

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL  
Douglas, Tuesday, 27th January 1998  
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), 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 Chaplain of the House of Keys took the prayers.*

**Apologies For Absence**

**The President:** Hon. members, we have apologies this morning from the Lord Bishop and from Mr Delaney who is undergoing hospital treatment once again.

**Welcome To The New Attorney-General**

**The President:** Now, hon. members, we have already welcomed the new Attorney-General, Mr Corlett, in Tynwald and now it is my pleasure to warmly welcome him to the Council itself. We wish you every success in your new role, Mr Attorney, confident that your wide experience and expertise will enhance the work of this upper House in its traditional role of ultimate guardian of the rights of the people.

**The Attorney-General:** Thank you very much for your kind words, Mr President.

**Financial Legislation And Regulation In Crown Dependencies - Review - Statement On  
Behalf Of The Chief Minister**

**The President:** Hon. members, prior to turning to the agenda paper, I have given permission to the hon. member for Health and Social Security to make a statement on behalf of the Chief Minister.

**Mrs Christian:** I am grateful, with your permission, Mr President, to have this opportunity on behalf of the Chief Minister of providing an update to members of Council on the recently announced review of the financial regulations in the crown dependencies. What I have to say parallels a statement being given to the House of Keys by the Chief Minister.

There were some relevant questions answered in the House of Commons yesterday and there was some correspondence at the end of last week which has moved things on a little and members should be aware of these developments.

There are three matters to which I would refer: the handling of the announcement of the review by the Home Office; our formal response to the invitation to assist with the review; and the initial contact with Mr Edwards who is to conduct the review.

First, the handling of the announcement. The Chief Minister did write to members at the end of last week, but just to recap briefly, it became clear to the Council of Ministers last Thursday, following a comment made by Lord Williams in an interview on Manx Radio, that there had been some provision of information to the Isle of Man, Jersey and Guernsey in advance of the formal notification which was brought to the Chief Minister's attention on Monday, 19th January. What was subsequently established was that on the preceding Thursday the Lieutenant-Governor was given advanced notice of the announcement but His Excellency was not at liberty to pass that information to ministers here.

This early informal notification was one of the matters dealt with in the questions answered in the House of Commons yesterday. The Home Office response to one of the questions stated: 'Shortly before this, Home Office officials had informed the Lieutenant Governors of Guernsey and the Isle of Man and the Bailiff of Jersey informally and in confidence about the review so that they could brief themselves in advance of the official notification.'

It is suggested that in providing this early information to the Lieutenant-Governor the Home Office was endeavouring to be helpful. However, the action has served to rub salt into the wounds of the lack of consultation which was felt about the announcement of the review in any case. The implication that ministers here, especially the Chief Minister, should not be seen worthy of being included within the fold of those who should be privy to the early and informal notification is a cause for concern.

The Chief Minister has, as his letter to members makes clear, made representations to the Governor in this matter. He has also written to Lord Williams and will be making a point of including this matter within the discussions he will be having with Lord Williams when he meets him on 4th February. This incident does suggest that there is a need to redefine some aspects of the communications between the Isle of Man Government and the Home Office. It is a matter on which the Council of Ministers takes a most serious view.

On Friday we sent out formal response to the Home Office's invitation to participate in the review. Within that response we registered our great dissatisfaction at the way in which the establishment and notification of the review had been handled by the United Kingdom Government, but we did confirm that that Isle of Man Government will co-operate with Mr Edwards and the constitutional unit of the Home Office in the review in the clear belief that a full and impartial review will validate the Island's existing legislation and regulatory systems.

There were a number of points on which we sought clarification, in particular the issues to be examined, the documents to be produced, the persons to be involved, the outcome of a similar review which is said to have taken place in respect of dependent territories, and the handling of the report once the review has been completed. Without in any way wishing to delay the review, we are keen to ensure that the ground rules for the review are properly established and understood.

We understand that Jersey and Guernsey will be responding this week to the Home Office letter of invitation and that they are likely to respond in broadly similar fashion.

One of the questions answered yesterday in the House of Commons confirmed that it is not part of the terms of reference for the reviewer to recommend changes in the island law. The review is said to be basically a mapping exercise to establish clearly with the islands how the islands' current laws and regulatory systems operate in practice.

Also on Friday of last week we had our first contact with Mr Andrew Edwards who is to conduct the review. We received an initial letter in which he suggested some possible dates for his visit to the Island. We have responded to Mr Edwards but have had to say that we are not in a position to agree a timetable with him until we have confirmed what we have described as the ground rules with the Home Office. Nevertheless we hope to be able to agree a programme with him, as we would certainly wish him to complete his review within the six-month timescale proposed by the Home Secretary.

I think that brings members up to date. We remain unhappy with the way the announcement of this review has been handled by the Home Office, although we have no problem with co-operating with the review. We think our response has been a responsible one

and we have been pleased with the endorsement of our stance by a number of prominent members of the Island's business community who share our view that we have nothing to hide and that there may well be considerable benefit for the Island from the review if, as we expect, it confirms the quality of our legislation and regulatory arrangements. Thank you, Mr President.

**Mr Lowey:** Mr President, is it permissible to pose some questions on the statement?

**Mrs Christian:** I will endeavour, Mr President, within my brief, to answer the questions.

**Mr Lowey:** Thank you. First of all, Mr President, I think the statement is to be welcomed but it does raise one or two questions that are still clouded in a little bit of mystery.

First of all I do wonder just what the Home Office thought they were playing at in informing the Governor so that he could prepare a position. What position does the Governor play in the political life of this Island for the last few years while we have been disengaging him from politics? It does seem to me to be a gulf of difference between what the Home Office perceives as the role of the Governor and our perceived role.

Secondly, the statement has not mentioned the position of the permanent civil servants who have been embroiled in this, and I use the word in the plural, 'servants', because there only appears at the moment to be the Chief Secretary that has been publicly involved. Is it correct that the Chief Financial Officer was informed and was sworn to secrecy and was the Attorney-General informed and sworn to secrecy? Because the two civil servants that I mentioned first, the Chief Secretary and the Chief Financial Officer, are directly, I would have thought, answerable only to the Chief Minister and the Council of Ministers and if that is the case, then there is a serious breach there and somehow I do not see how they can be divorced because I do believe in the sound government of the Isle of Man that this needs to be clarified at the earliest opportunity.

Could I also ask the minister? I believe our Chief Minister has been put in a doubly embarrassing position. He obviously inadvertently misled Tynwald, and I can appreciate that, although it does seem to me almost inexplicable that the Chief Secretary should be sitting in the Court while the Chief Minister made that statement, and I find that offensive. And secondly, when the Chief Minister reported privately to the members on Thursday, I appreciate he was again in a very difficult position, having just discussed it with his colleagues in the Council of Ministers in the morning and was due to meet the Governor in the afternoon, so that he could not divulge very much of what went on in the Council of Ministers. So again I think the Chief Minister had been placed again in an impossible position. I do not think that is acceptable to anybody round here, and I have the greatest sympathy for the Chief Minister and the Council of Ministers in this but I think it has got to be cleared up and cleared up quickly as to the role of the civil servants that serve the Isle of Man Government.

**Mrs Christian:** Mr President, I think all members would share the view of the hon. member in that the role of anybody in relation to this incident, particularly any civil servants who may have been involved, does need clarification and I am quite sure will be a matter which is discussed to identify where the difficulties are and where any changes need to be made. I understand that the Chief Secretary's job description puts him in the same relationship with the Chief Minister as it does with the Lieutenant-Governor and there seems, it would now appear, perhaps to be a difficulty because we all feel, I think, that the Chief Minister's position is invidious in all of this and it may be now that there will be some examination of that job description.

**Mr Lowey:** But could I press the minister? If it happens this week - and there have been questions asked in the House this week, sir - what is the position? And if the Governor said

again to the civil servants, 'Where are your loyalties? I want you to keep this under wraps' or whatever the terminology is, the Chief Minister could be put in that position. So while we talk and say, 'Yes, we will look at the job description', I would have thought we would have been looking at the job description last Friday morning, and I press the minister to convey my view anyway that the position cannot wait until after the meeting. This is in our hands and should be rectified now.

**Mrs Christian:** I take the point the hon. member is making. The Chief Secretary's job description puts him, as I say, in the same position in relation to the Governor as to the Chief Minister. No doubt the Chief Secretary felt some discomfort about the position in which he was put. My understanding is that if there is no conflicting instruction from the two parties to whom he is responsible he does not consider there is a difficulty, but we may take a different view from that and I am quite sure will wish to resolve this particular issue.

**Mr Luft:** Mr President, whilst accepting all that the hon. member Mr Lowey has said, there is something which accentuates, to my mind, and emphasises the totally unsatisfactory way in which these communications were made, and that is new to me this morning, and that is that not only were the Lieutenant-Governors of Guernsey and Jersey informed but the Bailiff of Jersey. Now, if the Bailiff could be informed I see no reason whatsoever why the Chief Minister should not have been informed and I entirely agree with the other remarks he has made.

