

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 24th February 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), Mr B Barton, Hon C M Christian, Mr E G Lowey, His Honour A C Luft CBE, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies For Absence**

**The President:** Hon. members, we have apologies for absence this morning from the hon. Mr Delaney, who is continuing to make slow but steady progress in hospital.

**Brewers (Amendment) Bill - First Reading Approved -  
Second Reading Approved - Clauses Considered - Third Reading Approved**

**The President:** Now, turning to our agenda paper, as first business we have the Brewers (Amendment) Bill and I call upon the hon. Mr Barton to take the first reading.

**Mr Barton:** Mr President, hon. members, the Brewers (Amendment) Bill 1997 is promoted by the Treasury. The Bill amends the Brewers Act of 1874, which has not kept pace with the developments in the brewing industry.

Clause 1 contains a number of amendments of the 1874 Act; in particular the definition of beer is clarified by making it consistent with the definition in the Alcoholic Liquor Duties Act of 1986. Unnecessary references to certain prohibited ingredients are removed; a new provision is included to enable the Treasury to grant exemptions from the restrictions contained in the 1874 Act. This will enable Treasury to ensure that the Act can operate appropriately in response to developments in brewing technology. That is the first reading and I beg to move.

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

**The President:** Does any hon. member wish to speak to the first reading? If not, I will put the resolution that the Brewers (Amendment) Bill be now read a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. I think, hon. member, you wish to seek suspension of standing orders?

**Mr Barton:** Yes, Mr President. I would like to move:

*That standing order 22(2) be suspended to enable the second reading of this Bill to be taken.*

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

**The President:** May I put that resolution? Those in favour please say aye; against, no. The ayes have it. The ayes have it. Continue, sir.

**Mr Barton:** Mr President, the effect of this Bill is that it retains the Brewers Act of 1874; it amends the definition of beer in the Act to correspond with what was contained in the main customs and excise legislation involved, and this is the Alcoholic Liquor Duties Act of 1986. It removes outdated references to various additives, for example opium. It includes a power for the Treasury to provide exemption for the additives of beer that do not meet the strict requirements of the Act's provisions. It restates the Act, as amended, in the form of a schedule to the Bill. I beg to move the second reading of this Bill.

**Mr Lowey:** I beg to second, sir. Could I say, in supporting the Bill, I speak, if you like, as the most unlikely supporter of this particular provision, being teetotal. However, as the mover said, this particular Bill actually does not force anybody to do anything. In other words, there has been a fear, I think, that somehow the traditional ale will be under threat. I do not think that that is necessarily so from this particular Bill but it does enable what I would call modern technology to be applied, not so much with beers but with lagers and the way in which lager is actually made. As far as I am concerned, this Bill is an enabling Bill and meets the modern world in which we live. So I welcome it and, as the mover said, 1874 is rather a long time to remain static.

**Mr Waft:** Mr President, we have advocated time and time again that we must diversify our economy and restructure our existing industries to compete with Europe and the rest of the world. This is one of those Bills that will allow us to do just that. We are faced with more popular brands of beers and lagers having to be imported because we have not been able to compete due to ancient laws which purists feel might threaten their image and marketing strategy. This has not proved to be the case. Our ability to export into Europe and so defend ourselves being swamped with imports from other countries is directly linked to how fast we can move with the times. This Bill allows our industry to compete on a level playing field with the rest of the world. We will soon be having to look to other industries to see if we can, by changes in legislation, allow them to offer similar products which are constantly changing. I would sincerely hope the Treasury and the Council of Ministers are doing just that.

The finance sector are quick to tell us if we can help in any way to compete with worldwide competition and we fall over ourselves to comply with their wishes. This is as it should be, but we must also be just as ready to help other industries to do the same and see that all obstacles in the way of legislation are not holding back their ability to compete in the global market. I fully endorse the spirit of the Bill and hope that any other industries which find that we can help them in any way will not hesitate to come to us to provide the means by which they can further their marketing ability. The Isle of Man Government must be seen as a facilitator to which all industries can seek help and take away any restrictions to economic growth. Thank you.

**Mrs Christian:** I too would support the Bill, in that it will not affect those who believe in real ale; that can still be produced, but it will allow local businesses to produce what is needed in terms of lagers and so on by the drinkers of today and will, I think, allow special brews to be made for special occasions, which seems to be a niche market these days, and to the extent that it will allow that to happen here now and will allow lager to be produced where it may hitherto have had to be imported, I think it is a good move and therefore justifies support from everyone.

**The Lord Bishop:** Mr President, could I ask the mover to tell me what a nux vomica is? And I am rather sad to think that grains of paradise will be dropped. *(Laughter)*

**The President:** Reply, sir?

**Mr Barton:** I may have to look to the Attorney-General on this one *(Laughter)*, I think it is

**Mr Lowey:** A good try, Brian, keep it going!

**Mr Barton:** I think it is in fact something which was used as a measurement within the brewing industry and, yes, I know one or two people are a little sad in the loss of some names, but this is the result of progress, but I do thank hon. members for their support.

**The Attorney-General:** Mr President, just by way of information, I do have a draft of the speech made by the mover in another place, Mrs Crowe, and she describes nux vomica as follows: nux vomica is actually 'vomiting nut' in Latin and it is the name for an Indian tree bearing berries with poisonous seeds. The seeds themselves are a medicine which, I might add, used to be used as a heart stimulant made from them. So this is what we know of nux vomica. Grains of paradise - now, these can also be referred to as Guinea grains. This is a very woolly area and these are peppery seeds obtained from African plants. I would be on dangerous ground if I went any further. *(Laughter)*

**Mr Barton:** I thought, Mr President, he was going to ask about a frog's wing!

**Dr Mann:** Just as a matter of interest, if somebody did want to put in nux vomica or grains of paradise, how would they now be stopped, only by an order of the Treasury?

**Mr Barton:** Yes, Mr President.

**The President:** Hon. members, I now put the resolution that the Brewers (Amendment) Bill be now read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses, sir.

**Mr Barton:** Clause 1, which also introduces the schedule. When the 1874 Act was enacted it served partly as a revenue Act and partly as a beer purity Act. Since its enactment other legislation has replaced revenue functions, leaving it as an instrument to ensure the purity of Manx beer. However, given the considerable amount of excise duty involved with the brewer, it is right that Treasury should retain an interest, and in addition the inspector of breweries appointed under the Act ensures brewers' compliance with its provisions and is currently the collector for Customs and Excise.

As has been said by one of the previous speakers, when the Bill was first brought out, lager just did not exist and it was not a known drink on the Island and the original Act was therefore not drafted in this manner. The 1874 Act prevented a Manx brewer from being able to make his own lager that could compete with imported lager, and yet the same branded lager would merely be imported from the UK where it is being brewed under licence to the same recipe as that barred at present in the Island. Traditional Manx ale, the purity of which the original Act was designed to protect, will be unaffected by this new Act.

The reply of the customs and excise division, supported by the Attorney-General, was that the list of materials that would not be permitted by other food laws were therefore

superfluous, containing archaic terms not compatible with modern legislation and ran counter to the intention of bringing the Bill up to date. I beg to move clause 1 be part of the Bill.

