

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 31st March 1998
at 10.30 a.m.**

Present:

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

Apologies For Absence

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

**Non-Smoking - Promotion Of - Public Areas -
Question By Mr Lowey**

The President: Turning now to questions, I call upon the hon. member Mr Lowey to ask the question standing in his name.

Mr Lowey: Thank you, Mr President. I beg leave to ask the Minister for Health and Social Security:

- (i) *What plans has government to promote the provision of non-smoking areas in buildings open to the public; and*
- (ii) *how much money was expended by government in each of the last three financial years on promoting non-smoking?*

The President: The Minister for Health and Social Security to reply.

Mrs Christian: Mr President, can I say that in a personal capacity I sympathise with the thrust of the hon. member's question. In terms of the DHSS, I can advise in response to part (i) of the question that our health services policy group has been looking at the issue of smoking in public places. This review has been heavily influenced by medical opinion, taking into account morbidity data directly or indirectly linked to cigarette smoking, and at the same time having regard to public opinion as gauged by surveys undertaken by the United Kingdom Office for National Statistics which indicated that the vast majority of people are in favour of wider restriction being applied.

From a government perspective the department has recognised that whilst some restrictions do apply in relation to government-operated buildings they are not universal. In such circumstances it is strongly felt that the issue of smoking within government buildings should be addressed in advance of any proposals being put forward in relation to buildings open to the public generally. As a first step the views of the Advisory Council for the Misuse of Drugs have been sought on the issue of smoking in public places.

Turning to the second point of the question, I would say that the education of the general public to the dangers of smoking is very much a health promotion responsibility. In pursuing this objective, the department's health promotion unit is linked into the United Kingdom-wide

campaign and has been able to obtain free promotional packs, advertising literature and so on, which is extensively circulated in the Island. A local group involving the Department of Education and the DHSS staff meet regularly to agree the campaign strategy. In terms of resources, these are essentially manpower, the staff involved taking on this work as part of their day-to-day health promotion activities. In these circumstances I am not able to say how much money has been expended specifically in pursuance of non-smoking.

Mr Lowey: Could I ask two supplementaries, Mr President, thanking the minister for her reply? She says that the department and her advisory committee are looking at the problem. How long have they been looking at it and how long will they continue to look at it and when will we get some action?

She mentions, in answer to the second part of the question, that, in conjunction with the Department of Education, they are looking at a strategy. What is the strategy? I am extremely alarmed with the young people and there is a tendency, when I mix with young people, that I do see an awful lot of girls smoking. That cannot be good to their health long term, and it seems to me that if there is a strategy, we seem to be losing out on it. There is a lack of urgency about the place that really alarms me.

Mrs Christian: Mr President, the matter was referred to the advisory council in January this year from the policy group, who had obviously looked at it prior to that date. In terms of the strategy, it is an annual strategy which is worked out between the department and the education department. I accept the point that the hon. questioner is making in relation to young people. Whilst there has been a decline over a period, there now does seem to be a tendency for smoking to increase yet again with young people. I think both the Department of Education and the DHSS staff are very conscious of this. Work is done through the Life caravan, through the promotions on non-smoking day, through schools specifically, targeting primary schools as well as the secondary schools; the College of Further Education has recently had a health promotion day in relation to a wide number of issues but which also included cigarette smoking.

I think that the hon. member's concern is not only his, it is a concern of anyone who is concerned with the dangers of smoking, given the morbidity details. What I think I would say is that, as yet, I am not sure that anyone has really found the trigger to getting across the message to some young people. Somehow or other some campaigns are successful. I think the drink/driving campaign has been very successful insofar as young people are concerned. I am not sure yet that we have managed to hit the right button as far as young people are concerned in relation to smoking, but that is not to say that it is not an issue that is being tackled. I would say that our health promotion budget is not an extensive one and, as I indicated in my first answer, our budget is largely used in employing staff. There are three staff employed in the health promotion area, though I must say that in the health service in general everyone regards it as a part of their function to deal in some aspects with health promotion.

Mr Waft: Minister, in view of the workload on the DHSS - and you have expressed a concern - I intend to seek leave to introduce a private member's Bill on this very issue. Would the minister agree with me that this is a preventable epidemic and government should take the lead?

Mrs Christian: Mr President, I note the hon. member's comment about introducing a private member's Bill. Certainly it is a matter of concern from a health perspective, the amount of ill health which is caused by tobacco smoking. The issue in relation to the question is about smoking in public places and that implies, I would suggest, as much a concern about passive smoking as it is about the dangers to the individuals themselves, because we are not tackling smoking per se in relation to the question.

So far as passive smoking is concerned, I think there are mixed views. However, I think that insofar as some of the evidence indicates that there are dangers from passive smoking, we will certainly be bearing that in mind.

Mr Lowey: Would the minister not agree, in the light of her reply, that we have taken our eye off smoking and concentrated on the drug issue in a wider sense, because I do believe that one of the social changes -

The President: A question, hon. member, please.

Mr Lowey: Yes, indeed. Would the minister also not agree that one of the successes has been the changing habits of smoking in the last 20 years, has been the growth of non-smoking campaigns at the expense of the very strong lobby given by the tobacco industry? It is addictive, it does damage your health and therefore to lose a generation cannot be right, and if we have not got enough money in this time of plenty for promoting good health -

The President: Hon. member! Question, please. *(Laughter)*

Mr Lowey: The minister mentions, Mr President, that she has not got much of a budget. Would she not agree that this is a priority spending, preventing illness as opposed to curing a preventable illness?

Mrs Christian: Mr President, I think that we have to recognise, in terms of our budget, that we very much sit on the back of a UK health promotional budget, because the impact nowadays in terms of advertising and so on comes through the television and literature which is widely available, and I think the counter-message also comes through those media. There is something that we can do and we do try to focus our efforts, particularly with young people. I would also say that as regards the comment about our budget being small, it is small; we have, as you are aware, very great difficulties in determining where we should be placing our priorities and how much should go under each head of our budget. I do think that we should perhaps recognise - but this would create difficulties for the Island - that the evidence suggests that the best way of stopping smoking is increasing the price of cigarettes. A 10 per cent increase in cost effectively brings about a 10 per cent reduction in consumption. Now, whether or not the Island could do that unilaterally remains to be seen because we have seen what happens in the UK vis-à-vis the Channel. Things start to be moved from one place to another if you start putting differential charges on. So it is a difficult area to tackle but, having just had a recent document provided to the department on the major areas of health concern in the Island, there is no doubt at all that the message should be going out loud and strong to everybody that smoking does damage your health.

Mr Kniveton: Just one very short question, Mr President, if I may ask the minister, and the subject has already been touched on - passive smoking: do you ever have debate with the medical officer for health and do you know his beliefs on the passive smoking subject? It is

controversial. There are those who believe it is damaging and there are those who will argue that it has no effect.

Mrs Christian: Mr President, the view of the Deputy Director of Public Health is that passive smoking does damage health.

Mr Radcliffe: Mr President, could I just ask a brief supplementary? With all the publicity attendant upon this question of smoking and non-smoking, and it is certainly high in everybody's agenda seemingly, could I ask the minister, is there a danger of the much more dangerous habit of drug-taking been lost in the melee of clouds of smoke, and should the department not lose sight of the danger of drug-taking because of all the steam that is being generated at the moment about smoking, passive or otherwise? *(Laughter and interjections)*

Mrs Christian: Mr President, one might suspect that that is a question from a smoker! *(Laughter)*

Mr Radcliffe: Why not?

Mrs Christian: I do not think so. I think the danger has been that the emphasis has been on drugs and alcohol, and perhaps the emphasis has been on drugs, and we do have to recognise that alcohol does an enormous amount of social damage as well. So I think that perhaps the emphasis on smoking has not been quite high enough. I would not agree with my hon. colleague that we are in danger of overwhelming one issue with the other. The fact of the matter is that smoking is very detrimental to health. The area of public buildings and so on is an area of passive smoking and I think that, apart from any governmental determination of the issue, there is increasing social pressure, never mind statutory obligations or statutory imposition of policy. People in general are objecting more and more strongly to smoking in public places.

Pensioners - Information Re Benefit Eligibility - Question By Mr Lowey

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

Mr Lowey: I beg leave to ask the Minister for Health and Social Security:

What steps have been taken during the last three years to bring more pensioners into benefit, e.g. heating allowances?

The President: The Minister for Health and Social Security to reply.

Mrs Christian: Yes, Mr President, in responding to the question I am assuming that the information requested is in relation to steps taken to inform people in receipt of retirement pension about the availability of supplementary pension. For householders on supplementary pension there is an additional requirement for heating that is increased for 14 weeks of the winter, the winter heating supplement. To bring a person into supplementary pension entitlement, it is necessary for that person to complete a claim form. If the pensioner claimant so wishes, one of our staff can call at home to take the claim rather than the claim being taken at the department's offices.