**Mr Radcliffe:** I just have a question to raise. I agree with everyone else that the whole affair has been handled very badly, or it would appear to have been handled very badly, by the Home Office in a very ham-fisted way, but I think it has been sensible of Council to welcome the inquiry because I feel that the Isle of Man particularly has nothing to hide. But I would ask, have the Council of Ministers asked for the review to be done separately on each island? Are they to be done individually or done as a group?

**Mrs Christian:** No, Mr President. I hoped that had been made clear by the communication from the Chief Minister to members, that we are firmly asking that the individual Islands be considered separately and reported on separately because of the different legislative structures in the different islands.

**Mr Radcliffe:** And has there been no response yet to that request?

**Mrs Christian:** There is no response yet as far as I am aware.

**Mr Lowey:** The minister did not directly answer. Was there more than one civil servant involved or were there more? Or is it, as I am reliably informed, the three main people that I have mentioned?

**Mrs Christian:** I understand that there were three involved, yes.

**Mr Lowey:** Thank you.

**Mr Waft:** I think, Mr President, that in view of the ramifications of this situation we have seen a review of the Governor's situation over the years being diminished. The position of the Chief Secretary also needs to have his relationship with the Governor examined as well and the implications for civil servants who have been put in an invidious position because it is quite wrong for them to be put in that position, and I think the constitutional committee who are examining the external relations of the Island should be fully informed and a full examination of the facts of the case be referred to them.

**The President:** Do you wish to respond to that comment?

**Mrs Christian:** I will note that comment, Mr President, and convey it to the Chief Minister and the Council.

**The President:** A comment, Mr Attorney?

**The Attorney-General:** Mr President, I think it is only correct that I should confirm my position in relation to this matter in so far as a question was directly put to the minister.

It is perfectly correct that I was notified of the announcement from His Excellency. The matter was conveyed by His Excellency to the Chief Secretary and at the same time it was also referred to me, again on the same terms that it should be referred to me in strictest confidence. It was only indeed when the matter came before the Council of Ministers, I think on Thursday last, that I had to advise the Council that because the matter was referred to the Chief Secretary and to myself in the strictest confidence, the correct approach as I saw it was then for the matter to be referred to His Excellency in order that he might, if he thought fit, release the recipients of that information from the confidence, and it was, I think, only after the Chief Secretary spoke to His Excellency on the telephone in the course of the Council of Ministers' meeting that that confidence was released and the matter then became in the open forum, as it were.

But I think it is only correct that I should convey that information to you because obviously the minister would not know that.

**Mr Radcliffe:** Could I just ask one, with permission? It is a follow-up on Mr Lowey's comments, really, Mr President, and he has said that the CFO, the Chief Financial Officer, was informed. I do not know whether the hon. minister can say whether that was or was not the case. Mr Lowey said three: the learned Attorney-General and so on.

**Mrs Christian:** Yes, I am informed that the Chief Financial Officer was informed on a confidential basis. The point made by the hon. member Mr Waft is that those officers, having been given that information, were placed in a very difficult position.

**Dr Mann:** I think we all have to accept that this was a most appalling situation. In years gone by a Labour government in the United Kingdom has always acted very correctly in the constitutional relationship between the UK and the Isle of Man and this is the first time that a Labour government has in fact acted in this way. I consider the matter quite appalling, but having said that, we cannot turn the book back, it has happened, and what is most important of all is that we get our act together and have a very robust way of answering the potential depths of the inquiry.

The UK is perfectly well aware of our legislative programme. They, after all, have to give Royal Assent to it, so they know exactly what our legislative situation is. I think it is very important that we - and I am sure we will as a group of ministers - ensure that there is a robust response to the final part of their inquiry, that is, the impact that the finance sector has on this economy and on the economy of the United Kingdom, and I think it will be found beyond any doubt at all that it is actually to the advantage of the United Kingdom to have the finance sector here in the Isle of Man and we must ensure that that is the ultimate result.

**Mrs Christian:** Mr President, may I just add, in response to the question from my colleague Mr Luft, my information is that the Bailiff of Jersey was copied into the information in the absence of the Lieutenant-Governor in that Island.

**The President:** I wonder if I can ask the hon. member a question. Is it the intention of the Council of Ministers to terminate the dual role that is being played by the Chief Secretary and the Chief Financial Officer?

**Mrs Christian:** Mr President, I am sure the role of those two civil servants will be under scrutiny and will have to be if we are to avoid this sort of situation happening again.

**Mr Lowey:** I think the question has to be posed, should it have happened in the first place?

**Mrs Christian:** My understanding, sir, is that in the way in which the Chief Secretary's job is drafted in particular he has this dual responsibility. Obviously if you have dual responsibility it has potential for conflict, and that needs to be resolved. My understanding is that when the powers of the Lieutenant-Governor were changed this was an issue which was debated at that time and was resolved in the particular fashion which has led to this problem at this point. Hitherto it has not created a difficulty, but clearly if you have two masters it does have the potential for a problem.

**Mr Lowey:** I would have thought it was quite clear that there is only one master and that is that he is the Chief Secretary to the Council of Ministers and his terms of reference, which we have all had a copy of, quite clearly state that, and there could and there should not have been a different interpretation of the role in my view, because of the powers being diminished over the years of the Governor in the political sphere, and let us face it, every time we have spoken about the Governor's role we have made him into a vice-regal position and the political input is being whittled away to nothing. And I think that is open, it has been quite clear, and how anybody then can interpret, 'Well, because I'm Chief Secretary I owe my first allegiance to the Governor of the Isle of Man and not the politicians', and I use that word in its adjective sense. The Chief Secretary is the Chief Secretary of the Isle of Man, the Chief Minister and the Council of Ministers, and I cannot see how anybody could have interpreted that particular job in any other way than he has his responsibility to the government of the day and not to the Lieutenant-Governor.

I am sorry. It is not a personal thing, it is the office that I think is quite important, and I just find it difficult to comprehend how anybody can interpret that position as a first loyalty to the Crown, i.e. the Governor.

**The President:** Perhaps in relation to this one the minister might also indicate when the contract was entered into with the Chief Secretary on these terms.

**Mrs Christian:** Mr President, I have not got that information. I have no idea when.

**The President:** It is not a new thing?

**Mrs Christian:** No. These questions, I am sure, are all up for examination now. My understanding is that it was when we changed the Governor's roles and functions.

**Mr Barton:** Mr President, just a brief comment. The way I look at it, this new government, this new Labour government, of course it is so many years since they were in office one almost gets the impression they are totally unaware of the change of relationship over the years, it would appear, and I would say the constitutional relationship committee, which I think someone has asked that they should be addressed, should bring and update the Home Office on the situation.

**Mr Lowey:** But the same civil servants are running the Home Office. Forgive me, I do not think that holds water. The reality is 'The King is dead: long live the King.'

**Mr Brown:** You don't think so.

**Mr Lowey:** It is the civil servants there that know the constitutional position and that is why I posed the question at the start: how did the Home Office think that the Governor's role was the role that they have applied to it? Because I am quite sure Jack Straw would not know the difference between -

**Mr Barton:** But there are a load of new civil servants at a senior level in there because they have changed in the last three years.

**Dr Mann:** They would have been advised and they did not take any notice of the advice.

**Mr Barton:** Right.

**Mrs Christian:** We are all asking the same question, Mr President, and make our own suppositions as to why these things have happened.

**Mr Lowey:** Indeed.

**Dr Mann:** And that would be a political motivation and that is what we have got to be aware of.

**Mr Lowey:** I thank the hon. minister for the courtesy extended to the members by answering the questions.

**Mrs Christian:** I will convey your message to the Chief Minister.

### **Companies (Transfer Of Domicile) Bill - Second Reading Approved - Clauses Considered**

**The President:** Right, hon members, on to the agenda. For consideration this morning, hon. members, we have the Companies (Transfer of Domicile) Bill and I would invite the hon. Mr Radcliffe to take the second reading of that Bill.

**Mr Radcliffe:** Thank you, Mr President. This is a Bill that is promoted by Treasury to introduce into Manx law a facility by which companies meeting certain criteria will be able to effect a transfer of their domicile to the Island from another jurisdiction and provides for the reciprocation of this particular action. In other words they can move from the Isle of Man as well.

This piece of legislation allows for the continuity of life of a migrating company and obviates the usual winding-up and dissolution process attaching to companies which would otherwise have to deregister and discontinue their corporate being and reregister with a fresh incorporation in the new jurisdiction in order to attain a new domicile of choice.

I should like to stress right at the beginning that the eligibility to take advantage of this facility has been made very, very narrow as it is intended to be aimed only at public companies whose securities are listed on a recognised stock exchange and their subsidiaries. We are therefore talking about a relatively small number of companies being attracted and hopefully far fewer being eligible to leave. In other words the intention of this Bill is to attract quality companies, not quantity of companies. This accords with the policy of Treasury and is supported by the Financial Supervision Commission, though there are others who would undoubtedly like to see the wider application of this legislation and would like to see the ability to move companies en masse irrespective of size, pedigree, track record or indeed dirty linen. This is not the intention of this Bill. It is far too narrow and tight to enable that sort of thing to happen.

