

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 12th 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, Messrs J R Kniveton, E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

Apologies For Absence

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

**Criminal Justice (Money Laundering) Bill - Clauses Considered -
Third Reading Approved**

The President: Now, with regard to Bills, with your permission and with the agreement of the hon. members in charge, I would like to take the second item on the order paper and deal with the Criminal Justice (Money Laundering) Bill first of all, if that is agreed.

Members: Agreed.

The President: Thank you. In that case I call upon the hon. Mr Waft to take the clauses of the Criminal Justice (Money Laundering) Bill.

Mr Waft: Thank you, Mr President. With members' permission, although there are only three clauses in this Bill, there are numerous sub-paragraphs, sub-clauses, subsections, new sections, which makes the Bill rather difficult to follow, for the sake of celerity I intend to take the Bill through, mentioning the main headings, and will elaborate where necessary in the schedules.

The President: Proceed, sir.

Mr Waft: Schedule 1. This schedule contains a series of amendments to the Prevention of Terrorism Act 1990. The amendments relate to the giving of financial assistance for terrorism, improvements to the powers for the investigation of terrorist activities and the imposition of an obligation to give information of a knowledge or suspicion of certain offences relating to financial assistance for terrorism.

Paragraph 1 deals with financial assistance for terrorism. The amendments in this paragraph are based on section 49 of the Criminal Justice Act 1993 of Parliament. The paragraph amends sections 7, 8 and 10 of the Prevention of Terrorism Act 1990 which mirrors the Prevention of Terrorism (Temporary Provisions) Act 1989 of Parliament. Those sections provide a scheme of investigation, prosecution and forfeiture of funds or property destined to be used to finance terrorism.

Paragraph 2 deals with investigation of terrorist activities. This paragraph follows the provisions of section 50 of the Criminal Justice Act 1993 of Parliament. The paragraph amends section 15 of the Prevention of Terrorism Act 1990. Section 15 contains powers for

the effective investigation of terrorism connected with the affairs of Northern Ireland or places outside Great Britain and the Isle of Man, terrorist offences under the 1990 Act and investigations into the resources of proscribed organisations. The powers introduced by section 15 of the 1990 Act are quite extensive and include powers to require the production of evidence, powers of search and requirements for the explanation of seized or produced material.

Paragraph 3 deals with failure to disclose knowledge or suspicion of financial assistance for terrorism. This paragraph inserts a new section 16A in the Prevention of Terrorism Act 1990. The provision is based on section 51 of the Criminal Justice Act 1993. The new section 16A replicates section 48 of the Drug Trafficking Act 1996. The section creates a new offence connected with the laundering of terrorist funds. It will require certain persons to provide information to the police in relation to terrorist funds.

Paragraph 4 is the amendment of section 21 of the 1990 Act. Paragraph 4 amends section 21 of the Prevention of Terrorism Act 1990 by inserting a new subsection (2A). Section 21(2) of the 1990 Act enables the Governor in Council, with the approval of Tynwald, to repeal the Act. This was originally included to allow for circumstances where it was necessary, because of a successful peace process or for some other reason, to repeal the Prevention of Terrorism Act 1990 speedily at the same time as the UK repealed its equivalent legislation. The new section 2A will enable the Governor in Council to exercise that power of repeal in relation to other legislation which amends the 1990 Act and would have to be repealed as a consequence of the repeal of the 1990 Act. Mr President, I am pleased to move clause 1 and schedule 1 of the Bill.

Mr Radcliffe: I beg to second and reserve my remarks, Mr President.

The President: Does any hon. member wish to speak to this clause? If not, I will put the resolution that clause 1 along with schedule 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2 and schedule 2, sir.

Mr Waft: Clause 2 and schedule 2, Mr President. Paragraph 1 amends three sections of the Criminal Justice Act.

Paragraph 2 adds nine new sections to part 1 of the Criminal Justice Act 1990 that currently deals with the confiscation of the proceeds of criminal conduct. The new sections 17A to 17I deal with the proceeds of criminal conduct. The new offences introduced by these provisions apply only to the laundering of the proceeds of crime other than drug trafficking offences. This is because the Drug Trafficking Act 1996 already contains similar money laundering offences in relation to the proceeds of drug trafficking. The provisions of the new sections 17A to 17D follow very closely the provisions of sections 93A to 93D of the Criminal Justice Act 1998 of Parliament. New sections 17E and 17G to 17I do not follow UK precedents on this subject and are intended to enhance local control on information and prosecutions. New section 17F does not follow a United Kingdom precedent but is intended to enable codes to be made which are equivalent to the United Kingdom Money Laundering Regulations which were made to implement the European Community Money Laundering Directive.

New section 17A, assisting another to retain the benefit of criminal conduct, makes it an offence to assist another to retain the benefit of criminal conduct. This section replicates the offence in section 46 of the Drug Trafficking Act 1996 in relation to the proceeds of drug

trafficking. The purpose of the clause is to make it as difficult as possible for criminals to enjoy the fruits of their crime, and the clause recognises that those who assist criminals to launder the proceeds of crime are assisting another to retain the benefit of criminal conduct.

The new section 17B makes it an offence to acquire, possess, or use property representing the proceeds of criminal conduct, knowing the property to be such proceeds. This clause replicates the offence in section 47 of the Drug Trafficking Act 1996 of acquiring, possessing, or using the proceeds of drug trafficking.

The new section 17C makes it an offence to conceal, disguise, transfer or convert the proceeds of criminal conduct. This section replicates the offence under section 45 of the Drug Trafficking Act 1996, which concerns the proceeds of drug trafficking. The section is designed to prevent and punish anyone who hides property or moves property outside the Isle of Man, whether his own property or another's. The section extends to actions designed to disguise or remove evidence, thus assisting in the avoidance of prosecutions or the removal of assets which could form the basis of an enforcement or confiscation order.

Section 17D. This new section makes it an offence to pass on information to anybody knowing or suspecting that it is likely to prejudice an investigation into money laundering. The new section replicates the tipping-off offence contained in section 49 of the Drug Trafficking Act 1996. In essence, the offence provides a criminal sanction against those who warn others of an investigation of their or others' activities in relation to money laundering.

The new section 17E is with regard to the Attorney-General's consent. This new section 17E will require the consent of the Attorney-General before proceedings can be commenced for money laundering under sections 17A to 17D of the Criminal Justice Act 1990. The Attorney-General is the Crown Officer responsible for the supervision of prosecution for offences. In many cases of serious offences the Attorney-General's consent is necessary.

The new section 17F contains enabling powers which will permit the Department of Home Affairs to make codes for the purpose of assisting in the prevention and detection of money laundering. Subsection (1) has been amended in another place. This subsection deals with page 12 and section 17F(1); (a) after the words 'money laundering' insert 'whether in respect of the benefits or proceeds of criminal conduct, drug trafficking within the meaning of the Drug Trafficking Act 1996 or otherwise'; (b) in paragraph (a) after 'criminal conduct' insert 'or drug trafficking within the meaning of the Drug Trafficking Act 1996'. The new section 17F, which is to be inserted into the Criminal Justice Act 1990 by paragraph 2 of schedule 2 to this Bill, provides for the making of money laundering codes. Since the Bill was drafted, a question has arisen as to whether this section is as wise as had been intended and whether in particular it would permit the Department of Home Affairs to make codes in respect of the proceeds of crime other than those to which part 1 of the Criminal Justice Act applies. It could be argued that it excludes the proceeds of drug trafficking. That obviously was not intended. This amendment removes any doubt that might exist and makes it clear that the reference to money laundering covers all forms of money laundering and that the reference to the proceeds of criminal conduct also covers the proceeds of drug trafficking. The new sections 17G, 17H, and 17I deal with information which has been disclosed to a constable and the circumstances in which it may be disclosed by a constable. The provisions are similar, although not identical, to provisions relating to restrictions on disclosure of information contained in the Financial

Supervision Act 1988. That Act limits the disclosure of information which has been obtained as a result of investigations undertaken by the Financial Supervision Commission.

The new section 17G prevents a constable from passing on information relating to suspicious transactions which has been passed to him. A restriction also applies to other persons who obtain the information directly or indirectly from the constable. This section and sections 17H and 17I respectively specify the only occasions when the information can be passed on to others.

Section 17H sets out the circumstances in which information of suspicious transactions in the hand of a constable or a person who obtained the information from a constable may be disclosed to others.

The new section 17I sets out the circumstances in which the disclosure of suspicious transactions may be passed to a person outside the Island. There are two basic cases; the first requires the consent of the Attorney-General and the second requires the consent of the Chief Minister. Paragraph 3 of schedule 2 amends section 21 of the Criminal Justice Act 1990. Section 21 is a provision which is similar to the new sections 17A(3)(a) and 17B(5)(a) in that it provides a waiver of any liability where a person discloses to a constable a suspicion that property has been obtained as a result of criminal conduct. At present, section 21 only provides a waiver of liability where there is a duty of confidentiality imposed by contract. This paragraph amends section 21 so as to make it consistent with the new provisions inserted into the 1990 Act. The effect of the amendment is to extend the waiver to cover all legal duties of confidentiality.

Paragraph 4 of schedule 2 amends section 22(2) of the Criminal Justice Act 1990. The amendment inserts into the list of defined expressions the cross-reference to the definition of 'criminal conduct'. Mr President, I beg to move clause 2 and schedule 2 as amended stand part of the Bill.

Mr Radcliffe: I beg to second and reserve my remarks, Mr President.

Mr Lowey: Mr President, there were a couple of comments made by my friend in moving the Bill that give me a little concern. On two occasions he said, it is not exactly the same as the United Kingdom legislation which this Act is based upon, and I think he also coined the phrase 'similar but not identical' to a latter clause, and on both occasions he mentioned local confidentiality being the reasons for the difference. If there is a difference, surely it should not be weakening legislation to allow local conditions, because this Bill is aimed at the international market more than anything else because the world is global now, crime is global and the proceeds are global. So therefore if we are reserving to ourselves, a local condition of non-disclosure surely must weaken this legislation. What we are trying to get out - and I believe that it is right and proper and that is why I support this Bill - is the message that should be strong and loud and clear, that there are not local conditions being attached to disclosure; it is the hot pursuit of criminals and their proceeds. Can I have an assurance from the mover of the Bill that this . . . Perhaps I am reading into it what I should not but I must confess that both of those phrases filled me with alarm.

Could he explain finally, because it is the first time in my time in this House that I have heard the Chief Minister being able, perhaps, to get involved in criminal prosecutions - I

thought all criminal prosecutions emanated from the Attorney-General's office. Perhaps he would like to explain that one a little bit more?