**Mr Lowey:** I beg to second, sir, and I would just stress that any orders that are brought in in the future to amend the substances. . . And in fact this Bill is an enabling Bill which will allow the Treasury, after Tynwald has concurred, so therefore whatever happens in the future will have to have public scrutiny because the Treasury will have to get Tynwald concurrence to any variation. So I think it is a safeguard there and I beg to second.

**The President:** Are there any observations on the clause or schedule, hon. members? If not, I will put the resolution that clause 1 along with schedule 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

**Mr Barton:** Clause 2 is the short title and commencement of the Bill and I beg to move that clause 2 stand part of the Bill.

**Mr Lowey:** I beg to second, sir.

**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. Bill read a second time.

Now, hon. members, the hon. member in charge of the measure has indicated that he would hope to complete this measure today, this stage of it, and will be seeking suspension to take the third reading. I am sure no-one would wish to mute the hon. member's swan song - *(Laughter)*.

**The Lord Bishop:** Why not?

**Mr Lowey:** Has he got a brew? Have we got a sample?

**The President:** Would you care to move the suspension of standing orders, sir?

**Mr Barton:** I will move:

*That standing order 22(2) be suspended to enable the third reading of this Bill to be taken.*

**Mr Lowey:** I beg to second, sir.

**Mr Radcliffe:** Mr President, I normally would oppose the third reading (**Dr Mann:** Yes. Hear, hear.) of any Bill in the one go, but this has got some merit, Treasury support it, which helps it on its way, but I will not oppose. It is a Bill which is certainly needed after 120-odd years to update things, and certainly I would not wish to oppose the hon. member's final appearance in this Council today. Let him go out in a blaze of glory having achieved first, second, clauses and third reading of the one Bill!

**Dr Mann:** In view of the hon. member's comments, I must go along with it!

**The President:** I will put the resolution, hon. members, that standing orders be suspended to enable the third reading of the Brewers (Amendment) Bill to be taken. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Would you proceed, sir, with the third reading?

**Mr Barton:** Mr President, I thank the support from the Treasury. Actually I think they have got to noticing that this will not increase any public expenditure; in fact it could probably increase government income to the Treasury. So thank you for your support, hon. member. This Bill serves only to fulfil the intention stated, as I have said at the other readings. There will be no resource implications arising from it. Whilst the Bill itself is not designed to increase overall beer duty revenue, enacted it will enable Island-based brewers to compete with imported beers more efficiently, and therefore I formally would like to move the third reading of this Bill and that it do pass.

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

**Mrs Christian:** Mr President, in another place there was some discussion about the penalties under the Bill and I wonder if the hon. mover has any observations on that?

**Mr Barton:** Yes, Mr President, we did note this, and in fact I did check with the Treasury and the original mover of the Bill whether they wish to have this amended. In effect, the amendment in the other place - whilst it did appear to increase the penalty, in practical terms it did not. In fact, previously it was a £2,500 penalty and that was it, full stop. The way the amendment has been moved in the other place - in fact, whilst it increased it to £5,000 it returned to the practice where on the first offence only a percentage of that figure is given. So in actual fact, instead of being fined £2,500, now you could in fact only be fined £500. But the feeling was that they were prepared to accept this for the time being. So no one was asked to move an amendment in this place.

**The President:** Hon. members, I will now put the resolution - Do you wish to speak, sir?

**Mr Waft:** Mr President, I was just checking - is this a sign of the times that we are going to have more Bills coming through in plain English? Perhaps the legislative draftsmen might take this in mind and get first, second and third readings through quite quickly. *(Laughter and interjections)*

**The President:** I will put the resolution, hon. members, that the Brewers (Amendment) 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. Thank you, hon. member.

### **Banking Bill - Clauses Considered - Third Reading Approved**

**The President:** Now we move on to the Banking Bill and I call upon the hon. Mr Radcliffe to take the clauses prior to taking the third reading. Clauses 1 to 4, sir.

**Mr Radcliffe:** Thank you, Mr President. If we take clauses 1 to 4, I will just give a brief resume of each clause.

Clause 1 defines the term 'banking business' as including the receipt of deposits, and a deposit is defined in clause 33 of the Bill, and the payment and collection of cheques. The definition is, by design, simple and wide in scope. The Treasury may by order modify this definition. In addition, the Financial Supervision Commission may declare in writing certain activities to be or not to be banking business for the purposes of this Act. Thus it is hoped that the definition can be modified either generally or specifically as necessary in order to respond to changing developments in the market.

Clause 2 deals with the offence of carrying on a banking business without a banking licence, and this clause states that any person who carries on or holds himself out as carrying on a banking business in or from the Island without holding a licence or in breach of the conditions of a licence is committing a criminal offence. The clause then provides further clarification of what constitutes carrying on business in or from the Island including the operation of a representative office here.

Clause 3 deals with managers of banking businesses. We do have a number of managed banks in the Island, which are banks which do not have a real presence here but are instead managed by another licensed institution. This clause makes it an offence for anyone other than a licensed bank to act as the manager of a banking business here or hold himself out as being the manager of such a banking business. It also creates an offence to act as an unlicensed manager or consultant to an unlicensed banking business.

Clause 4 deals with application for and other matters relating to a banking licence. Clause 4 requires applications for banking licences to be made to the Financial Supervision Commission and states that the application should be in such form and be accompanied by such documents and information as the Financial Supervision Commission shall require. I beg to move that clauses 1 to 4 stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Lowey:** I just wonder if the hon. member can help me? Would this cover the system that we licensed where people could act as a co-operative and put money in and lend money to themselves? Does this include credit unions? They act in every way like a bank - they take deposits, they lend money out. But would this cover them or would they actually be contravening the Banking Bill?

**Dr Mann:** Credit unions regulations, I think, are issued by the Financial Supervision Commission but they are not the same as a banking licence.

**Mr Radcliffe:** Could I say, Mr President, my understanding is that they are not the same as a banking institution and they would fall outside the scope of this Bill.

**Mr Lowey:** The definition says it is an institution that actually takes deposits and payment and collection of cheques. Maybe that is where they fall out, I do not know. I just wondered, as we had already passed legislation permitting them to operate on the Island if and when they get up and running.

**Dr Mann:** Are there any people who are actually members of the credit union and are regulated by separate regulations?

**Mr Radcliffe:** As I understand it, credit unions come under the Industrial and Building Societies Act, Mr President, so they would not be affected by this particular legislation. It is a different Act, yes.

**The President:** Right, I will put the resolution that clauses 1 to 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 5 to 8, hon. member.

**Mr Radcliffe:** Thank you, Mr President. Clauses 5 to 8.

Clause 5 deals with the criteria for the grant of a banking licence, and this clause states that the Financial Supervision Commission may not grant a licence unless it is satisfied that the applicant is fit and proper to carry on the business it intends to conduct. This is further expanded by making provisions in relation to companies which are part of a group. These provisions are designed to ensure that effective supervision can be carried out over the banking businesses. Sub-clause (3) states that the commission may revoke a licence if it is satisfied that the licence-holder is no longer fit and proper.