In the first instance, the criterion that we have imposed that companies will be listed or be subsidiaries of those listed is based on the fact that such companies distinguish themselves through being subject to more strict disclosure requirements about their ongoing operations and to various codes of conduct concerning insider dealing, takeovers and mergers, corporate governance and so forth. Information on these large PLC companies is more accessible and is generally in the public domain and there is more evidence of their track record than for some others. That is not to say that simply accepting a company on the basis of its listing is enough, as we would accept that this is no absolute guarantee of company standing.

The mechanism for approving a transfer of domicile under this Bill reflects a full application procedure in which all rights of creditors, shareholders, litigants and others are

preserved or taken into account and all available information about a company will be considered by Treasury before any migration is approved. We are especially concerned that the migration of companies is properly controlled and, again I stress, the quality of these can be upheld.

There is a close precedent to this Bill in the form of the Insurance (Amendment) Act of 1995 which hon. members may recall facilitated the inward and outward migration of captive insurance companies. In fact these two pieces of legislation are intentionally very similar in the interests of consistency of law as far as possible. However, the scope and application of that Act is strictly confined to captive insurance and, I might mention as a point of interest, has worked extremely well and we have indeed attracted a small number of valuable captive insurance companies and they are adding to our Island's economic base as a result of that piece of legislation.

Treasury is encouraged at having identified a small number of companies fulfilling the eligibility criteria under the current Bill which already wish to take advantage of the legislation when it is enacted. The legislation is in fact of particular attraction to those major corporate groups which already have some presence on the Island and by virtue of the positive experience of that presence would wish to consolidate additional parts of their operation here without disturbing existing corporate structures and relationships or the need to enter into the novation of contracts.

The mechanics of the operation of the Bill and the checks and balances within it are matters of considerable detail and I will of course go into those in the clauses stage.

It may be of assistance to hon. members if I were to say that the Bill consists of 19 clauses and can be divided into three parts.

Part 1 is concerned with companies migrating to the Island or their continuance here.

Part 2 is concerned with provisions for the outward migration of companies or their discontinuance here. This is an essential part of the Bill of course, although clearly not one which Treasury would wish to encourage the use of.

It should be explained that the potential outward migration of companies is on much the same criteria for eligibility as applies to those who would seek to move in. In other words there is reciprocity in the application of provisions for inward and outward migration. This is arguably - and perhaps the learned Attorney-General would comment - an equitable approach in law. Moreover it is the accepted form of this legislation in virtually all other countries with similar legislation permitting this, which, incidentally, is another prerequisite of redomiciliation being able to take place at all. In other words the country they move from to here or from here to a particular country, they have to have similar legislation so the reciprocity is there.

Of the numerous countries which we understand have legislation permitting redomiciliation, probably Luxembourg, Switzerland, Bermuda, Cayman and Liechtenstein are of most interest to the Island as areas of potential business.

Part 3 of the Bill deals purely with matters miscellaneous and general but it is essential, of course, for the proper operation of the Bill.

I would just give a brief overview, Mr President, and I beg to move that the Companies (Transfer of Domicile) Bill 1997 be read a second time.

**Mrs Christian:** I beg to second, Mr President, and simply say that we note that it is a reciprocal arrangement and that there can be two-way traffic, but as this is a plank in the armoury of the financial sector I think it is to be welcomed because it puts us on a par with other jurisdictions and we will hope to encourage people to come to the Island rather than

moving the other way. The hon. member has referred to its value in the captive insurance sector. I think that there has been some movement both ways, but I would hope that the net result has been beneficial to the Island.

**Mr Barton:** Mr President, I wonder whether the hon. mover in his reply or perhaps subsequently when we deal with clauses could cover one or two points. He mentioned in his introduction about the subsidiary companies are probably already here or they could be subsidiaries of a parent company and some of these companies already have a presence. So perhaps could he enlighten me as to what is the advantage of this change? That is the first question.

One would assume that if they are already here or it is a subsidiary, they will employ local staff, and later on in the Bill it talks about insolvency et cetera and different things. Are we talking about the local company being such? And if that was the case, would the parent company then be responsible in relation to the staff or does the Isle of Man and its national insurance fund have to stand redundancy et cetera?

So I am just trying to find out what are the advantages of this if they are already here, and in his introduction he was talking about subsidiaries, they would be a subsidiary of the parent company. That implies that they are not moving lock, stock and barrel from the other jurisdiction to here.

**Mr Waft:** Mr President, I think it is the ability to move to and from the Island. I take it that is the principle of the Bill.

With regard to the reciprocity, you mentioned Luxembourg, Switzerland, Bermuda, Cayman and Liechtenstein. Are those the only countries that are involved and so there will only be an interchange between those five jurisdictions? Is that correct?

**The President:** Reply, sir.

**Mr Radcliffe:** Thank you, Mr President. If I could deal with the last point first from the hon. member Mr Waft, no, these are not the only countries that would have this sort of legislation but we think of these as fairly close by, that those are the ones which will be of interest to companies to move either to or from the Isle of Man. Other countries certainly in the world have legislation which permits this sort of thing but we have, as I say, identified these as the more likely venues for movement to or from, but there is certainly nothing to prevent, if the current proper legislation is in place, companies from moving from elsewhere. As I say, these have been just identified as potential areas which they may or may not come from.

**Mr Waft:** Though not the United Kingdom?

**Mr Radcliffe:** No, it would be outside of that, I would say.

I thank my seconder for the support and the welcome. What we are seeking to encourage to move in is quality of course, not quantity, as I said in my opening remarks, and I would agree with her statement that captive insurance companies have moved in from other domiciles and they certainly are of benefit to the Isle of Man. Again it is a selective process. They cannot just uproot and say, 'We want to move to the Isle of Man.' There have to be many and various hurdles that they have to get over before they are welcomed into the Isle of Man.

The hon. member Mr Barton - well I think regarding the advantage of change, I cannot answer for a PLC as to what advantage they may or may not see in moving to or indeed from the Isle of Man, but I would say that the safeguards which are incorporated in the Bill will be enough to ensure that there will be no or little risk of insolvencies anyway. As I pointed out again, it is quality we are after. There are not going to be very many, if any. The legislation will be there. We do not anticipate more than a handful taking advantage of it. There may be

many others who would wish to take advantage of it, but as I stress again, it is quality we are after, not quantity, and the Treasury will be, I would suggest, quite selective in who they will or will not welcome to the Isle of Man. I hope that answers the hon. member's query.

**Mr Lowey:** Could I just keep on that one point, with your permission, Mr President? The mover says we are after quality, not quantity, he says a small number. Who will actually vet them? You said the Treasury. Is the Treasury going to vet all the companies now that want to apply to join the Isle of Man? In other words how will you vet them? In other words if every company is going to be registered in the Isle of Man and wants to go into this category, that means if you have 100, who is actually going to vet them? Is there a registrar or is it just going to be the Chief Financial Officer or somebody nominated by the department?

**The President:** Back to your reply, sir.

**Mr Lowey:** Indeed, sir; sorry about that.

**Mr Radcliffe:** I would suggest that the various offshoots of Treasury such as the Financial Supervision Commission and so on and indeed the regulatory authorities in the domicile in which they come from will provide information perhaps that Treasury will require in order to make a reasonable and reasoned judgement. I do not think there is any danger of a hundred queuing up to take advantage of this in any case, so there is not going to be a requirement for another empire to be built just to look at this question, but the regulatory authorities on both sides will be able to advise Treasury as to who or who is not acceptable.

**Mr Barton:** Mr President, could I just come in?

**The President:** Hon. members, now, let us get this straight. We are not in committee yet and we did have a second reading debate. The hon. member was replying to it and I think I must draw the line somewhere and you have concluded your reply, sir, haven't you?

**Mr Radcliffe:** Indeed, sir, yes.

**The President:** Right, well, I am going to put the resolution that the Companies (Transfer of Domicile) Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. On to the clauses. Clause 1, hon. member.

**Mr Radcliffe:** Thank you, Mr President. If I could just put my notes in order, clause 1. This clause is fundamental to the operation of the Bill and defines the whole scope and application of the operation of part 1 of the Bill indeed.

The subject of the application of the Bill has been a matter for much discussion and deliberation both within Treasury and between Treasury and other interested parties. The issues which emanate from the application of this clause and indeed the Bill as a whole are concerned with quality - and I stress that over and over again - and control over businesses migrating to and from the Island and indeed the maintenance of the Island's good reputation. Treasury, supported by the Financial Supervision Commission, is of the view that only quality businesses should be permitted to be facilitated by this mechanism and then only after consideration of all the facts relevant to the intended migration in each case. Treasury has decided to confine the ability for companies to migrate to only those companies which are listed on a prescribed stock exchange or subsidiaries of such bodies.