In the last three years, the department's policy has been to include, with each new claim for retirement pension and with each new order book issued, information about the availability of supplementary pension. I have to say that I have identified that there have been periods

during those years when, apparently, due to staffing changes the policy did lapse occasionally. The oversight has been redressed and now not only are all new retirement pension claim forms again included with information about supplementary pension but such information is going to be provided annually to all pensioners together with their declaration of entitlement certificates, which they have to complete on an annual basis.

This comprehensive publicity is complemented by talks given to interested groups, such as pensioners' organisations. During the last three years 24 such talks were given by the manager of the pensions and supplementary section. There is also a policy of giving talks on benefits to groups of professionals with responsibility for the elderly. In particular, they are given to our own social workers, health visitors and nurses and, from this year, it is our policy to introduce an annual benefit seminar for department professionals.

It is currently the department's policy to inform all retirement pensioners not in receipt of supplementary pension of the availability of that benefit annually, and the policy is complemented by ensuring that professionals and organisations who are responsible for vulnerable, elderly people are kept informed. We did, in December this year, publicise a help line, a telephone line, via the press and radio, inviting low income pensioners to call us to establish whether or not, as the supplementary benefit entitlement level rose in relation to the winter heating supplement, they would then come into the supplementary benefit net in order to receive the winter heating supplement.

Mr Lowey: I thank the minister for her reply. Could I ask one supplementary? The minister, at the end of her answer, said that last December they did an advert for pensioners to apply, those that are outside the net, to see if they did qualify. Could I implore the minister to keep that particular campaign going for longer than, say, the one week or the two weeks that it was in the paper. If I can digress just a fraction to illustrate the point, Mr President. I notice in the paper we have a weekly thing about cheats and people who should be reported because of that and that is a constant message that is going out. I wonder if that message of 'Are you getting your rights?' should be equally stressed on a weekly basis?

Mrs Christian: Yes, I will note the member's comment. We do have an advert which is a standing advert, and we can consider whether or not we should put a similar advert in, going the other way.

Mr Lowey: I am very grateful to the minister for her replies, Mr President.

Privatisation Of Government Services - Question By Mr Lowey

The President: Question 3, the hon. member Mr Lowey to ask the question standing in his name.

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

- (i) *What consideration was, or is being, given to the privatisation of services provided by government, and*
- (ii) *does government intend to promote this practice and, if so, in what areas?*

The President: The Minister for Education to reply.

Dr Mann: Mr President, it is the duty of government to constantly review the way in which services are delivered in order to ensure that they are delivered in the most efficient and cost-

effective way. Associated with this responsibility it is necessary from time to time to consider how certain existing or future services could be delivered other than by direct employment by government. This is an issue which has been considered from time to time in the past but has, as a general principle, not been progressed. As I am sure members will be aware, government's personnel control mechanism is under considerable pressure at the present time as government departments' requests for additional personnel exceed those planned for under the central planning assumptions. In response to this pressure, this year's round of policy meetings in the summer will be asked to give consideration to current methods of service delivery with a view to identifying those services which could be made less labour-intensive or provided by alternative means, other than direct labour provision by government.

I must emphasise, in answer to the second part of the question, that this present time is very much a fact-finding exercise and should not be seen in the context of any predetermined government policy on the issue.

Mr Kniveton: Mr President, I would like to ask Dr Mann, when the Treasury minister, through the Council of Ministers, regularly advises us that government is looking for alternative means of funding, then precisely what alternatives is he looking at? Has he discussed this type of funding or alternative types of funding?

Dr Mann: We are not talking about alternative fundings, we are talking about alternative means of providing a service. That can be determined either by buying in services from contractors or actually short-term contracts for certain services the future of which is in either doubt or needs to be approved before it becomes a permanent service. These are the types of areas that we are talking about.

Mr Lowey: Can I ask a supplementary? Would the minister not agree that while it is the duty of the government to constantly look at things, it is the duty of the government to inform members when they are going to change it, and I have not heard any statement from a government minister that they were going to change that policy. The policy of providing buying-in services seems already to be established. We have already had it on the health services, as related by my friend Mr Kniveton, but also we have had it in education. They are now giving their headmasters, are they not, the money to buy in services, and will that not include cleaning services of the schools? Again we are getting policy by stealth and that cannot be right.

Dr Mann: I thank the hon. member for his supplementary. The buying-in of services by departments has been going on for many years, including the time when you were a minister yourself, so that the policy has not changed, the policy has been progressively applied over a period of time but the future policy most certainly has got to be clarified, as you point out in your original question, because there is no doubt that departments are very definitely being restrained by the personnel policy of government as it exists at this moment.

Mr Lowey: I thank the hon. minister for his reply. No doubt I will be coming back to him!

**Police Powers And Procedures Bill - Second Reading Approved - Consideration Of
Clauses Commenced**

The President: We move on then, hon. members, to item 2 on the order paper and I call on the learned Attorney-General to move the second reading of the Police Powers and Procedures Bill.

The Attorney-General: Thank you, Mr President. Looking at the Bill, part I provides the police with power to stop and search persons or vehicles. As is mentioned in the explanatory memorandum to the Bill, part I is based on the equivalent part of the Police and Criminal Evidence Act 1984 of Parliament. In an introductory chapter to one of the leading textbooks on the 1984 Act, the learned author comments that there had been official dissatisfaction with the rules of the criminal process for several years. The whole topic had been shelved for some long time, but in June 1977 a Royal Commission on Criminal Procedure was set up. The terms of reference of the commission were to consider the investigation of offences in the light of police powers and duties, as well as the rights and duties of suspects. The commission was asked to examine the issues, having regard both to the interests of the community in bringing offenders to justice, and to the rights and liberties of persons suspected or accused of crime and taking into account also the need for the efficient and economical use of resources. I would suggest that those issues are equally pertinent in the Isle of Man. Mr President, I beg to move the second reading of this Bill.

Mr Waft: I beg to second, Mr President.

Mr Lowey: Can I just say on the second reading that, on rereading the Bill, I still find myself of the same opinion as I was last week, that I could not support it notwithstanding the lucid replies given by the Attorney to some of the queries I raised last week. I have to say that I find another area that gives me great concern is the appointment of custodial officers, sergeants, who then have the dual role of looking after the interests of the accused as well as the prosecuting officers that are in the station. I find that round about clauses 39 to 43 are very suspect, and I will be speaking on them later when we arrive at the clauses stage. Can I also say that, in reply last week to the intimate searches that can be given to juveniles, juveniles can only get intimate searches on the written approval, I think, of a magistrate or the High Bailiff where an ordinary member of the public can get intimate searches if it is thought an emergency that he needs to be searched there and then on the judgement of the police officer at that particular time. It does seem to me that you can search an adult because of an emergency but you cannot search a juvenile, if there is an emergency, unless you get the approval of a magistrate or the Deputy High Bailiff. That does seem to me strange indeed. An emergency is an emergency, whether it is for a juvenile or for an adult. So I would like a comment on that.

The President: Reply, sir.

The Attorney-General: Mr President, I will certainly endeavour to deal with the points raised by the hon. member when we deal with the relevant clause. I think we will see that one of the underlying points of the Bill is that the custody officer actually must be separate and apart from the investigating officer, and if, in fact, there is to be any dispute between the custody officer and the investigating officer, the custody officer actually has priority and it is his right then to refer the matter to a senior officer, who will ensure that the investigating officer does not browbeat the custody officer, and that is indeed very important for the protection of a suspected person whilst he is in custody.

Insofar as the position of the juvenile is concerned, again we will look at that at the relevant clause, but again I think the point is that a juvenile can only be subjected to an intimate search if either his parent or guardian or a person who is in control of the juvenile pursuant to an order involving the DHSS is present and can therefore protect the juvenile, even if there is an emergency, and that added protection for the juvenile should not be taken away.

The President: Hon. members, I will now put the resolution that the Police Powers and Procedures Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses, Mr Attorney, and leading into clauses 1 to 10.

The Attorney-General: I am much obliged, Mr President. Clause 1 gives the power to the police to search any person or vehicle, and anything which is in or on a vehicle, for stolen or prohibited goods and to detain a person or vehicle for the purpose of such a search. A constable may not, however, search a person or vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles. Any stolen or prohibited article found in the course of such a search may be seized.

What are 'prohibited articles'? An article is prohibited for the purpose of the Bill if it is either an offensive weapon or it is made or adapted for use in the course of or in connection with burglary, theft, taking a motor vehicle without authority, or obtaining property by deception, or is intended by the person having it with him for such use by him or by some other person - that is sub-clause (7).