Clause 6 deals with the granting and refusal of licences, and this clause states that the FSC can grant or refuse a licence or grant a licence subject to conditions. The clause also states that the licence conditions may impose certain regulatory codes or other recognised rules and regulations as a condition, thus making a breach of these codes et cetera a criminal offence, and that the conditions may provide a waiver so that the licence holder need not comply with certain specified regulatory codes. This, therefore enables the Financial Supervision Commission to adapt the application of its codes to suit the circumstances of any licence-holder or to any particular type of business carried on by a licence-holder. If I just wander a little bit there, Mr President, this is the first time in the Bill where the word 'may' is used instead of 'shall', and I know the hon. member, Mr Waft, raised this question at second reading stage as to why this was permissive and so on, but I am informed that it enables the commission to take a flexible approach to any problems which may arise in the regulation of the industry.

The commission can take a number of things into account before deciding whether a public notice should be issued, for example, and they 'may revoke' - it is not that they shall revoke. There could be occasions where an organisation has provided false information but where an individual is involved there rather than the organisation as such, and it would be rather a drastic step if the commission had to deal with the organisation as such rather than the individual, so therefore there is a certain permissiveness there which enables the thing to be administered coolly and not too harshly. That is by the way.

If I move on to clause 7, this deals with the revocation and alteration of banking licences. This clause provides that the Financial Supervision Commission may revoke a banking licence if, for example, it suspects that key information provided to it is materially false and the licence-holder providing the information knew that to be the case when he provided the information.

Sub-clause (3) enables the Financial Supervision Commission to make a licence subject to conditions at any time and to vary or revoke any conditions at any time.

Sub-clause (5) states that breach of a condition can lead to the Financial Supervision Commission undertaking enforcement action, and this is defined in clause 33(2). It should also be noticed that breach of a condition is a criminal offence.

Clause 8 deals with the register of licences, and this clause requires the Financial Supervision Commission to keep a public register of licences issued. Little more to be said, sir, and I beg to move that clauses 5 to 8 inclusive be part of the Bill.

**Dr Mann:** I beg to second.

**Mr Lowey:** Could I ask: am I right that the regulations we have just heard about and defined in clause 6 particularly are not definitive - in other words, the commission will make the rules if you like to suit the circumstances of the applicant? The mover then said that if they contravene any of these regulations it is a criminal act. Now, if that is the case, is the commission not in a position of making law without any recourse to the checks and balances? In other words, do these regulations have to go before Tynwald for approval or are they made specifically for the particular industry? It gives the commission tremendous authority then if they can make criminals out of people operating a business because they make the regulations and have that ability to be as flexible as the hon. member has said in this particular clause.

**Mr Radcliffe:** Could I reassure the hon. member, Mr President, that in clause 10 an amendment was moved in another place that regulations are subject to the positive approval of Tynwald. That is the reason -

**Mr Lowey:** So they have got it. That is it, that is fine.

**The President:** Are there any further observations on these particular clauses? If not, I will put the resolution, hon. members, that clauses 5 to 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, sir.

**Mr Radcliffe:** Thank you, sir. Clause 9 is a restriction on the use of the word 'bank'. This clause requires the written consent of the Financial Supervision Commission to be obtained for use of the word 'bank' in a business name or in any advertisement implying that the advertiser is a banking business. Failure to obtain such consent is a criminal offence. I beg to move, sir, that clause 9 stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Lowey:** Can I just say that the first thing in clause 9 says 'shall use or cause to be used the word "bank" or any like or cognate word (whether in English or any other language)'. I take it that means Manx? I would not be able to use the Manx equivalent, whatever it is, and I do not know what it is.

**Mr Radcliffe:** I think that would be subject to the consent of the Financial Supervision Commission again to want to try, I suppose.

**The President:** Are there any further observations, hon. members? I take it the Financial Supervision Commission would not look unfavourably at the Manx language being used in respect of banking?

**Mr Radcliffe:** I can give that assurance, they would certainly look carefully and conscientiously at any suggestion that that should be used.

**The President:** I will put the resolution, hon. members, that clause 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10.

**Mr Radcliffe:** Thank you, Mr President. Clause 10 deals with the regulatory codes, and this clause empowers the Financial Supervision Commission to issue regulatory codes. These are the main regulatory requirements which will need to be met by licence-holders. I might say that they have already been drafted and have been consulted upon with the industry and they

have received the broad support of the industry. So already a move has been made ahead there so that things can slot into place. A licence-holder in contravention of a regulatory code may be subject to unfortunate action. This clause was amended in another place to provide that positive approval of Tynwald was required, and I once again reassure the hon. member that this is now in place. I beg to move that clause 10 as amended stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Waft:** Just on this one, Mr President that this was the one that I queried the 'may' and 'shall' situation with sub-clause (2) of clause 10: 'A regulatory code may include a requirement that the banking licence holder to whom it applies shall comply with such rules, regulations, codes or standards as are from time to time in force. . .' Well, if they do not include the requirement, there is not much point, really. I take the member's point that from time to time 'may' can come in rather than 'shall' and there are times that that may be more applicable, but in this case, where the regulatory codes are in place, if, as the member says they are coming to be in place, they should include a requirement that the licence-holder to whom it applies shall comply with rules and regulations. It says the regulatory code 'may' include and I can understand perhaps the 'may' in undertaking enforcement action, but with the fact that they are going to be there they should include the requirement that the licence-holder to whom it applies shall comply rather than may. There does not seem much point if it is only 'may'.

**Mr Radcliffe:** I take the hon. member's point, but I think 'may', as well as being permissive, it can be applied rigorously as well. It is a word which I have always heard is a useful word in legislation, but it may be or it can be, shall be; it all comes within that meaning. I think that the hon. member can rest assured that this particular 'may' will probably be a 'shall' when it comes to the regulations.

**Mr Luft:** In this clause, Mr President, the word 'code' is included, and I should have thought that means that some codes are like the highway code: they do not involve a criminal offence and it may be that a particular institution may not be required to adhere to the code. I do not know if it is the same. The regulation, I would agree, they must surely obey the regulations and rules.

**The President:** If there is no further comment, then, hon. members, I will put the clause. The resolution is that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 11 and 12, sir.

**Mr Radcliffe:** Thank you, Mr President. Clause 11 deals with recommendations and directions to banking institutions, and this clause enables the Financial Supervision Commission to make recommendations and issue directions to banking licence holders. A breach of a direction under this clause is a criminal offence. It is important to note that directions cannot be given in relation to the affairs of a particular customer of a banking licence holder except in very limited circumstances - for instance, when the FSC considers it necessary in order to protect the licence-holders or the customers.

Clause 12 deals with the request for information, and this clause enables the Financial Supervision Commission to request information from a banking institution about the bank itself or about a company within the same group as the bank. Information about a customer of a banking institution may also be requested but only in limited circumstances - for instance, if

the commission believes it is necessary to protect the interests of the institution's other customers.

Sub-clause (7) provides a protection for persons making statements to the commission under this clause and has been inserted following the recent judgment in the European Court of Human Rights relating to Mr Ernest Saunders.

I beg to move that clauses 11 and 12 stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Lowey:** We may be nit-picking today - it is not meant to be - but 'request' is not often a word that you actually see in legislation, and here it is 'the commission may request'. Is there any particular reason why 'request' is put in, because I always think that 'request' can be taken in the way that you can request something or you can command something or demand something. Usually in legal terms, if a regulatory body is there to do a regulatory job it should have the power to say 'I want that' but here we are saying 'Please, may I have that?' Is there a reason for it? Let us face it, either we are sending out a signal here that we are regulating banking and at the same time the wording seems to be soft in the sense that it is mellow, we are requesting. And I just wonder why these sorts of words are being used in this particular instance.

