

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS
Douglas, Tuesday, 3rd February 1998
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen) and the Acting Speaker (Mr J D Q Cannan) (Michael); Mr L I Singer and Hon A R Bell (Ramsey); Hon R E Quine OBE (Ayre); Hon H Hannan (Peel); Mr W A Gilbey (Glenfaba); Mr S C Rodan (Garff); Hon D North (Middle); Mr P Karran, Hon R K Corkill and Mr J R Kniveton (Onchan); Messrs J R Houghton and E A Crowe (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Mr A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc), and Mrs P M Crowe (Rushen); with Prof T StJ N Bates, Secretary of the House.

The Chaplain took the prayers.

Apologies For Absence

The Speaker: Hon. members, we have apologies this morning from Mr Shimmin, who is unfortunately suffering at the moment from a bit of a back problem so will not be in to join with us today.

**Isle Of Man Constabulary - Use Of Courthouse Custody Suite -
Question By Mr Houghton**

The Speaker: Hon. members, if we turn to our order paper, this morning we have 13 questions for oral answer. Can I ask that the hon. House keep its supplementaries as direct as is possible? Turning then to question 1 on our order paper, hon. members, I call upon the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I beg to ask the Chief Minister:

- (1) *Are there any reasons why the Isle of Man Constabulary should not be permitted to use the custody suite within the new courthouse complex (when required) during evenings and weekends; and*
- (2) *if there are no substantial reasons, will arrangements be made to secure the use for the constabulary of this important facility at the earliest possible date?*

The Speaker: I call upon the Chief Minister.

Mr Gelling: Mr Speaker, the design of the new courthouse complex followed extensive consultation with future users of the complex, including the Isle of Man Constabulary. Now, during these consultations the constabulary made no request for the new courthouse facilities to service any of their operational needs, nor did they subsequently ask for any aspect of the building design, as they evolved, to be modified to serve their operational needs. Had any such request been made and agreed, they could have been included in the brief to the architects.

As designed and built, it is not now possible to allow the cellular accommodation to be used without giving access to the remainder of the building and compromising the overall security of the building.

The question which the hon. member asks has been raised by the Department of Home Affairs with the Council of Ministers on two occasions, in 1994 and again in 1997, when the Council of Ministers, with the full knowledge of the information I have given in this reply, supported the views of the deemsters that unrestricted access could not be given as had been requested. I can, however, inform the hon. member that this cellular accommodation may be made available to the constabulary outside normal working hours in exceptional circumstances and subject to the prior approval of the Chief Registrar, and the constabulary are aware of this arrangement, Mr Speaker.

Chief Secretary - Accountability - Question By Mr Karran

The Speaker: Question 2, hon. members, and I call upon the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Chief Minister:

To whom is the Chief Secretary responsible for carrying out his duties as a civil servant?

The Speaker: Again, I call upon the Chief Minister to reply.

Mr Gelling: Mr Speaker, for most aspects of his work the Chief Secretary is responsible to the Chief Minister, but the Chief Secretary and his office do work for the Lieutenant-Governor in relation to His Excellency's responsibilities and, obviously, in relation to that work he is responsible to the Lieutenant-Governor.

Mr Karran: Vainstyr Loayreyder, could the hon. Chief Minister give us a breakdown of his duties? Does the UK taxpayer pay part of the £70,000-plus it costs the Manx taxpayer to employ the Chief Secretary in order that he does this duty for the United Kingdom Government, and would the Chief Minister not agree that the way he has carried out his duties has shown where his true loyalties are and not to the Isle of Man and this elected government?

Mr Gelling: Mr Speaker, first of all, of course, the Chief Secretary is paid from this Island, he is paid from this government and therefore he is paid by the taxpayers of this Island, and I would like immediately to say that the Chief Secretary's responsibilities to the Governor and the Chief Minister are quite separate and therefore there is no difficulty about reporting to each in their own field. Therefore, in answer to the second part of the hon. member's question, I have no difficulty in accepting that the Chief Secretary has been loyal to the Chief Minister on this occasion.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree, for the Chief Secretary to carry out his duties, to allow you to mislead this hon. House whilst he is sitting in the reserved seats shows a contempt to us all, and what do you intend to do about it - or is it another case of one law for those at the top and another law for those at the bottom? And would he also not agree that it would show a contempt to this government if he brings him to see this third division Home Office minister in the United Kingdom? He should not be brought because his loyalty is not to support this government?

Mr Gelling: First of all, Mr Speaker, can I say quite clearly I did not mislead Tynwald (**Members:** Hear, hear.) and I did not mislead the Court or the House in any shape or form, because when I spoke to both of the chambers I was in the knowledge that I had been informed on the Monday, so therefore I misled no member of either Keys or Court.

Basically, I have to be careful here, otherwise I actually will run into some of the other questions that are following because the question has been raised as to the loyalty and where the loyalty lies of the Chief Secretary. I would say that as far as the Chief Secretary is concerned, he kept a confidential cover on something he had been told by His Excellency, and I am absolutely certain that, had I made a similar remark to the Chief Secretary and I told him not to tell anyone, i.e. the Governor, he would have honoured that also.

Mr Houghton: Mr Speaker, enlarging on the Chief Minister's answer about being misled, does he not agree that he was deceived and misled by this gentleman and that now members of this hon. House have no confidence in this man? What I would further go to say is that this sends out a negative message -

The Speaker: Ask the question, sir.

Mr Houghton: Sir, this sends out a negative message to other civil servants subordinate to this post; does he not agree with that, sir?

Mr Gelling: No, I do not agree with that, Mr Speaker, because, as I have said, it is going to be difficult not to stray into other parts of the question paper. The situation is quite clear, and it is also quite clear in the Channel Islands' situation. The Isle of Man, in fact, is in a better position than they are inasmuch as the communication that came into this Island formally was a letter that came directly into this building, into the Chief Secretary's Office, and I was told immediately on receipt of that communication. The fact that the Home Office - and I repeat, the Home Office - as the vehicle for another department of government contacted His Excellency the Lieutenant-Governor to inform him that this particular review formal letter was on its way is something that was entirely in the hands of the United Kingdom Government and it was an instruction from there that it was not giving that information to political members of this government till the official formal fax was sent, which was on the Monday. The same thing for all islands, so therefore the Chief Secretary did not mislead me because he did not tell me. He kept a confidence that was put upon him by the Lieutenant-Governor under instructions from the UK Government. So that is the exact position, Mr Speaker.

Mr Gilbey: Mr Speaker, would the Chief Minister agree that the form of some of the questions that have been asked about a senior civil servant are absolutely disgraceful and that such questions should not be asked about people who cannot defend themselves, (**Several Members:** Hear, hear.) and will he express his complete confidence in the Chief Secretary? (*Mr Karran interjecting*)

Mr Gelling: In reply to the hon. member, yes, it is very difficult when someone is being criticised and they cannot defend themselves. However, I will do my best not to defend the Chief Secretary but to give the facts to the hon. members so that they can form their own opinion. However, I will say that this has left our Chief Secretary in a very difficult position; it is a position that he has never been in before, a position, I hope, he never will be in again. However, the Chief Secretary has stated that if members wish, after our lunchtime meeting

today and at the behest of the House if we conclude our business early, he is quite prepared to meet members and to give the explanation to members if they wish any more details, sir.

Mr Cannan: Would the Chief Minister consider, in the light of the comments made today, that the terms of reference of the office of Chief Secretary in the Civil Service Act 1990, section 7, should be reviewed and, if necessary, amended so that there is in future no distribution of his duties?

Mr Gelling: Mr Speaker, the Council of Ministers have already asked for details of the whole situation in respect of the Chief Secretary where we will be reviewing that particular area of responsibility. However, I would suggest to hon. members that we should not be hasty, because we must still remember that our system is ahead of our friends' in the Channel Islands, because the communication on the Monday that came directly into the Chief Secretary's Office of which I was informed immediately on receipt went to the Governor, or in Jersey's case the Bailiff, being the deputy Governor, and then found its way slowly, in one case, to the Tuesday morning before anyone in the states of Guernsey knew and late on the Monday when Jersey knew. So our system is still better the way it is. Again, this is the first time this has happened and, as I will repeat, I hope it is the last time.

Mr Houghton: Hear, hear.

Anglo-Manx Parliamentary Group - Question By Mr Rodan

The Speaker: Question 3, hon. members, and again I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I beg leave to ask the Chief Minister:

- (1) Who are the members of the Anglo-Manx Parliamentary Group at Westminster;*
- (2) what are the functions of the group; and*
- (3) what liaison takes place between the group and both Tynwald and the Isle of Man Government over UK parliamentary business relating to the Isle of Man?*

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, the answer to the hon. member is quite a long one, so if you bear with me. The United Kingdom/Manx Parliamentary Group at Westminster consists of members from a cross-section of political parties in both the House of Commons and the House of Lords.

The current members of the group are: Mr Andrew MacKinlay, Labour; Nicholas Hawkins, Conservative; the Right Honourable John Taylor, Unionist; John Austin, Labour; John Wilkinson, Conservative; Lord Hoyle, Labour; Joe Benton, Labour; Dennis Turner, Labour; Joan Walley, Labour; John Marek, Labour; Lord Jopling, Conservative; Charles Kennedy, Liberal Democrat; Ronald Fearn, Liberal Democrat; Roy Beggs, UUP; Rev Martin Smyth, Unionist; and Lord Quirk.

In answer to part (2), the group consists of members who are willing to take an interest in the Island and its affairs and who are available to give advice and assistance to the Island if it should be needed.

Part (3). Regular contact and liaison is maintained with the group in a variety of ways: firstly, when the Isle of Man delegation goes to Brussels each year it aims to meet up with members of the group on the return leg of its journey; secondly, an invitation for a representative of the group to attend the Tynwald sitting at St John's in July is extended annually and a number of members of the group have taken up that invitation, whilst others have visited the Island on separate occasions; thirdly, members of Tynwald attending Westminster always receive a warm welcome from whichever members of the group are available, and I believe that we should continue to take the opportunity on a regular basis to build personal relationships with our colleagues in the group, which can only be to the advantage of the Island.

In addition, Mr John Wilkinson MP, secretary of the group, was on the Island in November for a private visit, and I took the opportunity to meet with him to talk about the group and further promote our mutual interests.

Finally, normal channels of communication by letter or telephone are always open at any time to liaise or discuss UK parliamentary business relating to the Isle of Man, Mr Speaker.

Mr Rodan: Mr Speaker, will the Chief Minister be meeting any members of this group when he goes to London this evening and, if so, will he ask for their support for the Isle of Man's expressions of outrage and concern to the Home Office? And lastly I would ask him, does he agree that it would be wise to develop a closer, perhaps, working relationship with the group who represent our closest political friends at Westminster?

Mr Gelling: Mr Speaker, first of all we have not made any contact with the group on this specific last few days' events. However, the situation is that they have all been briefed. Each member that I have read out has had a briefing from us on exactly what it was all about, what happened, so that they are up to speed on the announcement of the review. Certainly, on this particular trip to the Home Office our time is committed and we have not, at this time, been able to make contact with any of the members, but certainly if the opportunity is there we will take it, Mr Speaker.

Home Office - Communication Channels With Manx Government - Question By Mr Rodan

The Speaker: Question 4, hon. members, and again I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I beg leave to ask the Chief Minister:

What are the channels of communication between the Home Office and the Isle of Man Government?

The Speaker: The Chief Minister to reply.

Mr Gelling: Mr Speaker, the formal channel of communication is between the Constitutional and Community Policy Directorate of the Home Office and the Chief Secretary's office on this Island. Informally, of course, there can be other contacts, particularly on a day-to-day working basis between different parts of the Home Office and His Excellency the Lieutenant-Governor and different departments and offices of the Isle of Man Government.

Mr Rodan: Mr Speaker, does the Chief Minister agree that if formal channels of communication are to the Chief Secretary's office and the Chief Secretary can then advise the Chief Minister, then the informal channels which apparently can involve the Home Office informing the Governor, who can inform the Chief Secretary as long as he keeps it confidential from the Chief Minister, these informal channels are far from satisfactory and will he give that message to the Home Office?

Mr Gelling: Yes, indeed, Mr Speaker. As I said to an earlier question, I was straying into this one because in fact the system we have is that those formal communications come into the Chief Secretary's office here, whereas in the other islands they go to the Governor and therefore we do have an advantage in time and basically the hon. member has raised the very point that I will be raising tomorrow, and that is that the informal contact perhaps with His Excellency could at least be extended to the Chief Minister's office.

Mr Karran: Vainstyr Loayreyder, can the hon. Chief Minister explain with the channels of communication that officials of his government knew before the elected members of this hon. House knew? How can he justify the criticism not being levelled that it once again shows that the bureaucrats have more control over your government than you do over it yourself when at least three members of staff within the employ of government knew before any elected member of this hon. House, and will he make sure something is going to be done about it?

Mr Gelling: Yes, I have partly answered the hon. member's question to the previous one and that is, of course, because that is the channel of communication into the Chief Secretary's office and his instruction, or request, from His Excellency was in the Chief Secretary's capacity as his duties to the Governor. So therefore this is something, as I have already said, that I will be discussing tomorrow, because basically I would not wish the Chief Secretary to be put into that position again.

Chief Secretary - Constitutional Relationship - Question By Mr Rodan

The Speaker: Question 5, hon. members, is a very similar subject. Again I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I beg leave to ask the Chief Minister:

What is the constitutional relationship of the Chief Secretary to -

(a) His Excellency the Lieutenant-Governor; and

(b) the Chief Minister?

The Speaker: The Chief Minister to reply.