An 'offensive weapon' is defined as meaning any article made or adapted for use for causing injury to persons or intended by the person having it with him for such use by him or by some other person, or any article which has a blade or is sharply pointed, other than a folding pocket-knife if the cutting edge of its blade does not exceed three inches, and that is sub-clause (9).

Sub-clause (3) requires that the power to stop and search must be based on reasonable grounds, and the requirement of reasonable grounds and reasonable suspicion are critical to the operation of this part. It will be noted that, in accordance with provisions of clause 75, the department must provide for codes of practice in connection with, amongst other things, searches of persons by police officers, and no doubt the department will ensure that the code of practice on stop and search will emphasise that reasonable suspicion, in contrast to mere suspicion, must be founded on fact. There must be some concrete basis for the officer's belief related to the individual person concerned which can be considered and evaluated by an objective third person.

The power of stop and search can be exercised (a) in any place to which at the time the public or any section of the public has access on payment or otherwise as of right or by virtue of express or implied permission, or (b) in any other place to which people have ready access but which is not a dwelling. That is sub-clause (1).

If I could refer to clause 1(1)(a), the power of stop and search can be exercised (a) in any place to which at the time 'the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or (b) in any other place to which people have ready access' but which is not a dwelling. Paragraph (a) of clause 1(1) would cover places such as parks, streets, roads and car parks and, while open to the public,

shops, public houses and sports grounds. Paragraph (b) would cover places such as school yards or gardens which are readily accessible from the street. So the police can stop and search someone who has aroused reasonable suspicion who is lurking in a garden next to the road. The clause, however, makes it clear that if a person is in a garden or yard or other land attached to a dwelling house, the officer cannot search him unless he has reason to believe that he does not live there and that he does not have the express or implied permission of the person who lives there to be on the premises, and that is sub-clause (4). Similar provisions apply equally to a search of a vehicle - sub-clause (5). In other words, people and their cars are not to be searched on their own private land.

Clause 2 sets out the procedural safeguards relating to stop and search powers both under the Bill and under any other statutory provisions. Sub-clause (1) of the Bill covers the situation where before carrying out a search, the officer questions a person and receives a satisfactory explanation of anything which had raised reasonable suspicion in the mind of the officer. The sub-clause makes it clear that the officer need not conduct a search if, in those circumstances, it appears that no search is required or that a search is impracticable. The police are therefore not legally at fault if they stop and do not search, but the legality of the stop depends on whether there were or were not grounds for reasonable suspicion before the stop was made.

Sub-clause (2) makes it clear that before searching a person or vehicle or detaining a person or vehicle for the purpose of that search, the officer must take reasonable steps to bring to the person's attention his name, the name of the police station to which he is attached, the object of the search and his grounds for making it. That is sub-clause (3).

If he is not in uniform, he must produce documentary evidence that he is a police officer. The officer must also inform the person being searched that he is entitled to a record of the search. However, this duty need not be performed if it appears to the officer that it is not practicable to make a record, for instance because of the size of the group involved. That is sub-clause (4).

If the search is of unattended vehicles, the officer must leave a notice stating that he has searched the vehicle, giving the name of his police station, stating that an applicant for compensation for any damage done should be made to that station and that the owner can request a copy of the record of the search. That is sub-clause (6).

The procedural safeguards apply only to searches. They therefore need not be complied with if the stop does not lead to a search. This is based on the royal commission's view that it would not be desirable, practicable or necessary to require the police to record each occasion on which they stop a member of the public, possibly for an informal conversation. It is a search, following upon a stop and based upon reasonable suspicion, that is the main intrusion upon the person and it is that and the reason for it which should be recorded. The time for which someone may be detained is limited to such time as is reasonably necessary to permit the search to be carried out at the place where the person or vehicle was first detained or nearby. That is sub-clause (9). Paragraph (a) provides that no power to stop and search, without first arresting a person, authorises a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves. Sub-clause (9) also makes it clear that only a police officer in uniform can lawfully require a person driving a vehicle to stop for the purpose of any exercise of a power of stop and search.

Sub-clause (10) extends the power of stop and search to vessels, aircraft and hovercraft.

Clause 3, which is based on section 60 of the Criminal Justice and Public Order Act 1994 of England, confers authority to exercise powers of stop and search where it is reasonably believed that incidents involving serious violence may take place in a locality and it is expedient to use these powers to prevent their occurrence. Authorisation should normally be given by an officer of the rank of chief inspector or above, in writing, specifying the locality in which the powers may be exercised and the period of time for which they are in force. Authorisation may be given by an inspector if he reasonably believes that violence is imminent and no chief inspector is available. That is sub-clause (2).

In either case, the period authorised shall be no longer than appears reasonably necessary to prevent or try to prevent incidents of serious violence, and it may not exceed 24 hours. A chief inspector may direct that the period shall be extended for a further six hours if violence has occurred or is suspected to have occurred and the continuing use of the powers is considered necessary to prevent further violence. That is sub-clause (3).

That direction must also be given in writing at the time or as soon as practicable afterwards - sub-clause (9).

Sub-clause (4) provides that any constable in uniform thus authorised has the power '(a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments' and '(b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.'

A constable may, in the exercise of these powers, stop any person or vehicle and make any search he thinks fit whether or not he has grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind. That is sub-clause (5).

If in the course of a search under this clause a constable discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it - sub-clause (6).

The clause applies with the necessary modifications to vessels, aircraft and hovercraft as it appears to vehicles - sub-clause (7).

A person who fails to stop or, as the case may be, to stop the vehicle when required to do so by a constable in the exercise of his powers under this clause shall be liable on summary conviction to custody for a term not exceeding one month or a fine not exceeding £1000 or both - sub-clause (9).

Clause 4 deals with the power to conduct port checks for outward journeys from the Island in exceptional cases. The powers may be exercised only if an inspector or above authorises their exercise in writing. That is sub-clause (1).

The officer may only authorise the exercise of the powers if he has reasonable grounds (a) for believing that a person who is unlawfully at large will attempt to leave the Island, or (b) for believing that a serious arrestable offence has been committed in the Island and that the person who committed the offence will attempt to leave the Island, or (c) for believing that a serious arrestable offence has been committed in the Island and that an attempt will be made to remove from the Island property which was obtained as a result of or in connection with the commission of the offence, or (d) for believing that a serious arrestable offence has been

committed in the Island and that an attempt will be made to remove from the Island articles which were used for the purpose of committing or facilitating the commission of the offence. The authorising officer must in all cases believe that the circumstances are sufficiently serious to justify the use of the powers which are classified as being exceptional conferred by the clause.

Sub-clause (3) specifies that the powers of stop and search conferred by the clause must be exercised by a constable in uniform in or in the immediate vicinity of a harbour or aerodrome. The powers of stop and search may be exercised in relation to vehicles, which may be searched for fugitives and for suspected offenders and for stolen property or articles used in the commission of the offence in respect of which the power is exercised. Containers may be searched and pedestrians may be stopped and searched, or property used in the commission of the offence in respect of which the power is exercised.. 'Serious arrestable offence' is defined in clause 79 of the Bill and perhaps we can look at that later on in the consideration of the Bill.

Clause 5 mirrors clause 4 and deals with cases where fugitives or property may be coming into the Island. The clause again provides exceptional powers for an inspector to authorise constables to stop and search pedestrians and vehicles, drivers and passengers, who are within a harbour or airport. The object of the power is to enable searches for fugitives and stolen et cetera property to be carried out where serious crimes are suspected to have taken place in the British islands and the fugitives, responsible persons or property may be about to enter the Island.

Clause 6 of the Bill provides procedural and other safeguards including time limits which affect the exercise of the exceptional powers under clauses 4 and 5.

Clause 7 concerns the duty to make records concerning searches, and as such it provides a further control against arbitrary and discriminatory searches insofar as police officers are under a duty to make records of what transpires and an individual who is subjected to a search is entitled to a copy of the record.

Sub-clause (1) accordingly provides that a constable who has searched a person or vehicle, under the powers conferred by clause 1 or under one of the other powers of search already available to him, must make a written record of the search unless it is not practicable to do so, for instance because of the numbers involved.

If he is under a duty to make a record but it is not reasonably practicable to make such a record at the time, it must be done as soon as is reasonably practicable after the completion of the search, and that is sub-clause (2).

Clause 8 of the Bill deals with road checks. Section 40 of the Road Traffic Act 1985 imposes a duty on a person driving a motor vehicle or riding a cycle to stop the vehicle or cycle if required to do so by a constable in uniform. There is no mention in that section as to the purpose for which the power may be used. When the question of road blocks was examined by the royal commission, it was considered that in general the powers to set up road blocks should not be used in connection with crime. An exception should, however, be made for special emergencies. Accordingly, sub-clause (3) provides that a road check may only be established if a police officer of the rank of inspector or above authorises it in writing.