**Mr Luft:** I should have thought the request is fully implemented by sub-clause (3): 'they may issue directions . . . to secure that effect is given to a request. . .' So there it is.

**The Attorney-General:** I would entirely agree with what His Honour has said, Mr President. That is the point I was going to make, that the commission under clause 12 have a discretion as to whether or not they do ask the institution for various information, and that is to enable the commission to carry out its functions under the Act. So, having made the polite request, if the institution refuses to comply with the request then under clause 12(3) the commission can follow up that polite request via the issue of directions which are binding.

**Mr Lowey:** I am all for politeness, Mr President!

**Mrs Christian:** Mr President, this is the iron fist in the velvet glove, isn't it really? And I think there is no harm in using the word 'request' when you have the power to back it up later if you need to. Better than the knuckle-duster going in straightaway!

**Dr Mann:** I think this really underlines the great difficulty there always has been with banking legislation, because it has to be absolute and there is immense power given to the Financial Supervision Commission and there is no power of any appeal, nor can anybody take legal action directly against them. So I think possibly even the public image is probably that of being more gentle, but in fact, of course, there is immense power here and, as far as I know, there is only a petition of doleance presumably that they have used their powers in an unlawful way or is the only way of . . . Now, each time this has come up over the years it has always been supported, that if you are going to have effective banking supervision this has to be, and so I think this is just following the line that has always been taken since the Financial Supervision Commission was established, that it does have this absolute power. But I think in the wording of this it is perhaps using words a little more gently than they have done in the past.

**Mr Waft:** Just on that sub-clause (2) with regard to the affairs of a customer of a banking institution, I just wondered about the confidentiality that any information so obtained would remain within the confines of the FSC and not be subject to any other jurisdiction asking and being granted any information that would otherwise be confidential.

**The President:** Reply, sir.

**Mr Radcliffe:** Thank you, Mr President. I am obliged to His Honour and to the learned Attorney-General for the explanations that they have given in regard to this clause. It is worth noting that this is a repeat of existing provisions in law, so there is nothing new about this particular clause whatsoever. It is essential, as the hon. member Dr Mann has said, if you are going to have effective supervision, that you have got some clout to go with it if need be.

In regard to the hon. member Mr Waft's comments regarding confidentiality, I would say that would be respected by the FSC and it would be rather unusual if they were to do less than that. It is governed by confidentiality rules. I beg to move that the clause stand part of the Bill.

**The President:** I will put the resolution, hon. members, that clauses 11 and 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clauses 13 to 16, sir.

**Mr Radcliffe:** Thank you, sir. Clause 13 deals with inspection and investigation. This clause provides the Financial Supervision Commission with powers to investigate the affairs of a banking institution, former banking institution or manager of a banking business. The clause empowers the Financial Supervision Commission to enter premises, take possession of documents, books and accounts. Again, there is a protection built into sub-clause (7) in relation to individual clients of banking institutions. Any person who obstructs the commission in exercising its functions under this clause is guilty of an offence as set out under sub-clause (4).

Clause 14 deals with the power of the commission to require information. This clause enables the commission to apply to a justice of the peace for further investigation powers. Where the JP is satisfied that there is a good reason to do so for investigating the affairs of a banking institution, he can authorise the FSC to exercise the powers contained in this clause, and these powers are two-fold: (a) the commission can require persons under investigation and third parties - for example bankers, company administrators et cetera - to attend before it and answer questions or otherwise furnish information; and (b) the commission can also require persons to produce documents which appear to relate to matters under investigation. Failure to comply with the requirements will, by virtue of sub-clause (8), be a criminal offence. And again, under sub-clause (6) of this clause, the protection is given for persons making statements under this clause as required following the Saunders judgment in the European Court of Human Rights.

Clause 15 deals with a deemster's search warrant, and this clause provides further investigation powers which may only be exercised if a deemster is satisfied they are necessary. The clause enables the deemster to issue a warrant enabling named officers to enter and search premises. There have been no complaints, as far as I am aware, anyway, as a result of the powers given under clauses 13, 14 and 15 having been used. There have been no complaints that I am aware of about the usage of them.

Clause 16 deals with directors and controllers et cetera, and this clause enables the commission to disqualify an individual from acting as a director, chief executive, manager or controller of a banking institution on the grounds that he is no longer considered to be fit and proper. Sub-clause (3) deals with the procedures to be adopted by the commission when issuing a disqualification direction. Any individual who accepts any appointment in contravention of a direction is guilty of an offence under sub-clause (5), and sub-clause (6) requires a banking institution to take reasonable care not to appoint an individual in contravention of a direction.

I beg to move that clauses 13 to 16 stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** Does any hon. member wish to speak to the clauses?

**Mr Lowey:** Could I just ask one question? Is this existing legislation or has it been amended?

**Mr Radcliffe:** Existing legislation under the appropriate Act.

**The President:** I will put the resolution, hon. members, that clauses 13 to 16 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clauses 17 to 20, sir.

**Mr Radcliffe:** Thank you, sir. Clause 17 deals with public statements. This clause enables the commission to issue a public statement about a banking business where it deems it desirable in the interests of protecting the public. Safeguards are built into the clause where a statement is to be issued in respect of a licence-holder to provide such a licence-holder with prior notice of any proposed public statement, thus giving the opportunity to oppose it if so wished.

Clause 18 deals with unauthorised acceptance of deposits, and under this clause those who accept deposits illegally may be required by the court to repay those deposits and any profits accrued as a result of their contravention in order to compensate investors for any loss which they may have suffered as a result of any contravention.

Clause 19 deals with injunctions, and this clause deals with the powers of the commission to apply for and the powers of the High Court to grant an injunction restraining a contravention of this Act.

Clause 20 deals with matters to be communicated to the commission by auditors and reporting accountants. This clause places an obligation on auditors of banking institutions to report certain matters to the commission. The inclusion of this clause is a recommendation of the Basle Committee of International Banking Supervisors following the failure of the BCCI, which we are all very well aware of. The FSC is in discussion with auditors in the Island with a view to drawing up guidance notes which will spell out more clearly those situations where the commission expects a report to be made. It is worth noting that guidance notes for bank auditors have already been issued by the Institute of Chartered Accountants of England and Wales.

I beg to move that clauses 17 to 20 do stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** If there are no observations, I will put the resolution, hon. members, that clauses 17 to 20 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clauses 21 to 23, sir.

**Mr Radcliffe:** Clause 21, Mr President, deals with reporting accountants. This clause enables the commission to require a banking institution to appoint an approved accountant or other person of relevant professional skill to make a report on specified aspects of the bank's business or the business of another company within the same group as the bank. The costs of such a report would be met by the banking institution concerned.

Clause 22 deals with indemnity for auditors and reporting accountants. This clause provides an indemnity for the auditor to banking institutions and reporting accountants, enabling them to communicate in good faith relevant information or opinions about a licence-holder to the FSC without incurring any liability for contravening their duty of confidentiality to their clients.

Clause 23 deals with compensation schemes and this clause contains the enabling power for the creation of a depositors' compensation scheme. Such a scheme is, of course, already in existence under an enabling power contained in the Financial Supervision Act of 1988. The purpose of this clause is to move the enabling power into the banking legislation, thus making it more user-friendly for practitioners in the industry.

