christian' please substitute 'Mr Lowey'.