It may be helpful to explain here a point which is defined later in the Bill, that for this purpose Treasury will be able to prescribe those stock exchanges which would be recognised for this purpose. In other words Regaby stock exchange will not be acceptable. It has got to be a reputable stock exchange that they are quoted on.

The relatively narrow scope of this Bill with regard to its application only to public companies whose securities are listed on a recognised stock exchange and their subsidiaries

is down to the fact that these represent our primary target businesses and indeed there are a number of such businesses already identified as wishing to take advantage of the Bill to move here.

It is a rather prolonged and agonising explanation of this clause 1.

Such companies that are intended to be covered by the Bill by virtue of their listing are subject to a substantial disclosure of information and the recording of significant events and influences on their economic fortunes in the public domain. We would accept that this in itself is not absolutely foolproof and there are therefore other provisions within the Bill whereby Treasury will seek to avail itself of and consider all information before making a decision on an application.

We are not interested in creating a free-for-all where there might be an unchecked flow of nominally capitalised or unvetted companies in and out of the Island en masse, as some might have us do, with the resulting potential for criminal activity and abuse. This would clearly be undesirable and a nightmare for those who would seek to administer and control it.

I would beg to move, Mr President, that clause 1 should stand part of the Bill.

**Dr Mann:** I beg to second and I think the hon. member's answer underlines the fact that we are only inviting listed companies from stock exchanges, which means that almost certainly the full financial details of that company are known on an annual basis, their prospects are known on a six-monthly basis and their total assets are clearly identified. So when you talk about who is going to sift the information in the Isle of Man, I think the critical knowledge is going to be freely available and I would not have thought that it would involve a vast amount of additional expertise in the Treasury to identify those that are worthy and those that are not.

**Mrs Christian:** Mr President, part 1 (b)(iv) allows the Treasury to exclude businesses which may be prescribed. I wonder if the mover could indicate whether the Treasury have in mind any particular categories or whether this is a catch-all for future use.

**Mr Lowey:** Well, Mrs Christian has actually taken the point that I have picked up on. While I understand everything that Dr Mann has said and the hon. mover has said, and in fact he used the words we have got some primary target businesses and in certain jurisdictions, and I understand that, then I ask myself why then have part (iv) in, 'such other business as may be prescribed'? Now, the first three deal with banking, insurance and financial investment business. That I can understand. And then we have this all-embracing 'and any other business which the Treasury could prescribe', and I have picked up on that one. So I take on board what Dr Mann said, that there will only be a few of them at the moment, but does this little clause here allow any other business that may be nominated on the stock exchange, that perhaps we have not got expertise in but which is very lucrative, and then the Treasury could prescribe? And perhaps the mover could inform us whether the other businesses that may be prescribed would need Tynwald approval or would that just be at the discretion of the Treasury?

**The President:** Reply, sir.

**Mr Radcliffe:** Can I just say that this clause, hopefully when this is enacted, is going to be in place for a long time. There is no telling what may or may not develop in the future and it is, I think, sensible to have a section in, such as in (iv), that such business may be prescribed. One cannot tell what may develop in the future, so at least it is covered without having to muck round with the main Act again if something turns up that you wish to do and cannot do unless this is in the Act, So I think, as the hon. member Mrs Christian said, it is a sort of catch-all portion of this clause and it will enable Treasury in the future to be able to prescribe

something. One cannot tell, none of us, or at least I have not got a crystal ball anyway. I do not know what may or may not happen in the future and at least this is covered.

Tynwald approval is required and the negative procedure for various portions of this Bill. Can I move, sir, that clause 1 stand -

**Mr Luft:** Could I just mention I would just like to support what the hon. member Dr Mann has said, that there is this fine mesh that if the stock exchange is to be prescribed, then it is going to be a reputable stock exchange and they have the strictest rules of course as to who may be members of that stock exchange. That means, too, this clause refers to what we in the law of the Isle of Man and England call public companies. They are the only companies who will be eligible under this Bill, whether they are Manx or English.

The other point just to mention is in clause (1)(i): 'banking business within the meaning of section 1(1) of the Banking Act 1998'. I assume that is the Act which has not yet reached the Keys, so this Act, I take it, will not be forwarded until that Bill is passed.

**Mr Radcliffe:** Yes, I must agree with the learned member. I do not know if the learned Attorney-General could cast any light on that but I think his comment there is quite correct, sir.

**The President:** Have you any point to make, sir?

**The Attorney-General:** I think that must be so, Mr President, and presumably therefore the Bill, if it is enacted, will of course be the Companies (Transfer of Domicile) Act 1998 and it will come into force after the Banking Act 1998.

**The President:** May I put the resolution then, 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.

**Mr Radcliffe:** Clause 2, Mr President, deals essentially with the mechanics of the application to be made under part 1 of the Bill to re-establish in the Island and provide some of the safeguards considered essential to the protection of all stakeholders purporting to have an interest in the movement of a company.

Sub-clause (1) is a simple statement that an offshore company as defined under subsection (1)(iii) may apply to Treasury for consent to be a company continued in the Island as if it were a company formed under the Companies Act 1931 and subject to other relevant laws of the Island.

Sub-clause (2) defines that Treasury may prescribe the nature of the application form for the purpose of this part and lists items which must accompany the application, and briefly these may be summarised as (a) a memorandum of continuance, being essential constitutional details as may be prescribed and required by Treasury; part (b) proof of consent from all the necessary authorities in the original jurisdiction of the company that it is entitled to make the application; (c) accounts of the company audited to Treasury's satisfaction for its year-end within 12 months prior to the application; (d) details of all charges in the order in which they will be registered, being charges to which section 79 of the Companies Act 1931 would apply; (e) copies of the written consent of the charge holders to the said charges both to the making of the application and the order of charge registration; (f) a certificate from a local advocate or registered legal practitioner that the application complies with part 1 of this Act and all matters precedent and incidental have been complied with and (g) any other information or documents if required by Treasury.

Sub-clause (3) continues with the mechanics and requirements attached to the making of an application and these three are requiring an applicant company to announce its intentions to redomicile in the press both here and in its jurisdiction of origin, together with its name and

place of business. The requirement here for publication in just one newspaper in the jurisdiction of origin is because there may be an occasion when only one newspaper is published in such jurisdiction and the condition for more than one could not be met.

Sub-clause (4) provides for occasions when the publishing requirements of section 2(3) may be waived by Treasury, but only in such exceptional circumstances that Treasury might consider this waiver reasonable. An example perhaps might be that if in fact there was no suitable publishing medium to fulfil the requirements of section 2(3).

Sub-clause (5) explains that the terminology to be used in part 1 for the purposes of describing an offshore company which has been granted consent to continuation in the Island will be 'a continued company'.

I think that explains the various sections of clause 2, Mr President, and I would beg to move that clause 2 stand part of the Bill.

**Mr Luft:** Mr President, I wonder if it is the intention of the Treasury to refuse to accept an application from an offshore company which otherwise complies, which is domiciled in a country which does not participate or having as part of its law this particular provision?

**The President:** Will somebody second it, please?

**Dr Mann:** I will second it.

**The President:** Thank you. The hon. member Mrs Christian.

**Mrs Christian:** Mr President, I understand the explanation of the hon. mover in relation to (3)(b) about one newspaper circulating throughout the country or territory, given that there may only be one. However, I think we recognise even in the Isle of Man that some newspapers have extremely limited circulation and whilst I would not propose any amendment, I would just have a little concern perhaps about that one. I accept where there is only one, you have no alternative, but I should have thought that we might have required it to be circulated in more than one where there was a possibility of so doing.

**Mr Waft:** Mr President, it is just a clarification of the offshore company with regard to Luxembourg, Switzerland and those types of places. I take it offshore must mean offshore from the Isle of Man and that is why it has been couched in these terms, offshore being outside the Isle of Man. Is that correct, Mr President?

**Mr Lowey:** Could I just add? Again I think it is really following on the point from Mrs Christian. I can understand, as Mrs Christian said, we know of the *Peel City Guardian*, for example, or the *Ramsey Chronicle* or whatever, but the principle there encapsulated in number (4) is that wherever possible it should be circulated so that people can see what is going on and read what is going on and then in the next breath the Treasury may waive the requirement of sub-clause (3), if it considers the circumstances are such that it is reasonable to do so. It seems to me we are getting away from a principle there. The principle is wherever possible you should advertise the fact of what is going on and yet we reserve the right to waive it if it is unreasonable to do so. It seems to be a contradiction, if anything.

Could I again pose the question, I think, that my friend Mr Barton actually raised, regarding subsidiaries of companies? Is it right, regarding the subsidiary of a company if it went into liquidation or it had got problems, would this clause actually deal with that? In other words if it is a subsidiary of a major company that is actually quoted on the stock exchange, does it all apply? In other words does the major company have to then pick up the pieces from its subsidiary?