The Attorney-General: Mr President, in answer to the question from the hon. member, I think it might be helpful to hon. members to know that this Bill has been introduced to our parliamentary process in consequence of a close liaison and consultation with the Home Office. Now, as one might imagine, the Home Office is and continues to be anxious that not only the Isle of Man but also the other islands, Jersey, Guernsey, and indeed the islands in other jurisdictions further afield should not be easy locations for laundering the proceeds of crime. I can therefore, I think, with some confidence assure the hon. questioner that this legislation represents the best attempt which one can possibly invent to prevent the laundering of the proceeds of crime. It indeed represents the hot pursuit of crime. No concession has been made to any local conditions whatsoever. In fact, one can readily appreciate that, far from being soft on the pursuit of crime, there may very well be many persons in the financial services sector who have legitimate concern that we might be going too hard on the pursuit of crime, because naturally one can see that professionals who are involved in banking, insurance, accountancy and so on will have to introduce codes into their business activities to ensure that they do not fall foul of the very rigorous remedies which are available to people who pursue criminals involved in money laundering. The legislation does contemplate and appreciates that money laundering goes on on a global scale and, as I say, no concession is made in any way to any local conditions.

In so far as the Chief Minister is concerned, I believe the hon. member is concerned there about the reference in 17I. Clause 17I does, exceptionally, I agree, permit the disclosure of information to a person outside the Island where the Chief Minister, or in his absence the Minister for Home Affairs, is satisfied that the disclosure is in the public interest and that the information is likely to be of substantial value to the recipient and, having consulted with the Attorney-General, the Chief Minister then gives his written consent to the disclosure. One can perhaps contemplate that this would indeed be an exceptional course where information was disclosed by the Chief Minister, but it would be in a matter of national concern and there would be consultation with the Attorney-General.

Mr Lowey: Could I say on the first point, Mr President, that I am reassured by what the learned Attorney has said. However, when I hear caveats entered into legislation when we are actually putting it forward, that is the reason why I raised the doubts that I did. Secondly, can I also say to the last point he makes, that is fine when the Chief Minister gives consent, he will consult and then everybody will be aware of it. What happens when a Chief Minister of the day does not give consent, because nobody other than the Chief Minister will know that he has not given consent, and where is the openness in this legislation that can actually say he was asked to give consent and he did not give it? Therefore I can understand the reassurance being given that after consultation with the Attorney-General he would then given written consent, but what happens when he does not give and there is a secrecy and there is a block there? Who would know?

The President: As those comments touched directly on your explanation, sir, would you respond?

The Attorney-General: Thank you, Mr President. I think that the clause 17I(2) contemplates that the Chief Minister will have to perform some particularly executive role

purely in his position as Chief Minister, akin to the prime minister of a country. The analogy, perhaps, would be when the Chief Minister is sometimes asked to issue an order permitting the interception of telephone communications. Sometimes there are matters of national concern, national importance, which require the Chief Minister, again in consultation with the Attorney-General, to exercise rather draconian powers when one looks at interception of communications. Certainly the section does not impose a duty on the Chief Minister to disclose. It simply says that the normal rule that information should not be disclosed by a constable and so on does not preclude the disclosure of information where the Chief Minister is satisfied that the disclosure is in the public interest and so on. So, as I say, it is a matter of executive discretion vested in the Chief Minister. That, I think, is something which is inevitable. The Chief Minister has a peculiar role. He has the confidence of his ministers and of Tynwald, and the legislation contemplates that in exceptional circumstances the Chief Minister may be authorised, if he feels fit, to make a disclosure, having consulted with the Attorney.

The President: Are there any further points? The hon. Mrs Christian.

Mrs Christian: Mr President, if we could perhaps just ask for a little further clarification on that clause 17I? Would the learned Attorney perhaps confirm that the actions taken under subsection (1) could be quite different and distinct from the actions which might be taken under subsection (2) and that they are not interrelated? Perhaps the mover, in replying, would indicate that I feel that where he is referring to local situations that we are indeed just protecting the autonomy of the Island in this respect and not allowing open house for anybody to come in and get information, and would he confirm that my understanding is what he was trying to convey in his remarks?

The President: Would you care to reply, sir?

Mr Waft: Perhaps the Attorney-General might be able to clarify that as well.

The Attorney-General: Yes, thank you, Mr President. I would concur with the interpretation placed on 17I by the learned minister, and I think that 17I(1) is distinct from 17I(2). Clause 17I(2), as I say, is a matter reserved for the executive discretion of the Chief Minister. Clause 17I(1) enables a broader picture to be disclosed, namely that if the Attorney-General consents to the disclosure of information to a person outside the Island and that is for the prevention or detection of crime or the institution of or otherwise for the purposes of criminal proceedings outside the Island, that is the sort of jurisdiction which the Attorney-General often has to assume and do his best to interpret, but that is quite different from the executive governmental discretion which is vested in the Chief Minister under 17I(2).

The President: Are there any further points you wish to add, hon. mover?

Mr Waft: I would just like to thank Mr Attorney for his clarification of those points raised by the hon. members. I would like to move clause 2 and schedule 2, Mr President.

The President: I will put the resolution, hon. members, that clause 2 along with schedule 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, hon. members.

Mr Waft: Clause 3, Mr President, deals basically with the short title and the commencement. I beg to move that clause 3 stand part of the Bill.

Mr Radcliffe: I beg to second and reserve my remarks, sir.

Mr Lowey: Could I just ask - again, is the title of the Bill, 1997, one of those formal things that will be altered to 1998?

The President: You can have that assurance, yes. I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, we have the third reading and I call upon the hon. Mr Waft.

Mr Waft: Thank you, Mr President. As hon. members know, the Island already has legislation covering money laundering where the funds laundered are the proceeds of drug trafficking or are derived from terrorist activities. This Bill extends existing legislation in two respects: firstly, it amends the Prevention of Terrorism Act 1990 and brings its provisions governing money laundering into line with those of the Drug Trafficking Act 1996; secondly, it amends the Criminal Justice Act 1990 to create offences of laundering the proceeds of criminal conduct other than drug trafficking and terrorism. This will establish a consistent approach to the way in which money laundering is dealt with, to be established regardless of the source of the funds being laundered. In particular, clause 2 and schedule 2 will make it an offence (a) to assist another to retain the benefit of criminal conduct; (b) to acquire, possess or use the proceeds of criminal conduct knowing them to be such proceeds; (c) to conceal, disguise, transfer or convert the proceeds of criminal conduct; and (d) to pass on information to anybody, knowing or suspecting that it is likely to prejudice an investigation into money laundering.

Extensive consultation has already taken place with the industry and there has been general support for the proposed measures. However, schedule 2 includes powers for the making or approval of codes of practice relating to this issue. The schedule demands that further consultation takes place before the codes are adopted, and I would like to remind hon. members that an initial draft of the code is currently ready for consultation and the first meeting has been arranged for the beginning of April 1999. In 1990 the financial action task-force, an agency of the OECD, issued 40 recommendations to combat money laundering. In 1994 they were invited to carry out an informal evaluation of our anti-money laundering legislation policies and practice. At that time we received an excellent report. However, in 1996 their recommendations were revised and it is expected that once this legislation has come into force we will seek a further evaluation by the financial action task-force, probably later this year, which we hope will lead to full accreditation by that body. It will send out a clear signal that the Isle of Man is at the forefront of the international drive against illegal financial activities and will help to reinforce the message that the Isle of Man is truly a centre of excellence in the financial world and be a major boost to the marketability of our Island's financial sector. Mr President, I beg to move the third reading of the Criminal Justice (Money Laundering) Bill and do pass.

Mr Radcliffe: I beg to second, Mr President, and in so doing echo the remarks made by the hon. mover. We do hold ourselves, on the Isle of Man, to be a financial centre of excellence and we have to have the legislation to back that. Without doubt money laundering does go on and we must make it - I was going to say impossible, but certainly as difficult as possible for people to undertake that activity. It is a continual, ongoing battle between authority and those who wish to flout authority and we must give the people in authority every means we can to combat this very insidious practice which is acknowledged to be going on. We are in

the forefront, we must remain in the forefront and, quite frankly, we cannot afford not to have this legislation, and I give it my strong and utmost support.

Mr Lowey: I welcome the Bill, Mr President, and I am reassured in the third reading speech that codes of conduct are already being talked about with the authorities and I hope that they will be introduced speedily and that is a clear indication of the Bill and the member of the Treasury here this morning, I am delighted for that. I echo all the words that he said, that for the Island's reputation we need to be seen to be moving not to events but preventing unfortunate events from happening, and I think this Bill will help, so I support it.

Mrs Christian: Mr President, the financial sector already exercise vigilance against proceeds of drug-related crime. This is an opportunity to reinforce the message when we are extending it further, and I think certainly the financial sector are actively involved in taking their staff through training programmes and so on. Emphasising the penalties here, I think, to any individual would make it quite clear how important it is that they understand what the legislation is trying to do and what their individual part is in the battle against money laundering, and to that extent I think that the process of this piece of legislation gives us an opportunity to re-emphasise the requirement of any individuals involved in the financial sector for exercising vigilance.

The President: Reply, sir?

Mr Waft: Mr President, I think it is appropriate that this Bill is going through at this particular time when the international climate is focussing very much on efforts to eradicate tax evasion and illegal financial activities and, as I think I said in the Bill, it will announce to the outside world that the Isle of Man is taking its responsibilities in this area very seriously, and I believe that the industry on the Isle of Man will respond very positively to this legislation and ensure that the excellent standards which we have developed over the last few years will be maintained and enhanced. There is nothing more I think I can add other than to thank the members for their support on this tricky piece of legislation. I beg to move the third reading and that the Bill do pass.

The President: Hon. members, the resolution is that the Criminal Justice (Money Laundering) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Welcome To Commonwealth Parliamentarians

The President: Now, before proceeding to our next Bill, I should like to extend to our visitors this morning in the gallery the warmest of welcomes to the Isle of Man to those three distinguished Commonwealth parliamentarians who are with us today, Mr Demetrius Eliades of Cyprus, Dr Lawrence Gonzi of Malta and Mr John Gordon Leefe of Nova Scotia. You, hon. members, are members of a commission helping us in the question of members' remuneration and we are most grateful to you for making the time from your busy legislative schedules to assist us and hope that, in the course of giving that assistance, you will enjoy your stay in our Island. Delighted to have you.

Police Powers And Procedures Bill - Consideration Of Clauses Concluded

The President: Now, hon. members, we turn to item 1 on the order paper and I call upon the learned Attorney-General to take part V, indeed, of the Police Powers and Procedures Bill. We start with that point - I think that is correct. Clause 56, sir.