Mr Gelling: Yes, Mr Speaker, if we could have put the questions in a slightly different order we probably could have got through them quicker! However, this particular question - the Chief Secretary, like all civil servants, is an officer of the Crown and a public servant. Now, when the post was created in 1989, it was described as being divided into four main areas of responsibility, the first of which creates a relationship with the Lieutenant-Governor and the second creates a relationship with the Chief Minister. Now, as regards the Lieutenant-Governor, the Chief Secretary is described as adviser to His Excellency the Lieutenant-Governor, and his task is the provision of independent advice to His Excellency the Lieutenant-Governor in relation to His Excellency's area of responsibility.

As regards the Chief Minister, the Chief Secretary is described as chief adviser to the Chief Minister, and his task is the provision of policy advice to the Chief Minister. This responsibility involves a substantial contribution to the formulation and development of policy on a wide range of subjects, the central co-ordination and integration of policy on a government-wide basis, and consideration of and advice on the implications of proposed changes in policy or legislation.

Mr Rodan: Mr Speaker, does the Chief Minister agree that present events have exposed a clear conflict in the two roles discharged by the Chief Secretary in his particular post? Does he therefore agree that, whatever assurances the Home Office may give him for the future and which he may request, the only way to make sure that it will not happen again is for us here to remove the source of this particular conflict and to change the statutory basis for the Chief Secretary's two roles?

Mr Gelling: Yes, Mr Speaker, as I have said, this is something that will definitely be raised tomorrow. It is the first time that it has happened since this particular arrangement of communication has been put into practice, and I say again that in looking at this we must be very careful that in fact we do not step backwards (**Members:** Hear, hear.), because if we separate once again that Chief Secretary's position whereby he has no communication with His Excellency. . . Take this particular incident that happened: we would have had no indication whatsoever probably till late Monday evening or Tuesday morning for the simple reason that it would not have come into this office, it would have gone to His Excellency and then, as happened in the other islands, His Excellency would have handed it down to the Bailiff, or whatever, and then it would have come into our office late. So at least with the situation we have got, we have that dual role which, I would suggest, in many cases is an advantage rather than in this one particular case, where it proved a little embarrassing.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that the constitutional arrangement of the Chief Secretary is only one of three senior civil servants who are paid by the Manx taxpayer and who knew before the elected members of this hon. House knew?

Mr Gelling: Correct, Mr Speaker, because in the instruction from the United Kingdom Government - and I keep on saying the United Kingdom Government and not the Home Office because they were only the vehicle of the communication - His Excellency was in a position to give this information of a pending announcement on Monday of a review. This allowed the Chief Secretary to request that he addressed two other officers within government where he could get information to be in a position to be able to brief the Chief Minister on the Monday when the formal communication came into the office. Now, I would suggest that that was done in a way to try to be helpful so that all the information was available, so when we actually got the formal communication we were able to respond immediately, and that was the difference. The other islands responded very late; the Isle of Man was able to get out, respond immediately, and I think the whole of our economy in the Island has actually accepted that as being something which definitely was an advantage to us in the Isle of Man.

Mr Cannan: Having listened to the Chief Minister's reply, I would again ask him, how is it that the Attorney-General and the Chief Financial Officer were both advised prior to the Chief Minister knowing of what was going on, and can this give credibility to the office of the Chief Minister, notwithstanding all the answers he has already given this morning?

The Speaker: Chief Minister, I think the response was given in response to the previous supplementary but you may reply, sir.

Mr Gelling: Yes, Mr Speaker, I think the very question is that it put them in a very difficult position. However, they were the officers that had the legal and the financial expertise to give some advice to the Chief Secretary for him, in turn, to then be able to advise the Chief Minister and subsequently the Council of Ministers immediately on what perhaps could be the implications of such a review. I suppose members have actually read, so I will not repeat: it is quite clear in the Jersey and Guernsey newspapers that the exact same system was put in place for them and they in fact had the disadvantage of finding out quite number of hours behind ourselves.

Mr Braidwood: Mr Speaker, does the Chief Minister know if the Lieutenant-Governor, the Queen's representative, has written to the Home Office to express his concern at the invidious position he was placed in over the communication of the financial review and the subsequent reporting to the Chief Secretary which has compromised his working relationship?

Mr Gelling: Yes, indeed, Mr Speaker, I can inform hon. members that after I visited His Excellency to register our concern and our outrage that in fact there had been no consultation and the announcement had been placed upon us of a review which actually was involving us and we had had no consultation at all, he then sent a formal communication to the Home Office registering his concerns that I had had to go and formally express our concerns to him as the representative in this Island of the Crown.

Income Tax - Self-Assessment - Question By Mr Kniveton

The Speaker: Question 6, hon. members, and I call upon the hon. member for Onchan, Mr Kniveton.

Mr Kniveton: Thank you, Mr Speaker. I beg leave to ask the Minister for the Treasury:

Has Treasury given consideration to self-assessment of income tax liability, and if so is there any intention to introduce such a system?

The Speaker: The Minister for the Treasury, Mr Corkill, to reply.

Mr Corkill: Thank you, Mr Speaker. Consideration has been given to the subject of self-assessment but not in any detail. At that time, Treasury took the view that it was not a system of taxation which was appropriate to the Isle of Man. It would require an entirely different approach by both the taxpayer and the income tax division and could well involve individuals having to incur greater expense in completing their income tax return. One only has to read about the problems experienced in the United Kingdom to realise that the Treasury's concerns were well founded. Whilst the Treasury believes that it is important to try to streamline the administration of the income tax system and find ways of making it easier for individuals to calculate their income tax liabilities, it does not consider that the self-assessment route is the way forward.

Mr Kniveton: Mr Speaker, I thank my hon. colleague for that reply. Does the minister, may I ask him, not agree with me that an option to self-assess through straightforward explicit instructions and pay up on submission of tax return by a fixed date, even with possibly the bait of a small discount similar to rate payments, could bring in income tax much earlier and thus

create an earlier cashflow for government, especially in view of the heavy call on financial resources for future capital developments?

Mr Corkill: Mr Speaker, I take on board the hon. member's concern about the rate of cashflow coming to the Treasury from income tax receipts but the objective of Treasury is to make the income tax system as simple as possible, and I do believe what he proposes would in fact add another tier of complication to that, but it is something we can consider. This subject is always under development. There is a great deal of investment at the moment in a new computer system in the income tax division, known as Chrysalis, which does give a great number of options for the future in terms of tax planning as well as the administration of taxation. So these options will be more available for discussion in the years to come. At the moment the system we have is very rigid and there is not the ability to expand in the income tax administration at the moment. Therefore that is something that could be considered in the future, but I still believe quite straightforwardly that self-assessment actually leads to greater costs for the taxpayer, and that is something I could not support.

The Speaker: Now, hon. members, the Court clock and our standing orders are now in disagreement and I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I rise to move:

That standing order 43(2) be suspended to enable the remaining questions tabled for oral answer at this sitting to be put.

Mr Downie: I beg to second, Mr Speaker.

The Speaker: Are you agreed, hon. members?

Members: Agreed.

The Speaker: I am a little unsure but was the hon. member for Onchan, Mr Kniveton, actually trying to rise on a supplementary to the previous question?

Mr Kniveton: Yes, sir, I have one final supplementary, if I may.

The Speaker: On this occasion I will permit it. A final question.

Mr Kniveton: Thank you, sir. Is the minister aware, may I ask him, that there appear to be a fairly large number of tax assessments awaited by taxpayers, even though they submitted their tax returns back as far as April last?

Mr Corkill: I have not got that information to hand, Mr Speaker, but I will investigate.

The Speaker: Thank you, minister.

Transport - New Bus Network - Question By Mr Singer

The Speaker: Turning then to question 7, hon. members, I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask the Minister for Tourism and Leisure:

- (1) *When did your department first announce that it intended to introduce a new bus network;*

- (2) *will the new bus network be introduced before the summer season and the commencement of the Steam 125 events; and*
- (3) *will the new bus network be part of a fully integrated transport system?*

The Speaker: The Minister for Tourism and Leisure, Mr Cretney, to reply.

Mr Cretney: Thank you, Mr Speaker. I think I should first explain to hon. members that my department undertook a detailed survey of passenger requirements in July 1994. This survey formed the base of information on which the new bus network was constructed. It attracted approximately 1,400 individual replies and each was thoroughly considered.

At the early investigative stages of introducing this service, various options for a route network were considered before the preferred option was published for further public consultation in November 1996. Again, this consultation produced a large response.

Whilst compilation of the draft timetable has been extremely complex, I can advise that this process is now complete. Throughout the whole exercise it has been the aim of my department to incorporate as many public requests as possible whilst keeping within budget constraints.

Finally, in an undertaking previously made in an answer to a question from the hon. member, I confirm the draft timetable will be the subject of public consultation as the final stage in the consultative process, and this will occur this month.

Whilst overall the processes required to implement this service have taken longer than I would have liked, hon. members will be aware from my letter to them in October that this is a complicated matter. It is therefore important to get it right.

On the question of the date of introduction of the new bus network, my department hopes to be in a position to introduce the service as soon as possible this year. The Steam 125 events are progressing well and hon. members will have received details of them from the director of public transport. Whilst my department is working hard to ensure these events are successful, they are not dependent on the introduction of the new bus network.

In answer to the hon. member's last question, I have to say that fortunately, unlike the system in the United Kingdom, the 1982 Passenger Transport Act requires us to operate a properly integrated system of public road and rail transport.

Mr Singer: Can I thank the hon. minister for his answer and I am pleased to hear that we are at last getting underway. Could I ask the minister, what does he actually envisage, though, as a fully integrated service which your department claims in its advertisement in the new telephone directory it already has in place? Is it the bus being at the railway or tram terminus as a train or tram arrives or, as happens at present, the bus going past the tram as it is arriving? Officers, I believe, often have to transport passengers because the bus has not waited for the tram to arrive and therefore they have to try and take them on to their destination.

Mr Cretney: Mr Speaker, obviously a properly integrated system of public transport which applies, in my opinion, not only to buses and railways but also, I would suggest, to that privately operated system of transport, the taxis - it is very important that each can co-ordinate with each other and one of the reasons that the review of the bus services has taken place is that such arrangements would be more appropriate in future.

Mr Singer: Do I take it then, minister, that what you are saying is that the fully integrated transport system will mean that people will be able to go directly from the tram from the bus - whatever - and not have to wait the times that they have to wait at present?

Mr Cretney: Yes, even the horse tram, I hope.

Mr Kniveton: Mr Speaker, just one supplementary, if I may, please, to the minister. To what extent, minister, has recent competition on express services had through abstraction of traffic on or from existing services or estimated from the introduction of the new bus network, and has abstraction had an effect on your future plans?

Mr Cretney: I am pleased to say, Mr Speaker, that the element of competition which has occurred recently has not had any effect in terms of abstraction of traffic from the services which we provide. In fact, our services are so popular that on some occasions we are going to have to put on two buses. However, I am concerned about the general point of public policy and I do not believe that competition on the Island's roads of a more general nature would be of benefit, either for consumers or more especially for the taxpayers who have to fund to a large extent the services provided by the public transport division of my department, and the reason that taxpayers fund that to a large extent is that they provide an all-Island service and not just on the profitable routes.

Mr Karran: Vainstyr Loayreyder, could the minister tell us with this fully-integrated transport system, has the possibility of a free transport system throughout the Island been part of the equation?

Mr Cretney: Obviously, Mr Speaker, I am aware that the hon. member for Onchan, Mr Karran, has for a long time been the proponent of free public transport. I am, however, also aware that there is a large public subsidy which goes into the running of the buses at present, and that would be increased substantially if we were further to extend the number of concessionary fares which already exist. For example, people over 60 on the Isle of Man can all travel free of charge. It has not formed part of my department's proposals because my officers are of the opinion that the best way to get people travelling on the buses is to have frequent services in comfortable surroundings - decent modern buses such as those which we have now provided, travelling regularly, travelling to where the people want them to travel, rather than necessarily travelling free of charge.

Department Of Transport - Public Service Incentives To Use Bicycles - Question By Mrs Cannell

The Speaker: Item 8 on our order paper, hon. members, and I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

Will your department further the introduction of incentives to encourage the use of bicycles rather than private motor vehicles by members, civil servants and other government employees?

The Speaker: The Minister for Transport and member for Castletown, Mr Brown.

Mr Brown: Thank you, Mr Speaker. My department is happy to promote and encourage the use of bicycles by all members of our community where to do so is both practical and sensible.

Mrs Cannell: Mr Speaker, I thank the hon. minister for his short reply, which was shorter than the question. Can I ask him, has he considered or would he consider, as part of a sound incentive for those who use bicycles, cycle paths and cycle stands around the Island?

Mr Brown: Mr Speaker, as hon. members will note, the question that was before me was quite specific in terms. It related to members of this hon. House and Tynwald Court, civil servants and other government employees. Therefore, as far as the general situation is concerned, which of course is our responsibility, my department is already giving consideration to cycle ways. The hon. member for Ramsey who has specific responsibility within my department for highway and traffic has in fact been in discussions with other persons off the Island in terms of how to utilise such cycle paths and we are always looking at ways to encourage people to cycle, as I say, where it is both practical and sensible, and I think that is really the most important point.

Mr Cretney: Mr Speaker, could I ask the minister, is the minister aware whether the car park which is provided under the courthouse for members and others to park their cars in is also available for bicycles?