**Dr Mann:** Then the subsidiary becomes the main company.

**Mr Lowey:** Does it? Well, that is okay. That is the point I am trying to get at.

**The President:** Reply, sir.

**Mr Radcliffe:** If I could deal with the last hon. member first, Mr President. I think, as the hon. member Dr Mann says, my understanding is that a subsidiary becomes the main company if there is that situation arising. Perhaps the learned Attorney can clarify that later on. So I do not think the fears are well grounded, but there could be big problems and of course the vetting procedure is going to be strict anyway.

**Mr Lowey:** Yes.

**Mr Radcliffe:** The hon. member Mr Luft asked about refusals. If the country that a company proposes to come from has no reciprocal law, they will not be welcome in the Isle of Man because the requirements cannot be met. So it is essential that a company they are going to come in from has the same law as the Isle of Man so that all the requirements can be met. So if there is no reciprocity in legislation, there would be no welcome here either.

The hon. member Mrs Christian raised the question of advertisements. Treasury will ensure as far as possible that advertisements are properly placed so that residents of a country that a company is proposing to move from are aware of the move. There could well be problems there which require to be sorted before a move can happen and in fact I stated in one of the sub-clauses here that it is for the protection of shareholders in the company of origin. A strange country where there is no newspaper at all - I cannot think of one anywhere where one could not place an advertisement in a local newspaper, even if it is only a *Peel City Guardian*-type thing in some countries perhaps. *(Interjections)* Well, I think again one has got to think about what may or may not happen in the future and this is again a sort of catch-all so that if the need should arise 10 or 15 years in the future, Treasury will have the power to waive that if it so desires, but it would be a strange thing, I think, if this particular section was used.

**Mr Lowey:** Mr President, isn't this a contradiction, though? The principle we accept and we all accept is that wherever it can be possibly done it should be done, and yet we reserve that right that, 'Well, hang on, if it does not meet our requirements, we can waive it.' It does seem to me we are having our cake and eating it too.

**Mr Luft:** A country may have no newspaper at all.

**Mr Radcliffe:** Well, that is possible, I suppose. I do not know. I honestly cannot answer this particular query. I think if there should be such a country in the world, a small country of some sort, I cannot think ever there would be a case where there would be no newspaper of any sort that one could advertise in.

Could I just say to the hon. member Mr Waft that 'offshore' I think is outside of the Isle of Man, as I understand it. It is just sort of a name, anyway, 'offshore company'.

**Dr Mann:** It is defined in the Bill.

**Mr Luft:** Yes, it is in the definitions.

**Mr Radcliffe:** I beg to move, sir, that clause 2 stand part of the Bill.

**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.

**Mr Radcliffe:** Clause 3, thank you, Mr President, a short clause dealing with Treasury's consent.

Sub-clause (1) requires Treasury to either consent to or refuse an application under sub-clause 2(1), but it does allow, and very importantly, Treasury to make such other enquiries as it considers appropriate in addition to considering the contents of the application. So we can send the spies out, in other words, to see what is really going on.

Sub-clause (2) requires the decision of the Treasury to be conveyed in writing. A telephone call is not going to be sufficient.

Sub-clause (3) allows time for an applicant company to organise its affairs by stating simply the Treasury's consent, where given, shall be valid for a period of three months provided there is no material change in the information which was submitted by the applicant.

A short clause, Mr President. I beg to move that clause 3 stand part of the Bill.

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

**The President:** I will put the resolution, hon. members, that clause 3 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.

**Mr Radcliffe:** Thank you, Mr President. Clause 4 deals with the process of registration of a company which has received Treasury consent under clause 3(1). Specifically, in clause 4(1) it requires delivery of the following items to the Chief Registrar and there are five: (a) the written consent obtained from the Treasury; (b) the memorandum of continuance as specified under clause 2(2)(a); (c) the articles of association, if any, conforming to the Island's legal requirements; (d) particulars of any charges to be registered under section 79 of the Companies Act and in a form to be prescribed by Treasury; (e) a director's statutory declaration, made not more than seven days before delivery, to the effect that there has been no material change in the original information submitted by the applicant.

Sub-clause (2) covers the registration action to be taken by the Chief Registrar on prompt delivery of all the particulars and includes the registration of the memorandum of continuance and the issuing of a certificate of registration in a prescribed form, the entry of charges in the charges registrar in the order of priority submitted, being the order in which shareholders consent has been given and the issuing of a certificate of registration in recognition of each charge registered.

Sub-clause (3) simply states that the memorandum of continuance has the effect of being the memorandum of association of a continued company. Sub-clause (4) is in effect an addendum to clause 4(1)(c), that in the absence of any articles of association being deliverable to the Chief Registrar it provides that a continued company's articles will effectively be those statutorily laid down in the tables to section 7 of the Companies Act 1986 and this will be until it adopts its own.

Sub-clause (5) completes the registration process by requiring the continued company to transmit a copy of the articles of association to the competent authority, for example to the companies registrar in the original jurisdiction of origin and within 14 days of the date of such certificate.

I beg to move, Mr President, clause 4 stand part of the Bill.

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

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

**Mr Radcliffe:** Thank you, Mr President. Clause 5 is an important clause which gives effect to the continuation of the life of the offshore company as a continued company in the Isle of Man.

Sub-clause (1) states that the offshore company becomes a company subject to the laws of the Island, especially the Companies Acts, as though it were a company incorporated thereunder as of the date of its certificate of registration and its memorandum of continuance.

Sub-clause (2) serves to confirm that the provisions of the Island's Companies Acts relating to a conventional memorandum of association shall apply, with any necessary modifications to a memorandum of continuance.

Sub-clause (3) similarly confirms that the Companies Acts provisions relating to certificates of incorporation shall apply, with any necessary modifications, to a certificate of registration of the memorandum of continuance.

Finally sub-clause (4) makes it clear that by virtue of deliverance of details of a charge to the Chief Registrar under section 4(1)(d) such a charge shall not become void against a liquidator by reason of it being filed within the period after its creation as laid down in section 79(1) of the Companies Act. However, this does not apply the generality of the operation of Manx law under section 5(1) here concerning the general applicability of the Companies Acts.

I beg to move, Mr President, that clause 5 stand part of the Bill.

**Dr Mann:** I beg to second. I do not know whether this is the correct time to ask, but we are inviting listed companies, that is, companies listed on stock exchanges outside the Isle of Man, and is the effect of continuance also that that listing should be maintained in the stock exchange of its origin or does it have to move to a stock exchange within the United Kingdom? It is easy for a UK company because they would continue their listing in London and after all we have Isle of Man companies listed on the London Stock Exchange, but if it was listed elsewhere, in Europe, say, is it then expected to continue its listing in its country of origin? It is not referred to, but it is an effect of continuance that this is the clause under which continuance is effected.

**The President:** If there is no other comment, sir, reply.

**Mr Radcliffe:** I must admit I am not an expert in company law and stock exchange Law, but I would say that the listing should have to continue in the country of origin if they are still there, but perhaps the learned Attorney may be able to assist on this particular one.

**Mr Waft:** Just on a point, Mr President, regarding the continuance within the UK stock exchange, there is no reciprocal arrangement with the United Kingdom.

**The Attorney-General:** Mr President, it is a very interesting point which has been raised by Dr Mann. I do not actually think that the Bill addresses that point specifically, but I think the clear intention of the Bill is that the company, once it migrates into the Isle of Man, shall become a Manx company to all intents and purposes and presumably it becomes a Manx public company. If it comes vested with the attributes of a public company from outside the Isle of Man I assume that it must, therefore, remain as a public company in the Isle of Man and therefore must, for example, comply with obligations relating to prospectuses and so on and so forth. Equally I would assume that it is the intention that the company would have to comply with the obligations under its home stock exchange. If, for example, it was incorporated in shall we say, Australia and its shares were listed on the Australian Stock Exchange and it applies to be reregistered in the Isle of Man, I would assume that it has to remain as a public company in Australia so far as the listing requirements are concerned, because it is not a point, I think, which is actually addressed in the Bill. Perhaps I could undertake to make some further enquiries on that.

**The President:** Any further points, sir?

**Mr Radcliffe:** No, I am grateful to the learned Attorney for his intervention there, Mr President, and perhaps, as he has said, if he could clarify the situation a bit more on a future occasion it would be helpful to Council, and with that I would beg to move that clause 5 stand part of the Bill.

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

**Mr Radcliffe:** Clause 6, Mr President, is quite a lengthy and important clause concluding part 1 of the Bill and it serves to explain the legal effects and consequences of continuance of an offshore company under this part. In particular it serves to prevent a continued company escaping its obligations in its jurisdiction of origin as well as any legal consequences of its past actions which would otherwise be actionable in law.

Sub-clause (1) states the effects of continuance as being (a) all property of the offshore company continues to be the property of the continued company; (b) all liabilities and obligations continue to attach; (c) all actions, claims and liability to prosecution are unaffected; (d) any civil, criminal or administrative actions pending are unaffected; (e) any convictions, judgments, orders or rulings against the offshore company may be enforced against the continued company.