The Attorney-General: Thank you very much, Mr President. I wonder if it would be convenient to hon. members if I again try to break part V down into what hopefully will be convenient clauses and sections. If I may, I would suggest that we consider clauses 56 to 60 inclusive and then move to 61 to 63 inclusive.

The President: Is that agreed, hon. members?

Members: Agreed.

The President: Thank you. Please proceed, sir.

The Attorney-General: Thank you, Mr President. Part V of the Bill deals with the questioning and treatment of persons by the police.

Clause 56, in sub-clause (1), abolishes all previous laws, both statutory and common law, which permitted constables to search persons in police detention or to carry out intimate searches. These searches will in future only be carried out in compliance with part 5 of this Bill.

Sub-clause (2) preserves the effect of anti-terrorism powers and anti-smuggling powers.

Clause 57 deals with searches of detained persons and makes provision for persons who have been arrested and are to be detained at a police station to be searched.

Sub-clauses (1) and (2) require the custody officer to ascertain the property that a person detained at his police station has on or with him and to make a record of it.

Sub-clause (3) provides for the seizure and retention of any property other than personal effects. This does not mean that all property that a detained person has on or with him will automatically be seized and retained while he is in custody but simply that this will be within the custody officer's discretion.

Sub-clause (4) restricts the power of the custody officer to retain clothes and personal effects to articles which (a) might be used to cause injury, damage property, interfere with evidence or effect an escape or which (b) are needed as evidence. A decision by the custody officer to withhold articles in the former category does not have to be based on reasonable grounds.

Sub-clause (5) provides for a detained person from whom property has been withheld to be told the reason for this unless he is incapable of understanding what is said to him.

Sub-clause (6) provides that a detained person may be searched if the custody officer considers this necessary in order to comply with the duty under sub-clause (1).

Sub-clause (7) authorises the search of a person in custody at any time to ascertain whether he has anything which could be used to cause injury or damage, to interfere with evidence or escape.

Sub-clauses (8) and (9) provide for the retention by the police of property seized following a search.

Sub-clause (10) importantly prohibits an intimate search under this clause.

Sub-clause (11) provides for any search to be made only by a constable, and sub-clause (12) requires the constable to be of the same sex as the person searched.

Clause 58 deals with intimate searches and restates the provisions of the Criminal Justice (Intimate Body Searches) Act 1994, which is one of the Acts repealed by schedule 5.

Sub-clause (1) provides that an intimate search of an arrested person may take place if authorised by a chief inspector. He must be satisfied that the person has concealed articles which could cause injury to himself or others and which he might use while detained or he has a controlled drug - for example, cocaine or heroine - which he possesses with criminal intent.

Sub-clause (2) sets out the conditions which must be satisfied before a search is authorised, namely that the officer has reasonable grounds for believing that the thing searched for cannot be found unless there is an intimate search and the person to be searched has been informed that he can consult an advocate and that the advocate may be present when the search is carried out.

Sub-clause (3) provides for authorisation to be in writing or given orally and requires the written confirmation of an oral authorisation under sub-clause (1).

Sub-clause (4) requires an intimate search to be by way of examination by a doctor unless there is an immediate need - for example, danger of injury - when the search may be by a police officer of the same sex or a registered nurse.

Sub-clause (5) permits the use of reasonable force in carrying out the search.

Sub-clause (6) requires the search to be carried out only at a hospital, doctor's surgery, medical room at a designated police station or, in cases of urgency, at a police station.

Sub-clause (7) requires the responsible adult to be present where a juvenile - that is, under the age of 17 - is to be searched.

Sub-clauses (8) and (9) enable the High Bailiff to authorise a search in the absence of the responsible adult where the adult cannot or will not be present or cannot be traced.

Sub-clause (10) prohibits the presence of persons of the opposite sex at an intimate search except that a doctor, nurse, advocate or person responsible for a juvenile may be present.

Sub-clause (11) requires information about an intimate search to be recorded on the person's custody record.

Sub-clause (12) requires this information to be recorded as soon as practicable after the search.

Sub-clauses (13) and (14) provide for the seizure and retention of articles found in the course of an intimate search in the same way as in clause 57.

Sub-clauses (15) and (16) require information about intimate searches to be included in the chief constable's annual report, and sub-clause (17) provides the definitions of 'appropriate criminal intent' and 'controlled drug'.

Clause 59 deals with the right to have someone informed when a person is arrested and it affirms the right of persons detained by the police to have someone notified on their arrest and their whereabouts.

Sub-clause (1) entitles a person who has been arrested and is being held in custody to have one friend or relative or other person who is known to him or likely to take an interest in his welfare told of his arrest and his whereabouts if he so requests. This information must be sent without delay except to the extent that delay is permitted by later provisions of the clause.

Sub-clause (2) provides that the sending of this information may be delayed only in the case of a person who is in police detention for a serious arrestable offence and on the authorisation of an officer of the rank of inspector or above.

Sub-clause (3) provides for the written confirmation by a chief inspector of an authorisation under sub-clause (2), such confirmation to be given within eight hours of the authorisation.

Sub-clause (4) makes the right conferred by sub-clause (1) absolute 36 hours after the detention clock has started, or eight hours after an authorisation under sub-clause (2).

Sub-clause (5) requires the written confirmation of an oral authorisation under sub-clause (2).

Sub-clauses (6) and (7) set out the grounds on which delay may be authorised under sub-clause (2), namely, firstly, that telling of the arrest will interfere with or harm evidence or lead to interference with or physical injury to other persons or will alert other suspects or will hinder the recovery of property; or, secondly, that the offence is a drug-trafficking offence or an offence where a confiscation order may be made.

Sub-clauses (8) and (9) provide that where delay is authorised the detained person must be told of the reason for the delay, and the reason must be noted on his custody record. This must be done as soon as practicable.

Sub-clause (10) makes it clear that a person is entitled to exercise the right to have somebody told of his arrest and whereabouts whenever he is transferred from one police station to another.

Sub-clause (11) makes it clear that once the ground on which delay was authorised ceases to apply, then no further delay is permitted.

Sub-clause (12) applies the clause to persons detained under the terrorism provisions.

Sub-clause (13) modifies the provisions of the clause in its application to the terrorism provisions. The modifications are largely those necessary for the proper application of this clause. In addition, an officer may authorise delay in notifying another if he has reasonable grounds for believing that notification will lead to interference with the gathering of information relating to acts of terrorism or that it will, by alerting any person, make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of a person involved in terrorism. This provision, in common with sub-clause (6), is designed to ensure that the right to notify a friend or relative should not prejudice the gathering of intelligence.

Clause 60 deals with additional rights for children and young persons who are arrested. Clause 60 amends section 29 of the Children and Young Persons Act 1966. The clause places a duty upon the police by obliging them to inform the person responsible for a juvenile when the juvenile has been detained. The clause will be supplemented by the code on the detention, treatment and questioning of suspects to be issued under clause 75.

Sub-clause (1) inserts a number of new subsections in section 29 of the 1966 Act.

The new subsection (3) provides that where a child or young person is detained at a police station following arrest, the person responsible for his welfare, as defined in subsection (6), must be identified.

New subsection (4) requires notice of the arrest to be given to that person except where it is not practicable.

New subsections (5) and (7) require the information relating to the arrest of a juvenile and any intimate search of a juvenile to be passed on as soon as practicable.

New subsection (6) defines who is the person responsible for a juvenile, namely the parent or guardian or some other person who assumes responsibility.

New subsection (8) requires notice to be given to the officer responsible for the supervision of a juvenile under a supervision order made by a court, and new subsection (9) includes the Department of Health and Social Security as the parent or guardian in the case of a juvenile in care.

New subsection (10) makes it clear that the rights conferred by this clause are additional to the right of a juvenile under clause 59 to have someone informed when arrested.

New subsection (11) applies the above provisions to juveniles detained under the terrorism provisions, and new subsection (12) defines the expression 'the terrorism provisions' by reference to clause 69.

Subsection (2) repeals an unnecessary provision. So I move that clauses 56, 57, 58, 59 and 60 do stand part of the Bill.

Dr Mann: I beg to second.

Mr Radcliffe: Could I ask the learned Attorney, Mr President? Clause 58, we are dealing with intimate searches; in subsection (8) where it talks about not being able to . . . or impracticable or whatever to contact relatives or whoever else, an application may be made to the High Bailiff. Only the High Bailiff, it would appear. There are occasions when the High Bailiff is off the Island or unavailable or whatever. Is there another person who would authorise in that case, and what sort of timescale? There is no timescale mentioned for that authorisation. Could it be hours? Could it be much longer than that? I think if one of the authorities are wishing to conduct an intimate search it would want to be a thing which should be done fairly speedily rather than a very long timelag. As I say, if the application is only to the High Bailiff what happens when he is not available? Thank you.

Mr Waft: Mr President, with regard to the move of care in the community these days, I wondered if this Act does encompass the problems of . . . It mentions children and young persons in clause 60, but those with obvious learning difficulty - would it encompass someone to have notification of the responsibility for their welfare when they are committed to custody?

Mr Lowey: Clause 57, where the learned Attorney said in sub-clause (3) of it the police do not have to have reasonable grounds and, subject to sub-clause (4), the custody officer may seize and retain any such thing or cause any such thing to be seized and retained. Then the Attorney added also there 'and he does not have to have reasonable grounds'. Now, the other one says they have to have reasonable grounds to be able to do this, this and this. That gives the police the complete get-out where they can seize virtually anything and say they are doing it under sub-clause (3). Perhaps he would like to explain that one.

Could I ask him on clause 59(2)(a), 'in the case of a person who is in police detention for a serious arrestable offence' - could he tell me what that means, because I do not see that defined in the definitions? What is a serious arrestable offence? As we are writing law we should have that clearly defined. And again, what sanctions are there? The Attorney said in clause 60 the police have got to inform people and they have to report to a guardian or some responsible person. Are there any sanctions against the police if they do not report, and where are the sanctions written into that? There does not seem to be anything there.

I noticed in that particular clause the point that Mr Radcliffe made in relation to clause 58, 'where practicable', and the Attorney repeatedly said 'where practicable'. Now that means really anything to anybody. The defence would be 'I am sorry, it wasn't practicable at that particular time' for whatever reason. That is almost 'how long is a piece of string?' It is the perfect answer - 'Well, at that time it was not practicable - shortage of manpower. . .' I wonder, when we are actually defining law, how that can be justified or explained? I am sorry for giving him such a rough time!

The President: May I call on the learned Attorney to reply?