The road check may be authorised to see if a vehicle is carrying someone who has committed a serious arrestable offence or is a witness to such an offence or someone intending to commit such offence or an escaped prisoner - sub-clause (1).

The road check may be made to stop all vehicles selected by any criterion, such as, for example, all white Ford transit vans. An officer may only authorise a road check where it is reasonably suspected that a person has committed a serious arrestable offence or who is unlawfully at large, is or is about to be in the locality or where the search is for someone intending to commit a serious arrestable offence, that he is or is about to be in the locality. When the road check is for potential witnesses, it is only necessary for the officer to have reasonable grounds for believing that the offence is a serious arrestable offence.

Sub-clause (5) provides that any police officer may authorise a road check if he considers that it is necessary as a matter of urgency for one of the purposes specified in sub-clause (1).

Clause 9 of the Bill provides that the chief constable's annual report must contain information about the use made by police officers of powers of stop and search and of road checks set up for purposes other than those of road traffic and vehicle excise duties. This will make the exercise of those powers subject to the independent scrutiny of the Department of Home Affairs.

Information about searches does not give details of individual cases but it includes the total number of searches in each month for stolen articles and offensive weapons and for other prohibited articles, and the total numbers arrested in each month in respect of each such category - sub-clause (2). The information about road blocks must also include the reasons for and the result of each road check.

Mr President, that concludes consideration of part I of the Bill, and I move that clauses 1 to 10 within part I of the Bill do stand part of the Bill.

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

Mr Radcliffe: Could I just comment, Mr President, on clause 7? There seems to be a bit of an anomaly there in recording that there is a duty to make records concerning searches, and clause 7 seems to be totally concerned with that. But at the latter end of it, in sub-clause (7), it says 'if' the constable who conducted a search made a record of it. So in one part it seems mandatory that it shall make a record and yet it would appear in sub-clause (7) that there is a possibility that he may not make a note of it, and I just wonder if the hon. mover could clarify how that shall come about. It is either mandatory or not, I would have thought, that notes shall be made of each and every search.

Mr Kniveton: Mr President, I am referring to clauses 4 and 5 - and perhaps I have missed this but I would like to be corrected if I have - the ports checks. I was under the impression that any stop search at ports, particularly Douglas harbour and Ronaldsway airport, had to be in conjunction with the DoT or the authority within the DoT. After all, if we are talking about 500 people departing on a vessel, that is according to a timetable. Timetables in this day and age of modern operation are associated with being tight and particularly aircraft, if I can mention it, where we are continually hearing about slots. If aircraft are to be held up, then

that causes a problem. I understood that the checks would be in conjunction with the DoT, and I would like confirmation of that if I may, please.

Mr Waft: Just to make a comment, Mr President, on clause 3, where in sub-clause (5) it states, 'A constable may, in the exercise of any of the powers referred to in subsection (4), stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.' That is a wide-ranging amount of responsibility for any constable to be able to take up on his own behalf and I wondered where harassment comes into this. If a constable can do this, perhaps repeatedly, are there any sort of rules and regulations whereby an individual feels that he is suffering undue pressures on behalf of an individual who is, by this section, able to stop and search at any time, apparently? Perhaps the Attorney might clarify that situation for me?

Mr Lowey: I am glad Mr Waft took that one up because that is one of the ones that I have picked on, because in the previous clause it actually says a policeman has to have a reason to stop and search, and yet immediately it is followed by. . . and I notice this was only passed in 1994, so we are really taking on board a United Kingdom element that has had very little time to prove itself and it is all-embracing. Could I ask where the word 'reasonable' is defined? I noticed in the definitions it is not referred to and yet it is constantly referred to in many of the clauses that we have heard. It is almost as if it has been introduced as a comfort factor for the general public - you know, it is reasonable, they have got to act reasonably, but nowhere do I see 'reasonable' defined. I do see in clause 3(3) 'reasonable' seems to be 24 hours plus 6 hours, if an inspector says it should be extended, so I presume 30 hours would seem to be a reasonable time for somebody to be held without charge. Is that the definition?

The Lord Bishop: Can I ask about clause 7, please, Mr President? Coming back to that, I am a little concerned with sub-clauses (1) and (2). It talks about making a record in writing unless it is not practicable, but it says if not practicable to be made on the spot, to be done as soon as possible after the completion. Is that not making the situation wide open to lapses of memory on the part of the constable and therefore contention later on when the person, having been searched, could contest what was there? It seems to me that that time lapse does have all the seeds of contention. I wonder if the Attorney could comment on that?

The President: Would you care to reply, sir?

The Attorney-General: Mr President, the point, I think, first of all made by hon. member Mr Radcliffe was the apparent discrepancy between a duty to make records concerning searches in clause 7, and then in sub-clause (7), 'if a constable who conducted a search. . . made a record of it' - the clause, I think, envisages that there is indeed a general duty to make a record, but it might not be possible to make a record because, for example, the officer is faced with a large number of people. It might be quite impossible for him to make a record if he has to search a dozen or more people. And there is this concept that if it is practicable - this is under clause 7(2), 'If (a) a constable is required. . . to make a record of a search; but (b) it is not practicable to make the record on the spot, he shall make it as soon as practicable after the completion of the search.' So I think possibly the clause envisages that it might not be practicable for the officer to make the record, and that gives him some sort of leeway in so far as clause 7 (7) is concerned.

In so far as the question by the hon. member Mr Kniveton is concerned on port checks, it is certainly true that the Bill does not confer a right of entry onto land which is in the ownership of the Department of Transport, and that, I think, appears from the Bill. One can only envisage that arrangements will be made between the department and the police authorities to ensure that access is afforded to the police to enable them to exercise their powers. It must be, I think, a matter of liaison between the department and the police. The police do not have the right of entry and they must consult with the department and work out appropriate ways of enforcing their powers, and of course it must be remembered that the port checks can only be carried out in emergencies, in special cases where there is special authorisation from the high-ranking officer. It is not envisaged, I think, that these port checks would be carried out other than in exceptional cases.

The hon. member Mr Waft raised a question about clause 3 and the apparent concept of random searches under clause 3, and there is no doubt about it that clause 3 does indeed give the police powers of random search in those very special circumstances which are envisaged by clause 3. I think that clause 3 in England was introduced to deal with situations where there was football violence or such as that, and if a high-ranking officer believed that people might be carrying offensive weapons, then it would be open to him to make a general order that police officers could indeed conduct random searches for offensive weapons. But I do emphasise that there had to be special circumstances before those admittedly draconian powers could be exercised.

In so far as the hon. member Mr Lowey is concerned and the question of reasonableness, as the hon. member has rightly pointed out, we see the word 'reasonable' running throughout this Bill and police officers must only exercise powers of stop and search if they have reasonable cause. That is the general rule, leaving aside the exceptional rules which we have just looked at for clause 3. It is clear that the department has to issue a code of practice in relation to stop and search and the code will, I am sure, emphasise that reasonable suspicion in contrast to mere suspicion must be founded on fact. It is not enough for a police officer to exercise powers of stop and search arbitrarily in connection with a person against whom he has a particular grudge. He has to have reasonable cause for stopping and searching. If the officer does not comply with the code, then he is open to disciplinary proceedings for breach of the code.

The Lord Bishop raised a point on clause 7(1) and (2), and again I think that, in so far as that is concerned, the Bill recognises that a police officer may be faced with a very difficult situation where there may be a number of people or one or two very violent people whom he wishes to search, but it is not possible to make a record on the spot there and then, but the Bill does make it perfectly clear that the search has to be carried out as soon as practical thereafter. Again the officer would be liable to disciplinary proceedings if he acted in breach of that code.

The President: Now, hon. members -

Mr Kniveton: Can I come back on my question, sir?

The President: Yes.

Mr Kniveton: Thank you. In the case of clauses 4 and 5 should there be a disagreement between the port authorities, the airport authorities and the police on searching and stopping, who in the end wins the day?

The Attorney-General: Mr President, I would suggest that the inspector who has to give authority in writing under clause 4 and in clause 5 would have the ultimate say. After all, one must assume that he would exercise those powers in a reasonable and responsible way. I cannot imagine that the department would wish to impede the inspector in those powers, but the Bill does make it perfectly clear that there is not any right of entry, but, as I say, I cannot imagine that the department would wish to impede those powers under sections 4 and 5.

The President: Hon. members, we have the resolution that clauses 1 to 10 do stand part of the Bill, but before putting that resolution may I say to hon. members that if any one specific clause causes you a problem I will put that individually.