I beg to move that clauses 21 to 23 do stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Waft:** Mr President, again 'may' comes into the Bill rather than 'shall' especially with regard to establishing a fund for which compensation is to be paid. The FSC Bill encompasses that, but this only includes the 'may' possibility. I would think it would be essential compensation be paid on a similar pattern.

**Mr Lowey:** Could I, just for clarification, be assured that the regulations would be subject to Tynwald approval?

**Mr Radcliffe:** Yes, all regulations are subject to that anyway.

**Mr Lowey:** As it stands in clause 10?

**Mr Radcliffe:** Yes, clause 10 covers all regulations, Mr President. In reply to the hon. member Mr Waft, again this is one where a 'may' issue will become a 'shall', I think, as far as compensatory schemes go. Certainly after the experiences we have had in the past, it is essential that such a scheme is in being.

**The President:** I will put the resolution, then, hon. members, that clauses 21 to 23 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clause 24, sir.

**Mr Radcliffe:** Clause 24, Mr President, deals with the review of commission decisions. This clause provides a mechanism for certain decisions of the commission to be subject to an independent review. Sub-clause (3) requires that, on receipt of an application for review, the Treasury should establish a review committee consisting of three members, at least two of whom shall be independent persons of appropriate experience. The review committee is

empowered to either confirm, vary or revoke the decision appealed against and the decision of that review committee is final. I beg to move that clause 24 stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 24 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clause 25.

**Mr Radcliffe:** Clause 25, Mr President, deals with fraudulent inducement to make a deposit. This clause introduces an offence where a person knowingly or recklessly induces another to make a deposit on the basis of false, deceptive or misleading information. This is a vital element of customer protection. This clause was amended in another place to extend the penalty time, and I beg to move that clause 25, as amended, stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 25 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clause 26, sir.

**Mr Radcliffe:** Clause 26 deals with prejudicing investigations, and this clause states that obstructing an investigation being conducted by the commission through the falsification, destruction or concealment of relevant documents is a criminal offence. This again was amended in another place by extending the time penalty clause. I beg to move that clause 26 stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 26 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clauses 27 and 28, sir.

**Mr Radcliffe:** Clause 27 deals with false statements et cetera, Mr President, and this clause provides that any person who knowingly or recklessly provides materially false information to the commission shall be guilty of an offence.

Clause 28 deals with offences by bodies corporate, and this clause provides that where an offence is committed by a company then the directors or others involved in the management of that company are accountable unless they can satisfy the court that the offence was carried on without their consent or that they did all they could to prevent it. This clause replaces an identical section which currently appears within the Banking Act of 1975.

I beg to move that clauses 27 and 28 do stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** I will put the resolution, hon. members, that clauses 27 and 28 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clause 29, sir.

**Mr Radcliffe:** Thank you. Clause 29 deals with penalties, and this clause lays down the penalties which will apply to those persons who are guilty of an offence under the Bill, except where otherwise provided. It also states that if a banking licence holder is convicted of an

offence under the Act the commission may take action against it under the Act. Again, an amendment was moved in another place, Mr President, to increase the penalty time, and I beg to move that clause 29, as amended, stand part of the Bill.

**Dr Mann:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 29 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clauses 30 to 34, sir.

**Mr Radcliffe:** Thank you, Mr President. Clause 30 deals with Treasury directions, and this clause provides that the Treasury may give the commission directions as to how it should exercise or perform its powers under certain sections of the Bill. This provides an important mechanism of political accountability and oversight of the commission.

Clause 31 deals with public documents, and this clause provides the enabling powers for the making of regulations to bring the Act into effect. Regulations may be made by the commission after consulting with Treasury, and all regulations will be subject to the approval of Tynwald.

Clause 32 deals with the definition of a 'related company' and this clause provides a definition of a related company which should be read in particular in conjunction with clauses 12 and 21.

Clause 33 is the interpretation clause.

Clause 34 is a repeal of clause 12 of the Royal Bank of Scotland International Limited Act of 1995. Clause 34 has been introduced because clause 12 of the Royal Bank of Scotland International Limited Act of 1995 made provision for the change of name of that organisation. In the event the change of name did not occur and the provision is therefore being repealed.

I beg to move that clauses 30 to 34 stand part of the Bill.

**Dr Mann:** I beg to second.

**Mr Lowey:** Is there any reason why the Treasury in clause 30, Mr President, is restricted in its powers of direction to the commission to those sections named in clause 30(4) to (7), 31(1) to (3)? And then it goes on 'whether generally or in any particular case and the Commission shall comply with such directions', but only for that part of this Bill. Is there any reason why it has been restricted and not given . . . The member said that the Treasury is right to have a political input. Why restrict it to just those sections of the Bill? Is there a particular reason?

**The President:** Reply, sir.

**Mr Radcliffe:** Thank you, Mr President. Well, I cannot give a specific reason but it is important to note that Treasury can direct either in relation to a specific case - for example, an individual licensing application - or the Treasury can direct generally for certain types of action. In practice, the Treasury has rarely exercised this right in any case, but it is there in case it is required. I can give no better explanation at this moment than that.

**Mr Lowey:** I understand from the clauses that it actually defines it is the banking business licences, so I can understand specifically that the Treasury may want to at the very

outset have a say in how the licences are granted. It just seems strange to me that, by specifying just that, we exclude the other parts of the Act, and I just wondered whether there was a reason why it was being just defined to those areas and not in generality.

**Mr Radcliffe:** I think there have to be certain restrictions in, Mr President, but members of this Council and other places are always saying that too much power has been given to various bodies, there is not political accountability, and this does certainly provide for political accountability on the part of the Treasury in overseeing what the commission is doing and what it -

**Mr Lowey:** In a limited way.

**Mr Radcliffe:** Well, certainly in a limited way, perhaps, but if we get amateurs delving into professional activities you are in trouble then, aren't you?

**Mr Lowey:** I agree. It is one of balance and I just wondered why it was deemed, when it was drawn up, that it should be limited, and I am conscious that they should not be too limited because I do believe the Treasury ultimately carries the responsibility for the commission, although it is at arm's length, and I agree with the hon. mover that you do not want the Treasury involved in every day-to-day detail of the commission, otherwise why have a commission? But it just seems to me that when you limit something there may be a specific reason for it. I will accept the mover's response to my queries, but I pose the question.

**The President:** Any further comments?

**Mr Radcliffe:** I have no further comment, really. The hon. member has already said he accepted the explanation I gave, so that is that!

**The President:** I will put the resolution, hon. members, that clauses 30 to 34 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. They ayes have it. Clause 35, along with schedules 1 and 2, sir.

**Mr Radcliffe:** Thank you, sir. This deals with amendments and repeals and again there were certain amendments made in another place. I think I should, in fairness to members, give a brief resumé of what repeals there are, just so the record is clear.

Clause 35(1) specifies by way of schedule 1, part 1, a series of enactments which are amended by this legislation. The amendments are minor and consequential in nature and, in addition, schedule 1, part II includes a further series of enactments which are amended by this legislation, and these amendments are more substantive in nature.