The Attorney-General: Thank you, Mr President. If I may deal with the question put by the hon. member Mr Radcliffe, in so far as the definition of High Bailiff is concerned, I believe I am right in saying that the Interpretation Act does cover this in so far as the High Bailiff includes the Deputy High Bailiff. If, therefore, the High Bailiff were absent from the Island or was ill, hopefully the Deputy High Bailiff would be able to step into his shoes.

I entirely accept the points the hon. member makes about making the application as soon as is possible and practicable. The point is that unless an order is obtained by the High Bailiff the police will not be able to carry out an intimate search of a juvenile. If the police suspect that the juvenile is concealing drugs or a weapon or some item which requires to be obtained, I would think the police will move very quickly to seek the order and, although no time limit is specified in the clause, I think that in reality the application will indeed be made as soon as ever is possible by the police.

In answer to the question from the hon. member Mr Waft, the problems which might be faced by children and young persons who have learning difficulties, I think that the Bill makes it clear that these intimate searches may not be carried out unless we have a responsible adult who can look after the child and young person. In an ordinary case it may very well be that the parent or guardian is available to protect the children's interest. We have also seen that if a child is in care, then the department may have to assume that role. If a child has particular learning difficulties and perhaps cannot communicate very well, then hopefully the person who stands as parent or in the place of the parent will see to it that the child is not disadvantaged.

Mr Waft: Just on a point of clarification, Mr President, sometimes it is not young persons particularly. These are adults with learning difficulties who may have similar problems.

The Attorney-General: Mr President, I am afraid I am not quite certain what the answer to that must be. Perhaps I can undertake to research that and come back to the hon. questioner with further clarification, if I may? I am sorry I do not know the answer to that.

If I may try to deal with the questions raised by the hon. member Mr Lowey, I think the first question was in relation to clause 57 and whether the police have to have reasonable cause to carry out searches. The clause makes it clear that the custody officer has a duty to ascertain what items an arrested person has on him or her and the items must be recorded, and the custody officer has a discretion as to whether anything may be seized or retained for their own protection in respect of clothes and personal effects so that they may only be seized if there is a belief that the person may use any item to cause injury, damage property et cetera, or he has reasonable grounds for believing that the item may be evidence relating to an offence. So it is perfectly true that the officer does not have to have reasonable cause for seizing an item provided that the officer honestly believes that the item might be used to cause physical injury, to damage property, interfere with evidence or assist in an escape but he must have reasonable grounds, if he is going to seize them for evidence, for believing that they are evidence relating to an offence.

In so far as the next question was concerned on clause 59, I believe, I think the question there was the definition of 'serious arrestable offence'. The definition of 'serious arrestable offence' is in one of the schedules, I hope, and in schedule 3 we will see that there is a list of offences referred to, ranging from the most serious, of course - treason, murder, manslaughter - explosive offences, firearms, road traffic and so on. So those are the very serious arrestable offences which are defined there.

The next question, I think, related to the sanctions against the police if they did not make a report under clause 60. Sorry, I wonder if I could just trouble the hon. member to clarify the nature of the report he was concerned about.

Mr Lowey: Yes, you stressed, Mr Attorney, that the police have a duty to inform a responsible person - a parent, a guardian or what have you - and, as I said at the last meeting, I believe that the right of silence has been taken away from people and sanctions or interpretations can be done on that. What sanction is there if the police do not carry out getting the guardian quickly or what have you? What happens then?

The Attorney-General: Thank you, Mr President; I am obliged to the hon. member. I think there are two aspects of that. First of all, the officer who was guilty of that failure would make himself liable to disciplinary proceedings under the relevant code. More importantly, perhaps, in so far as the prosecution of the offence is concerned, if the court was informed that the evidence had been applied in breach of the codes and in breach of the section, then the judge has a discretion to rule out that evidence as being inadmissible, as having being illegally obtained. I hope, Mr President, that deals with the questions.

The President: Hon. members, I will put the resolution set that clauses 56 to 60 inclusive do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 61 to 63, Attorney, please.

The Attorney-General: Thank you, Mr President. Clause 61 concerns the access to legal advice and entitles a person detained by the police to consult an advocate privately at any time. There is no present statutory right for such consultation although the judge's rules, which are an informal code, assert this right. The clause permits the exercise of this right to be delayed by the police in specified exceptional circumstances on the authority of a senior police officer. Under the clause, however, the right to consult an advocate becomes absolute by the time detention has lasted 36 hours. The clause will be amplified in the codes of practice on the detention, treatment and questioning of suspects to be issued under clause 75.

Sub-clause (1) entitles an arrested person who is being detained by the police to consult an advocate privately at any time if he asks to do so. The consultation may be in person, on the telephone or in writing.

Sub-clauses (2) and (3) require requests made under sub-clause (1) to be recorded on the custody record except where the request is made in court.

Sub-clause (4) provides that if a person asks to consult an advocate he must, subject to later provisions of the clause, be permitted to do so as soon as is practicable.

Sub-clause (5) restricts delay to cases involving a serious arrestable offence where an inspector or above has authorised the delay.

Sub-clause (6) requires authorisation of a delay to be confirmed within eight hours by a chief inspector or above.

Sub-clause (7) provides that a person who asks to consult an advocate must in any case be allowed to do so within 36 hours from the start of his detention. This will ensure that a detained person is able to be legally represented at the hearing of any application made by the police for a warrant of further detention.

Sub-clause (8) requires written confirmation of an authorisation given orally under sub-clause (5).

Sub-clauses (9) and (10) set out the circumstances in which delay is permitted to be authorised, which basically relate to interference with evidence, alerting witnesses and others or hindering the recovery of property obtained as a result of serious crime. Delay may also be authorised in the case of drug trafficking and where a confiscation order may be made under the Criminal Justice Act 1990.

Sub-clause (11) requires the detained person to be told of the reason for a delay and it is to be noted on the custody record.

Sub-clause (12) requires the record to be made as soon as practicable.

Sub-clause (13) prohibits any delay once the reasons for authorising a delay cease to exist.

Sub-clause (14) makes it clear that references in sub-clause (1) to an arrested person also include a person detained under the Prevention of Terrorism Act 1990.

Sub-clause (15) follows clause 59(13) by making necessary modifications to this clause for its application to persons detained under the Prevention of Terrorism Act 1990.

Sub-clause (16) provides that if an officer of appropriate rank has reasonable grounds for suspecting that an interview between a person detained under the terrorism provisions and his advocate will have any of the consequences listed in sub-clause (9), he may give a direction under sub-clause (17) that interviews may take place only in the sight and hearing of a qualified officer of the uniformed branch of the force to which the officer giving the direction belongs.

Sub-clause (18) provides that an officer qualified for the purpose of sub-clause (17) must be of at least the rank of inspector and must, in the opinion of the officer giving the direction, have no connection with the case.

Sub-clause (19) sets the appropriate rank for the purposes of sub-clause (16) as the rank of inspector.

Sub-clause (20) requires a direction under sub-clause (16) to cease to have effect when the reason for its issue ceases to exist.

Clause 62 deals with duty advocates. The clause amends the Legal Aid Act 1986 to enable the Legal Aid Committee to prepare a scheme to enable legal advice and assistance to be given to persons in police detention. A scheme will, by means of a rota of participating advocates, enable free legal advice and assistance to those who need it when in detention. The proposal will compliment the existing scheme under which duty advocates are available in the courts.

Clause 63 deals with tape-recording of interviews and provides that the Department of Home Affairs must issue a code of practice for the tape recording of police interviews with suspects and to make an order requiring such interviews to be tape-recorded.

Sub-clause (1)(b) requires that interviews with persons suspected of the commission of criminal offences or such descriptions of criminal offences as may be specified shall be tape-recorded in accordance with the relevant code of practice.

Sub-clause (2) saves the provisions of the Prevention of Terrorism Act 1990 which deal with tape recording.

Mr President, I move that clauses 61, 62 and 63 do stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: It is one of the positive sides of this particular Bill where clause 62 will present a legal representation to people in custody as opposed to in court, which is new and which I welcome. I think it is important. But is the Attorney saying that agreement has already been reached with the legal profession for this to take place, or will there be certain codes put into play before this safeguard is put in? In other words, they should come in parallel, all codes of practice, where practicable, to use his phrase. Has agreement been reached with the legal profession?

Mrs Christian: Could I just seek some clarification, Mr President, on clause 62? The legal aid duty advocate scheme will have the same legal aid rules applied as applied for other legal aid services, will they?

The President: Reply, sir?

The Attorney-General: Thank you, Mr President. In answer to the hon. member Mr Lowey, I think I should make it clear that advocates do, of course, advise their clients not only in court but they do attend upon their clients at police stations, and I know that there are several advocates who do perform a sterling job in making themselves available at all times of the day and night to assist accused persons in custody. The scheme relating to duty advocates under this Bill is, I believe, still under consideration. There are negotiations on foot, I think, with the Law Society. I think they are trying to ascertain a rota. In other words, can a rota be produced of advocates who have sufficient experience of this type of work? Clearly it would be grossly unfair if there were only three or four advocates who had to make themselves available to perform this serious duty under clause 62, and I am confident that the Law Society recognise their public duty in this respect and will indeed encourage their members to put themselves forward - that is, those persons who are able to provide legal advice in criminal matters.

In answer to the question from the hon. member Mrs Christian, again I am sorry, I cannot give you the precise details but I think that there will be enhanced scales for advocates who are, as it were, on call; in other words, if they do actually attend a police station at an unsociable time that they may be paid a premium over and above the normal rates for legal aid work but perhaps if I could give that detailed information at the next meeting?

Mrs Christian: Could I just clarify the query, Mr President? My query is not so much what the advocates will be paid as to whom their services will be available. At the moment with legal aid there are means-testing rules, are there not, in certain categories and I do not know whether civil and criminal legal aid are different in this regard. I just need a clarification of who could avail themselves of this service. Can anybody avail themselves of the service or is it means-tested in any way?

The Attorney-General: Mr President, I think the wording of the new proposed section 21 of the Legal Aid Act makes it clear that this scheme would be available to all persons who are arrested and are held in custody who exercise the right to consult an advocate. So on the face of the wording there will not be a means test applied, but again if I could clarify that to the hon. member at the next reading?

The President: Hon. members, I will now put the resolution that clauses 61 to 63 inclusive do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Would it suit you to take 64 to 69, Mr Attorney, the balance of this section?