Mr Lowey: I must confess that I am less than happy with the Attorney telling us that in clause 7, for example, there is a leeway for the policeman to either yea or nay and its interpretation, and wherever you have an interpretation you have. . . When we are writing law I thought the idea was to make it crystal clear what the rights and the duties are, but if you are saying 'And, by the way, these are enabling bits of legislation which will then have to be followed up by codes of conduct and codes of practice', which we do not know about, and are these codes to be actually put before Tynwald Court for approval -

The Attorney-General: Yes.

Mr Lowey: - or are they to be public documents that cannot be allied? I just find my uncomfortableness with this particular Bill increasing as it goes on, and I am going to take the unusual step of voting against all the clauses. Sorry, Mr Attorney.

The President: Do you wish clause 7 to be put separately, hon. member, or not?

Mr Lowey: No, I will just vote against the lot.

The President: Right.

Mr Lowey: Thank you, Mr President.

The President: Hon. members, I will put the resolution, which is that clauses 1 to 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

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

Against: Mr Lowey - 1

The President: Six votes have been cast in favour of the resolution, one against, the resolution carries. Now, as we move forward, the learned Attorney-General has indicated he would like to take clauses 11 to 26 along with schedule 1. What I would suggest is that we take that lot along with schedule 1 and then adjourn the consideration of the clauses until next week to enable us to dispose of the other items on the agenda, if that is acceptable to you, Mr Attorney?

The Attorney-General: Certainly, Mr President. So I will try to summarise the -

The President: No, there is no point. Hon. members, clauses 11 to 26, and schedule 1. The learned Attorney.

The Attorney-General: Yes, Mr President. Clause 11 provides for the issue of search warrants to enter and search premises for evidence of serious arrestable offences.

Sub-clause (1) empowers a justice of the peace on written application from a constable to issue a search warrant where he is satisfied that there are reasonable grounds for believing that a serious arrestable offence has been committed, or that property in respect of which an offence under the Criminal Code has been committed will be found there. He must also be satisfied that there is material on the premises likely to be of substantial value to the investigation, that it is likely to be relevant evidence and that it is not and does not include items subject to legal privilege, excluded material or special procedure material, and that any of the conditions in sub-clause (3) apply.

The conditions in sub-clause (3) are basically that it is not practicable to gain entry to the premises in question without a search warrant; thus examples are where entry has been refused or no-one with authority to grant access can be reached or the purpose of the search may be frustrated unless an officer can gain immediate entry.

Sub-clause (5) makes it clear that the power to issue a search warrant is in addition to any existing powers to issue warrants.

Clause 12, Mr President, deals with the question of police access to material held on a confidential basis. Sub-clause (1) states that the police may only seek access to excluded or special procedure material by applying to a deemster under schedule 1. Application must also be made to a deemster where the material sought is partly excluded for special procedure and partly other material. The deemster may order the material to be produced or in special circumstances may issue a search warrant. Searches cannot be undertaken for items subject to legal privilege, even under the schedule 1 procedure, because any search would undermine the right to proper legal advice.

Clause 13 defines items subject to legal privilege. Material covered by legal privilege can neither be searched nor seized by the police. Sub-clause (1) sets out the three classes of items which fall within the definition: (a) communications between a professional legal adviser and his client in connection with legal advice; (b) communications in connection with contemplated legal proceedings; (c) items, including documents, enclosed with or referred to in such communications. It is important to note that documents or articles held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Clause 14 defines 'excluded material.' It will be recalled that clause 12 provides that a constable may obtain access to excluded material by making an application under schedule 1 to a deemster.

Sub-clause (1) of clause 14 provides that 'excluded material' consists of three categories held on a confidential basis: (a) personal records, which are defined in clause 12; (b) examples of human tissue or tissue fluid taken for the purpose of diagnosis or medical treatment, which are held in confidence; and (c) journalistic material, which is defined in clause 13 and which consists of documents or records if held in confidence.

Sub-clauses (2) and (3) define what is meant by the concept of 'held in confidence'.

Clause 15 defines 'personal records' to mean documents and other records concerning an individual, whether living or dead, who can be identified from them which relate: (a) to his physical or mental health; or (b) to spiritual counselling or assistance given or to be given to him; or (c) to counselling or assistance given or to be given to him for the purpose of his personal welfare. The exemption of personal records as defined from any access by the police is absolute. This was in response to a fierce campaign waged in particular by the caring professions and their voluntary counterparts. The definition is very wide. It would cover not simply the records of probation officers, social workers and advisory agencies, but school, university, personal files and records, but the records of accountants or other professional advisers would presumably not qualify save in so far as they gained exemption through legal privilege. As has been noted, 'excluded material' is defined so as to include journalistic material, which consists of documents or other records held in confidence.

Clause 17 defines 'special procedure material' for the purposes of clause 12 of the Bill. In essence it comprises (a) material held on a confidential basis, which does not qualify as personal records or journalistic material as defined in clause 16. Clause 17, too, states the material is 'special procedure material' if it is held subject to an express or implied undertaking of confidentiality or a statutory restriction on disclosure or obligation of secrecy, for instance under the Official Secrets Act, by someone who acquired it or created it in the course of a trade, business, profession or other occupation or for the purpose of any office, whether paid or unpaid. This would include, for example, company accounts, stock records held on behalf of a client by a bank, advocate or accountant.

Clause 18, Mr President, prescribes the safeguards which apply to the issue of all search warrants not only under the Bill but also under other enactments. An application for a search warrant must state the grounds for making the application, the statutory authority covering the claim and, in as much detail as possible, the object of the warrant and the premises concerned - sub-clause (2).

The application must be made *ex parte* - that is, without the person affected being present - and must be supported by information in writing. The constable must answer on oath any questions put by the justice of the peace or by the deemster. Each warrant can authorise entry on any one occasion. If nothing is found, the police therefore cannot return to have another attempt unless they get a second warrant. The warrant must specify the name of the person applying for it, the date of issue, the statutory power under which it is issued, the premises to be searched and, so far as is possible, the articles or persons sought and when the search is to take place. One copy shall be made of a warrant, which is for the occupier of the premises to keep - that is 19(5)(c).

Clause 19 contains provisions to ensure that warrants are exercised in a proper and reasonable manner. Sub-clause (1) provides that any constable may execute any warrant. Sub-clause (2) states that a warrant may authorise persons to accompany the officer executing it, such as a witness. The clause provides that entry and search under a warrant must be within one month from the date of its issue. It must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour. Where the occupier of the premises is present the constable must produce the warrant and must give a copy to him. If he is not present a copy must be left there in a prominent place on the premises. An officer executing a warrant must identify himself and

if he is not in uniform he must produce documentary evidence that he is a constable, even without being asked. If the occupier is not there and someone else is who appears to be in charge, the police should treat him as the occupier for the purposes of the clause.

A search under a warrant may only be a search to the extent required for the purpose of which the warrant is issued - sub-clause (8). In other words, if the search is for large items it would not be proper to tear up the floorboards whereas, if it were for prohibited drugs, such a search might be lawful. It is important to note that a warrant authorising a search of premises does not in itself entitle the police to search persons on the premises. Such persons may only be searched if arrested or if there is a specific power to search in the warrant, for example under the Misuse of Drugs Act.

Sub-clause (9) requires the police to endorse a warrant stating whether the articles or persons sought were found and whether any other articles were seized. This is intended to enable the court to monitor the success or otherwise of search warrants.

Clause 20 empowers the police to enter and search premises without warrant for certain specified purposes. The clause both clarifies this area of the common law and places it on a statutory basis and makes comprehensive provision for the circumstances in which the police may enter premises in order to effect an arrest.

Sub-clause (1) gives the power to the police to enter and search for any of the following purposes: (a)(i) to execute a warrant of arrest in connection with or arising out of criminal proceedings - this follows the existing common law; (ii) to execute a warrant of commitment to custody for failure to pay a fine; (b) to arrest a person for an arrestable offence as defined; (c) to recapture someone unlawfully at large whom the officer is pursuing; (d) to save life or limb or prevent serious damage to property. Except where entry is made to save life or limb or prevent serious damage a constable may only exercise the powers conferred by clause 20 if he has a reasonable belief that the subject of the warrant or the person whom he wishes to arrest or recapture is on the premises which he proposes to search. In the case of a block of flats the power to enter and search only applies to the actual flat in which he is suspected to be and any common parts.

Sub-clause (3) provides that a constable may only exercise the powers or search conferred by clause 20 to the extent that is reasonably required in order to accomplish the purpose for which the power of entry was exercised.

Clause 21, Mr President, deals with the power to enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence if the officer has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates to that offence or to some other arrestable offence which is connected with or similar to that offence.