Schedule 1, part II deals first of all with the Bill of Exchange Act, and this is dealt with in paragraphs 1, 2, 3 and 7. These amendments to the Bill of Exchange Act enable cheques to be cleared electronically, thus keeping the Island's legislation in line with international developments and enabling banking institutions to take advantage of new technology. An amendment was successfully moved in another place dealing with cheques written in what some would term a foreign language, but that amendment has been accepted in the other place, accepted by the industry and successfully moved. The Companies Act of 1931 is dealt with in schedule 1, part II. Paragraphs 4 and 5 deal with this, and the opportunity has been taken to amend clauses 42 and 51 of the Companies Act of 1931 with a view to authorised and restricted collective investment schemes in a corporate form being exempt from the requirements to file returns of allotments and redemption notes for shares. This has been

done on the basis that such schemes are regulated by the commission and investment interests will not be jeopardised by removal of this particular procedure. The Companies Act is also dealt with again in paragraph 6, the Companies Act of 1931. The opportunity has been taken to amend clause 130 of the Companies Act of 1931 to delete the requirements for banking institutions to have and display the information provided in the seventh schedule in their registered and branch offices. It is intended to include in the new regulatory code for banks a requirement for banking institutions to display a notice at their registered and branch offices stating that their copy of their latest audited balance sheet and auditor's report may be inspected on demand. Paragraph 8 of schedule 1, part II, deals with the Companies Act of 1982, and this enables the commission to obtain information and explanations from authorised auditors and also to enable the commission to make such authorisations subject to conditions.

The Financial Supervision Act of 1988 is dealt with in paragraphs 9 and 10 of schedule 1, part II: a minor amendment in paragraph 9; a minor amendment to section 22(1)(c) of the Financial Supervision Act of 1988 to enable the commission to issue statements for the protection of persons as opposed to investors. Paragraph 10 proposes a number of amendments to section 24 of the Financial Supervision Act of 1988, and these are amendments to the gateways which are available to the commission for the disclosure of information. The amendments are designed to assist the Island in fighting fraud and crime.

The Investment Business Act of 1991 has a number of amendments, and if I can just summarise briefly: paragraph 11 amends section 3 of the Investment Business Act. This brings provisions into the Investment Business Act which are equivalent to clauses 5 and 6 of the Banking Bill which we have got before us. Paragraph 12 amends section 8 of the Investment Business Act dealing with the section in investigation. Paragraph 13 amends section 8A of the Investment Business Act. Paragraph 14 amends section 9 of the Investment Business Act, and paragraph 15 amends section 10 of the Investment Business Act. Paragraph 16 amends section 12 of the Investment Business Act. Paragraph 17 amends section 13 of the Investment Business Act. Paragraph 18 amends section 15. Paragraph 19 amends section 15A of the Investment Business Act. Paragraph 20 inserts a new section 15B into the Investment Business Act and paragraph 22 insert two new sections into the Investment Business Act. Paragraph 23 amends section 18 of the Investment Business Act and paragraph 25 inserts a new section 22A into the Investment Business Act. Certain amendments were made in another place, Mr President, and I would beg to move that clause 35 and schedule 1, parts I and II, as amended stand part of the Bill.

**Dr Mann:** I beg to second.

**Mrs Christian:** Mr President, may I just say that I am pleased that the issue of the Manx language cheques has been resolved after some delay in another place. It is hard to understand now what the reason was for that, given that it is now proceeding without any particular issues having been raised, but from my perspective it is difficult to understand why there could have been a problem given that people have been writing Manx cheques without any difficulty. I do not think this is going to signal a massive number of Manx cheques going through the banking system but I think it is appropriate that we have the right to write them in Manx and that they should go through in the ordinary way.

**Mr Lowey:** I endorse every word that Mrs Christian has said on that subject too.

**Mr Waft:** I would just like to say, Mr President, different countries in Europe. . . for example, Switzerland has four languages in which they are able to write cheques. This was an absolute red herring. It should never have got the publicity it did. It should be an automatic right to write cheques in the Manx language if they so desire.

**The President:** Reply, sir?

**Mr Radcliffe:** Well, I thank the hon. members for their contribution regarding this amendment. There was no reason why it should have been seized on the way it was. It was an over-reaction from all sides and there is nothing new about it, because people have been writing cheques in Manx for a long, long time and there has been no problem whatsoever, but it was hyped up for some reason and got far more publicity than it deserved certainly, anyway, and there has not been, there is not and there will not be any problem with a cheque written in Manx. Can I beg to move, sir, that clause 35 as amended again stand part of the Bill?

**The President:** I will put the resolution, hon. members, that clause 35 along with schedules 1 and 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 36, sir.

**Mr Radcliffe:** Clause 36, sir, provides a short title for the Bill and enables the Bill to be brought into operation by means of an appointed day order. I beg to move that clause 36 stand part of the Bill.

**Dr Mann:** I beg to second.

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

**Mr Radcliffe:** The third reading, sir, if I may?

**The President:** It is up to you, sir. It says that you propose to take the third reading. Proceed.

**Mr Radcliffe:** I am obliged. Thank you very much, sir. I would thank members for their support for the Bill this morning and the clauses as moved. The Bill is needed to enable the Island to fulfil its commitments under the minimum standards for supervision of international banks as adopted at the International Conference of Banking Supervisors in 1996, two years ago. The Bill will ensure that the Island will maintain its reputation as a well-regulated jurisdiction. There has been - and I stress again - wide consultation with the industry, which has been broadly supportive of the Bill before us today. In fact, one can say that the Banking Bill carries the general support of the financial services industry as a whole in the Island. Finally I reiterate the comment I made at the second reading stage, which was that this Bill is a necessary vehicle so that the Island's standards of financial regulations remain effective and meaningful in what is a changing environment, and it is a continually changing environment. I beg to move, Mr President, that the Banking Bill 1997 be read a third time and do pass.

**Dr Mann:** I beg to second.

**The President:** Does any hon. member wish to speak to the third reading?

**Dr Mann:** I entirely support this Bill and this third reading, but I think, as to the matter raised by the hon. Mr Waft as to whether we should talk about 'may' or 'shall' in terms of a compensation scheme, we all know there is a compensation scheme but I think the definition

of 'compensation' has to be looked at very closely and the present compensation scheme is capable of being improved, and I think it is not necessary that the commission may be able to continue to issue regulations setting out further compensation schemes if and when they are required. I think it is not common knowledge that the amount of compensation is not a hundred per cent. It only relates to sums of money up to £20,000 and, as inflation rises, I think it will be necessary at some point in the future to relate that compensation scheme more readily or more up-to-date with the present values of deposits. It also, of course, only relates to sterling deposits and does not relate to any foreign currency deposit, and I do not know that that is widely known amongst the population and amongst investors in general. So I think there certainly are or could be in the future, opportunities for the commission to look at those compensation schemes to at least give more assurance to depositors that they relate to the present value of money as distinct from the value of those deposits when it was set up about five or six years ago. It is just a comment. I entirely support the Bill otherwise.