Mr Brown: Yes, Mr Speaker, I was quite interested to read the *Examiner* last night and I came in this morning and I looked at the car park under the courthouse, and I thought that if you take one car parking space, every member for Douglas could get a push-bike within there and I look forward to seeing all the members for Douglas cycling to work. *(Laughter and interjections)*

Consumer Affairs - Itinerant Traders - Question By Mrs Cannell

The Speaker: Question 9, hon. member, again I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr Speaker, I beg leave to ask the Chairman for Consumer Affairs:

- (1) *What recent measure has the Board of Consumer Affairs taken to curb the unlawful activities of itinerant traders in the building industry; and*
- (2) *how many complaints have been received from the public about such traders since January 1997?*

The Speaker: The Chairman for Consumer Affairs, Mrs Crowe, to reply.

Mrs Crowe: Mr Speaker, I am most grateful to the hon. member for Douglas East for giving me the opportunity to explain to the House the scale of the problem caused by these itinerant traders, or 'cowboy builders' as they are often referred to. I would like to detail the measures we have taken and I shall be dealing with the questions in reverse order.

I can confirm that the Board of Consumer Affairs has received no less than 41 complaints or enquiries about the activities of these traders who call unannounced at the homes of the elderly, and our experience would indicate that these traders target the elderly and yet there is often very little that can be done under the present legislation. I could spend a great deal of time reciting the details of numerous complainants who have lost thousands of

pounds for defective or inferior work and who have actually been driven to their banks or building societies to draw out the money to pay these traders off. It is also true to say that the figures that we have available are most likely only the tip of the iceberg and vast sums of money are being lost by consumers. The reputation of the building industry is being severely damaged by these unscrupulous traders, so this opportunity of advising the public to be on their guard once again is most welcome.

As to the measures taken to curb the criminal activities of these traders, I must inform the House that there have been many varied and very innovative measures adopted by the board. We have utilised existing legislation, we have co-operated with other government departments, we have gone by the way of education, publicity, and we have put forward proposals for new or amended legislation, all of which of course are subject to consultation before coming to this House. For the past 14 months the board has taken every opportunity to warn the public that they should not allow any traders who call unannounced at their homes to do any work for them and certainly not to part with any money. If they do receive a call, then they should contact our officers at once. This message has recently been reinforced with the kind co-operation of the Department of Health and Social Security. When the new pension books were issued, they included a yellow page which we had prepared and paid for, in large print, to warn all pensioners of the dangers of these traders, and I might say this initiative has relieved many plaudits from trading standards officers in the adjacent isle.

Now, during Consumer Education Week which we held in November, hundreds of visitors to our offices, including many members of this House, were able to hear at first hand about the problems caused by these traders and the difficulties our officers face in trying to deal with the problems under the existing legislation. Our attendance at events such as agricultural shows and our regular Manx Radio broadcasts, together with frequent newspaper articles, all serve to highlight the problems we face. But we are always looking for new ways to safeguard the public, and under certain circumstances now our officers have taken to making a leaflet drop in the area where we see these traders working.

Our prosecuting officers have worked closely in recent months with the police, and this joint initiative in dealing with cowboy builders has resulted in one such trader being convicted and sent to prison for three months. I would like to place on record my gratitude to the police for the positive steps that they have taken to limit the activities of these traders and the assistance that they have given to our officers. There are, however, many cases where the existing legislation is unable to protect the most vulnerable members of our community, and this is why the board was most disappointed when its proposals for new legislation failed to gain the support of the Council of Ministers. They were referred back to the board for review. However, undeterred by this, the board has totally revised its proposals and they are now with the Attorney for his consideration. Subject to his advice, I would hope to be invited to present the new proposals to the Council of Ministers before Easter. These proposals will be closely watched by the UK Office of Fair Trading, as they are facing similar difficulties with regard to prosecution as we are here.

I would also like to take this opportunity to pay tribute to the officers of the trading standards division of the Board of Consumer Affairs for their dedication in assisting the victims of these traders, which goes far beyond their duties. Our technical officers not only provide practical help for the victims but they do so often in their own time; our prosecuting officers are

totally frustrated when meticulously prepared evidence is presented to the Attorney-General, only to find that if a prosecution is successful, the victim has little likelihood of the return of any moneys. These officers are dealing week by week with these cases and in one day last year we had two cases, both involving sums of over £2,800 each. Every week we deal with cases where elderly people are losing up to £2,000 to £3,000 from these unscrupulous trades people.

Now, I could go on at great lengths about these many heart-rending cases (*Interjections*) and the tireless work carried out by our officers, but I would just like to say, by way of finishing, that anyone that may be listening to this broadcast (**Members:** Oh!) should not have any work done by them. They should close the door and ring the police or ourselves.

Mr Quine: Hear, hear.

The Speaker: Hon. members, and with respect to the hon. member for Rushen, my colleague Mrs Crowe, you are addressing the House, Mrs Crowe, and not a broadcast. The hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Would the hon. chairman of the consumer board not agree that this needy legislation has been on the starting blocks for some four, five or possibly six years? In view of the fact that there have been problems, and in the answer it is indicated that there have been problems and that the Council of Ministers have failed to support the proposed new legislation submitted by the board, can the chairman please inform us as to why the proposals failed to gain the support? What were the specific reasons given? And can she also explain, given that for 14 months the board has been practising under legislation which has problems, which does not work, which does not have sufficient measures in - all quotes made by the chairman - why this new legislation has not been made a first priority with her board?

Mrs Crowe: I would like no-one to be in any doubt that this legislation is our first priority in the Board of Consumer Affairs. We have worked very hard to present two sets now of legislation, both differently formed, one rather pro-active and the second passive policing of these traders. We think that the proposals we have now formulated, with the help, I may say, of the Attorney-General, the Council of Ministers will view favourably and legislation will be in place as soon as possible. What I have learned is that government works slightly more slowly than private enterprise.

Mr Downie: Mr Speaker, I would like to ask the chairperson that, given that her department considers this new legislation something of a major priority, could the member explain to the House when these proposals were put before the Council of Ministers and also whether she is aware that in the minutes that are circulated to members of this Court there is reference to her presenting her case to Council of Ministers? And if not, would she give an undertaking to this Court that she will express her concern that members of this Court are from time to time not given the full picture and we are not aware that you are trying to push this new legislation and apparently being thwarted by the Council of Ministers?

Mr Houghton: Hear, hear. Good point!

Mrs Crowe: I think it was actually the method that we were trying to use for prosecution that had some query with the Council of Ministers, and at that time members of departments

or chairmen of boards were not invited to the Council of Ministers to present their case, which might have made the difference if technical officers and perhaps myself had been present. But on this occasion, I am sure that we will be invited to make the presentation -

Mr Downie: You will now! *(Laughter)*

Mrs Crowe: - which is very complex, like all legislation that involves the police, customs officers or trading standards officers. Where criminal legislation is going to be put in place, it is complex.

Mr Gelling: Would the hon. chair of the consumer council not agree that in fact the legislation was returned to her board because of concerns expressed from the Council of Ministers, not in any way to disrupt the progress of the Bill but purely because it was in some way perhaps affecting those who were not rogue builders and therefore we asked for them to look at it again? And also, would she not agree that in fact the invitation has been extended for them to present it to the Council of Ministers when it comes back?

Mrs Crowe: Yes, I think when we presented the new form of legislation to the Council of Ministers we did encompass all aspects that we thought might be tried, and I think it was slightly confusing to have the reams of information. If you like, we over-informed. However, this time I am sure the presentation by technical officers will prove of value and the Council of Ministers, I am sure, will agree with the legislation going forward.

Health Service - Employment Of Child Psychologist And Psychiatrist - Question By Mrs Cannell

The Speaker: Question 10, hon. members. Again I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr Speaker, I beg leave to ask the member for Health and Social Security:

Is it your intention to employ a child psychologist and a child psychiatrist within the health service?

The Speaker: The member for Health and Social Security, member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I can advise the hon. member that bids for both a child psychiatrist and a child psychologist have been made in my department's revenue estimates. Having said that, I would make it quite clear that whilst the objects are in relation to the dedicated substantive posts, this does not mean that no provision currently exists. For example, in terms of psychology, the department's social services division currently contracts psychology services privately from both on and off the Island, and this has proven successful in the management of a number of difficult cases. In addition to this, the Department of Education has an extensive special needs and educational psychology service based at Glencrutchery School.

Looking at child psychiatry, this is currently undertaken by one of the department's general consultant psychiatrists. Although it is acceptable, it is not ideal and this is the reason for the bid that has been made. I should, however, caution the hon. member: even allowing for all the authorisations in place, it may not be easy to recruit to the Island such staff. All I can

say is that my department will endeavour to do what it can to achieve and enhance the service of my department in these two important areas.

Mrs Cannell: Mr Speaker, I thank very much the positive response by the member for the department this morning in informing us that the department has made a bid, and that is to say that the money is there. But can I ask him - in his reply to me he mentioned that the recruitment may not be easy; can I ask him, is this due to the government's overall policy on manpower provision - that is to say, that it is restricted? And given that that may be the problem, could he not have a word with his minister to make a bid to the Council of Ministers to have this particular policy lifted in order to be able to engage these two very needy, very necessary, very essential positions?

Mr Karran: Vainstyr Loayreyder, I thank the hon. member for her question because it does raise an important factor and that factor is nothing to do with the mad policy as far as the recruitment restrictions which we have seen have cost in some cases the taxpayer dearly, but these are specialist areas and there is an international shortage of such professional persons anyway. What my department is looking at and one of the things that I am trying to encourage, maybe not in this sphere so much but in other spheres such as occupational therapy and the like, is that we would like to see some way of encouraging people to be trained up to go off to the adjacent island and to come back, and that is something that we are doing, but I do not think that that could be extended to encourage someone to do these two occupations. But I can assure the hon. member, it is because of the international shortages of such professional people.

Mrs Cannell: Mr Speaker, my final supplementary, sir. Given that the hon. member has indicated that bids have been made and that money is present in revenue, how soon then can his department envisage being in a position to advertise for the specialist posts?

Mr Karran: Vainstyr Loayreyder, I do not see why it would be any different than other things. I would imagine that is something that would have to be done with the full consultation of the personnel department, and I am sure, if we get that sorted out, then it can be done within a reasonable amount of time.

Incinerator - Estimated Cost - Question By Mr Karran

The Speaker: Item 11, hon. members, and this time I call upon the hon. member for Onchan, Mr Karran, to ask the question.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Minister for Local Government and the Environment:

- (1) *What is the estimated cost of the proposed incinerator; and*
- (2) *what are the principal elements of the estimated cost?*

The Speaker: The Minister for Local Government and the Environment, Mr Quine, to reply.

Mr Quine: Thank you, Mr Speaker. As indicated in another place in November 1997, my department has commissioned studies to define the project parameters upon which basis the all-Island integrated incinerator energy from waste facility will proceed. This exercise has regard to the environmental impact of such facilities, the specification for the technology to be

employed within the facility, the gas-cleaning arrangements and procurement method amongst other things. Various other studies have also been undertaken which are essential to the design capabilities and features as well as the overall project definition.

Until these studies have been completed, it is not possible to give a reliable estimate of cost for this particular facility. Hon. members will, of course, be aware that the 1991-92 estimates identified a sum of £18 million for an incinerator. This included a sum of £2 million for reinstatement of the Middle Farm landfill site. The 1997-98 budget provision was £21.8 million for the incinerator and £2.18 million for the Middle Farm landfill reinstatement. Since 1991 certain requirements have changed and these will inevitably be reflected in the final figure. The amount of waste arising has substantially increased, impacting on the size and the capacity of the plant. Provision will be made to deal with animal waste from the meat plant. The integrated incinerator facility will be engineered to abstract energy from waste, and furthermore I have made it clear that the integrated incinerator facility will take account of the higher environmental standards which must be attained.

It is possible that there might be other as yet unknown costs arising from planning conditions, should approval be granted to the zoning of the land following the public inquiry scheduled for May 1998. Hon. members will be aware that the planning conditions imposed on the landfill site facility at Wright's Pit East added significantly to the projected cost.

When an accurate estimate of costs is known, and subject of course to planning approval being granted, it will be for Tynwald Court to determine whether or not the project proceeds. In reaching that decision they will no doubt take account of what, if any, viable alternative courses of action are open to government. Given an initial life of 25 years for the integrated incinerator facility, it would require some eight landfill sites comparable in size to what is proposed for Ballahara to compensate, the capital cost of which could be of the same order as that for an integrated incinerator facility. Separate provision would have to be made, of course, for animal waste and clinical incineration involving planning issues and substantial additional cost.

In common with the hon. member, I am anxious to have a reliable estimate of the cost for the proposed integrated incinerator facility at an early date. When this is to hand it will be provided to hon. members.

Mr Karran: Vainstyr Loayreyder, would the minister not agree that once again this hon. member will be proven right that on financial grounds, let alone on the environmental grounds, incineration is not right for this Island, and would he not agree that he should come clean about what the costs are going to be for producing an incinerator at the bottom of Richmond Hill because they are going to be in excess of £40 million? And can he confirm or deny that that is the true figure, not the £23 million that is in the budget book at the present time?

Mr Quine: Mr Speaker, I certainly cannot confirm that the hon. member will be proven right. It would be very unusual if that were to be the case! *(Laughter)* The situation is quite simply that, as I have said, when the costs are known he will be given the costs. He can pick any figure he wishes out of the air; that is not what I propose to do. I will give you accurate figures as and when I have them to hand, and this hon. House, along with Tynwald, will no doubt then consider the matter. I will certainly - there is no question of it - come clean on the costs. All the information will be made available to Tynwald and indeed to hon. members

individually, if they wish to discuss the make up of that. There is no question of concealing information. I have been completely open about the whole issue, straight through from the environmental assessment, and the same will apply in relation to costs.