The Attorney-General: Thank you, Mr President. Clause 64 deals with fingerprinting, and the general rule is that a person's consent must be obtained before his fingerprints are taken. However, clause 64 makes new provision for the circumstances in which fingerprints may be taken from a person without consent. Under the present law as contained in section 36 of the Summary Jurisdiction Act 1989 which is to be repealed, fingerprints may be taken compulsorily only on the order of a court of summary jurisdiction and if the person concerned is at least 14 years old and proceedings have already been instituted against him. The clause removes that age limit, provides for such fingerprinting to take place where necessary for investigative purposes - that is, before the institution of proceedings - and transfers the responsibility for authorising such fingerprinting to an inspector.

Sub-clause (1) provides that fingerprints may not be taken compulsorily from any person without the appropriate consent, as defined in clause 69, except in accordance with this clause. Clause 69 provides that a person who has attained 17 years must give consent. A person between 14 and 17 must give his consent, as must his parent or guardian and, where a person has not attained 14 years, his parent or guardian must give consent.

Sub-clause (2) provides that consent must be given in writing if the person concerned is at a police station.

Sub-clause (3) sets out two of the three circumstances in which fingerprints may be taken compulsorily; the third is set out in sub-clause (6). Fingerprints may be taken without consent if, firstly, that is authorised by an inspector who, in accordance with sub-clause (4), must have reasonable grounds for suspecting the involvement of the person in a criminal offence and for believing that his fingerprints will tend to confirm or disprove his involvement; or secondly, if a person has been charged or informed that he will be reported for a recordable offence as defined in clause 30(4) and his fingerprints have not previously been taken in the course of the investigation.

Sub-clause (4) sets out the criteria which govern the compulsory taking of fingerprints for investigative purposes, and sub-clause (5) provides for the written confirmation of an oral authorisation of compulsory fingerprinting.

Sub-clause (6) makes provision for the third circumstance in which fingerprints may be taken compulsorily, namely where a person has been convicted of a recordable offence.

Sub-clause (7) provides that where compulsory fingerprinting takes place, the reason for it must be recorded and the person concerned informed of the reason.

Sub-clause (8) makes it clear that in the case of a person detained at a police station the record concerned is his custody record.

Sub-clause (9) saves the provisions for compulsory fingerprinting contained in immigration and terrorism legislation which are not primarily related to the prosecution of offences.

And sub-clauses (10) and (11) amend section 13 of the Prevention of Terrorism Act 1990 to make certain that the fingerprinting requirements are consistent with this clause.

Clause 65 deals with intimate samples. Sub-clause (1) provides that intimate body samples from a person in police detention may be taken only with the appropriate consent and with the prior authorisation of an officer of chief inspector rank or above.

Sub-clause (2) makes similar provision for the taking of intimate samples from persons who are not in police detention but have provided two non-intimate samples in the course of an investigation and those samples have proved insufficient.

Sub-clause (3) sets out the grounds on which a sample may be authorised to be taken under sub-clauses (1) or (2). There must be reasonable grounds to suspect that the person may be involved in a recordable offence, and the sample will prove or disprove involvement.

Sub-clause (4) provides for the written confirmation of an oral authorisation given under sub-clause (1) or (2).

Sub-clause (5) requires the appropriate consent to be in writing.

Sub-clause (6) requires the person concerned to be informed of the authorisation and the grounds for it, and sub-clause (7) requires the nature of the offence concerned to be specified when this is done.

Sub-clause (8) requires the authorisation, grounds and the fact of consent to be recorded as soon as possible.

Sub-clause (9) requires notification that a sample may be the subject of a speculative search to find in clause 69(1) and for that fact to be recorded.

Sub-clause (10) requires the matters recorded under sub-clauses (8) and (9) to be recorded in the custody record of the person concerned.

Sub-clause (11) limits the taking of dental impressions to a dentist and other intimate samples, with the exception of urine samples, to doctors.

Sub-clause (12) provides that where consent to give an intimate sample is refused by the person concerned there is no power to force the giving of the sample. This sub-clause permits a criminal court to draw such inferences from the refusal as seen proper in the circumstances. This is the same principle as is embodied in the provisions relating to refusal to answer questions which will be dealt with in part VI.

Sub-clause (13) saves the procedures for obtaining samples for analysis in drink-driving investigations.

Clause 66 deals with other samples and provides that body samples other than intimate samples may be taken from suspects compulsorily in connection with the investigation of serious arrestable offences on the authority of a senior police officer. The clause will be supplemented by codes on identification procedures to be issued under clause 75.

Sub-clause (1) therefore states the general rule, namely that non-intimate samples may not be taken without the appropriate consent except in accordance with the following provisions.

Sub-clause (2) provides the consent must be in writing.

Sub-clause (3) permits the taking of samples without consent in the case of a person in custody if an inspector or above authorises it.

Sub-clause (4) permits the taking of a sample without consent where the person has been charged with a recordable offence or informed that he will be reported for such an offence and he has not had previous samples taken, or he has but they were not suitable for the purpose.

Sub-clause (5) permits the taking of a sample in cases where the person has not consented but has been convicted of a recordable offence.

Sub-clauses (6) to (10) mirror the similar provisions in clause 65.

Sub-clause (11) requires the person from whom the sample is to be taken to be told the reason for taking the sample, and the police must record the reason.

Sub-clause (12) parallels clause 65(9) and sub-clause (13) parallels clause 65(10).

Clause 67 deals with supplementary provisions relating to fingerprints and samples and contains a number of miscellaneous provisions.

Sub-clause (1) permits the police to check fingerprints and samples taken from persons who have been arrested on suspicion of being involved in a recordable offence against other records of fingerprints and samples.

Sub-clause (2) sets out how samples of hair other than pubic hair may be taken.

Sub-clause (3) permits samples to be taken in designated institutions, for example prison.

Sub-clause (4) enables a constable to require certain persons to attend at a police station to have a sample taken. The power may be exercised in relation to persons who have been charged with a recordable offence or have been reported for such an offence or have been convicted of such an offence. The power can be exercised where the person has not had a sample taken previously or a previous sample was unsuitable.

Sub-clause (5) sets out the period within which a person must attend a police station under sub-clause (4).

Sub-clause (6) requires the police to give at least seven days' notice under sub-clause (4) and permits a time and day to be specified.

Sub-clause (7) gives a power of arrest without warrant in respect of persons who fail to comply with the requirement under sub-clause (4), and sub-clause (8) defines 'appropriate officer' for the purposes of the clause.

Clause 68 deals with the destruction of fingerprints and samples. Sub-clause (1) requires fingerprints and samples to be destroyed as soon as practicable after the person concerned has been cleared of the offence concerned.

Sub-clause (2) provides that fingerprints and samples must be destroyed if the person concerned is neither prosecuted nor cautioned for the offence concerned, having admitted the offence.

Sub-clause (3) requires fingerprints and samples taken for the purposes of an investigation to be destroyed if the person concerned is not suspected and the purpose for taking them, for example elimination, has been fulfilled.

Sub-clauses (4) and (5) prevent the use of information derived from a sample which is required to be destroyed under sub-clauses (1), (2) or (3). In such cases the information derived from the sample cannot be used in evidence against the person entitled to have them destroyed, nor for the purposes of any investigation of offences other than those for which the samples were obtained.

Sub-clause (6) provides that criminal proceedings which are discontinued are to be treated as concluded. The effect is to require the destruction of fingerprints if the discontinuation of the proceedings involves the clearing of the person concerned but to permit their retention if the charges are ordered by the court to lie on the file. This again reflects current practice.

Sub-clause (7) provides for the destruction of copies of fingerprints and data relating to them as well the fingerprints themselves.

Sub-clause (8) entitles a person who wishes to witness the destruction of his fingerprints to do so.

Sub-clause (9) provides for the issue of a certificate that information on a computer about fingerprints which must be destroyed has been made inaccessible.

Sub-clause (10) saves the effect of immigration and terrorism legislation under which there are rules for the taking of fingerprints.

Clause 69 is a supplementary clause and defines certain words and expressions which appear in part V. Mr President, I move that clauses 64 to 69 inclusive do stand part of the Bill.

Mr Kniveton: Mr President, I may have missed it - correct me, learned Attorney, if I have. Clause 64: when we talk about fingerprints, if the detained person does not consent to having fingerprints taken, can force be used?

Mr Waft: Mr President, clause 66, sub-clause (5) with regard to the mention of a person convicted of a recordable offence in the general interpretation of 'recordable offence' and the meaning given under section 30(4), which states 'The Department may by regulations make provision for recording in police records convictions for such offences as are specified in the regulations and in this Act such offences are referred to as "recordable offences" ', could he elaborate on recordable offences with regard to the non-intimate samples, being able to take them from those people who have recordable offences?

Mr Lowey: Just on clause 64 we are changing substantially the present position. People under 14, I believe, could not have their fingerprints taken. Now, they can; anybody can, whether they are eight-year-olds or ten-year-olds. Is there a particular reason for that? In moving the law I think we should have the reasons spelt out why that particular change is being sought by the authority.

The President: Reply, Mr Attorney?

The Attorney-General: Thank you, Mr President. Dealing with the question from the hon. member, Mr Kniveton, the general rule in respect of clause 64 is that a person's consent must be obtained before fingerprints are taken. So the question of reasonable force, or force, does not come into consideration in the ordinary course. In other words, if an officer simply asks you to come down to the station and to voluntarily have your fingerprints taken you can say no. However, the clause does state that there are exceptions, and sub-clause (3) is the appropriate clause. It states that the fingerprints may be taken without consent if a police officer of at least the rank of inspector authorises it or you have been charged with a recordable offence or informed that you will be reported for an offence and you have not had your fingerprints taken in the course of the investigation. Now, if those conditions apply it is correct to say then that the police officer may use reasonable force. There is a clause later on in the Bill which specifically states that in the exercise of his powers a constable may exercise reasonable force.

Mr Lowey: Could the Attorney comment on sub-clause (6) of that same one? It says, 'Any person's fingerprints may be taken without the appropriate consent if he has been convicted of a recordable offence.' Well, if I have had a driving offence I could be forcibly. . .

The Attorney-General: Mr President, I think the definition of 'recordable offence' does impinge upon the learned member's question. Although we do not know as yet what recordable offences are to be, because, as the hon. member Mr Waft has pointed out, these are to be stated by the department, nonetheless recordable offences will be reserved for that category of serious offences, which will not be ordinarily driving offences and so on like that; they will be offences involving dishonesty and offences to the person and so on. So the ordinary, if I can say, law-abiding citizen who has not been convicted of any offences in the past cannot be asked simply to come down to the station to have his fingerprints taken. If the police officer were then to try to force you to have your fingerprints taken, that would be an assault and battery. The officer would be guilty of a breach of the code and undoubtedly could be sued as well.

The President: I will put the resolution, hon. members, that clauses 64 to 69 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, part VI. Would 70 to 74 be all right?