**Mr Waft:** I would just like to concur with those remarks, Mr President.

**The Attorney-General:** Mr President, I was just looking at the provisions of clause 10 of the Bill again in the context of the regulations which may be made by the Treasury as to compensation. The hon. member, Mr Lowey, I think, enquired whether the regulations which could be made by the Treasury under section 23 had to be approved by Tynwald. When I look at the amendment that was moved in another place to clause 10 it states that regulatory codes under this section, so in other words regulatory codes under clause 10, shall be laid before Tynwald, but I cannot find any reference in the Bill as presently drafted to show that the regulations made by the Treasury for compensation under clause 23 are to be laid before Tynwald, and that is perhaps a point I should have spotted when -

**Mr Luft:** Section 31(4) covers it. The only exception there is section 36(2).

**The Attorney-General:** Thank you very much, Mr President. I am sorry about that, sir.

**The President:** That is okay. Any further comment from the hon. mover?

**Mr Radcliffe:** Well, the question has been raised about compensation schemes. It is worthwhile saying that the depositors' compensation scheme is being reviewed as a result of practical experience gained through the BCCI episode. It is likely that a separate statutory body will be established to act as the scheme manager, because there is a bit of a relationship between the commission and regulators at the banks and the commission as administrators of the compensation scheme can be a little bit of variance on occasions. So certainly the intention is to set up a new statutory body to act as scheme manager. The whole question is being reviewed anyway, I can assure the hon. member.

**The President:** I will put the resolution, hon. members, that the Banking 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.

Hon. members, it was once the practice, when Bills such as this which consolidate with amendment were produced, there was a table of comparison after all embodied in the memorandum of the Bill making it clear where changes were being made to the Bill. That practice has been dropped and I do not think it has been beneficial. I think it is helpful to hon. members if they are able to look and see what elements of previous legislation are being

embodied in the new measure, and I wondered whether Council had any particular feelings on that, and whether they like to see the practice reintroduced. Perhaps you could give it a thought.

**Mr Lowey:** I wonder why the practice was changed. I find it very helpful when we are altering existing practice to get that drawn to our attention, because I do think that if you have got something and you are changing it, it is usually for a reason and we can then explore, but I think you are right, sir. The information was always there and I wonder why it was taken away. I have no recollection of it being a statutory or a conscious decision - 'As from this date we are not doing it'. Have we drifted into this?

**Mr Radcliffe:** I think, as I say, we have drifted into it, Mr President.

**Mrs Christian:** Can I make an observation from my own experience in the recent past with the Mental Health Bill? That was a lot of consolidation but it also involved in almost every clause some minor new provision, sometimes a major new provision, but it would have been very difficult to have set out every little bit of new legislation in the explanatory memorandum. I think in those circumstances it probably behoves the person moving the Bill to indicate to members where it has changed or have some sort of, apart from the explanatory memorandum, paper to circulate guiding members on that.

**Mr Luft:** Yes, that is quite right.

**Mrs Christian:** But to set it all out in here is not always easy.

**Mr Luft:** Oh, no, it cannot be done.

**Mr Waft:** The danger is that members debating something that was already an existing law and get bogged down in what would otherwise have just gone straight through.

**The President:** Perhaps, Mr Attorney, you could have a look at that one.

**The Attorney-General:** Yes.

### **Tributes To Retiring Members Of Council**

**The President:** Now, hon. members, with the conclusion of the term of office of four of our colleagues imminent I call upon the hon. member of the Council, Mr Radcliffe, to move the resolution standing in his name.

**Mr Radcliffe:** Thank you, Mr President. I beg to move:

*That Council do express its appreciation of the parliamentary, governmental and other public service of Mr Lowey, His Honour A C Luft, the Hon Mrs Christian and Mr Barton who shortly vacate office as members.*

It gives me great pleasure to move the resolution standing in my name at item number 3 on today's agenda. The term of office of each of these four members ends on the last day of February, and I am honoured indeed to have the opportunity this morning of saying a few words of appreciation in regard to them. Two of our retiring members are offering themselves for re-election and I feel - I am a born optimist anyway - that our parting today will be but for a short while in any case. (**A Member:** Hear, hear.)

Mrs Christian was first elected to the Keys in 1980 and during her six years in that House served on a wide variety of boards, as they then were. I think I am correct in saying that Mrs Christian was involved during that time in no less than nine different and challenging posts covering a wide and diverse range of activity from such matters as planning appeals, being a member of the Planning Appeals Tribunal, chairing the Civil Service Commission to being a Treasury member plus being involved on a goodly number of committees of Tynwald.

It was good to welcome Clare, if I may be familiar, to this hon. House in 1993, and her experience was put to good use right away. She has, during her five years in this Council, given sterling service to whatever appointment she was asked to undertake. Latterly, of course, she has been the Minister for Health and Social Security, dare I say it, the hottest of hot seats in this government. And again, with a composure and stoicism that certainly would not have disgraced a biblical figure, Clare has kept the department on an even course despite the, at times, ill-informed criticism and, on occasion, the positively abusive comments that have been directed against the department and all who are involved in it. Clare is, as we all know, a qualified pilot, and there must have been times I think, Clare, when you felt you were flying solo on this particular one. *(Laughter)* However, this has all been accepted by Mrs Christian as part of the job and has demonstrated over and over again the calibre of person and politician which she is.

Mr Eddie Lowey - Eddie is one of our longest serving politicians and one who has always given sterling service to this Island and its people. He was first elected to the Keys in 1975 and elected to this Council in 1982. His records of appointment over the years have ranged from board chairmanships to ministerial portfolios, all of which I might say he has handled with purpose and dignity. During his terms of office in tourism and industry Eddie has travelled a great deal off the Island, and what an excellent ambassador he has been for the Island! It is normal, I think, for the tourism department - and Eddie was involved there, of course - to receive an invitation to attend the North American Manx Association Convention, an event which Eddie was always pleased to attend.

As an aside and to demonstrate the character and charm of Eddie Lowey, could I say that after one of his visits to the North American Manx Association Convention I was contacted by one of the delegates, a youngish lady who was full of praise and admiration and asked many questions about Mr Lowey including a sort of a \$64,000 one - is he married? That was the hardest one to answer because I had no idea what he had told them when he was in America! *(Laughter)*

Eddie is deeply involved with the Commonwealth Parliamentary Association; he has been in an official capacity since 1984, and through that organisation he has contacts all over the world. It is fair to say that if one is looking for a contact anywhere to do with something specific CPA-wise, Eddie will find that contact for you. He has a great sense of humour - I suppose that is essential for a football referee on occasions - and that, coupled with his pragmatic outlook on life and its problems, has made Eddie Lowey a most valuable member not only of this House but of government as a whole.

Mr Barton has signified that he will not be standing for re-election to the Council. Mr Barton came to the Keys in 1986 after a very full career in the commercial world. Although not Manx-born Brian is, like many people who come to the Isle of Man through their career, one who cares greatly for the Island. Indeed, it is often said that those who come to the Island to

live are keener on things Manx than those who are Manx-bred and born, and this has certainly been the case with Brian; he has fostered many things on the Island.

Brian has not relaxed since he retired from a leading department store of international repute, and in his political career he has been a very active person serving on a diverse number of departments and committees of Tynwald. He has said that of all the committees that he has or is serving on, the Overseas Aid Committee is the one which gives him a great deal of satisfaction. He has been involved with this committee since 1988 and has seen some great things achieved by way of aid from his committee to various parts of the world. Mind you, Mr Barton has also been heard to say that a greater number of projects could have been undertaken if Treasury had been a bit more open-handed, but however that is another story! As I said, Brian has given total commitment to his political activities. He has, for example, been a loyal and very conscientious member of the Department of Health and Social Security for something like 10 years, and in that time has been mostly involved with the social security side.