The hon. member might wish to take account of the reference I made earlier in my answer to looking at the alternatives. Landfill is not a cheap alternative. He may wish to know that the cost of landfill at Wright's Pit East is in the order of £35 per tonne. If we are moving into lined landfill, as we are proposing for Ballahara, it will be substantially more, and he may also wish to note that our ability to landfill may in future be severely restricted. There is currently a Council direction dated March 1997 which could impose further severe restrictions as to what can be landfilled.

Mr Duggan: Mr Speaker, would the minister then confirm that in Tynwald in November the member in charge, Mr Quine, stated that there would be 60,000 tonnes of rubbish which could be incinerated at £75 per tonne? Would that not be a fact then, Mr Quine, that the cost of running the incinerator would be at least £4.5 million per year? Would you confirm that?

Mr Quine: No, I can confirm that the figure of waste on which the incinerator is being planned is 60,000 tonnes a year. I have no recollection whatsoever of a £75 per tonne figure. What I have said and what my predecessors have said at the point when they made that information available is that we could expect the disposal of waste by incineration to be greater by a factor of two or three times. That is what has been said in this hon. House and that is still the premise upon which it is being progressed.

The Speaker: Hon. members, we will not start an incinerator debate. The final question from the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the hon. minister tell this hon. House what are the most up-to-date figures for the costs for any development at the bottom of the Richmond? Is it not the case that it is more in the region of well over £40 million, and would the minister not agree that from my side of the fence it is looking like he has gone down the same road of trying to hide the figures from this hon. House like so many other government contracts until we are in crisis and then we have no alternative but to get the bum's rush? Can he assure this hon. House that it is not going to be well in excess of £40 million and he comes back like a rabbit out of a hat, like so often in the past, and then we have a fait accompli on our hands?

Mr Quine: If I may reply in waste management terms, sir, that is a load of rubbish. *(Laughter)* **(Mr Houghton:** Incineratable rubbish!) I made it quite clear to the hon. member what our current provision is in the pink book. I made it quite clear to the hon. member about the additional elements which we have decided to take into account in progressing this integrated incinerator facility. The exercise in working up the project and working up the cost is ongoing and when they are available he will be given all of those costs, but I am not going to enter into the realm of speculation for publicity or any other reason, which may be to the hon. member's benefit.

Mr Karran: I hope that he apologises when the true figures come out!

Victim Support Scheme - Question By Mrs Cannell

The Speaker: Item 12, hon. members, and I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr Speaker, I beg leave to ask the Minister for Home Affairs:

Will you consider establishing a victim support scheme in the Isle of Man?

The Speaker: The Minister for Home Affairs, the hon. member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, the establishment of a victim support scheme is already under consideration by my department. As the questioner already knows, a scheme was established a few years ago, but for a variety of reasons it fell into disuse and was eventually wound up. I understand that the main problem was a reluctance by victims to seek the support available to them under that scheme. A meeting has recently been held between representatives of the police, the probation service and social services to consider the establishment of a new scheme, and it is the recommendations of the officers concerned that a new scheme should be established. They advise, however, that for any new scheme to operate successfully it will require to be adequately funded and the amount of funding required could be significant. It is planned in the first instance to invite a Home Office representative involved in the operation of victim support schemes to visit the Island in the near future to advise on the establishment of a local scheme.

I would not like it to be thought that there are no support facilities available for victims of crime at the present time. Limited support is provided on an informal basis by some of the professional services, and in particular the police provide some equally limited support for the victims of sex offences.

Mrs Cannell: Mr Speaker, I thank the hon. minister again for his positive reply in that a victim support scheme is presently under consideration, but would he not agree with me that the reason why the previous scheme, which was set up some time ago, fell apart or was abandoned was that because it was a voluntary scheme and that it relied upon absolutely no finance and no backing at all from government, and would he agree with that? And despite the fact that he has assured us that there is limited provision in terms of a victim support scheme, could he please ensure that this consideration, which his department is presently undertaking and also which will include the Home Office, will be pursued with all speed in view of the fact that his own domestic crime unit at police headquarters is vastly overstretched in this area?

Mr Bell: Mr Speaker, the previous scheme was a voluntary scheme which was working very closely in connection with the social services and indeed with the police services. The scheme, I think, largely foundered when the driving force, the individual who was in charge of the scheme, decided to withdraw from that for personal reasons. It is my intention, as I have already stated quite clearly, Mr Speaker, to pursue the investigation into the establishment of a victim support scheme, and I would remind the hon. member that the main victim support scheme in the United Kingdom is a voluntary charity and we will be talking to a representative from that body. I think the individual is due to come to the Isle of Man at the beginning of May and I will be personally meeting with this individual to take the issue a stage further.

Mr Houghton: Mr Speaker, it is acknowledged that a proper victim support scheme has been badly needed for many years. I am pleased to say that there is also an involvement with my division, the social services division, in the setting up of such a scheme, but can the hon. minister confirm which department will be ultimately responsible for the continual operation of such a scheme?

Mr Bell: No, I cannot, Mr Speaker.

**Employment Opportunities Committee - Moneys Available -
Question By Mr Rodan**

The Speaker: Question 13, hon. members, and I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I beg leave to ask the Minister for Trade and Industry:

- (1) *In each of the financial years 1995-96, 1996-97 and 1997-98 -*
 - (a) *what sum was made available to the Employment Opportunities Committee from your department's revenue vote;*
 - (b) *what schemes were funded by these moneys; and*
 - (c) *what funds were disbursed under these schemes?*
- (2) *What sum has been estimated by your department for the financial year 1998/99 to support the work of the Employment Opportunities Committee?*

The Speaker: The Minister for Trade and Industry, the hon. member, Mr North, to reply.

Mr North: Mr Speaker, in the financial year 1995-96 a total of £34,578 was required by the Employment Opportunities Committee out of the allocation made within my department's revenue vote. The 1996-97 figure was £44,338. So far this year no expenditure has been made on this provision. The schemes funded out of these moneys have fallen into three categories, namely work related to the railways, work at the Wildlife Park and dry stone walling. Out of the provision made within my department's vote over these two years the railway schemes have received a total of £30,931, the Wildlife Park scheme some £15,769 and stone wall training and work experience £32,216.

As far as the next year's estimates are concerned these are still merely just that, estimates, but at this stage we would hope that Treasury will concur that a provision of some £50,000 is prudent against the possibility that action may be deemed necessary to address rising unemployment at the onset of next winter, unlikely though this may seem at this particular time.

Mr Rodan: Mr Speaker, is it not time that this committee, of which the hon. minister is chairman, actually met? Is it not unsatisfactory to have this ring-fenced guaranteed funding for schemes every year, but for the committee to have only met once in 1996 and not at all in 1997, and in particular would it not have been better for the 11 men laid off by the MER in December if the minister's committee had actually met to consider the MER's request for funding, to keep their jobs going for another 10 weeks?

Mr North: Mr Speaker, the purpose of the scheme, despite the committee's change of name, has always been to alleviate unemployment. Among the requirements is one condition that those offered places should have spent some time on the unemployment register. Thus individuals who have only just become unemployed would not necessarily be taken on. Employers are finding great difficulty in filling the vacancies which exist at the present time and conditions have rarely been better for than anyone who genuinely wishes to work to find a permanent, full-time job. There is a wide range of training schemes available for those who

find that they do not possess the right skills and who want to retrain. There is thus no justification in government using taxpayers' money to retain individuals in employment who were taken on a short-term contract for 10 weeks, I think it was, over a year ago.

The Speaker: Hon. members, items 14 and 15 on the order paper were for written answer and I understand the answers have been circulated to hon. members and are now on your desk.

**Noble's Hospital - Staff Resignations - Question By Mr Singer
For Written Answer**

Question 14

The hon. member for Ramsey, Mr Singer, to ask the member for Health and Social Security:

- (1) *For each of the years 1995, 1996, and 1997, how many staff in the following categories resigned from their posts at Noble's Hospital -*
 - (a) *full time medical staff;*
 - (b) *part-time medical staff;*
 - (c) *full time nursing staff; and*
 - (d) *part-time nursing staff?*
- (2) *What were the reasons given for the resignations?*

Answer

(1) For the three years in question, the number of resignations amongst medical and nursing staff at Noble's Hospital were as follows:

	Medical Staff Full-Time	Medical Staff Part-Time	Nursing Staff Full-Time	Nursing Staff Part-Time
1995	3	0	not available	not available
1996	3	0	26*	17*
1997	3	1	35	15

* Figures for 1996, in relation to nursing staff, cover the period April to December only.

NB. The above data relates to individuals who have resigned their positions at Noble's Hospital and have left the employment of the health service. The figures do not include retirements, dismissals, or those staff who have accepted transfers from Noble's Hospital to other parts of the health service.

(2) Reasons for Resignations

Medical Staff For medical staff, the indications are that eight staff resigned to take up posts off-Island, with one member leaving to join general practice.

Nursing Staff In relation to nursing staff, the reasons are varied. Explanations provided by individuals suggest the principal reasons for resignations are due to leaving the Island, family commitments, taking up work in the private sector, or going on to further education.

Noble's Hospital - Unfilled Posts - Question By Mr Singer For Written Answer

Question 15

The hon. member for Ramsey, Mr Singer, to ask the member for Health and Social Security:

How many unfilled full time and part-time posts were there for medical and nursing staff at Noble's Hospital on 31st December 1997?

Answer

The medical and nursing establishment data in relation to posts at Noble's Hospital as at 31st December 1997 was as follows:

Establishment at 31 December 1997

	Full-Time	Part-Time	Total Full-Time Equivalent
Medical	65	22	68.8
Nursing	261	180	382.5

Vacancies at 31 December 1997

	Full-Time	Part-Time	Total Full-Time Equivalent
Medical	0	0	0
Nursing	20	7	24.15

Banking Bill - Standing Orders Suspended For Further Consideration Of Clauses - Third Reading Approved

The Speaker: That will take us to item 16 on our order paper. I had an indication given to me by the hon. member for Douglas West, Mr Shimmin, that had he been here he would have been taking certain action, and on this particular occasion I call upon the the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. I would move:

That under standing order 198 standing orders be suspended to further consider clauses of the Banking Bill.

Mr Brown: I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion is that standing orders be suspended in order to allow further consideration of the clauses to the Banking Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Then I call upon the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker, and I thank the hon. House for giving permission to address this situation, which occurred as a result of amendments made at the last sitting that considered this Bill.

Mr Speaker, I would wish to move the amendment that has been circulated to hon. members, the amendment that was circulated in the hon. member for Douglas West Mr Shimmin's name, and this relates to clause 35 and part II of schedule 1. This changes a number of penalties under the Investment Business Act and brings it into line with the amendments that were moved in this House which changed penalties in other parts of the Bill, and it is seen by Treasury that this would be a sensible move in order to make sure there is continuity throughout the Bill. I beg to move:

Page 39, in paragraph 22;

(a) in the new section 17A(3)(a), for "7 years" substitute "10 years";

(b) in the new section 17B(4)(a), for "7 years" substitute "10 years".

Page 34, after paragraph 13; insert -

"13A. In section 8A, after subsection (13) insert -

"(13A) A person guilty of an offence under subsection (13) shall be liable -

(a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;

(b) on conviction on information to a fine or to custody for a term not exceeding 7 years, or to both."."

Page 40, after paragraph 23; insert -

"23A. In section 19(1)(b), for "2 years" substitute "3 years"."

Mr Gilbey: I beg to second and reserve my remarks, Mr Speaker.

The Speaker: Does any hon. member wish to speak to the amendment, clause 35 and the schedule? In that case, hon. members, I will put the motion that the amendment circulated under the name of Mr Shimmin but moved by the hon. member for Onchan, Mr Corkill, be approved. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, we turn back to our order paper and I call upon the hon. member for Glenfaba to take the third reading of the Banking Bill.

Mr Gilbey: Mr Speaker, I am very pleased to bring forward the Banking Bill once more before this hon. House and to move that it receive its third reading.

There were five main areas which caused discussion during the debate whilst the Bill went through its clauses stage. Firstly, Mr Speaker, members will recall that clause 10 empowers the commission to issue regulatory codes. I should like to thank hon. members for their contribution to the discussion on this issue, which culminated in the provision being

modified so that under the revised clause, instead of simply being laid before Tynwald, such codes will need to receive the positive approval of Tynwald. The hon. member for Onchan, Mr Karran, proposed this amendment, which has the full support of the Treasury and the Financial Supervision Commission.

There was some debate as to whether such codes should be able to be brought into effect before receiving such Tynwald approval, and I think that the hon. member for Douglas North, Mr Crowe, helpfully raised this point. However, this hon. House agreed that it would be unworkable to wait for such approval because of potential time delays. For instance, it may be necessary in the interests of investor protection to make urgent amendments to a regulatory code in, say, late July to deal with an undesirable regulatory abuse. If this order had to wait until late October, i.e. after the summer recess, before it could be effective, investors interests could well be jeopardised and I am sure that this hon. House was wise to take this into account.

We then move to clause 24, which provides a mechanism for certain decisions of the Financial Supervision Commission to be subject to independent review. The request for such a review is made to the Treasury, who must, on receipt of an application, appoint a review committee consisting of three members, at least two of whom shall be independent persons of appropriate experience. Members will recall that this clause generated some comment, and indeed the hon. member for Douglas North, Mr Crowe, tabled an amendment which would have varied this mechanism, and he was supported in this aim by the hon. member for Douglas East, Mr Braidwood, who wished to introduce a modification to Mr Crowe's amendment. In the event, because of significant concerns raised by a number of hon. members, Mr Crowe and Mr Braidwood agreed to withdraw their amendments pending closer scrutiny and industry consultation prior to the third reading. I can advise hon. members that, as promised, the Treasury has considered this matter in very considerable detail and indeed convened a special meeting of the Banking Consultative Committee which the hon. members Messrs Crowe, Braidwood and Karran kindly attended. As a result, I am happy to report that both Mr Crowe and Mr Braidwood did not feel it necessary to press on with their amendments.