Sub-clause (2) adds further legal clarification to this by stating that the registration of continuance under part 1 neither (a) creates a new legal entity nor (b) prejudices or affects the continuity of the body corporate which has been continued.

Sub-clause (3) extends the legal principles further by causing the Manx courts to apply the laws of evidence and the rules of procedure with the intent that a claimant against a continued company shall not be prejudiced in relation to a claim that existed prior to continuance and which could have been pursued under the laws of the then company governing the offshore company.

Sub-clause (4) has the effect of applying part 1 of the Judgments (Reciprocal Enforcement)(Isle of Man) Act 1968 to any judgments in a foreign court on any offshore company which has become a continued company under the circumstances laid down in sub-clause (4)(a) to (e). The circumstances which must apply in clause 6(4) are the company who is continued is the judgment debtor; (b) the judgment is given in proceedings concerning a cause of action which arose before the registration of the continued company; (c) the company was incorporated in or had its principal place of business in the country of the relevant court at the time of the cause of action; (d) the judgment is final and conclusive; and (e) a sum of money is due under the judgment.

Sub-clause (5) expands the meaning of a final and conclusive judgment to mean one which may still be subject to appeal or to which an appeal may be pending.

Sub-clause (6) is included to add clarification that judgments for a sum of money under sub-clause (4) shall also mean for taxes or similar charges and also fines and penalties. The point here is that we are again emphasising that a continued company shall not be put in a position of avoiding its debts and obligations arising from its former position as a foreign incorporated company, taking advantage of the redomiciliation process to avoid or try and wipe out debts which existed against it.

Sub-clause (7) is included with the intention of disapplying section 1 of the Judgments (Reciprocal Enforcement)( Isle of Man) Act in any case where clause 6(4) applies to a judgment.

Sub-clause (8) is added for clarification that where part 1 of the 1968 Act applies to a judgment of any court and such application thereto is not continued on the operation of clause 6, then in that circumstance clause 6 shall be read as standing additional to the requirements of part 1 of the 1968 Act which is the Judgments (Reciprocal Enforcement) Act rather than in

derogation of that part. Very convoluted, it seemed to be, Mr President, but I do beg to move that clause 6 stand part of the Bill.

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

**Mrs Christian:** Mr President, I understand the continuance principle, and of course any company may at any time have civil, criminal or administrative action or proceedings pending of various degrees of seriousness; some may not be particularly serious and others may be more substantial. Presumably would such action be taken into consideration when the application to transfer was being considered?

Secondly, under (3) perhaps the Attorney-General can assist. I am not clear here: 'The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of the Island a claim that existed prior to the date'. Does that mean that it is heard effectively under Manx law or is it heard under the law of the prior company or to what extent can Manx law take cognisance of the laws of the other country if in fact they are conflicting?

**Mr Luft:** They would have to take notice under that clause.

**Mrs Christian:** Even if it conflicts with our own law?

**Mr Luft:** Oh, yes.

**Mr Waft:** Just going on from the last speaker, Mr President, the debts and obligations of the company prior to the transfer would, I would take it, be gone into in considerable detail prior to a transfer actually taking place and the importance of the problems that that company has will have a bearing on whether the transfer will actually take place. Thank you, Mr President.

**Mr Luft:** This provision, I think, to which the hon. member has referred, must refer to where the evidence of the law of the Isle of Man and the evidence of some other country is different and under our evidence law it may be prohibited to prove the case under foreign law. This overrules that and it will not be Manx evidence law that will be applied, it will be the law of the other country, and if it is admissible there, it will be admissible here.

**Mr Lowey:** Could I then just pose a question because that is a query? I took comfort from this particular clause because it is quite clearly signposting that we are trying to prevent people using the Isle of Man or the jurisdiction as a bolthole, running away from their responsibilities. I accept that. But am I right in assuming that under this clause and in particular (3), because companies, big companies on the stock exchange, can have a whole multiplicity of different activities, say they were closing a factory down and there was a redundancy problem and then the parent company decided to move to the Isle of Man. Does that mean I as an employee of that particular company would have to pursue my claim for redundancy, to illustrate it, in the Isle of Man, because that company has come here or can I do it in the country of wherever the company was set up and doing business?

**The President:** Mr Attorney.

**The Attorney-General:** Mr President, I think that clause 6 of the Bill certainly makes it clear that merely because the company moves from one country to the Isle of Man, in those circumstances in the example posed, the redundant employee would be able to sue his cause of action in the courts in the Isle of Man and the new company could not say, 'Ah well, your claim was actually against the Australian company and it can't be pursued in the Isle of Man.' The clear intention is that all existing causes of action can be sued out here in the Isle of Man and there can be no escape hole for such a company coming to the Isle of Man.

**Mrs Christian:** May I just clarify then? If the incident which gave rise to any claim occurred before the transfer to the Isle of Man but was not pursued through the courts until after the transfer, would that be under Manx law or under the country of origin?

**The Attorney-General:** I think, Mr President, it would be sued out here in the Isle of Man, but the Isle of Man courts would have to apply the laws of evidence so as to enable the claimant to have the benefit of all the advantages he or she may have had in the courts in the home jurisdiction.

**Mrs Christian:** So that no claim would be heard under a purely Manx law until something happened after the transfer to the Island: is that right? It makes it a little difficult if you are in Australia to pursue your redundancy claim here, doesn't it?

**The President:** Have you any further point to add, sir?

**Mr Radcliffe:** No, I am obliged to the learned Attorney for the various explanations. I would assure the hon. member Mrs Christian that any actions a company may have taken in its country of origin will certainly be taken into consideration here when we are looking at the quality and desirability of attracting a company in, and the same applies to the hon. member Mr Waft's query about debts and obligations: they certainly would be considered when an application comes in. I think that is set out in an earlier clause anyway, that the information required to be given is details of any debts and obligations. So again we are talking about quality and the Treasury will certainly ensure that quality is there before they would be allowed to come in. I beg to - Sorry, sir.

**Mr Waft:** What about the transfer of responsibilities and jurisdictions? For instance, the sexual discrimination Act, which is not in the Isle of Man but it is elsewhere and perhaps a claimant might have difficulty.

**Mr Radcliffe:** It may be in the Isle of Man, Mr President, soon and whether the hon. member expects it I do not know, the sexual equality Bill. I beg to move, sir, clause 6.

**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.

**Mr Radcliffe:** Thank you, and we move into part 2 of the Bill here, Mr President, and clause 7 covers the scope of part 2 and its application to companies which may be discontinued. It provides for exactly the same classes of business to be eligible for discontinuance, with the same exclusions as those found under clause 1 which we have already dealt with for companies seeking to be continued in the Island. The only point of difference between clause 1 which we have dealt with and clause 7 is it introduces the term 'Isle of Man company' which will be used throughout part 2 to refer to a company to which part 2 applies.

It may be helpful to say that clearly Treasury would have no wish to provide any means by which companies might be encouraged to leave the Island. Legislation of this type is to be found in many other jurisdictions and provides for the two-way mechanism and I suppose we have got to say that it is only equitable that it should be the case here in the Isle of Man that the two-way legislation should be there. The case may be that there are not many existing companies in the Island that would qualify under this part anyway and undoubtedly they would cease existence here if they were inclined to do so by the existing provisions of company law for winding up in dissolution in any case, but this again provides for reciprocity and I beg to move that clause 7 stand part of the Bill.

**Dr Mann:** 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.

**Mr Radcliffe:** Clause 8, Mr President, deals with the process of making an application for consent to Treasury for discontinuance here.

Sub-clause (1) provides that the application may be made to the Treasury for consent to discontinuance here and continuance in another country or territory. This assumes that a chosen country or territory has a reciprocal form of legislation permitting redomiciliation, which, for example, Luxembourg does but the UK does not.

Sub-clause (2) defines that Treasury may prescribe the nature of the application form for the purpose of this clause and stipulates various items which must accompany the application and those are covered in (a) through to (e). These are broadly similar but not identical to the requirements of the application for continuation under part 1, section 2.

Paragraph (a) says a certified copy of a resolution of the members authorising continuance in another named country with such resolution needing an order to carry the support of 75 per cent of the members of each class; (b) statutory declarations by all the company's directors that (i) the company is solvent and can meet all its obligations and (ii) creditors' and shareholders' interests will not be adversely affected; and (c) the submission of a copy of a public notice of intention. Such a notice should have been published at least 14 days prior to the application, appear in two local newspapers and one in the country chosen for redomicile and in effect stating that the company will cease in the Island and continue in the new country and that interested parties may direct comments to Treasury within 10 days of the date of publication. In addition (d) requires submission of a binding legal undertaking on the company and its directors that they will accept legal process arising out of actions and omissions before discontinuance, that they will provide a local agent for a minimum of three years to receive such service, that they will accept such service at a specified address in the country of intended redomicile and they submit to the non-exclusive jurisdiction of that country's courts.