The Attorney-General: Thank you, Mr President. Clause 70 and part VI deal with the effect of the accused's failure to mention facts when questioned or charged. Clause 70 deals with the effect of the silence of an accused person when he is questioned by the police under caution before being charged with an offence or when he is charged or informed that he might be prosecuted. In such cases, a criminal court may draw such inferences as appear proper in the circumstances. It is important to stress that a suspect still retains the right to remain silent under questioning, and the inferences to be drawn from silence are limited to those contained in the clause.

Sub-clause (1) sets out the circumstances in which the inferences may be drawn. The circumstances are: a failure by a person to mention any fact that he may rely on in his defence when he is questioned under caution but before being charged, or upon being charged with an offence, or informed that he might be prosecuted for it. It has been suggested that the equivalent provision in the Criminal Justice and Public Order Act in the United Kingdom was intended to apply to a situation that calls out for an explanation.

Sub-clause (2) deals with the effect of the failure of the accused to mention the facts relied on by the defence. The court has a discretion to draw such inferences as appear proper from a failure to mention those facts. A court need not take the silence of the accused into account. It is merely able to draw inferences from the silence.

Sub-clause (3) permits evidence as to the failure of the defendant to mention facts to be given at any time, either before or after the defence attempt to establish the fact about which the accused was silent.

Sub-clause (4) means that silence, when questioned by official persons other than constables, can be treated by the court in the same way as silence when questioned by the police.

Sub-clause (5) saves the existing laws relating to the admissibility of evidence and the drawing of inferences arising out of the silence or other reaction of the accused person, and sub-clause (6) ensures that the provisions of this clause do not apply in respect of interviews et cetera conducted by the police before the commencement of this legislation.

Clause 71 deals with the effect of the accused's silence at trial and enables a court or jury to draw such inference as appears proper from the refusal of an accused person aged 14 years or over to testify in his own defence, or from a refusal without good cause to answer any question at trial.

Sub-clause (1) permits an inference to be drawn, unless the accused's guilt is not an issue, or the physical or mental condition of the accused makes it undesirable for him to be called upon to give evidence. The inference may not be drawn if the defence advocate informs the court that the accused will give evidence or the accused himself indicates that he will give evidence.

Sub-clause (2) ensures that the accused is made aware that the point in the trial has been reached where evidence can be given for the defence and that if he does not do so, it will be permissible for the court or jury to draw such inferences as appear proper.

Sub-clause (3) specifically permits the court or a jury to draw inferences from the accused's silence or failure when determining guilt.

Sub-clause (4) makes it clear that the accused is not obliged to give evidence on his own behalf and commits no offence if he fails to do so.

Sub-clause (5) provides that a person is deemed to have refused to answer a question without good cause, unless he is entitled to refuse the answer because of some statutory provision or on the ground of privilege or the court in its discretion excuses him from answering.

Sub-clause (6) permits a court to estimate the age of a person for the purpose of determining whether that person is over or under 14 years.

Sub-clause (7) deals with the application of this clause in relation to proceedings which were commenced before the commencement of the section.

Clause 72 deals with the effect of the accused's failure or refusal to account for objects, substances or marks. This clause extends the principles of clause 70 to the failure or refusal to account for various matters. In the event of such a failure this clause permits a court to draw such inferences as appear proper. The provision permits inferences to be drawn from a failure, for example, to account for the carrying of a weapon or implements which may be used for criminal activity; for the possession of substances, perhaps drugs; for mud, scuffs or other marks on clothing, or indeed to explain its condition.

Sub-clause (1) specifies the criteria which must be satisfied for an inference to be drawn. A person must be arrested by a constable and must have on his person, in or on his clothing or footwear, in his possession, or in any place where he is at the time of the arrest, any object, substance or mark, or there is any mark on such an object and it is believed that the presence of the object et cetera may be attributable to participation in the commission of an offence, and the constable informs the arrested person of his belief and requires an explanation and the person fails to do so.

Sub-clause (2) enables a court to draw inferences from the failure or refusal of the accused person. The sub-clause parallels clause 70(2).

Sub-clause (3) applies sub-clauses (1) and (2) to the condition of clothing and footwear.

Sub-clause (4) obliges a constable to explain the effect of a failure or refusal to comply with the request for an explanation.

Sub-clause (5) applies the provisions of the clause to officers of customs and excise in the same way as it applies in relation to constables.

Sub-clause (6) saves any existing right of a court to draw inferences from a failure of an accused person to account for the presence of objects, substances or marks et cetera.

Sub-clause (7) ensures that the clause does not have retrospective effect. It does not apply in relation to failures or refusals to explain which occurred before the commencement of the clause.

Clause 73 deals with the effect of the accused's failure or refusal to account for presence at a particular place. It is an extension of the principles applied in clauses 70 and 72. Where the criteria set out in sub-clause (1) are satisfied, a court may draw inferences from the failure or refusal of the accused person to account for various matters, as appear proper.

Sub-clause (1) sets out the criteria which trigger off the powers of the court to draw inferences. All the criteria must be complied with: first, the provisions apply to a person arrested by a constable and the person is found at a place or about the time where an offence for which he is arrested is alleged to have been committed; second, that or another constable believe that the presence of the person at that place or at that time may be attributable to participation in the commission of the offence; third, the constable must inform the person of his belief and request him to account for his presence there; fourth, the person must fail or refuse to account for that presence.

Sub-clause (2) permits a court or jury to draw proper inferences from the failure or refusal of an accused to account for his presence at the scene of the crime.

Sub-clause (3) parallels sub-clause (4) of clause 72.

Sub-clause (4) parallels sub-clause (5) of clause 72.

Sub-clause (5) saves the court's existing power to draw inferences in such circumstances, and sub-clause (6) ensures that the clause does not have retrospective effect. Sub-clause (4) deals with interpretation and savings and contains definitions and other supplementary provisions in support of part VI of the Bill. Mr President, I move that clauses 70 to 74 do stand part of the Bill.

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

Mr Lowey: Mr President, the Attorney will not be surprised to know that I cannot support this particular part of the Bill. I genuinely believe that this is taking away one of the cornerstones of the legal system that we know, that I have been led to believe in and have been brought up with. I think there has been no case made today why there should be a change. I think the courts in the past have had the right to infer whether an accused in the dock refuses to answer or has not put into the dock to answer. The court can, and a jury particularly would be able to, judge whether that was deliberate or not. I think what we are doing here is changing the whole emphasis. No case has been made for it. Just because occasionally there is an irritant to the system does not seem to me to be justification. Although there has been no case made, there is no justification in my view to throw the baby out with

the bath water, and this is what we are doing in getting rid of what I would call the fundamental right for a person to remain silent. It is as simple and as basic as that, and all the niceties and all the safeguards. . . and the Attorney has tried to say, 'Well, all we are saying is that the court *may* infer this or the court *may* infer that,' but I do believe that we are kicking away a long-held tradition that has worked well in the legal system, and for what reason I know not. As far as I am concerned, I do not believe that it is a good day for justice when we abolish this particular right to silence.

Mr Kniveton: Mr President, I have a lot of sympathy with what the hon. Mr Lowey says in this respect. I would just like to ask the Attorney-General, is this within the UK Act now, these inferences from the accused's silence? Is that the law in the UK now?

The Lord Bishop: Mr President, could I just ask also, is there in these various clauses any matter of conscience, if a person on a question of conscience could not reply to a question or did not wish to respond? Taking, for example, a very final case, say, of very religious motivation, somebody might say, 'Well, Christ made no response in his trial. I will do the same.' Is there any way round that type of conscience clause, and also does this not contravene the human rights on the European scale?

Mr Kniveton: Mr President, I, of course, in the years gone by used to spend a lot of time in the road traffic courts and - you may argue this is completely different, of course - part of the set-up was you kept your tactics; you held on to certain information in case you required it. Now, is there any similarity here? In holding back, is it a tactical move?

Mr Waft: Mr President, I just wondered whether the Attorney-General might like to comment on the premise of the court's responsibility when they are identifying the right of a person to remain silent. I take it that anybody can remain silent anyway during their trial. It is down to the court in their decisions to decide whether that right to remain silent does inhibit the way they judge on the case before them, the inference being that if you remain silent there is a reason for this, and the right to remain silent may not be interpreted by the court as the correct one and it would depend on the person who deems his right to remain silent to judge how his silence will be seen to be judged by the court at the end of the day. I think that is what I am trying to say, sir.

Dr Mann: Yes, I think one has got to establish that nobody is taking away a right of silence. The right of silence still remains. It is the way in which the court interprets, or how they are now allowed to interpret as distinct from a rather ad hoc situation where up until then a court could interpret it in any way it wished, so I understand the situation. This at least sets down those areas in which the court can respond or in such a way as it should. Although perhaps the Attorney can confirm this, even though the person themselves remains silent I do not think there is anything which stops an advocate explaining that silence to a court.

The President: Reply, Mr Attorney?

The Attorney-General: Thank you, Mr President. When this Bill came before this hon. Court at first reading, I did endeavour to explain the way in which the court system had developed with a view to protecting the accused, either in court or under questioning. I explained that in the 19th century there was an Act of Parliament passed, which was also reflected in the law of this Island, whereby a person could not be compelled to give evidence. He was a competent witness, he could go into the Court and he could give an explanation, but

he could not be compelled by the prosecution or by any other person to give evidence. He could choose to remain entirely silent. That is the existing law. The accused, therefore, has a free choice in the matter.

However, I think it would be arguing in the face of common experience and indeed common sense to deny that people who find themselves in court charged with an offence, who have a proper explanation, who have an innocent explanation, are ready and willing to give an explanation. As one of the commentators said in one of the textbooks: 'In practice the privilege of giving evidence is one which it is usually very risky to forgo. Everybody now knows that absence from the witness box requires a very considerable amount of explanation, and the accused who clings to the sanctuary of the dock must not be surprised to find that he has only made things worse for himself.' Now, that, I think, is common experience. It is certainly in the experience of the persons whom we entrust to administer the law in the courts, that the magistrates, the bailiffs, the deemsters, being people who have experience in dealing with criminals and alleged criminals, know - and indeed the police know invariably - that people who have an innocent explanation are more than happy to explain themselves.

Put it another way: there was a very sarcastic, perhaps, comment made by Jeremy Bentham, again referred to in the textbook, where he said that 'if all criminals of every class had assembled and framed a system after their own minds, is not this rule the very first which they would have established for their security? Innocence never takes advantage of it. Innocence claims the right of speaking, as guilt invokes the privilege of silence.' In other words, Jeremy Bentham was stating that the right of silence has never gone unchallenged. There has always been some hint that, if you remain silent when there is such an obvious explanation to make, you are either guilty or you are probably very badly advised, because you must, if you are an innocent person, I would suggest, have an interest in explaining the matter to the prosecution, to the court and to the police.