Mr Speaker, to remind members of the other points raised during the clauses stage on this issue, these were twofold: firstly, there was a feeling that instead of ad hoc committees being established by Treasury on receipt of an appeal application a permanent panel should be established with the prior approval of Tynwald, thus bringing the decision on who is eligible to serve on such a committee to Tynwald Court. It was felt, I think, that this would add to the credibility of the review and justice would not just be done but would be seen to be done. Secondly, the question was raised as to whether the Financial Supervision Commission's initial decision would remain in force until the appeal had been heard.

There were, of course, technical problems with the amendments proposed. That aside, however, perhaps I could react to the above points. Taking the last point first, I can confirm that any decision by the commission would take effect and remain in force until the appeal was heard, and it is essential that this should remain the case. In particular, I am sure you would agree that it would be very undesirable for any person engaged in disreputable practices to be allowed to continue these practices until an appeal was heard. Indeed, I am sure that if such a situation did take place, investors suffering a loss as a result would try to impose liability on the government.

On the first issue, that of whether a standing permanent panel should be created, a number of points were discussed by the Banking Consultative Committee. The industry feels that the existing system works well. The provision has been in place since 1991 and to date no appellant has called the procedure into question. The panel as it stands is very independent. Although I am a member of the Treasury as well as the Chairman of the Financial Supervision Commission, I can assure hon. members that I do not take part in any of the Treasury's discussions when the Treasury are considering the appointment of a review committee, nor would it be right for me to do so. Furthermore, I would remind members that the Treasury is obliged by the legislation to appoint a committee of three persons, at least two of whom shall be independent and of appropriate experience. Thus there cannot be any kind of 'fix.'

The only concern with the existing system is the difficulty which the Treasury suffers from time to time in persuading people to serve on a review committee. However, the proposal of a permanent panel would increase this difficulty, firstly because it would be necessary to have a large panel in order to ensure that all the various professional disciplines within the industry were properly represented with people of appropriate experience as required by the Act, and also because people would be loath to allow their names to be put forward for public debate on the floor of Tynwald. Accordingly we do not believe that the idea of a permanent panel is the way forward.

We did consider the possibility of having each individual review committee approved by Tynwald in order to meet members' concerns for public accountability. However, this was quickly rejected by both the Treasury and the industry because it would inevitably lead to speculation as to who was under review. For example, if you had a committee that was comprised largely of bankers, people would start assuming there was some problem with the bank. If it was a committee largely comprised of people with investment management experience, people would assume it was to do with some investment management business. I am sure, Mr Speaker, that members will agree that any breaches of confidentiality at such a sensitive stage in a licence-holder's life could be very dangerous and could, in fact, lead to the terminal destabilisation of a banking institution, which on appeal might be found quite innocent of any wrong-doing. Furthermore, there are significant concerns as to whether such an ad hoc review committee could be established and obtain Tynwald approval quickly enough in order to provide the appellant with a quick remedy for his complaint and, of course, this situation would be particularly difficult during our summer recess. It was felt also that a permanent committee could be subject to intense lobbying from any person dissatisfied with a commission decision which might prejudice a proper and fair hearing taking place. However, Mr Speaker, I can assure hon. members that the Treasury and the Financial Supervision Commission will keep this whole area of law under review during the coming years.

Another area of the Bill which was debated was in relation to the points raised by the hon. member for Onchan, Mr Karran, for which I am most grateful. His comments revolved, of course, around the penalties for those found to be guilty of offences under the Bill, particularly in respect of fraudulent inducement and misleading statements. The hon. member proposed amendments which were accepted by this hon. House and which increased the penalties throughout the Bill. Following those amendments I should very much like to place on record my thanks and the Treasury's thanks to the hon. member for Douglas West, Mr Shimmin, who quite rightly spotted that the amendments by the hon. member Mr Karran put the Banking Bill

and similar provisions under the Investment Business Act out of line, and I am very grateful for the amendments proposed by the hon. member for Douglas West, Mr Shimmin, which, following the suspension of standing orders, this hon. House has just passed and which have put the penalties in the two Bills back on all fours. The proposal that the penalties should be increased has indeed already received acclaim from regulators in other jurisdictions who see the Isle of Man as making a very important statement to fraudsters around the world.

We then move to the schedules at the back of the Bill, and firstly my Treasury colleague, the hon. member for Rushen, Sir Miles Walker, with the support of the Treasury and the Financial Supervision Commission, tabled an important amendment which allows the Financial Supervision Commission's powers of investigation to be used to assist a recognised regulator in another jurisdiction. Again I can advise this hon. House that the Island's initiatives in this regard are already being well received by regulators elsewhere and the commission is currently preparing detailed guidance notes for the implementation of this clause to ensure that it is activated with efficiency, but whilst retaining appropriate safeguards for client confidentiality.

Finally we come to the area which perhaps caused the Treasury and the Financial Supervision Commission most difficulty, and that is the amendment by the hon. member for Onchan, Mr Karran, which was in respect of bills of exchange. His amendment, which of course stands part of the Bill, effectively obliges Manx banks to honour cheques written in Manx. When Mr Karran tabled this amendment, I had not unfortunately been able to consult with the banking industry on the matter. However, my Treasury colleagues and I were anxious to discuss this matter with the banking community, as it seemed to us that the amendment might create technical difficulties within the banking system. It is for this reason that I delayed moving the third reading until now, as I wished to ensure that the views of the banking industry were fully taken into account. I can now confirm that the Treasury has had full consultation with the bankers and indeed also with those active in promoting the Manx language, and Mr Karran kindly attended one of those consultative meetings. I am pleased to report that the banking industry has not raised any insurmountable problems, although it is true to say that there are a number of minor issues which may need to be ironed out. In this regard, the Manx language bodies have offered their assistance, particularly in the area of translational facilities, and for this the Treasury is extremely grateful. I should also like to pay tribute to their very responsible and helpful attitude when representatives of the FSC and the Treasury met with them.

The matters that I have touched on are the main issues arising through the clauses stage of the Banking Bill. It only remains for me to reiterate the comments I made at the second reading stage, and that is that this Bill is necessary in order that the Island's standards of financial regulation remain effective and meaningful in what is a changing environment. The Bill will stand the Island in good stead in safeguarding the Island's high standards of investor protection. I would like to pay particular tribute to the work of the staff of the Financial Supervision Commission and particularly Mrs Cathy Harrison, regarding the preparation of the Bill, the consultative processes and particularly the hurried but very full consultative process regarding cheques in Manx. I would also like to thank my colleagues in the Treasury for their help and support and Mr Speaker, I now beg to move that the Banking Bill 1998 be read for the third time.

Mr Corkill: I beg to second and I reserve my remarks, Mr Speaker.

The Speaker: Hon. members, the motion is that the Banking Bill be read a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Brewers (Amendment) Bill - Clauses Considered

The Speaker: Item 17 on our order paper, hon. members, is the Brewers (Amendment) Bill. We have reached the stage for the consideration of clauses and I call upon the hon. member for Rushen, Mrs Crowe.

Clause 1.

Mrs Crowe: The Brewers (Amendment) Bill 1998. Clause 1. This amends the Brewers Act 1874 and introduces the schedule, which contains the text of the Act as amended in this Bill.

Subsection (1) states that the Brewers Act 1874 was to be amended as was laid down in section 1.

Subsection (2) substitutes, for the definition of 'beer' in section 2 of the Act, that the definition be found in the Alcoholic Liquor Duties Act 1986, which is the main revenue legislation concerned with the brewing of beer. The original definition simply read: 'Beer shall include ale and porter', with no defining of what constitutes any of these three products. There is no exhaustive legal definition of 'beer', the term being a generic one for fermented malt beverage. The new definition more closely defines what is covered by the Act - that is, beer or a product sold as beer or as a substitute for beer and which is of a strength of not more than 0.5 per cent alcohol by volume. It also brings into line with the usual definition used for other purposes by customs and excise. The black beer excluded from the new definition is an alcoholic viscous syrup made from malt and sugar without the addition of hops. It has a very high original gravity, usually above 1200 degrees, and it is unpalatable in its neat form. It is unlikely that such a product should be treated as beer and rather it would be treated as made wine, hence it would incur a higher rate of duty. Porter is a dark sweet ale brewed from black malt. It was originally produced by mixing two beers, a mild and a stale - the latter that was not spoilt beer - and it was a soured beer, perhaps aged up to a year, used as to enhance the flavour of the final mixture. Stout is the name for a strong porter, but that is highly flavoured with malt.

Subsection (3) amends section 18 of the Brewers (Amendment) Act, removing from it the words 'any copperas, coculus indicus, nux vomica, grains of paradise, guinea pepper or opium' where they occur in the first and second sentences. So I think it would be helpful, before I leap into what these items are, to read to you what the new section 18 would say, after the removal of the old, archaic wording: 'No brewer shall use in the brewing, making, mixing with, recovering or colouring, any beer or liquid made to resemble beer, any article, ingredient or preparation whatever, for, or as a substitute for, malt or sugar or hops. . .' That clearly defines that no other ingredients can be used in the making of Manx beer but malt, sugar and hops and it goes on to say, after the removal of the archaic wording: 'And all such beer or liquid brewed, made, or mixed as aforesaid, and every other article, ingredient, or preparation as aforesaid (other than malt and sugar) in the custody or possession of such brewer, together with every copper, cooler. . .' and whatsoever.

So that is how, when it has been amended, the new Act would read, without the archaic references to some of these wonderful substances, and I thought the House might like to know what they were. Nux vomica is actually 'vomiting nut' in Latin and it is the name for an Indian tree bearing berries with poisonous seeds, the seeds themselves or a medicine, which, I might add, used to be used as a heart stimulant, made from them. So this is what we know of nux vomica. Grains of paradise - now, these can also be referred to as 'Guinea grains'. This is a very woolly area and these are peppery seeds obtained from African plants. We are not quite certain what the plants are but we have found two. These again were used as stimulants and diuretics - not terribly nice in beer! Copperas is a name for iron sulphate. Coculus indicus once again is an African berry used by natives there - now, you will all find this interesting - to stun fish. It could be added to beer. It used to be added at one ounce to every 54 gallons to give the impression of beer being stronger than it actually was; however, it is a narcotic and it did actually make drinkers quite giddy and some dreadful hangovers were blamed on this effect. *(Mr Karran interjecting)* So that is section 18 subsection (3).

Subsection (4) inserts the new section 18A into the Act. This allows for Treasury to make an order, subject to approval by Tynwald, which would exempt under paragraph (a) of its subsection (1) any specified article, ingredient or preparation from the prohibition or substitutes for malt, sugar and hops, and under paragraph (b) of that subsection, 'any specific beer type from the operation of the Act as a whole. The Treasury would normally do so on an application from Customs and Excise by a brewer. Customs and Excise would expect to be provided with the full details of all the materials to be used in the beer that was to be made, after which they would apply to Treasury and Treasury would apply for an order in Tynwald.

Subsection (5) omits from section 19 again the archaic words 'any copperas, coculus indicus, nux vomica, grains of paradise, guinea pepper or opium'. Section 19 is concerned with the adding of sugar or the priming or any other substances to make beer stronger or to make it go further, so avoiding the true duty liability. It was formerly also concerned with the adulteration of beer after it had left the brewer, but this no longer happens and, as stated, modern food safety laws prohibit the addition of any harmful ingredients in any manner.

Mr Speaker, I would like to ask that clause 1 with its six sub-clauses and its schedule be added to the Act.

Mr Corkill: I beg to second and reserve my remarks, Mr Speaker.

Mrs Cannell: Mr Speaker, I wish to move an amendment to clause 1 and the schedule in section 18. I believe that members have already been circulated with my proposed amendment and a covering letter, which I hope begins to explain the reasons behind the amendment, and may I draw members' attention to page 2 of the covering letter, to a typing error where it should read 'grains of paradise' as opposed to 'birds of paradise', which are in fact a flower. *(Laughter)*

My amendment seeks to include the wording specified in the 1874 Act, namely the copperas, which is a green ferrous sulphate; the coculus indicus, which is a strong intoxicant; nux vomica which is a strychnine poison used for medicinal purposes; grains of paradise which is the dried bark taken from a tree, again used for medicinal purposes; guinea pepper which is sought after because of its anaromic qualities and used for medicinal preparation; and opium, which we all know is a narcotic drug; and for these such exclusions as specified in the

1874 Act to beer to be included in the said amendment Bill. Such wording and meaning can be said to be a warning to would-be brewers in the 1800s to be wary of not putting into beer, when making it on the Isle of Man, anything other than the very purest of ingredients.

The 1874 Brewers Act was and still is a fine piece of Manx legislation and has been in place for over 124 years. Why then must it be changed today when two out of the three Island brewers would prefer for it to stay? I believe it is reasonable to assume that perhaps one of the Island's three brewers would prefer a little flexibility in Manx law with regard to beers, particularly in the provision of the continental-type beer which they may wish to make at some time in the future, and this is in general accepted and provision has been made for this in the Brewers (Amendment) Bill to which the hon. mover had alluded, in that clause 18A is where the Treasury may make an order to waive all of the conditions in the Act for a specific brew in the future, subject of course and always to Tynwald approval.