Clause 22, Mr President, deals with the power of the police to seize articles in the course of a search. The royal commission said that it defies common sense to expect the police not to seize items incidentally found during the course of a search. At the same time the risk that premises may be ransacked as soon as the warrant is granted for any offence must be minimised. The clause provides that where a constable is searching premises under statutory powers or by consent he may seize anything on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence and that it

is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed. A constable may also seize anything if he has reasonable grounds for believing that it is evidence in relation to an offence which he is investigating or any other offence and it is necessary to seize it in order to prevent the evidence being concealed et cetera.

Where information is stored on a computer the constable may require it to be produced in a form in which it can be taken away and in which it is visible and legible - sub-clause (4). Again, the constable must have reasonable grounds for believing that the information on the computer is evidence in relation to an offence which he is investigating. The clause therefore permits seizure of the fruits of crime and the evidence of crime regardless of the crime and of who is implicated. Again, codes of practice will be issued, to govern the conduct of searches.

Clause 23, Mr President, extends the powers of seizure to enable the Bill to require that information contained in a computer be produced in a form in which it can be taken away and in which it is visible and legible. The police can legitimately object if they are simply handed a floppy disk. In some situations it might be appropriate to secure the computer itself in order to make sure that a print-out is produced before it can be destroyed or tampered with.

Clause 24 makes provision for access to property held by the police. Sub-clause (1) states that a person who can show that he was the occupier of the premises from which items have been seized by the police, or that he had custody and control immediately before the seizure, may request that he be given a record of what was taken and such request shall be complied with. The record must be supplied within a reasonable time.

Photographs or copies made should be supplied to the person who made the request within a reasonable time - sub-clauses (6) and (7).

The caveat in sub-clause (8) is that there is no duty to grant access to the material or to allow its copying where the officer in charge of the investigation has reasonable grounds for believing that to do so would prejudice the investigation of the offence or of other offences or any criminal proceedings.

Clause 25, Mr President, deals with the retention of seized articles. At common law the police could retain items seized for such time as is reasonable in all the circumstances. The Bill provides the same power with somewhat more detail.

It might be interesting to refer to sub-clause (5), which preserves the provisions of the Summary Jurisdiction Act whereby a court of summary jurisdiction may make orders as to the disposal of property in the possession of the police. If someone from whom the police have seized something thinks that it has been retained too long, he may make an application to the courts under the Act which empowers a court of summary jurisdiction to make an order for the delivery of the property to the person who appears to be the owner thereof. Such an application may be made by a constable or by a claimant of the property.

Clause 26 enables the powers under part II and in schedule 1 to be used in relation to conduct outside the Isle of Man which, if committed in the Island, would constitute a serious arrestable offence. The conduct must be an offence in both jurisdictions and will help the police in assisting police forces in other jurisdictions. Mr President, that concludes consideration of part II of the Bill.

The President: Hon. members, we are moving clause 11 to 26 along with schedule 1, sir, right?

The Attorney-General: Yes, I move that clauses 11 to 26 within part II do stand part of the Bill.

Mrs Christian: I beg to second, Mr President, with, if I may, just one query just for clarification. In the earlier part of the Bill we dealt with a clause which created an obligation where a search was carried out without anybody being there: if any damage occurred information had to be left for the owner of the vehicle and so on and so forth, and the person whose vehicle had been damaged could make application for compensation. Now, in this particular section of the Bill we deal with rights for entry and search, and the learned Attorney gave the example of the extent of the search depending on the size of the object they are searching for and suggested that the lifting of floorboards and so on might be permissible if you are looking for something small. I do not think it is in the Bill, but is there a similar provision for compensation for damage where a search is carried out other than in the vehicle?

Mr Waft: Could I just ask, Mr President, on clause 22, the powers of seizure et cetera with the ability to contain information off a computer and that information can be obtained by the police, I presume that they would be under the same constraints of the Data Protection Act as any other individual. Is that the case, Mr Attorney?

Mr Lowey: I take it that most of these provisions in this section are existing provisions anyway and where the new provisions apply; in this particular section of clauses it says that the police cannot at the start take personal files, i.e. between my lawyer and myself or my doctor or my medical notes. If they are in a file in my flat when the police arrive and I say to the police, 'Excuse me, gentlemen, they are my file on X, Y, Z with my legal adviser, leave them alone,' who decides? I think the practicality of this is, do the police take it away and have a look at it and say, 'Oh, yes, they are your legal notes' having read all the information that is implied in those notes. How else do they decide, or do they take your word for it?

The President: Are there any further questions in relation to the clauses? If not, reply, Mr Attorney?

The Attorney-General: Thank you, Mr President. In answer to the question from the hon. member, Mrs Christian, I do not think that there are any provisions for compensation as such in the Bill whenever the police exercise a search warrant. They must, of course, always exercise their powers reasonably and within the ambit of the powers given to them under the warrant. Therefore, if they exceed those powers, it is always open to someone who has suffered loss and damage to sue the police for damages, but that would be outside the Bill. That is the right which anybody has if he or she is subjected to unlawful powers by the police, so if they exceed their powers, they act quite unreasonably, for example if they start lifting floorboards, destroying property, pulling down wallpaper et cetera, then, if that was unnecessary, they must pay compensation.

Mrs Christian: If I may, Mr President, why then is the treatment of vehicles different? One assumes that the same ability to sue if they damaged a vehicle would be as it is for property.

The Attorney-General: Mr President, I think that the answer to that is the Bill makes it clear that if there is a search of an unattended vehicle a notice must be left on the vehicle explaining who has carried out the search and the reasons for it and so on, and it puts the owner of the vehicle on notice that someone exercising powers of the police has carried out the search and it therefore enables the owner of the car to bring an action against the officer or the police force if he has suffered loss.

Mrs Christian: Well, could the police not enter an unoccupied house and therefore need to notify the owner?

The Attorney-General: Indeed, and they must leave a copy of the warrant on the premises or with someone who appears to be in possession or control of the premises. If there is nobody there they must leave a copy there on the premises.

Mrs Christian: Thank you.

The Attorney-General: Mr President, in so far as the question from the hon. member, Mr Waft, I am afraid I am not an expert on the Data Protection Act, far from it, but it is quite clear, I think, that if the police do extract information from a computer system, it must be used only for the purposes of the inquiry and it may not be disseminated other than in connection with the inquiry. In other words, if it is going to be used by way of information or by way of evidence, it can be restricted only for those purposes and for the court proceedings which may be on the way. It would be quite wrong for the police to disseminate that information to third parties and I am quite sure they would be in breach of the Data Protection Act then.

Mr Waft: If I could just clarify one further point? If the police go into somebody's premises, having arrested them previously, and they find the products of other crimes - for instance, if they enter an Aladdin's cave which seems to them the produce of previous other crimes - they are quite at liberty to take action, although it is not accord with the crime that they are actually investigating? Is that the way we read it?

The Attorney-General: Is this in connection with a person who has been arrested -

Mr Waft: Yes.

The Attorney-General: - and you go back to his premises? Mr President, I think the position there is that if someone has been arrested and the officers conduct a power of search, as indeed they are entitled to do under clause 21, a constable may enter and search any premises of a person who is under arrest, and may seize and retain anything for which he may search, under sub-clause (1). In fact it is quite clear, I think, that the officer there could seize not only items which are the subject of the particular search warrant, but also other items in connection with any other arrestable offence which is connected with or similar to the offence which is the subject of the search warrant.

Mr Waft: Thank you.

The Attorney-General: Mr President, the question from the hon. Mr Lowey related to legal files and doctor's notes. In so far as legal files are concerned, provided that a person is not involved in a criminal conspiracy, say, with his advocate, the legal files are absolutely privileged and may not be detained, may not be taken by the police in exercise of their powers. If there are doctor's notes, then that is the sort of excluded material which is specially protected and must be the subject of a special application to the deemster under schedule 1.

Your specific question is who decides what is protected. The individual concerned would, of course, protest that the files or notes were protected. If the police disregarded that protest and nonetheless seized the documentation, if that came to light at the trial, the deemster would not allow that evidence to be admitted because it would be illegally obtained evidence. Not only would it not be admitted, but also the police who had seized that evidence would be in breach of the particular code and would be guilty of a disciplinary offence. I suspect also that they would be liable to damages for unlawfully carrying out their powers.

The President: Now, hon. members, I will put the resolution that clauses 11 to 26 along with schedule 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, having dealt with sections I and II of the Bill we will, in keeping with your previous decision, adjourn consideration of the balance to a later sitting.

Legislative Council - Constitution And Work - Motion Carried

The President: We proceed now, with your agreement, Mr Attorney, to item 3 and I call upon the hon. Mr Lowey.