Now, it would be wrong for me to deny that this section of the Bill is controversial. It was very controversial when it was mooted in Parliament in England. But nonetheless, I would emphasise that we have seen that defendants are invariably represented by professional advocates. The advocates know the rules, they know the criminal law, the criminal evidence, and they would be able to protect their clients against over-intrusive questioning and against bullying at the hands of an over-zealous judge. It is always a question of balance but I would submit, for the reasons I have tried to explain, that innocent people have nothing to hide.

In answer to the point made by the Lord Bishop, I do accept, of course, that there are many people who for religious grounds or grounds of conscience - perhaps they are just very nervous and they are unable to cope with the situation - are clearly at risk, and I would suggest, though, that the court then is able to assess the explanation which can be put up in court by that person's defence advocate. The advocate can say to the judge, 'Well, Your Honour, it is perfectly true that Mr Kelly did not give any explanation as to why he was found with the sack of apples over his shoulder, but in fact I have to tell you that Mr Kelly suffers from a particular illness' - or a stammer or a conscience or a religious feeling. It is surely open to the defence advocate in court to make that case clear to the deemster and the deemster will be able to assess whether or not that explanation is true. That, of course, is the essence of the criminal trial, that we have the prosecution saying one thing, the defence the other.

The hon. member Mr Kniveton again raises a very interesting question about whether it is proper to keep the story in your pocket until the very end; in other words, can you keep your defence and surprise the prosecution and the court when the matter comes to trial? That is the very thing that this Bill seeks to prevent. It is considered to be quite inappropriate that a person should spring upon the court and to spring upon the prosecution a defence which was there for the telling all the time. If he has a defence, he must make it known at the time he is questioned and when he is in court. If he does not, he runs the risk that an adverse inference would be drawn.

Mr President, I hope that I have answered the questions phrased by the hon. members.

The President: Do you wish to raise another point?

Mr Lowey: Yes, a clarification really. My hon. friend Dr Mann says the right to silence - you see here we are getting the double standard - has not been taken away. The Attorney-General has quite clearly spelt out in his reply that it has been taken away; there are no ifs and buts about that. In section 70 'in the circumstances as existing at the time the accused could reasonably have been expected to mention when questioned, charged or informed', et cetera. In other words, it is quite clearly there: unless you do it at the time, the inference can be drawn. The Attorney has failed to spell out why the defence should now assist the prosecution in clearing the doubt. It is the duty of the prosecution to prosecute and put the onus on them to prove the guilt of the person, not for the innocent to prove their innocence, and that is the fundamental this Council has got to grasp.

The President: I think, Mr Attorney, you might respond to that observation.

The Attorney-General: Thank you, Mr President. I wish to reiterate that there is no duty at all upon the accused or his representatives to assist the prosecution. It is entirely open to the defence to cast upon the prosecution the duty to make out their case. The defendant can sit still, can say nothing. That is entirely his right. But if he elects to take that course, he runs the risk -

Mr Lowey: He does that now.

The Attorney-General: - that the court is going to draw an adverse inference. At the present time the prosecution are not entitled to comment on the defence's failure to give evidence. Under this new Bill the prosecution will be entitled to comment and the court, the jury, will be able to draw the necessary inferences. That is the fundamental change, that it is now part of the prosecution armoury in conducting their case that they can comment on the failure of a defence to give any explanation.

The President: Hon. members, I will now put the resolution. Do you want each clause put separately, hon. members? Does it affect any hon. member to have them put as a block? All right. Clauses 70 to 74 to stand part of the Bill. Will 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.

The Lord Bishop: Of course, it will ruin television productions now. 'Kavanagh QC' will never be the same again! *(Laughter)*

Mr Lowey: Never!

The President: Moving on, hon. members, to part VII and clauses 75 and 76, the learned Attorney.

The Attorney-General: Thank you very much, Mr President. Clause 75 deals with codes of practice and provides that the Department of Home Affairs shall issue codes of practice in connection with the searches of persons, the detention, treatment, questioning and identification of persons by the police; searches of premises, vehicles and vessels by police officers; the seizure and treatment of property; and the exercise of other statutory or common law powers by police officers.

Clause 76 provides that supplementary provision may be made for the codes which are to be issued. Sub-clause (1) requires orders, which will include codes, to be published in draft and representations on them to be considered.

Sub-clause (2) applies this clause to orders and codes under clauses 63 or 75.

Sub-clause (3) requires the codes to be laid before Tynwald and to receive its approval.

Sub-clause (4) provides that a failure on the part of any police officer to observe any provision of a code of practice renders him liable to disciplinary proceedings.

Sub-clause (5) imposes a duty on others who investigate offences - for example, social security investigators - to have regard to the provisions of codes.

Sub-clause (6) deals with the consequences of breaches of codes by police officers and others. The breach will not of itself cause any criminal or civil liability to be incurred, although under sub-clause (4) a police officer may face disciplinary action.

Sub-clause (7) allows the courts to admit in evidence any code under this Act if it is relevant to any issue or question before the court. Mr President, I move that clauses 75 and 76 do stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Mr President, again on the codes of practice, we really are being asked to take this particular Bill on a lot of trust, because a lot of the safeguards are going to be written into the codes. That being the case, I wonder, are there any timescales written down to actually make sure that they are all in place and they are not cherry-picked to introduce certain parts of the codes that will bring the jigsaw into place? So are all the codes going to be introduced on the appointed day order or are we going to wait and they are going to be introduced piecemeal? That is what I am going to ask.

The Attorney-General: Mr President, I am afraid I cannot answer that at this stage. I will have to, if I may, try to answer that at the next sitting. What I can say is that, of course, the codes are open for consultation, and I know that it is the intention that the police will introduce

codes which will be identical to those in force in the UK with the necessary amendments. But if I may, I can answer that at the next sitting.

The President: I will put the resolution, hon. members, that clauses 75 and 76 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, hon. members, the miscellaneous provisions contained in clauses 77 to 85 along with schedules 3, 4 and 5.

The Attorney-General: Thank you very much, Mr President. Part VIII deals with miscellaneous and supplementary provisions. Within that part clause 77 modifies the effect of the Bill to ensure that there is consistent terminology as between customs and excise legislation and the Bill.

Sub-clause (2) enables the Treasury to make orders to ensure that customs and excise investigations are carried on in a manner which is consistent with the provisions of this Bill relating to police investigations.

Sub-clause (3) saves certain powers to search persons and articles under the Customs and Excise Management Act 1986 which are peculiar to customs law.

Sub-clause (4) defines officers of customs and excise by reference to the definition in the 1986 Act, and sub-clause (5) requires orders under this clause to receive Tynwald approval.

Clause 78 requires the expenses of the Department of Home Affairs to be defrayed out of money provided by Tynwald.

Clause 79 deals with the definitions of 'serious arrestable offence' and sets out the rules for determining whether an offence is a serious arrestable offence.

Sub-clause (2) specifies offences which are always serious. They are listed in schedule 3 and also include drug trafficking offences.

Sub-clause (3) makes other offences serious arrestable offences if the commission of the offence has led, is intended, or is likely to lead to any of the consequences set out in sub-clause (6).

Sub-clause (4) creates a serious arrestable offence if a threat, which is an arrestable offence, is made and, if carried out, would be likely to lead to the consequences in sub-clause (6).

Sub-clause (5) makes certain offences under the Prevention of Terrorism Act 1990 serious arrestable offences.

Sub-clause (6) sets out the consequences referred to in sub-clauses (3) and (4). These are: first, serious harm to security or public order; second, serious interference with justice; third, the death of any person; fourth, serious injury to any person; fifth, substantial financial gain; and sixth, serious financial loss.

Sub-clause (7) defines 'serious' so that the seriousness must be assessed in the light of the circumstances of the person who suffers it.

Sub-clause (8) defines 'injury' to include disease and impairment of physical or mental condition.

Clause 80 deals with the powers of constables to use reasonable force and continues the principle set out in the Criminal Law Act 1981 that a police officer may use reasonable force when effecting the arrest of offenders. The clause extends that principle to include other powers conferred on a constable under the Bill - for example, powers of search, entry, seizure of evidence, arrest, fingerprinting and taking samples without consent. This single clause avoids the need to include powers to use force in individual clauses throughout the Bill.

Clause 81 is a general interpretation clause and defines expressions used in the Bill and provides additional provisions relating to the construction and interpretation of the Bill.

Sub-clause (1) contains the definitions for expressions used.

Sub-clause (2) explains the meaning of the expression 'police detention' as occurring where a person is taken to a police station after arrest or is arrested at a police station and is detained in the charge of a constable. Persons who are at court, after being charged, are not in police detention.

Sub-clause (3) requires references to Acts of Parliament in the Bill to be construed as references to those Acts as they have effect in the Isle of Man from time to time. This avoids the need to alter the references to those Acts if they are amended after the commencement of the Bill - for example, the Immigration Act 1971, which extends to the Isle of Man by Order in Council.

Sub-clause (4) will enable the Council of Ministers to replace references to Acts of Parliament if they are repealed and replaced by new Acts. This avoids the need to amend cross-references to Acts of Parliament by primary legislation.

Sub-clause (5) requires Tynwald approval for an order under sub-clause (4).

Clause 82 deals with the statutory indemnity. It absolves the police from civil liability if, in good faith, there is a failure to comply with time limits imposed by the Bill. This is supplementary to other provisions in the Bill which exclude civil liability in respect of a failure to comply with the provisions of a code made under the Bill. In addition, the clause will not affect the liability of officers in breach of codes from attracting disciplinary liability.

Clause 83 deals with amendments and repeals. It introduces schedule 4 and schedule 5, which contain amendments and repeals.

Clause 84 deals with the commencement of the Bill, or the Act, and provides that the Department of Home Affairs may bring the Bill into force by means of appointed day orders, and such appointed day orders may contain transitional provisions. An appointed day order does not require Tynwald approval.

Clause 85 contains the short title, and the short title of the Bill will be the Police Powers and Procedures Act 1998. Schedule 1, if I can refer to that, contains a special procedure which is introduced by clause 12 and provides the special procedures for obtaining access to material which is, in essence, held on a confidential basis. Because of the sensitive nature of the information to which the

police -

The President: We have already passed this particular one, sir, if you want to go on to schedule 2, which relates to. . .

The Attorney-General: I think I might have dealt also with -

The President: We are up to schedule 3. Schedules 3, 4 and 5.