My amendment will have no effect to this new provision and I must state that for hon. members, it will have no effect to the new provision, if it is supported. The mover of the 1977 amendment Bill stated in this hon. House last week: 'The reason for this legislation is to stand up in a court of law, and things like nux vomica and grains of paradise, particularly guinea pepper, are not clearly defined'. I have taken this matter up with two legal specialists who have assured me that there is not a problem with such wording. Any court of law, if called upon to look at the definitions, would look at such as they were posed in the 1874 Act and would therefore not present a problem if any matter relating to brewing came into a court of law. So we must ask ourselves, hon. members, why then must we be asked to exclude this ancient wording?

Now, I dare say that the hon. mover may have a different opinion and I would expect that she would, but I have no doubt whatsoever of the legal experts to whom I have consulted. Further, the mover of the Bill also indicated to hon. members one week ago during the second reading, 'Now, the reason for the amendment, which I might add does have the full support of the brewing industry', is somewhat misleading in that when I consulted two of the three Island brewers just yesterday to ascertain whether they were happy with the amendment Bill, they indicated to me that they were not happy. First, we had the issue of non-consultation with two out of the three Island brewers. Then we were informed there was to be consultation after the local media covered the same on the front page of a local newspaper. When such consultation took place, when this meeting did take place, was it rather one of a fait accompli? Was coercion ever used at such a meeting? (**Several Members:** Ooh!) Was there any real option open to the two Island brewers who had concerns? These are important questions which I feel ought to be clarified. Or were they told they could take it or leave it? Was the meeting as satisfactory as the mover indicated to us last week? Who was present at the meeting? Was there an officer in charge and who was that officer? And were any minutes taken?

It is my understanding that the majority of the Island's brewers would prefer for the original wording as contained in my amendment to remain in force, and I think this is important because part of what you are being asked to support today will provide for some of the wording to remain, but it will remain without force. To my mind, hon. members, you either have wording in which has force or you have wording out which does not hold force. The other part of the mover's suggestion in her amendment is that some of it will be omitted in its entirety.

I would ask hon. members to support the amendment to contain the old wording and for that old wording to stand as part of the Bill in order that the ancient tradition of brewing only the finest, purest beer in the Island can continue to be so. It is essential that such wording remains in force as an important marketing tool for the valuable export markets which we have so proudly achieved here in the Isle of Man in terms of beer. I hope hon. members will accept that there is nothing to be gained by not supporting my amendment and everything to lose for the brewing industry if members choose not to support my amendment. There is no reason whatsoever for you to support the erosion of this historical Act in supporting the mover of the amendment Bill. I ask hon. members to carefully consider before them today and please to support my amendment as standing part of the Bill. I beg to move:

Page 2, lines 1 to 8; omit subsection (3) and re-number the subsequent subsections. lines 20 to 23; omit subsection (5) and re-number the subsequent subsection.

Page 3, in section 18;

(a) for the first sentence substitute -

“No brewer shall use in the brewing, making, mixing with, recovering or colouring, any beer, or any liquid made to resemble beer, or have in his possession any copperas, coculus Indicus, nux vomica, grains of paradise, Guinea pepper, or opium, or any article, ingredient, or preparation whatever, for, or as a substitute for, malt or sugar or hops.”.

(b) for the third sentence substitute -

“And all such beer or other liquid brewed, made, or mixed as aforesaid, and also all the beer grounds and stale beer brewed, made, or mixed as aforesaid, and all copperas, coculus Indicus, nux vomica, grains of paradise, Guinea pepper, opium, and every other article, ingredient, or preparation as aforesaid (other than malt and sugar) in the custody or possession of such brewer, together with every copper, cooler, tun, vat, or other vessel or utensil whatsoever, in which any such beer, liquid, material, article, ingredient, or preparation shall be contained, or which shall have been made use of or employed for or in the brewing, making, mixing with, recovering, or colouring such beer or liquid, shall be forfeited to Her Majesty, her heirs and successors.”.

In section 19, for the first sentence, substitute -

“No dealer in or retailer of beer shall have in his possession, or shall mix with any beer, any malt or sugar, or any copperas, coculus Indicus, nux vomica, grains of paradise, Guinea pepper, or opium, or any article, ingredient, or preparation whatever, for, or a substitute for, malt or sugar or hops.”.

The Speaker: Hon. member, can I just say that it has been circulated to members and I am sure that they will have all read it.

Mrs Cannell: I thank you for your guidance, Mr Speaker. Well, following on, it is (b) under section 18 and also an alteration to section 19, under 18. Thank you, Mr Speaker. I beg to move.

Mr Rodan: Mr Speaker, I will in fact second this particular amendment. I did say at the second reading stage that I had some concerns about the necessity for taking out the historic archaic wording but I would like to emphasise that this particular amendment is being

supported not for any reasons of strengthening the provisions for purity in the Manx brewing Act, the Manx beer purity. This amendment does not touch any aspects of purity and I do not think the mover of the amendment was making the suggestion that it was, but in case there was any doubt in hon. members' minds that this is somehow designed to strengthen the purity laws, because it is not. If that was the intention, we would in fact be looking carefully at subsection (4), which is giving the right to Treasury to say in effect that by Tynwald order it may come forward and vary the provisions in place for Manx beer purity, the use of malt, hops and sugar, by permitting other ingredients. If there is any mechanism for varying the purity, it is this particular provision.

So it does not make the slightest difference to the purity of Manx beer whether we say in law that you cannot add into the brew copperas, coculus indicus et cetera or any other substitute for malt, sugar or hops, as we say in the 1874 Act, or whether we say simply you cannot use any article, ingredient or preparation whatever as a substitute for malt, sugar or hops, as we say in the 1997 amendment, because clearly the new wording embraces the old; it embraces opium, coculus indicus or any other ingredient which may still be around after a hundred-odd years of brewing. So I would actually say to the mover of the clauses, I would actually have no difficulty in supporting the Bill as drafted, even for reasons perhaps that it is in clearer English, it is straightforward, but I see, or I have heard, no good reason for taking out these historic archaic terms from the legislation if the brewing industry in fact consider that it is helpful to them in their marketing and promotion to leave them in, even in the amended legislation.

So I second the amendment but I am not particularly hung up on this subject. If the mover can give us good reasons why we must take out these historical terms because the brewing industry finds them useful in their advertising, then I suggest that we do in fact support the amendment.

Mr Corkill: Mr Speaker, it is an interesting debate we have here on this particular amendment, and it is true to say that whether the amendment succeeds or fails, it will in fact, from Treasury's point of view and I think from most members' point of view, not actually affect the main thrust of the Bill. So I believe we have a balance here to decide upon, because I believe it is one of my duties as an MHK to pass well-worded, good legislation in plain language which may well be around for maybe as long as the previous brewing Act, for over 100 years. I am sure, when our ancestors produced this particular Act, the 1874 Brewers Act, that in fact they at that time were doing the best they could to produce a modern, up-to-the-minute Bill which was accurate and not open to any misunderstanding as far as they could prove at that time.

So I think we have a balance here, whether to pass legislation which is quite clear, that has no chance of ambiguity. The hon. mover of the amendment has circulated a letter and she has pointed out the misprint regarding birds of paradise instead of grains of paradise; the reality is that it is very difficult to define what the nature of that substance is. But, having said that, it is irrelevant because it is not going to be included in beer because of other legislation which already exists. The Food Act, which went through this hon. House I think only a year ago, very comprehensive food safety legislation, more than covered these sorts of situations. So here we are, we have got a situation where there is enthusiasm for the brewing industry, and I would congratulate the small breweries that have set up recently to cater for the

enthusiasm for real ale and brewing. They have filled that market place. They are not ancient breweries, they are relatively modern breweries, but they are carrying on a tradition of real ale and that is fine. This Bill was never intended to affect that in any way.

So we have a balance here, I believe, to pass unambiguous, clear, plain-language legislation or we can go with the amendment and in fact cater for the concern of the small brewing industry with regard to marketing and the export where the mover has said these particular ancient, quirky words are of a valuable nature to them. That is a balance we all have to take today. My view is that, on the basis that this legislation may well be around for 100 years, we have a duty to be clear, and as a result I think I will be voting against the amendment on the basis that what I would like to see this House pass is modern legislation that is going to be around for some time to come. I would be very interested to hear the views of other hon. members.

There has been criticism with regard to the consultative process, but I think the very fact that this Bill has been in public, the green Bill has been around for some time now, there has been comment, means in the press and obviously that has drawn out more comment that we are now as legislators in possession of all the sides to these arguments and therefore it is decision day with regard to this issue. I was pleased that the hon. member for Garff made it quite clear when seconding the motion that these words are superfluous to the actual thrust of this Bill, and that is the point. I believe they are superfluous. Others feel as though it would be historically nice to keep them and that is the balance that I spoke about, but on balance I feel that we should pass modern legislation because it soon becomes ancient. The years go by and I think that that is the issue today and I will be voting against that amendment marginally on balance.

Mr Brown: Mr Speaker, it seems to me, based on the letter that we have had from the hon. mover of the amendment and the points that she made, and also being aware of the points that have been made by those in the brewing industry, that their concern is not about the removal of this wording; their concern, as I understand it, is that they wish to promote the Island's beer off the Island by being able to refer to the Brewers Act of 1874, and it is quite straightforward. That, as I understand it, is their only concern.

I think we then have to look at the Bill before us and clearly in there in the schedule, unusually, it refers to the Brewers Act of 1874, and the whole of this Bill is reprinted as a schedule. The reason for that is that it enables then the brewers to legally refer to the Brewers Act of 1874, because if we did not put it in the schedule they would have to refer to the Brewers Act of 1874 as amended by the Brewers Act of 1997. So the government has actually acknowledged the concerns of the industry by putting this special provision by making the Bill part of the actual schedule, and that in itself is extremely unusual. Therefore I think we have actually overcome the concerns, because having wording in the Bill that says you cannot have this, you are not allowed to use this in your brew, is not a selling point. The selling point is when you make a beer and say it is made under the Brewers Act of 1874 and complies with it, because if you send it across to the UK most of them will not even know the terms that are referred to, as I am sure most of the House did not until the hon. mover of the Bill explained what they were about.

Now, out of interest I thought 'Well, I wonder what this is all about; what about the Brewers Act of 1874?' and it has been referred to here about the importance of this ancient

Act and how we must retain it all. So I looked it up, I got a copy of the Act and it is quite interesting to look there. Out of 21 clauses and a schedule there are six clauses left within that Act and no schedule. So if you go through it, within the Act as it now stands, we have clause 1, which is the short title, because that is the way they used to do it in those days, clause 2 which is the interpretation clause, and lots of that has been modified, clauses 3 to 5 have been repealed, clause 6 has been repealed, clause 7 has been repealed, clause 8 has been repealed, clause 9 has been repealed, clauses 10 to 15 have been repealed, and clause 16 has been repealed, and then clause 20 has been repealed and the schedule has been repealed. So this ancient Act has hardly got anything in it.

So let us get into the world of realism. The world of realism is quite straightforward. At the moment, because of what is specified within the Act as it stands, it causes certain restrictions on the production of certain brews in the Isle of Man, and therefore representation was rightly made to say the Isle of Man should have the opportunity to produce certain beers legally within the Island and not be over-restricted, and rightly, when this matter was looked at, the concern about losing the title of the Brewers Act of 1874 was seen as quite important for the Island, and that bit was left in.

The other thing that is important, of course, is that the change in the wording makes it clear it will be illegal to use any article or to have in possession any article unless provided for by order by Treasury and approved by Tynwald, and we come to that later on in the clauses. So clearly it is not saying people can use these things. It is clearly still restrictive.

The consultation matter - it is always unfortunate if you have changes and there is not any consultation, and I think the Treasury Minister has covered that. I am quite satisfied that that has been adequately covered, but my understanding of after the meeting that happened based on what Mr Brunnschweiler said to the press after the meeting - and I understand he was their spokesman; he said that they had had a good meeting, they now understood the basis of the legislation, they were quite content, as I understand it, and their main concern was retaining and being able to sell beer brewed under the Act of 1874, and that that had been clarified. I have not had any phone calls and there is only a small number of people who deal with brewing on the Island. I have had no phone calls, no letters, nothing from any of those people. I do not know if any other members have but I certainly have not. If they were concerned I do not think there would be any doubt that they would be onto us. I know Martin Brunnschweiler personally, as a number of members do here, and clearly Martin would be onto us without any hesitation at all to say he was concerned and I am sure the others would as well.

An inference was given that it would stop us being able to brew our old beer in the Isle of Man. That is just not so. We will still be able to brew beer as it has always been brewed. We will still be able to produce what they call real ale. None of that will stop. It will still be there. So I think we need to be clear. We are not talking of destroying the Manx brewing industry; we are talking about strengthening it and retaining it and, unusually, retaining the Brewers Act of 1874 in its form slightly amended. Normally we would consolidate and have a new Act, which would be the Brewers Act of 1997. We are not doing that for the very points that have been made by the industry.

The hon. member for Garff said he does not know any good reason why the wording should be moved. I think the answer has to be that the legal advice we have from the

government's legal adviser, the Attorney-General, is clearly that it takes away uncertainty if there is ever a case in Court. That has to be paramount. We have seen enough matters go to Court where there has been uncertainty and we have relied on a judgement by the deemster which has then embarrassed the government, embarrassed members and has cost the taxpayer a lot of money. We have a responsibility to take away uncertainty and we have been advised that whilst the Bill is in its original wording there is uncertainty. That, to me, is a good enough reason not to support the amendment that is before us and to support the Bill as it is printed.