Sub-clause (2) continues the procedure by providing under (e) that Treasury should also receive a copy of a notice sent to all the shareholders which has been sent out 14 days prior to the application stating that Treasury will consider written comments from shareholders received prior to the application. In (f) copies of the consent of charge holders under section 79 of the Companies Act 1931 to the making of the application are required, and finally (2)(g) requires a certificate from an advocate or registered legal practitioner that he has made appropriate enquiries and believes the application is in compliance with part 2 of the Bill in respect of matters precedent and incidental.

Clause 8, sub-clause (3) provides for a reversal of a decision by the members of a company, subject to the same majority as required under (2)(a) of this clause and this allows for an abandonment of the application by the directors.

I beg to move that clause 8 stand part of the Bill, Mr President.

**Dr Mann:** I beg to second and I think it is worth stressing that we are talking once again about a listed body corporate and that means that there are only a handful of companies in the Isle of Man that it would apply to and we are not asking any more of those companies than we are asking of companies who have been invited or allowed to move in, so this is an exact mirror image of the conditions of moving in.

**Mr Luft:** If, Mr President, a Manx company, which is a public company of course, wishes to take advantage of this clause the question does arise that I assume they would have to make an application in the country chosen to be accepted there and which would they pursue first? Would they get this consent first or do they go to the other country first?

**Mr Lowey:** Could I pose a question on the 75 per cent, not being an expert in the stock exchange, the majority required? Here it is specifically spelt out: 75. What happens if in Switzerland or Liechtenstein they decide that for consent to be granted they increase it, say, to 80 per cent? I do not know whether it is 80 per cent or 60 per cent; whatever it is. But we are specifying 75 per cent. Now, I presume that is reciprocated in these other jurisdictions, but what happens if the jurisdiction that we are reciprocating for upgrades the majority? We would have to do it?

**Dr Mann:** No company could move unless they fulfilled their stipulation.

**Mr Luft:** It would not be interested, the other country, in what percentage, whether the shareholders agreed or not, I imagine, Mr President, would it? It is not the concern of the other country, it is the concern of the Manx shareholders really.

**Mrs Christian:** Mr President, just on this question of reciprocity, we have in (2)(d) a provision that the company and each of its directors agree to accept service of legal process in the Island and appoint an agent in the Island for a period of not less than three years from the date of discontinuance. Is there a similar provision in the other countries with regard to companies which are coming here and could I clarify, please, what exactly that means? For example, sometimes with large companies you might get a health case brewing up years later. Let us say there was an incident in the Isle of Man relating to asbestos or something but nobody recognised the effect of this until after the company had moved from the Island. What is the effect on any claimant then? Would they claim under the rules of the country to which the company had moved or would they still be able to exercise the Isle of Man rules of the time?

**The Attorney-General:** Mr President, dealing if I may with the first question as to what happens, is there any reciprocity if a company comes into the Isle of Man, and you are contrasting that with the provisions of 8(2)(d), if a company comes into the Isle of Man we have seen that it is actually considered to be an Isle of Man company to all intents and purposes, and that would mean that if a claimant wishes to bring proceedings, he or she or it could serve the proceedings on the company in the Isle of Man at his registered office and therefore the defendant company would be in the same position as any other company incorporated in the Isle of Man. So to that extent the plaintiff is not going to be jeopardised in any way whatsoever.

**Mrs Christian:** But do they have to have an agent in the country from which they have come to work through?

**The Attorney-General:** That point is not addressed in this Bill. It may be that in our example, a company migrated from Australia, they equally would have a procedure whereby an agent has to be appointed to cover claims which arose in Australia before the company came to the Isle of Man.

**Mrs Christian:** Essentially my question is, is that part of this reciprocal legislation?

**The Attorney-General:** It is certainly not in this Bill, no.

But to answer the second question, if we are looking now at a company which was incorporated in the Isle of Man but is migrating to another jurisdiction, it would obviously be very, very difficult and costly for a plaintiff to have to go out to Australia and instruct Australian

solicitors and so on. So the purpose of this sub-clause is to make it clear that as a condition of the migration the Manx company must appoint the directors and also a person who could accept service of proceedings in the Isle of Man. So again, in your example, if there was an asbestosis claim, at least for three years at any rate after the company migrated, the plaintiff could bring proceedings simply by serving the migrated company here in the Isle of Man. The difficulty, though, I suppose, would be if the cause of action, the injury under the asbestosis claim, became apparent to the plaintiff after the three years, because then of course the company would have migrated and the directors and the agent who had been appointed might well have left and they would not have any further obligations.

**Mrs Christian:** No, but they would then have to pursue it in the other territory and have that difficulty.

**The Attorney-General:** Quite.

**Mrs Christian:** Right. Thank you very much.

**The President:** Any further points, sir?

**Mr Radcliffe:** There is little to add really, Mr President. The hon. member Mr Lowey has raised the question of the requirement for a majority vote to move. What we are talking about here is to move out of the Isle of Man. A 75 per cent vote, I think, applies to coming in. It is up to the country of origin again, their law regarding redomicile. It could be that they just want a simple 51 per cent perhaps, I do not know, but certainly for our requirement for moving out from the Isle of Man it is 75 per cent.

The hon. member Mrs Christian raised an interesting point there about agents for three years or so and it is one which I will endeavour to clarify for the next reading of this Bill.

The hon. member Mr Luft raised the point about declarations of discontinuance in the Isle of Man. I think it would be a simultaneous exercise: a discontinuance in the Isle of Man notice with one of the intended domicile again. I think that such a notice would appear simultaneously in both the country they are leaving and the country they are going to.

I beg to move, sir, that clause 8 stands part of the Bill.

**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. Clause 9, sir.

**Mr Radcliffe:** Clause 9, Mr President, is comparatively straightforward. It deals with the granting of consent.

In (1) Treasury is required to either grant its consent or refuse the application, though, importantly, Treasury is empowered to make such enquiries as appropriate and to consider all information available to it in making the decision.

Sub-clause (2) provides that consent shall not be granted in the event that the applicant has not made arrangements to Treasury's satisfaction for the proper discharge of all public debts before the date of operation of a certificate of discontinuance.

Sub-clause (3) provides that Treasury's consent under this part may be in such form as Treasury determines. In other words it can be a conditional consent.

Sub-clause (4) concludes this clause by imposing an expiry date of three months within which Treasury's consent will remain valid, unless within such time continuation of the company in the new jurisdiction takes proper effect.

I beg to move, sir, that clause 9 stand part of the Bill.

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

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

**Mr Radcliffe:** Clause 10, Mr President, covers the necessary filing requirements to achieve discontinuation of a company and its proper recordal with the General Registry.

Sub-clause (1) requires certain items to be delivered to the Chief Registrar within 14 days of the date of the instrument of continuance as issued by the foreign authorities, and before discontinuation in the Isle of Man may be effected these items are Treasury's consent, a copy of the instrument of continuation from the competent authorities in the country of intended transfer, in other words they have got to show that they are going to be acceptable there; and a declaration of discontinuance, including certain terms of information, being, first, the undertaking stipulated in clause 8(2)(d) and, secondly, the name of the country of new domicile and, thirdly, the registered office or place of business in that country.

Sub-clause (2) concludes the process of discontinuance and confirms it has taken effect by requiring the issue of a certificate of discontinuance by the Chief Registrar upon filing of the foreign instrument of continuance.

Sub-clause (3) is included to confirm that a certificate of discontinuance issued by the Chief Registrar is both conclusive evidence of satisfaction of the requirements of this part of the Bill and of a company's discontinuance.

I beg to move, sir, that clause 10 stand part of the Bill.

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

**The President:** I will put the resolution, hon. members, 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. Clause 11, sir.

**Mr Radcliffe:** Clause 11, Mr President, summarises the legal effects of discontinuance in that sub-clause (1) confirms that on the date of the certificate of discontinuance the company is no longer registered in the Isle of Man, while sub-clause (2) provides that the Companies Acts shall cease to apply to the company on the date it is continued under the laws of the new country of domicile. For this purpose the effective date is that as stated on the foreign instrument of continuance and which shall be repeated in the company's declaration of discontinuance. I beg to move, sir, that clause 11 stand part of the Bill.

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

**The President:** I will put the resolution, hon. members, that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, sir.

**Mr Radcliffe:** Clause 12, Mr President, deals with the imposition of certain restrictions on the continuation of an Isle of Man company with the effect that the company may not be eligible to be continued in the new country unless certain legal preconditions attach. The intention here is to ensure that the legal environment of the new domicile preserves the recognition of certain fundamental rights to the assets and liabilities of the company. We are here concerned that the legal property of the company continues to be that of the body corporate and not of its members. The body corporate continues to be liable for its obligations. Any existing claims, obligations and actionable matters at law are unaffected and any convictions against and rulings, orders or judgments for or against the company remain enforceable. I beg to move, sir, that clause 12 stand part of the Bill.

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

**The President:** I will put the resolution, hon. members, that clause 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13, sir.