Mr Lowey: Thank you, Mr President, I beg to move:

That -

- (1) a committee of the whole Council do consider and report upon the constitution and work of the Legislative Council and its relationship with the House of Keys;*
- (2) the committee have power to constitute such sub- committees as it decides are desirable to consider specific areas of its terms of reference; and*
- (3) the committee and any sub-committee shall deliberate in private but may hear any oral evidence in public and that, as and when required, Council do further consider the establishment of standing committees on social issues and the quality of life and the development of the economy.*

Hon. members, in moving the resolution set down on the order paper, I want to spell out quite clearly at the outset that this is not a panic measure, it is not a signal that things are bad, wrong, or worsening with the Legislative Council, or that we are in need of emergency treatment. My resolution is a reaffirmation of our work, our role, in a tricameral parliamentary position that we operate in the Isle of Man. If I can spell out my view of what they are, it is that the Keys' and Council's primary duty is as legislative bodies and Tynwald Court has a primary role of policy and financial matters. I have used the word 'primary' because I know question time was introduced into the Keys and we use it here in this Council; I also know that question time in another place is a relatively new innovation.

It is a very germane time to spell out publicly what our role and influence is. You yourself, sir, said a few weeks ago that this Council regularly undersells itself; I have to agree. I have to say, having heard what some members of the Keys think we do or do not do, it makes it more important than ever that we do not allow this drift of misunderstanding and veritable rewriting of our role in the political firmament to continue. I read the *Hansard* report of the Keys on the select committee's report about the Council, and in many respects I was disappointed and surprised. Although I should never be surprised in politics, I was surprised at the interpretation

of our role by some of our colleagues, and it left a lot to be desired, I may say. It is not for me or this Council to agree or disagree with select committees of the House of Keys; that is their business. But when you hear - and I am going to be a little bit raunchy here - jaundiced and, dare I say it, misleading statements about this Council and its members, then I for one reserve the right to respond.

To illustrate what I would call the misleading statements in the report, the report says that question time is rarely used in this House. I believe it is a fact that question time is, as I have said, only a recent development in the House of Keys; it was introduced by my hon. friend Dr Mann. I can remember, when he did not get it in the first time, he in his usual persistent way got it at the second or third attempt, and I always remember the argument being floated that it would be used for matters of national importance. Well, I will leave members to think whether that is the use that question time in another place is being put to at the moment. But I would suggest that question time and the role of the branches are to hold the executive of the government of the day to account. That is our role, and question time is only one of a raft of measures that we should use to question and keep them in check. Question time is importantly, but not exclusively, used. I, for example, can say I ask in writing, by phone, orally, many questions of ministers and their executives and I am certain other members do the same.

Hon. members would also have read with a little surprise that we were castigated for not working long enough. Well, we can only deal with what the Keys send up to us and we have dealt with everything they have sent to us, and I know we have asked repeatedly to assist with the volume of Bills to ease the workload in another place, and we all know the response that this Council got to that request. But it is ironic that if this House should disagree with the House of Keys and dare to vote against a motion or resolution - I can think in Tynwald Court, for example, on Sunday opening of shops, or animal welfare - there was a chorus of anger bordering, I would say, nearly on hysteria if we dared to defy them and hold up the resolution for a month. It seemed in the eyes of some that that was the death of democracy. Yet the same scenario is interpreted in the same debate as the Council having little or no consequence, 'so let us abolish them'. So there we have the two extremes being talked: about almost you are damned if you do and you are damned if you don't.

Now, politics is an evolutionary situation, Mr President; you have seen that in your time. The changes in the 20-odd years I have been here have been immense and they have stemmed from a real need to grow up politically for the Isle of Man, to get away from the overpowering influence of the United Kingdom with governors presiding over this chamber, in Tynwald Court and virtually running our affairs. Now, that has been successfully negotiated and the advent of ministerial government has pursued it even further, if in our heart of hearts we know that the recent bout of reformitis is allied more to this than any other issue. But this Court and Council, particularly the Legislative Council, has never shied away from its responsibility in that fight for reform. We have played our part in guiding the political progress of this Island and I am sure will do so again now.

In the House of Keys report I could analyse, with vigour and for a long time, many of its conclusions or rather non-conclusions, because they were options; as the mover said, they were not exhaustive - well, that is what he said at the beginning of the debate, but by the end of the debate he was telling the members that they were going to be force-fed them if they did

not come up with any others. But it is not, as I said earlier, for us to discuss their deliberations. My resolution will give this Council an opportunity to answer some of the options and perhaps place a few more relevant options into the political arena concerning the development of the constitution. I think it is sad when an honourable and, let us face it, a historic part of the legislature, this Council, is caricatured, as it has been recently, for what some would say are short-term political gains. It is beholden on us, who have the privilege of being here at this time, not to allow our record of service to the political scene to go by default; it is beholden on us to bear the initials of MLC with pride and I believe, in allowing this motion to go forward and, I would hope, on a unanimous front, it will do the political life of this Island a service. I believe that the Legislative Council has played a progressive part and it has a part to play in the future, and I beg to move the motion standing in my name.

Dr Mann: Mr President, I beg to second this resolution. I think, in many ways, it has to be seen as a reaction to what has occurred in another place. I think we were all of us - and most of us have been around a long time - have seen many, many committees looking to the function of the Legislative Council, and there have been many reports. There was one in the last House which I had the honour of being part of. But these committees in the past have always been in Tynwald Court and in Tynwald Court this Council played its part in the response to those reports. On this occasion a report has been made by a committee of the Keys. Now that they obviously are entitled to do; that is their privilege, but I think it has been unfortunate that the debate has been conducted purely and simply by the Keys' members, whereas I think in democratic terms it should be actually in Tynwald Court where this Council would have had the opportunity of input and a balance to some of the arguments that have been used. Unfortunately, the reports in the media, for instance, of the Keys' debates have obviously, because of the content of the debate, been highly critical of the function of this Council, and so I think we have a slightly different set of circumstances here in which I think it is now very important that this Council also looks into the relationship between the two parts of the legislature. In particular, I think, we need to clarify the various aspects of the report that have been made in another place, to clarify their significance and how in fact some of these matters could be rectified.

I think first of all, in considering the importance of the report in another place, that report was a suggestion of options. It was a very interesting report and certainly one should look seriously at the options that have been put forward but, in the debate in another place, those were put forward to be received, not to be recommended, not to be acted upon, and in fact at the end of that debate all that happened was that the report was received, not that any recommendations were supported or moved forward or to be moved forward. So the significance of the report has to be seen for what it was - that is, that it has been received by the Keys.

I think it is important that we react to any recommendations that are actually supported by the majority of the House of Keys. So far we have not seen that and, when we do see it, we must then respond to such recommendations if they are in fact supported by the majority of the Keys. Here I think we have got to look at how any situation could be altered. This Council is set up by statute, it can only be altered by statute, and by statute it would have to be a Bill introduced into the House of Keys, it would be a constitutional issue, it would need the two-thirds support majority in the House of Keys before it actually passed through the House of

Keys; it would then come to Council for our consideration. So changing the structure and constitution of this Council would be a very serious position to adopt and it would have to be supported by a two-thirds majority, as I understand it, in another place. So it is not going to happen very lightheartedly.

Secondly, some of the objections of Members of the House of Keys do not in any way relate to the constitution of this Council; it is by convention or by voting within the branches. Such things can be looked at in a different way and I am sure, if we looked at these objections in a similar way to the Keys members, it is quite possible that we could resolve those differences - the differences, for instance, as to whether a minister should ever come from this Council is not a matter for us to decide; it is by convention and at this moment determined by the Chief Minister of the day. Likewise the voting habits and voting rights of this Council are also a thing that can be resolved.

So I think there are certainly three jolly good reasons why this Council should just look at its current functions, look at ways in which it could meet and discuss with and perhaps resolve some of the problems that have been identified, but only if and when there is a clear majority of the House of Keys in public expressed in a debate in that place.

I would very much support the hon. member and I congratulate him on bringing it forward at this moment, so that we at least establish those areas in which statute applies, those areas in which convention applies and those areas in which there is some ability of the two branches to come together and resolve any objections. So I wholeheartedly support the hon. member in his resolution.

Mr Kniveton: Mr President, I will follow after the last two speakers; obviously, I will condense mine as far as possible because they have said much. But after hearing so much, I was going to use the word 'waffle', but shall I say 'criticism' outside of this Council chamber regarding this hon. Council. I have no problem with all three parts of the motion - no problem whatsoever. Neither would I disagree with discussion over any reasonable changes as have been suggested. It is a changing world in which we live and we do have to adapt ourselves to that. I feel that perhaps, as we are in the news so much and the firing squad is ready, then it would be extremely sensible for a report, as outlined in the motion, to be prepared and let the Manx people outside and even members of the Keys know what we are all about.