Mr Speaker, before us is a change that is small but important. It does not affect our ability to produce beer on the basis that we have seen in the past. It provides an ability to expand the industry in a way that at the moment we cannot, and that also has to be important. Again from my point of view we have recognised the main concern of the marketing tool for the brewers, that if they wish to refer to the Brewers Act of 1874 they can, because that is the Act that will be in being and not the Brewers Act of 1997, and I believe clearly these matters have been covered.

Finally I would just ask the hon. mover of the amendment when she responds: she has referred to two legal experts and I think, when we respond to legal experts in the House trying to make a case for why we should not have a change, it is usually helpful for the House to know who they are because that may or may not influence whether or not we support the amendment, but clearly I am satisfied the advice we had, which was from the Attorney-General, is the best advice we can get, and clearly we should not put the Isle of Man in a position where there is uncertainty through the courts. I therefore would urge members not to support the amendment and to support the Bill as printed.

Mr Downie: Mr Speaker, on listening to the debate thus far I have no problems in supporting the Bill. The only thing that causes me some concern is the fact that we have this 125-years-plus tradition of brewing beer in the Isle of Man. In fact, 125 years ago, when the legislation was drawn up, considerable thought was given then to the different ingredients that went into the beer at the time and indeed all of the substances that should not be included. Now, the Treasury Minister himself has indicated that if the old terminology was left in, it would not make any difference to the Bill. I understand that the Bill has been moved on behalf of Treasury. Correct?

A Member: The Government.

Mr Downie: Right. I personally do not see any difficulty with having reference in it to the two lots of prohibited substances. What I do have concern about is that we see a tradition, really, if that is what you want to call brewing beer in the Isle of Man, but we also see the opportunity here for advertising in the future a product that has got a long history. We might want to make at some stage an 'Old Peculiar Manx Ale' and advertise the fact that it contains no Guinea pepper or grains of paradise or other such substances. In this day and age this is really what can move a product and give it a better sales potential.

The hon. member for Castletown says that we should be clear and concise about legislation, and yet his department are content to allow legislation to remain on their books which prohibits the carrying of corpses in hackney carriages, and you cannot feed a horse at the side of the road when he is on private hire. There are lots and lots of different piece of

legislation in government at the time which have no bearing on most people, and this is probably another area here. If this Bill had not come forward to this House I am absolutely convinced that 99.99 per cent of people in the Isle of Man would never know that grains of paradise or Guinea pepper were not allowed to be used. Now, it is different, and I am sure that somebody who is go-ahead and wants to promote a certain type of beer can use this to our advantage. If it not doing us any harm at the moment why not leave it within the legislation?

As I say, I am easy on this. As far as I am concerned I have got no axe to grind with any member in here; I am just trying to look at this down the middle and trying to be positive and move the Bill along. The Bill is fine, but do we need to throw out the old traditions by not accepting the spirit of this amendment? Thank you, Mr Speaker.

Mrs Crowe: Mr Speaker, I do take exception to the hon. member for East Douglas, the inference being made that there was collusion or coercion at my meeting with the brewers. Now, I might add this meeting took place after there were headlines in the Manx press which read, 'CHEMICALS TO BE ADDED TO MANX BEER.' The brewing industry was appalled. There were phone calls from all over the world to our major brewer. This is when they contacted me. This was the first time I found out that the two small brewers, if you would like to say, had not been consulted during the long-ranging consultation programme that had taken place with Customs. However, at that meeting there was not only myself and representatives from all the brewers on the Island but there was also the collector of duties and the inspector of breweries from Customs and the legislative officer that had taken part in drafting the Bill, and we went to great lengths to explain to all the brewers and to make sure that they were totally satisfied. I could have withdrawn the Bill at any time. I could have said, 'Right, if you are not happy let us look at it again.' I went to great lengths to make sure that all those brewers were happy, and when they left my office which was the point that the hon. member for Castletown made, Mr Brunnschweiler actually went on to Manx press at the office and, as far as I knew, they were totally content when they left the office.

Now, I too know of the desire of the brewers to use the antiquated wording of the old Act, and this is quite acceptable. They can do this at any time. They are going to use it on their beer mats, which have already been printed; they are going to use it in any way that they want. However, I would like to point out from the consumer's point of view that I would advocate the use of plain English in all legislation (**Several Members:** Hear, hear.) and if a case were to be taken to court it is important that legislation is understood by all and not just a few of the favoured legal profession. It is a fact that the case for plain English could be clearly made if you were to refer to the letter from the member for East Douglas where she refers to birds of paradise. This should, I presume, be grains of paradise but, as there is some question as to what grains of paradise actually are, perhaps birds of paradise might be more easily detected in Manx beer by floating feathers. (*Interjection and laughter*)

The brewing industry are happy that the amendment should stand. They know that they can use the archaic wording in all their marketing tools, their beer mats, their matches, whatever, but for the consumer and for the protection of the brewing industry it is important that we have plain, easily understood legislation to take us into the next millennium. Thank you, Mr Speaker.

Mr North: Mr Speaker, I rise as Minister for Trade and Industry to support this Bill and really to say that we are not - let us get it quite clear - adding anything to Manx ale; we are not

adding anything. What I would like to see certainly is the ability on the Island for new beers to be manufactured here. I would very much like to see us having a wheat beer here, a white beer - very good and could be exported and the potential. At the moment they cannot do that. So I am quite happy as the Minister for Trade and Industry that this Bill should be supported and I will not be supporting the amendment.

The Speaker: May I call upon the hon. member for Douglas East to reply to the amendment?

Mrs Cannell: Thank you, Mr Speaker. I would just like to say that I am very grateful for having had the opportunity for members to air their views on this, and I would thank the hon. member for Garff, Mr Rodan, for seconding and being in support of the principle of maintaining the ancient wording.

Now, the hon. Minister for Treasury, Mr Corkill, said, and admitted that the amendments that I am proposing would not jeopardise the main thrust of the Bill, and he is correct in that, in that section 18A has not been challenged at this sitting, has not been questioned at this sitting and stands to be adopted. And also, in answering the hon. Minister for Trade and Industry, of which I am also a member - and I also support the growth within the industry on the Isle of Man, very much so, and have great concerns about them, and it is possibly one of the main reasons why I have pursued this amendment to members today, because our existing industry is not happy despite what the hon. mover has said that she has the full backing of the industry she does not have the full backing of the industry and that is why I am coming forward to hon. members today. If she had the full support, then there would be no argument here today.

Now, also the Treasury Minister mentioned references to the Food Act which was adopted around a year ago, and he is quite correct in that, and in looking at the hon. member for Castletown he made many observations, which he is entitled to do at this stage, and he said, 'Well, look at the old Act, look at those sections which have been repealed, there are only six clauses left in it.' But members, that further gives more support to my call to you today: do not support further erosion of this ancient Act. If there are only six clauses left in it, why erode it any further with the unnecessary move to take out wording which really. . .? there is no reason to take out that wording.

The hon. member for Castletown also said that the industry can still continue to market, in that what is happening is very unusual, in that it will be called the Brewers Act 1874 and the amendment of 1977. Okay, that is fine. I suppose that is half-way in meeting the requirements, or part-way of meeting the requirements of the industry who are concerned, but nevertheless it is erosion because in the green Bill before you it is saying that the words copperas, coculus indicus, nux vomica, grains of paradise, guinea pepper, opium shall cease to have effect. So although that wording in part will be maintained it will cease to have effect. That is the bone of contention here. Why should they cease to have effect when they are merely specifications of things that you cannot put when brewing beer?

There was also mention and queries quite rightly asked from the hon. member for Castletown, and he said he had not had any contact or any phone calls. Well, we hear this argument bemoaned so much in this place and in another place so very often that if members do not get a personal phone call there is no issue, there is nobody who is upset. I can assure the hon. member that I have had phone calls from two of the three Island brewers. One of

those brewers is a constituent of mine, and that first got me interested in the subject matter, because it came from a constituent. I can also further advise hon. members that that particular constituent of mine, Mr Brunnschweiler, is presently in Prague at the moment, hopefully undertaking a lucrative export agreement for exporting good, sound, pure Manx beer to Prague (*Interjections*) and that is why he was not in a position to phone the hon. member for Castletown - he is in Prague.

The hon. member also asked, to whom did I seek advice in regard to the legal requirement? Again, we have been told that this is the reason for the removal of this terminology, that it is a legal requirement and it is in an effort to bring forward modern legislation. Do I have to remind hon. members that Tynwald on this Isle of Man is the oldest continuous parliament in the world? It is not a modern parliament, it is the oldest and the one that is still in being. (*Interjection*) Well, I have said it but many people listen but they do not hear, unfortunately.

Mr Brown: That is what I know about my parliament.

Mr Cretney: Hear, hear!

Mrs Cannell: I can advise hon. members that I sought advice from the learned Clerk, whom I would like permission to call upon in a moment to perhaps explain a point or two for members in terms of the clarification over the legal requirements as we have heard put as an argument for taking out the old wording. And I have further taken advice from the legal draftsman in the Attorney-General's Chambers. And that is where I have sought my advice. I have not gone outside of government; I have remained within the circles of government.

I thank the hon. member for West Douglas for his support, and he is right: by leaving the wording in, using it and continuing to use it is a valuable marketing tool, it does make it different, it makes Manx beer different and if the wording. . . Leave it. It is not doing any harm. It is working well, so why change it? Why fix it if it is working?

The hon. chairman, the hon. mover of the amendment Bill, obviously is quite concerned by what I had said regarding the questions that I posed to her in relation to the meeting which was called hurriedly after the exposure of this Bill in the press. I note and I thank her for her information on the meeting and I note that, other than the legal draftsman, there was no officer present. I also have not had a response as to whether any minutes were taken of that meeting, but the mover has indicated to me that she felt that everybody was happy at the end of the day, but the questions that I posed at the beginning of this date were: was it a fait accompli? Did they feel it was a fait accompli? When they arrived and when they left, did they feel they had any choice in the matter? Because when they spoke to me just last night they felt that they had no choice in the matter and that they were not entirely happy.

I think that just about answers those queries which were made. I would ask and indulge your permission in asking that the learned Clerk be allowed to speak to members to clarify the position in relation to the legal difficulties or otherwise that keeping the old wording in may or may not pose. Thank you, Mr Speaker.

The Speaker: Hon. members, the hon. member for Castletown did request the hon. member for East Douglas's comment in relation to who had given her the legal advice. You

have heard that further she has asked for the learned Secretary to expand on that advice. Is the hon. House willing to hear the Secretary?

Members: Agreed.

The Secretary: Mr Speaker, hon. members, I think what I can do is clarify the nature of the advice that I gave. The policy issue, if I may so, I think, was very clearly set out by the hon. member for Onchan, Mr Corkill. The advice I gave was whether the words that the words that have been cited so often, which I am just going to shorten to 'Guinea pepper' et cetera, have legal effect, and the advice I gave was that now as any time between the passage of the Brewers Act of 1874 it would have legal effect and would be interpreted by the courts, and the way they would do that, let us say now, is that if there was uncertainty about what the words meant they would try and refer to what the words meant when the legislation was enacted. So in the sense that the words would have legal effect that is the position.

I think, if I may say so, one element of confusion is that if you were proceeding with legislation with these words in it today and you were looking to prosecute for an offence it would be much easier to prosecute on the basis of the sort of substances that might now be put into beer that would be, if I may say, a pollutant, because the equipment is available to test for that. So I think there is not that area of disagreement. I think we are just looking at it from different perspectives. I would have thought that any prosecutor who was minded to prosecute for pollution of grains of paradise might have some difficulty in actually raising a successful prosecution in the sense that it would be difficult to provide the evidence, except of course he could show that grains of paradise had been delivered to X, Y, Z, and the indication was that it had been used.

I think that is the difference of view. Whether members, if I may say so, want to include these words or not is a policy matter. If they are included they will be interpreted by the court, but I think one of the issues is that it would be unlikely that today a prosecution would be raised on the basis of these words. I think that is best clarification.

Mr Gelling: Mr Speaker, just a point of clarification. Do I take it that the hon. member for Ramsey is not moving the amendment that we have on our desks to this clause?

The Speaker: Well, the first thing I would have thought that we require to do is to get through this first amendment. The object of the exercise is to try to get through this first amendment first. Hon. member for Rushen, was there anything further that you would wish to...?

Mrs Crowe: No. I think there was a query from the hon. member for East Douglas about the -

Mr Corkill: Is this a response to the clause, Mr Speaker?

The Speaker: Sorry, you are quite right, hon. member. We should, as I set out in the first place to do, deal with the original amendment moved by the hon. member for Douglas East first. If we clear that one we can then pick up the point which was raised by the Chief Minister in relation to the hon. member for Ramsey. So dealing then with the Brewers (Amendment) Bill amendment as moved by Mrs Cannell, which effectively omits sections 3 and 5 and puts back into this Bill the wording which is entailed within the 1874 Bill, will those in favour of Mrs Cannell's amendment please say aye -

Mrs Hannan: A point of order. Should not the member be allowed to respond, moving it?

The Speaker: She has responded.

Mrs Hannan: No, the mover of the -

The Speaker: We will do that because we have a further amendment still to come forward from the hon. member for Ramsey if this amendment is successful.

Mrs Hannan: I cannot agree. It is not right.

Mrs Cannell: Under standing orders.

Mr Brown: Mr Speaker, the point, I think, that is being made is that normally we deal with all the amendments and then go to the Bill for wind-up and then vote, and I think the concern is that we are taking an amendment out of step of dealing with the clause.