**Mr Radcliffe:** Clause 13 is the final clause to this part, Mr President, of course, and this clause is intended to give added clarity to the legal status of a discontinued company. It serves to confirm that the act of discontinuation here and continuation in the new domicile does not have the effect of creating a new legal entity, nor does it prejudice or affect in any way the continuity of life of the body corporate as a result of the transfer process. I beg to move, sir, that clause 13 stand part of the Bill.

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

**Mrs Christian:** Mr President, just as a general query really on this question of continuance or discontinuance, I presume that the mechanisms are such that the date of a certificate which allows continuance in one jurisdiction and the discontinuance in the other is the same date, otherwise we will have the situation either of two sets of laws applying or a situation of limbo, and I wonder if that is provided for in some way. I am not clear, from the reading the legislation, whether it is a requirement. I presume the companies in any case would take care to ensure that they had a proper legal status at all times, but is the way in which the mechanism will be executed developed to cover those points?

**Mr Waft:** Just on the person that they leave behind for the three years. This person is the agent. Is there any obligation on the company to ensure that they are legally qualified or accountancy qualified or whatever?

**The President:** Do you wish to comment, Mr Attorney?

**The Attorney-General:** Mr President, I do not think that the Bill contemplates that the agent should be qualified. I think the important point is that we have someone resident in the Isle of Man who is authorised to accept service. It does not matter what qualifications he or she has.

And just if I may, in respect of the point raised by the hon. minister, I think if we look at clause 10, sub-clause (2) it says the company, when it delivers the various documents to the Chief Registrar under sub-clause (1), after that has been done, 'The Chief Registrar shall file the instrument of continuance and issue a certificate of discontinuance which shall be in such form as may be prescribed.' So I think it is contemplated that there indeed will be a simultaneous, as it were, striking off of the new company and the resurrection. The two would happen.

**Mrs Christian:** I accept, Mr President, that that will obviously be the intention but do you not have to get your certificate of continuance from the other territory and get it to the Isle of Man to submit it to the registrar?

**Mr Radcliffe:** I think that is covered in clause 10(1)(b), Mr President. Part of the documents is a copy of the instrument of continuation.

**Mrs Christian:** Yes, but my concern is that it has to be dated on the same day, has it not?

**Mr Radcliffe:** Well, I would say the instrument of continuation would be a dated one before it is delivered to the Chief Registrar here. Again 'the learned Attorney may be able to help.

**Mr Luft:** It would not be effective until it had been discontinued here.

**Mrs Christian:** My concern then is that you have got . . . Ah, right. I think I am getting clear on this. If you have a certificate of continuance from another territory, their legislation

does not apply until your certificate of discontinuance is signed. If you are going the other way round, if you have a certificate of discontinuance you cannot get it until -

**Dr Mann:** You get some strong coffee instead! *(Laughter)*

**Mrs Christian:** I accept the point, Mr President, that there will be no limbo or duplication.

**The President:** Any further reply, sir?

**Mr Radcliffe:** I do not think so. The hon. member Mr Waft made the point about whether the person who is going to be their agent has to be a legally qualified person. I think he is only a sort of postman for the company, quite honestly, and legal qualifications will not be really required. So I beg to move, sir, that clause 13 stand part of the Bill.

**The President:** I will put the resolution, hon. members, that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, sir.

**Mr Radcliffe:** Clause 14, Mr President, is the first clause in part 3 of the Bill and clause 14 is intended to provide a review procedure for applicants who are aggrieved by a decision of the Treasury under this Bill and there are five steps to this procedure. The steps are (1) the aggrieved applicant may apply to Treasury for a review; (2) the application may be made within a timeframe on a form and subject to certain conditions which Treasury may prescribe in regulations. On application, a three-person review committee is to be constituted by Treasury of which at least two must be independent and have appropriate experience. The review will be carried out by the review committee and the review committee would decide to confirm, vary, or revoke the original decision by Treasury, though the operation of the original decision in anything done or suffered as a result prior to the review committee's decision would not be affected.

Sub-clause (6) confirms the absolute power of the review committee to make a final decision on the matter.

I beg to move, sir, that clause 14 stand part of the Bill.

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

**Mr Lowey:** Could I just ask, as a matter of legal niceties, does that preclude any firm that is aggrieved going to the court with a petition of dolence? I tremble to actually dive into this sort of field in the presence of learned people but is this appeal committee the ultimate appeal? In other words if I felt so strongly that the company's rights were being challenged, can it actually go to the High Court for dolence?

**The President:** Reply, sir.

**Mr Radcliffe:** Mr President, I have a note here that should an applicant still be aggrieved at a decision, the review procedure does not displace the ultimate right of such applicant to petition the Manx courts. Does that clarify the point, sir?

**Mr Lowey:** Yes, it does. I do not know if that is the right term I used but that is all right.

**Mr Luft:** There may be an irregularity in the procedure which would be then a proper subject of, say, a petition of dolence but the facts could not be challenged.

**The President:** I will put the resolution, hon. members, that clause 14 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, sir.

**Mr Radcliffe:** Clause 15, Mr President, is inserted by way of a standard provision that holds out an indemnity for Treasury to save it harmless from actions, suits or proceedings brought against it in respect of the exercise of the powers contained in this Bill, save in so far as it can be proved that Treasury's actions, omissions or exercise of functions can be shown

to have been carried out in bad faith. It is a cover clause and I beg to move that clause 15 stand part of the Bill.

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

**Mr Lowey:** Is this a normal one? That is the only question I pose. Is this a normal clause that we shove in to indemnify the Treasury?

**Mr Radcliffe:** I honestly cannot answer that, Mr President. Perhaps the learned Attorney can.

**The Attorney-General:** Mr President, I am aware, I think, that under the Financial Supervision Act there is a similar indemnity and I think it is probably very sensible that the Treasury, if they are acting in good faith in carrying out their functions under this Bill, if in fact someone claims that they have suffered loss or damage, the Treasury should not be exposed to a civil action.

**The President:** I will put the resolution, hon. members, that clause 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, sir.

**Mr Radcliffe:** Clause 16, Mr President, provides the enabling powers under this Bill for regulations to be made by Treasury to give effect to its provisions and it is intended that such regulations would be laid before Tynwald in the usual manner. In practice few regulations are required to support the operation of this Bill and these are concerned mainly but not exclusively with the prescribing of forms and the supply of information. I beg to move clause 16 stand part of the Bill, sir.

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

**The President:** I will put the resolution, hon. members, that clause 16 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. I think, sir, on a final run, 17, 18 and 19 form a framework.

**Mr Radcliffe:** Thank you, sir. Well, clause 17 is the interpretation clause which explains and lists the terms used within the Bill.

Clause 18 is intended to cover any financial provision deemed necessary. Clause 18 proposes that any increases in the expenses of the Treasury and the General Registry arising from this Bill will be met by votes of Tynwald, and clause 19 is the short title and commencement date.

I beg to move that clauses 17, 18 and 19 stand part of the Bill.

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

**Mr Lowey:** Mr President, can I just pose one question? “Offshore company” has the meaning given by section 1(3).’ and 1(3) says ‘In this Act, a body corporate to which this Part applies is referred to as an “offshore company”.’ Is there a clearer definition than an ‘offshore company’?

**Mr Luft:** No, it is ‘to which this part applies’. That is the operative bit.

**Dr Mann:** We need some strong coffees! (*Laughter*)

**Mr Lowey:** I will take your word for it.

**The President:** Are there any further points?

**Mrs Christian:** Mr President, may I just ask if there are any fees to be charged or payable for the transference?

**Mr Radcliffe:** As far as I understand, Mr President, the normal fees for setting up a company. There are no specifically particular fees, unless Treasury decides in the future that it

is costing too much and we have got to put a fee on, but that would be by way of regulation or whatever anyway.

**Mr Luft:** Well, you cannot do it by a regulation. You must have a statutory provision on which the regulation is made to charge fees or taxes.

**Mr Radcliffe:** Anyway there is no intention at the moment, Mr President.

**The President:** Very well, I will put the resolution, hon. members, that clauses 17, 18 and 19 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.

The hon. member in charge has indicated he would wish, at this stage, to move for a third reading.

**Mr Radcliffe:** Well, Mr President, I was of the opinion at one time that (*Laughter and interjections*) it would be useful to move that the Bill should complete its course today. I have to be very honest with members and say, in the light of one or two of the queries which have been raised, I do not know would it be really appropriate to go for the third reading or not today in any case. The learned Attorney is going to clarify a point, I think, for the learned Dr Mann and there is another point which the hon. member Mrs Christian raised which wants clarification.

**Dr Mann:** And it cannot be brought into effect until after the Banking Act anyway.

**Mr Radcliffe:** Yes, there is no desperate rush on the Bill anyway. So, Mr President, I will not be moving suspension of the appropriate standing order. No, I will not be, in the light of queries raised on this Bill.

**The President:** Well, hon. members, that concludes our public business for the day. The Council will now sit in private.

*The Council sat in private.*