Despite this, Brian has still found time for his many and varied outside interests. He is still involved with the Institute of Management as a vice-president, having been a past chairman of that august body. He is also a keen churchperson and has and still is serving in dioceses in many ways, not only as a St George's churchwarden but also on various dioceses and committees. Brian has also been involved with the special Olympics, again helping those less fortunate members of the community to achieve their ambitions. He has been ably supported in all these activities and many more by his charming wife, Barbara, now fully recovered from her illness and to whom I am sure we extend our best wishes.

Brian is retiring from the Council and political life, but I am quite certain that we shall still see him taking a full part in many activities outside of politics. Brian, we wish you a long and happy retirement and I do hope that you will relax a little and enjoy the reading, the music and the live theatre that you have listed as some of your interests.

I now turn, lastly but certainly by no means least, to His Honour Arthur Luft, another man who came into politics after a very successful career in the legal field. Arthur Luft first set up in practice in the Isle of Man in 1947. In 1972 he was appointed Her Majesty's Attorney-General for the Isle of Man, during which time, of course, he sat on this Council. Things were slightly different then than they are now, I think, as far as Attorney-Generals and their part in the proceedings went. After two years in the post of Attorney-General he went on to become Second Deemster for the Isle of Man, eventually becoming First Deemster and Deputy Governor of the Isle of Man in 1980, a post which he held until his retirement in 1988. He must have enjoyed his various excursions into the intricacies of the Legislative Council because in that same year, 1988, he became a member of this Council.

One could say that His Honour has completed a full circle with that appointment if one can liken one's activities to a circle. First of all, he is a law practitioner in practice, I suppose one could say arguing about the law; then he went on to the bench and he came a dispenser and administrator of the law; and, the third part of the circle, he came on to membership of this Council and he became a lawmaker, and I dare venture to say that this is possibly a unique first for the Island, where a person on this Council has been involved in all aspects of the law. He has been, obviously, a valued member of Legislative Council, and his sharp mind and knowledge of the law, as again demonstrated this morning, has been a real asset to this

Council, and his assistance to members in their deliberations has been greatly appreciated certainly by this member of Council anyway.

In his time in government His Honour served on two departments, the Department of Local Government and the Environment and, latterly, the Department of Agriculture and Fisheries. He has been a valued and loyal member of both, and again I do not doubt that his knowledge and experience has been of inestimable value to those departments. One of Arthur's listed interests is theatre and the arts and it is very fitting that he should have been made Chairman of the Arts Council in 1992, a post, of course, that he still holds. In his term of office the council has achieved some notable firsts, and he is to be congratulated and thanked for all his endeavours there. His Honour has served on many committees of government and he has never flinched from accepting the responsibilities thrust upon him, no matter how onerous they were.

It would be remiss of me were I not to mention Dorothy, His Honour's wife, who has always been at his side. We know, sir, that neither of you really has enjoyed the best of health recently, but we do sincerely wish you both a complete and speedy return to good health in the very near future.

Mr President, I would have wished to say a lot more about our retiring members. I certainly could have said a lot more about our retiring members but I would just like to end, sir, by wishing Brian and Arthur a long, happy and healthy retirement and, to Clare and Eddie my, and I am sure our, best wishes for a successful result in the forthcoming elections. Mr President, I beg to move the item, standing at number 3, in my name.

**Dr Mann:** I beg to second. I do not think I can add any more to that! I said my bit in another place and I wish those who are retiring certainly the best of health and support in all the activities they are still planning to take, and those who are standing for election I am sure are going to be with us again.

**The President:** Hon. members, a resolution to be again acknowledged by acclaim. (*Applause*) Thank you, hon. members. Now, hon. members -

**Mr Luft:** I wonder if the hon. member Mr Lowey wished to speak.

**Mr Lowey:** On behalf of all my colleagues, as Norman so aptly put it, I can remember why, Mr President, I stood in the first place for the House of Keys. I always remember thinking it was an old man's club and a rich man's club. Now, here I am, the longest continuous serving member after yourself, sir - your words come back to haunt you, don't they? I do not know so much about the rich man but I do know about the long service! But on behalf of all my colleagues can I just say to the members of the Council I have thoroughly enjoyed the experience and the friendship and the fellowship of this Council. Contrary to what is said about a retirement club for politicians who have not made it or have no desire to make it or who want to get away from it, they are going to be disillusioned if they come up here and think that any of those three will apply. The reality is that it is a full-time job, it is an exciting job and it is conducted in very good spirit, and I think we do a reasonably good job. I think the Isle of Man is successful because of its political make-up - not in spite of it but because of it. And I have been privileged, and I know my colleagues have been privileged, to have actually taken a part in and been allowed to play a part.

On behalf of all my colleagues I would like to thank you first of all for your friendship and your fellowship, and for the fun that we have had. It is no disgrace to admit that you have had fun - home or away, Norman, I may add! But the reality is it has been a challenging time and there is a time in politics when you have to manage what I would best describe as tough times. Most of us round this table have had that experience of managing tough times. We have also been able to say that we have been in the fortunate position of managing good times. Both are difficult but, if I have a choice, I know which I prefer to manage, and it is not the former, it is the latter.

Mr President, to you personally, thank you for the tolerance that you have shown from the chair to all of us in this chamber; it has allowed the debate to flow and I believe that, on behalf of my colleagues, I would just like to say thank you very much, and for the kind words - I could recognise my other three colleagues; I was finding it hard to follow the Eddie Lowey that I know I am through the glowing tribute paid to me today by Norman, but on behalf of all my colleagues, sir, I would like to say thank you very much. *(Applause)*

**Mr Luft:** May I, Mr President, also thank the hon. member Mr Radcliffe for the gracious, generous and very full way in which he has proposed the motion on the agenda as a tribute to the four members who in four days will be vacating their seats. I would also like to thank the other hon. members for the way in which they have received this motion.

The striking feature, I think, of this assembly is the goodwill and consideration which is shown by each member to the other members. Although widely different views are often expressed in the strongest terms, nevertheless there is a respect for the divergent views put by others. This means a civilised state of debate and a general friendly attitude and a proper respect for the President. A former senior partner of mine used to say that being in the army for a term was as good as going to university; I feel that serving a term in the legislature is as good as going to a university. You gain a great deal and I am grateful for having had the opportunity to serve in this Council, where I have enjoyed the companionship of the past and present members and which I have so much appreciated. I do thank Mr President for the kindness, consideration, fairness and skill with which he has carried out the duties of the distinguished office he now holds. I trust that the retiring members will be re-elected and back in their seats next month and my good wishes go to all the members, that they may have and continue to have an enjoyable and satisfying term of office.

**The President:** Now, hon. members, the show goes on and the adjournment will be to Monday, 16th March at 10.00 a.m. for the swearing-in and thereafter to the sitting of Tynwald commencing on Tuesday, 17th March at the normal 10.30 a.m. Thank you all very much, hon. members. We will now adjourn and I hope to have the pleasure of your company very shortly.

*The Council adjourned.*

### **Corrigendum**

Legislative Council, 2nd December, 1997.

Page C5, column 1, in the second heading, for 'Insider Trading Bill' please read 'Insider Dealing Bill', similarly in the footer on that page.