The Attorney-General : Thank you. Schedule 3, Mr President, lists serious arrestable offences. The schedule is introduced by clause 79 and lists the offences which are always to be treated as serious arrestable offences.

Schedule 4 deals with minor and consequential amendments and contains amendments to legislation which are either made necessary by the provisions of the Bill or are of a minor nature. Only amendments of a substantive, i.e. not consequential or unusual nature, are mentioned below. Those not mentioned are purely consequential. I think in fact it would not be necessary, unless you wish me to, to look at those amendments, save to refer specifically, if I may, to entry 18, which deals with the amendment made by the hon. member, Mr Downie in another place.

Schedule 5 repeals those provisions which are replaced by the provisions of the Bill or are made unnecessary or obsolete by the Bill. There are no repeals within the schedule which fall outside those criteria. In those circumstances, I move that clauses 77 to 85 inclusive and the schedules to the Bill do stand part of the Bill.

The President: Thank you, Mr Attorney.

Dr Mann: I beg to second.

Mr Lowey: Clause 82, Mr Attorney - 'Without prejudice to clause 70(6)', which deals with 'This section does not apply in relation to failure to mention a fact if the failure occurred before the commencement of this section.' Police officers, if I am arrested or held longer than I should be, cannot be prosecuted? They are being safeguarded against their actions. Is that right? Is that clause giving them safeguards? We are taking safeguards away from the accused and yet we are adding safeguards to the police officer.

Mr Waft: Mr President, just a concern I had with regard to notification to a responsible person for anyone of any age who comes under the category of learning difficulties as interpreted by the Mental Health Act, and I am going to investigate the need for an amendment to the Bill in this regard.

The President: Does any other hon. member wish to speak? Reply, sir.

The Attorney-General: Mr President, thank you. In answer to the question from the hon. member Mr Lowey, in fact I think an amendment was made when the matter was dealt with in another place. In clause 82, the reference should now be in fact 'Without prejudice to clause 76(6)' rather than 'Without prejudice to clause 70(6)'. I should perhaps have highlighted that when I was reviewing the clause. I am sorry about that. But the clause 76(6) provides that a failure on the part of a police officer to comply with the provisions of a code or a failure on the part of any person other than a police officer to have regard to the provisions of a code shall not of itself render him liable to any criminal or civil proceedings, and then clause 82 states that in so far as time limits are concerned, if for example an accused person should only be detained for 24 hours and in fact is detained for 25 hours, unless the officer is motivated by bad faith, that failure of itself will not mean that the officer is going to make himself liable for any civil proceedings. It is an area where I have said, throughout the consideration of this Bill, that if an officer is in breach of a code then of course he makes himself liable to disciplinary

proceedings. What clause 82 says that in so far as time limits are concerned, of course one can imagine that a police officer might inadvertently allow a time limit to be exceeded. Perhaps my example is bad; I mean one hour would be too long, but a quarter of an hour perhaps might not be too excessive. Unless the officer was motivated by bad faith, he is not going to be liable in any civil proceedings.

Mr Lowey: Why then, Mr Attorney - this is the point that I say - are we giving comfort factors and then we are writing into law escape clauses for those officers. If I have got to remain silent, I cannot see why a policeman. . . it says 24 hours, it does not mean 25 hours or 26 hours, and, 'By the way, if you do break it boys, you are all right, we are not going to prosecute you'. That is what is wrong with this particular bit of legislation: it is not even-handed. The emphasis is swinging very much onto authority, as I said at the very start. That is the matter, I think, that is between us.

The President: Would the hon. Mr Lowey like any particular clause taken separately?

Mr Lowey: Clause 82 I will not be supporting.

The President: Clause 82 to be taken separately. Hon. members, I will put the resolution that clauses 77 to 81 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 82 - the resolution is that clause 82 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: Hon. members, the resolution carries with 6 votes being cast in favour and 1 against. So clause 82 will stand part of the Bill.

I now put the remaining clauses along with the schedules, and that means clauses 83 to 85 along with the schedules. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time. Thank you, Mr Attorney, for the most comprehensive introduction to that Bill.

Mr Lowey: Never has there been a baptism like it!

Criminal Justice (Exclusion Of Non-Resident Offenders) Bill - Clauses Considered - Third Reading Approved

The President: Hon. members, we move on to item 3, Criminal Justice (Exclusion of Non-Resident Offenders) Bill and I call upon Dr Mann to commence clauses.

Dr Mann: Clause 1, Mr President, will enable a criminal court to make an exclusion order prohibiting a convicted person from remaining in or returning to the Island.

Sub-clause (1) enables a court, when convicting a person of an offence which is punishable with custody, to make an exclusion order which will prohibit the person from being in or entering the Isle of Man.

Sub-clause (2) deals with the date of commencement and expiry of an exclusion order.

Sub-clause (3) permits the court to make an exclusion order either on the application of the prosecutor or, if the court is so minded, on its own initiative.

Sub-clause (4) creates an offence for failure to comply with an exclusion order. If, during the currency of an exclusion order, the person remains on the Isle of Man or returns to the Isle of Man, he will commit an offence.

Sub-clause (5) provides the defence to a prosecution for an offence under this clause. I beg to move clause 1 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Dr Mann: Clause 2 sets out the criteria for making an exclusion order. Some of the requirements of this clause are absolutely crucial to the working of this Bill to ensure that it complies with the international obligations which extend to the Isle of Man.

Sub-clause (1) requires a court to make an exclusion order if it is satisfied that three criteria are complied with: first, the court must be satisfied that the exclusion order is conducive to the public good; second, the court must be satisfied that the order will not be in breach of an international obligation extending to the Isle of Man - this is a serious and onerous responsibility for the court; and thirdly, the court must be satisfied that the circumstances justify the making of the order.

Sub-clause (2) specifies certain cases in which an exclusion order must not be made. These are: first, where the convicted person is ordinarily resident in the Island; this means that no matter what the nationality or length of residence, a person who is ordinarily resident in the Island cannot be made the subject of an exclusion order; second, an exclusion order cannot be made in relation to a person who has a close connection with the Isle of Man; third, a juvenile under the age of 17 cannot be made the subject of an exclusion order; and fourth, an exclusion order cannot be made where the convicted person has a child, parent or spouse who is ordinarily resident in the Island. I beg to move clause 2 stand part of the Bill.

Mrs Christian: I beg to second and would indicate, Mr President, that this clause really illustrates that, whilst it may be a provision that people wish to see, it is fairly restrictive in the way in which it can be exercised.

The President: I will put the resolution, hon. members, that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Dr Mann: Clause 3 contains a number of miscellaneous supplementary provisions relating to exclusion orders.

Sub-clause (1) makes it clear that an exclusion order may be made in addition to any other sentence or order which may be made on conviction.

Sub-clause (2) will enable a court to impose a period of custody on conviction and make an exclusion order which comes into operation immediately after the convicted person has served his term in custody.

Sub-clause (3) is a technical provision which takes account of any legislation which restricts the sentencing of young or first offenders to custody.

Sub-clause (4) provides a rule for the determination of whether a person continues to be ordinarily resident in the Isle of Man.

Sub-clause (5) deals with cases where a person who is otherwise a non-resident serves a term of imprisonment in the Island.

Sub-clause (6) will ensure that a court can make an exclusion order in respect of a person even though previous orders have been made and have expired if the person subsequently is convicted before the court. I beg to move clause 3 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Dr Mann: Clause 4 will confer a right of appeal against the making of an exclusion order. I beg to move clause 4 stand part of the Bill.

Mrs Christian: I beg to second.

The President: The resolution, hon. members, is that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Dr Mann: Clause 5 will permit a court to postpone the making of an exclusion order to enable it to make further inquiries as to the appropriateness of the order.

Sub-clause (1) permits a court to postpone the making of an exclusion order if the court feels that further information is required.

Sub-clause (2) permits the court to make more than one postponement of the case.

Sub-clause (3) limits a postponement to an aggregate period of 14 days, calculated from the date of conviction.

Sub-clause (4) allows a postponement to be made at the request of the defendant or the prosecutor or by the court on its own initiative. I beg to move clause 5 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Dr Mann: Clause 6 deals with the practical arrangements which the court makes for enforcing an exclusion order.

Sub-clause (1) enables the court to give directions for the removal from the Island and, when necessary, the detention of a person pending removal.

Sub-clause (2) specifically enables the court's directions to require removal from the Island in accordance with the arrangements made by the chief constable.

Sub-clause (3) requires the court to specify the country or territory to which the person is to be removed.

Sub-clause (4) prevents the removal of a person to a country or territory unless he is a national or citizen of that country or territory or has a passport or other document of identity from that country or territory.

Sub-clause (5) prevents the removal of persons having various types of British nationality to places outside the United Kingdom unless they are also nationals or citizens of that country or territory or are willing to be removed there.

Sub-clause (6) permits directions to be made by a court which authorise the placing of the person to be removed, and sub-clause (7) requires the Department of Home Affairs to pay out of government money the cost of complying with the directions made by the Court under this clause. I beg to move that clause 6 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Dr Mann: Clause 7 deals with the detention of a person in accordance with directions pending removal under an exclusion order. I beg to move that clause 7 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Dr Mann: Clause 8 deals with a number of supplementary matters relating to the detention of persons pending their removal from the Isle of Man. I beg to move that clause 8 stand part of the Bill.

Mrs Christian: I beg to second, sir.

Mr Waft: Mr President, with regard to the removal of people from the Isle of Man, does permission have to be given by the jurisdiction to which that person is so removed before they are allowed to be either put on the boat or the plane and sent to that jurisdiction?

Dr Mann: Yes, that is correct.

The President: I will put the resolution, hon. members, that clause 8 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And finally, clauses 9 and 10, interpretation.

Dr Mann: Clause 9 is the interpretation clause and provides a cross-reference to the definition of 'exclusion order', and clause 10 is the short title and commencement. I beg to move clauses 9 and 10 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clauses 9 and 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time. Third reading, sir?

Dr Mann: I think, Mr President, that this is recognised as being a Bill with fairly limited powers, but within that very limited group of people to whom it refers it would be a very beneficial power for the Isle of Man to actually have. This Bill has followed the advice of a select committee and, as far as I know, although its limitations are quite clear, the benefits are worthwhile pursuing. I do not think any hon. member has raised any significant objection to the Bill and I beg to move the third reading.

Mrs Christian: I beg to second.

The President: Hon. members, I will put the resolution that the Criminal Justice (Exclusion of Non-Resident Offenders) Bill be now read a third time and do pass. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a third time. The Council will now sit in private, hon. members.

The Council sat in private.