As the new boy, I entered this Council willingly, with my eyes open, with my ears open. I was honoured to do so and I was honoured to be welcomed by you, sir. Perhaps I was lucky to get the 13 votes at the first time - I do not know what has happened recently. I did enter the Council in the belief that the Legislative Council has a good future, as good as it has ever done once we are adjusted. I believe that Mr Lowey is quite right, and I congratulate him for bringing this motion forward, when he calls for more work for us.

The fact that the House of Keys cannot find a member from within their own ranks - unless they have done so this morning, and that seems to be the policy within their own ranks - to join us has given a lot of people the impression that we in this Council are to blame for this situation. That, of course, is incorrect. I believe their report on the Council was published, accepted only as Dr Mann has just said, at a very bad time and certainly creates uncertainty as to the future of government. Such ideas as members of the Council not even being permitted to be members of departments, let alone ministers or chairmen, to my mind is

ridiculous. I believe they could not do without us simply because of the numbers game if nothing else, and I believe they know that situation.

We have had two speakers; I have put my power to this and I wholeheartedly support Mr Lowey's motion this morning. Thank you.

Mr Waft: I would just like to say, Mr President, I welcome the move by Mr Lowey today. In the normal course of events, I normally would think that navel-gazing would be the phrase I would have at the back of my mind, but in these circumstances it would be ridiculous to ignore the situation that is going on in another place when they are talking about abolition of ourselves in the whole scheme of the Tynwald concept. Tynwald itself being left as a place where Keys members can sit periodically would probably negate it at the end of the day and to lose the name 'Tynwald', which has a worldwide conception - as anybody who has been on any Commonwealth visits would tell you and as you must know, Mr President, the concept of Tynwald throughout the world has been respected worldwide, and any move to try and diminish that respect within the Commonwealth has to be deplored. I would hope they do not go down that road.

As I say, it would be ridiculous for us to ignore the concept that abolition of the Legislative Council was one of the reasons on the report, along with others, that has to be considered. The fact that it is a possibility of limitation of ministers to sit in Legislative Council, restricted powers, perhaps, no powers of voting of finance, the ability to sit in departments, does leave very little for the Legislative Council to do at the end of the day. So we have to consider our position and the report that we would put forward has to be a part of the concept, and every member of Tynwald should be aware of the road which will finally be ended up with if they take a certain procedure. All I am concerned about is that all the facts are presented to those members who are able to vote on this principle.

I would heartedly endorse what Mr Lowey is doing today. I am a little bit concerned with the principle of how we go about some of the situations, especially with regard to the standing committee on social issues, because I understand there is a standing committee on social issues within the Council of Ministers. So I am not against it, but there will be some duplication perhaps from time to time, and would that standing committee on social issues be considering Bills as they come forward from time to time, and who would decide whether it was a social issue or not? The impact of all Bills have some bearing on the social concept.

So there is a lot of thought to be given with this move and I hope that the mover does get his proposition moved today, but there are a lot of areas within this short piece of legislation that need a great deal of consideration. Thank you.

Mrs Christian: Mr President, I would just like to again add my support to the resolution and to endorse some of the comments made by the hon. member, Dr Mann. I think it is clear that in another place some of the thinking in relation to Council is being muddled in terms of what is constitutional and what is convention, and that is clearly illustrated, in my belief, in terms of the current elections to the Legislative Council.

In reading some of the *Hansard* extracts in relation to the debate on the report in another place, it seems to me that when we do our work we would do well to do it on a much more reasoned basis, because much of the comment, I think, made in another place was not backed up by argument sustaining the comment, and I think that if the Council is to embark on

this course, I am sure it will act responsibly in examining the proposals which have been made or any other proposals which we ourselves may propound in order to overcome the difficulties which apparently currently exist in our relationship with the House of Keys.

In so far as the final part of the resolution is concerned, I too would want to explore those issues a little further. I note that the hon. mover indicates that as and when required the Council do further consider the establishment of standing committees - you are not asking today, sir, that we do go ahead and establish such committees. I think I understand your thinking in terms of Council having a role on this wider front, but I think that that particular proposal would need further debate and development as to what we would hope to achieve and how we would hope to contribute to the whole of Tynwald's deliberations on those particular issues. I think we need to, in our deliberations, bear in mind - I do not know whether people share my view - that Council is generally accepted to take an all-Island view of these issues, and that is a very important function, in my belief. The House of Keys, by its very nature, has a very parochial approach to certain issues and I think that the emphasis on having a body here which is one step removed from the direct electorate - the importance of that should not be underestimated, and in order that we can go ahead and explore all these things by way of a report and a response to the report in another place, I am happy to support the motion on the order paper.

Mr Radcliffe: Mr President, I really was not going to speak on this one because I totally approve of the resolution which is before us, but I think it is worth stating, as the hon. member Mrs Christian has said, that in reading the *Hansard* of what took place in the other house, there seems, and certainly is, a lot of muddled thinking and certainly, again, a lack of knowledge as to what Council's role really is. It is not appreciated, particularly amongst some of the newer members, as to what Council's role is anyway. This, as I say, muddled thinking, lack of knowledge, coupled with perhaps various irritations regarding unfulfilled ambitions and such things of certain members, has led to the situation that we have where statements have been made which are totally wrong - misleading statements, mischievous statements, almost, about Council and its role. I think we can, as a Council, by following Mr Lowey's lead here, try and rectify that situation. It will not happen overnight, obviously, there is going to be a lot of consideration, deliberation and work involved, but certainly it can do the Council's position nothing but good, I think, to support the resolution today.

The President: I call on Mr Lowey to reply.

Mr Lowey: Well, thank you, Mr President. Can I thank colleagues for their response to the resolution. Can I first of all thank Dr Mann for his balanced resume of the resolution. I have tried to keep it a balanced one because I do think the reaction . . . He is quite right, of course: we are discussing it today because of the reality of the report from the House of Keys, but it is too easy and that is why I said it is not for us to discuss their report. The report is a matter of fact, it is there on the table and that is the engine that is driving this thing forward at the moment and I think it needs a governor on it to regulate the speed at which they wish to go.

I do believe, in recognising the political scene as the Isle of Man PLC, that we cannot divorce ourselves from the changing face of politics. We have got a new colleague with us now and we await the arrival of another colleague; this will alter the thinking and the performance of this particular Council. Every time we have a change there is a change of emphasis in the Council. So I believe personally that we have an evolving situation which we

cannot ignore. Now, the reality is they want to throw the baby out with the bathwater, and I genuinely believe that this Council should, in its own way, in its own time, in its own style, add to that public debate, and I believe that this way which I suggest will assist in that formulation.

I would like to say to Mrs Christian that I accept the point that I do not see these standing committees on social issues, the quality of life and the development of the economy, as alternatives to the government. I believe we have, as a Council, an input, a detached view, of, in the future, putting things into the arena that perhaps can be taken up by government that may be a bit too hot for governments to handle, and that we should be leading and saying, 'These are the ways in which we could do it.' But at this moment in time they are not priorities but they are signals, signposts, that perhaps this is the way the Council can actually develop in the future, in a positive way. So, again, I do not put them down as tablets of stone - you know, 'Here they are, they must be adopted tomorrow' - but I do believe that this is the way in which we should go.

I would like to thank Mr Kniveton for his support and his comment about the timing of the report being unfortunate. I, too, tend to think it was unfortunate but, be that as it may, it was brought out the time it was and that is that.

I could not agree more with Mr Waft when he says it would be dangerous to ignore what is going on. I said that we are getting one side of a story being perpetrated by the media all the time and, until the Council comes in and fills that void, that is the story that will be getting put out.

So I do think that we have a positive lesson here to learn and I think; to coin Mr President's phrase, we have been shy violets and we have sold ourselves short on too many occasions. What I would just like to say in response to the debate on my resolution is that I thank hon. members for the positive way in which they have received it and I beg to move the motion standing in my name.

The President: Hon. members, I will put the resolution set out at item 3 on the agenda paper. Will those in favour of that resolution please say aye; against, no. The ayes have it. The ayes have it. Resolution carried.

A Bill To Limit Smoking In Public Places – Leave To Introduce Granted

The President: Now, I understand the hon. member Mr Waft wishes to seek leave to introduce a measure under the proviso of standing order 21(2).

Mr Waft: Yes, Mr President, I was going to seek leave to introduce a Bill to limit smoking in public places and to make provision with regard to smoking in employment and connected purposes.

The President: Is that agreed, hon. members?

Members: Agreed.

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

The Council sat in private.