The Speaker: If the learned Secretary will explain, the point that we are trying to make is - I appreciate we are taking them out of step - it is dependent on the alteration of this amendment, which could have an effect on Mr Singer's amendment. The learned Secretary.

The Secretary: Sorry to intervene again, hon. members. It is a relatively simple problem. If the hon. member's amendment were to carry, the circulated amendment from the hon. member for Ramsey would have nothing to bite on in the view of the draftsman. We have an alternative amendment from the hon. member for Ramsey in the event that the hon. member for Douglas East's amendment carries. If that amendment carries we cannot proceed with the amendment already circulated from Mr Singer because there is nothing to bite on. The text is removed that he wants to amend. That is the position.

Mrs Hannan: With regard to that, it cannot be right that the person moving the Bill cannot comment on an amendment before an amendment is voted on, and therefore I would suggest that we suspend standing orders to allow the person moving the legislation to comment on the amendment before it is voted on, otherwise the amendment is not responded to.

The Speaker: I think, hon. member for Peel - I take the point which you are making - there is absolutely no need to suspend standing orders. I am perfectly content, if the House so desires, for the hon. member for Rushen, Mrs Crowe, to respond, though we will have to accept, as the learned Secretary has said, that we have in my hand an amendment circulated to members from the hon. member for Ramsey, Mr Singer, which will not be moved in that form if the member for East Douglas Mrs Cannell's amendment were to be successful. So Mrs Crowe in this instance will get the opportunity to respond to both amendments and twice, as it were, to the main clause. She has already spoken to the amendment at that particular stage; nevertheless, so that there is no problem with this hon. House, I call upon the hon. member to respond so far to clause 1 and the amendment.

Mr Cretney: Have it double, Pam!

Mrs Crowe: I am quite happy to remain seated, Mr Speaker, but thank you so much for this opportunity. I will just respond to the two comments that were made that have not been responded to the first time round, as it were, when I did speak, and they were about the meeting I had with the brewers. Yes, there were officers present; the senior officer at Customs and Excise, the collector, and his legislative officer was there to explain the legislation to the

brewing industry. As you can imagine, after reading the headlines there was a degree of anxiety about what this Bill was all about and so it did take some time to explain but, as far as I was concerned, when those brewers left my office they were totally content, and since that time, although I am in there every day, none of the representatives that were there that day has picked up the telephone to speak to me, and on leaving I asked them if they had any problems whatsoever to telephone me at any time. So as far as I am aware the brewing industry are quite happy with these amendments. They know now that they can use the archaic language in all of their advertising matter, and that to me is the crux of what this amendment was about - the fact that they could not use the archaic language in advertising. Well, they can do so and, as far as I know, they are fully content and I feel sure that I am not such a harridan (**Members:** Hear, hear.) that they would not have picked up the telephone to telephone me and say, 'I am sorry but we did not quite understand that point.' Thank you, Mr Speaker. (*Interjection and laughter*)

The Speaker: Hon. members, once again the motion is that the amendment to clause 1 and the schedule, as moved by the hon. member for East Douglas, stand part of the Bill. Will those in favour please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Messrs Rodan, Houghton, Braidwood, Mrs Cannell, Messrs Downie, Singer, Karran and Kniveton - 8

Against: Messrs Gilbey, Cannan, Quine, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Crowe, Cretney, Mrs Hannan, Messrs Bell, Corkill, Gelling and the Speaker - 14

The Speaker: Hon. members, the motion fails to carry in the House with 8 votes cast for and 14 votes against.

Now, hon. members, as that amendment has failed to carry, the amendment as has been circulated to you on the white paper to be moved by Mr Singer can now, as the learned Secretary says, still bite on the Bill. There is something left in the Bill which is relevant to his amendment. I therefore, hon. members, call upon the hon. member for Ramsey, Mr Singer, to move the amendment to clause 1 and the schedule of the Bill as has been circulated to you. The hon. member for Ramsey.

Mr Singer: Thank you, Mr Speaker. The intention of the amendment circulated in my name is to increase the maximum penalties for convictions as described in the Bill. Last week at the second reading of the Bill in this hon. House I raised the matter of the level of maximum fines available to the magistrates on conviction for the offences mentioned. I stated that in my opinion the levels were too low in relation to the seriousness of the offences. In her reply to the debate the hon. member for Rushen, Mrs Crowe, chose not to comment on my observations and I therefore concluded that she was not opposed to my suggestion.

A general comment is often made nowadays that the hands of the magistrates appear to be tied when levelling fines, that the maximum permitted figures do not reflect the seriousness of the crime and that is a general sentiment with which I agree. I believe that an adequate deterrent must be available and invoked when necessary. With regard to this Bill I do not believe that the seriousness of the offences is reflected in the proposed maximum fines that could be levied by the magistrates. The offences described would, I believe, have been

committed deliberately, the offender would be well aware of his or her crime and the offence or offences would not be due to unforeseen circumstances or by accident. Incorrect book-keeping or refusing the inspector the right to take samples can be considered as extremely serious matters, and that is why I am proposing an increase in the maximum fine from £1,000 to £2,500. Deliberate substitution with forbidden constituents in the beer or adulteration of the product is particularly serious, and I am suggesting that the proposed maximum fine of £2,500 is too lenient. In fact, I am saying that the maximum permitted fine that magistrates could impose should be £5,000, but if this is considered by them to be inadequate my amendment would allow the prosecuting authority to take it to a higher court or the magistrates to refer the case to a higher court. I hope, hon. members, that you will agree with me that the penalties as proposed are inadequate for the offences that can be committed in contravention of this Bill and that you will therefore support my amendment. Thank you, Mr Speaker. I beg to move:

Page 2, before line 1; insert -

“(3) In section 17 (inspection of brewers’ books), for the words “forfeit a penalty not exceeding £1,000” substitute “be liable on summary conviction to a fine not exceeding £2,500”.”, and re-number the subsequent subsections.

After line 5; insert -

“(b) in the second sentence, for the words “incur a penalty of £2,500.” substitute -

“be liable -

(a) on summary conviction to a fine not exceeding £5,000; or

(b) on conviction on information to a fine “.”, and re-number the subsequent paragraph.

Page 3, in section 17; for the words “forfeit a penalty not exceeding £1,000” substitute - “be liable on summary conviction to a fine not exceeding £2,500”.

In section 18, in the second sentence, for the words “incur a penalty of £2,500.” substitute “be liable -

(a) on summary conviction to a fine not exceeding £5,000; or

(b) on conviction on information to a fine.”.

Mr Houghton: Mr Speaker, I beg to second and reserve my remarks.

The Speaker: The hon. member for Rushen, Mrs Crowe, speaking to the amendment.

Mrs Crowe: Thank you, Mr Speaker. I did not purposefully comment on the raising of the fees when Mr Singer mentioned them last week because I really felt that as the Bill was promoted by Treasury they might have a view on that, but I am sure, as Mr Singer is offering the Treasury even more money in fines, they will be totally delighted. But I would say that I do think this is a paper exercise; there are no brewers on the Island that are not going to conform to all the standards laid down, and in the Food Act and all the other legislation that covers the sale and the making of food an inspector could walk in at any time to the brewery and test any

beer without the inspection of books or with it, but I do not oppose it, Mr Singer, and if that is what you feel is more appropriate, so be it.

Mr Brown: Mr Speaker, I just really would like to ask the mover of the amendment to clarify a number of points. Whilst I do not necessarily disagree with the point of having £1,000 substituted by £2,500 for a penalty and so on, I do note, though, there is a distinct change in the wording, and one of the things that has been said here this morning by members is the importance of keeping the style of the Bill of the 1874 Act in keeping with, as far as possible, legislation of that time, and the changes that have been made so far have done that in terms that they have used the old terminologies. And if I could just give members an example, if they look at the amendment moved by the hon. mover, the wording that is in the Bill at the moment says 'forfeit a penalty not exceeding £1,000' but then it is changed to say that it be substituted with 'be liable on summary conviction to a fine not exceeding £2,500,' and I do not know but I suspect that is a modern terminology, 'summary conviction', as against 'forfeit', which is clearly an older terminology, and I would have thought we achieve the same by just amending it, 'instead of saying '£1,000' just substitute '£2,500'. I think it would be interesting to know why the member, if he can explain, has actually also gone for a change of wording, because that to me then causes a problem in terms of the importance that was said about selling the Bill. Now, if it is not a problem that is fine, but I think it would just be helpful to know why there has been a change in that. I am quite content that maybe it needs to be looked at elsewhere and it might have to be amended elsewhere but I just wonder - again in one way we are trying to protect something and in another way we are putting modern wording in, and I just think we should be clear why.

Mr Corkill: Mr Speaker, certainly when presented with an amendment on the floor it is difficult and I certainly acknowledge the previous speaker, the hon. member for Castletown, with regard to the type of wording. This Bill is obviously sensitive to certain people and therefore that is important, and I do hope that when this Bill passes through, hopefully, to another place, I know that they obviously read *Hansard* - they pick up on this comment and examine that particular issue.

With regard to the subject, which is the actual penalty, of course the court will decide for itself with regard to the severity of any offence within the maximum prescribed by law and there will often, of course, be minor offences which would not attract the maximum penalty in any case, but I do not personally have a strong view on the maximum figure and therefore can support that if that is the view of the hon. member for Ramsey, Mr Singer. But I think it is an interesting point, the changing in word. If we are trying to preserve the 1874 culture of this Act and yet strike that balance and have modern-day legislation, then that is something we should be aware of.

The Speaker: I call upon the hon. member for Ramsey, Mr Singer, to reply.

Mr Singer: Thank you, Mr Speaker. I certainly understand Mr Brown's point and the hon. Minister for the Treasury's point, but the wording is on the advice of the draftsman because whilst I accept completely that this Bill has a history and an important history, it is necessary to word the Act in accordance with the present structure of the courts as they are to give them clear direction, and it is important that people who are likely to commit the offences also know quite clearly what those offences are. I do not believe that this detracts from the Bill, this wording, and my feeling is that it has to be, as I have said, clearly stated for the courts to be

able to come to understand and to implement the law as the modern day needs, and therefore I hope that members would accept the wording as it is here.

Mrs Crowe: Once again I think there has been emphasised the need for clear legal definition, and it was interesting to note that the hon. member for Ramsey, Mr Singer, made mention of it in that particular instance as regard offences, which is what we were trying to do in 18A, a clear legal definition, so I agree. Thank you, Mr Speaker.

The Speaker: Hon. members, the motion is that the amendment to the Brewers (Amendment) Bill and circulated to you on your white sheet to clause 1 and the schedule, moved by the hon. member for Ramsey, Mr Singer, be approved. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Cannan, Quine, Rodan, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Crowe, Cretney, Braidwood, Mrs Cannell, Messrs Downie, Singer, Bell, Karran, Corkill and Gelling - 16

Against: Messrs Gilbey, Brown, Mrs Hannan and the Speaker - 4

The Speaker: Hon. members, the motion carries in the House, 16 votes cast for and 4 votes cast against. Hon. members, I now put clause 1 and the schedule as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, then, hon. members, and I think this was the point which the hon. member for Castletown was referring to earlier and there is a small typographical error, I think: 'together a the Brewers Act', I think, should be 'together as the Brewers Act.' The hon. member for Rushen, clause 2.

Mrs Crowe: Thank you, Mr Speaker, for pointing out that typing error. I am sure that will be amended when it goes upstairs.

Clause 2, the short title and commencement. This clause lays out that the Bill, when passed by Tynwald, would be called the Brewers Act 1874 and the new Act together would be cited as the Brewers Act 1874-1998.

Sub-clause (1) gives the intended name of the Bill. When passed it will be referred to as the Brewers (Amendment) Bill 1998 but it also allows that the original Act and the amending Act will be referred to together as the Brewers Act 1874-1998, and this clearly allows brewers to use it as an advertising tool.

Sub-clause (2) provides that the Bill, when passed, would only come into operation when an appointed day order has been prepared by the Treasury and approved by Tynwald. It also provides that the different provisions contained in the Bill can be brought into operation on different days or on different days for differing circumstances. I beg to move that clause 2 and the schedule stand as part of the Bill.

Mr Cretney: Mr Speaker, I beg to second and congratulate the hon. member on moving her first non-controversial little Bill.

Members: Hear, hear. *(Laughter)*

Mrs Crowe: Thank you, David!

The Speaker: Hon. members, in the absence of anybody wishing to speak, I will put the motion to the House that clause 2, the short title and commencement, 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, I thank you for your co-operation in handling those amendments in the rather unusual form in which we did this morning.

Procedural

The Speaker: Hon. members, moving on then to item 18, I call upon the hon. member, the Minister for Home Affairs, to move the second reading of the Police Powers and Procedures Bill.

Mr Cannan: A point of order, Mr Speaker, sir. In view of the fact that this is a long Bill and people will probably have some fairly long speeches, may I suggest that we retire early for lunch and come back early rather than start and then adjourn for lunch.

The Speaker: I have no idea whether hon. members will wish to make long speeches on the Police Powers and Procedures Bill at all, but if that is the wish of the House - the member in charge?

Mr Bell: That is no problem.

The Speaker: In that case, hon. members, I think it may be advisable, the request having been made, to adjourn at this stage and we will recommence at 2.30. Thank you.

The House adjourned at 12.55 p.m.

Procedural

The Speaker: Now, hon. members, before we commence with the item 18 on our agenda paper and your Police Powers and Procedures Bill I would like to draw to the attention of the House a procedural matter which involves myself. As hon. members are aware, I am managing director of Central Marts of now some considerable time standing and as such am a registered estate agent. I am advised therefore and would wish to advise this hon. House that under the provision of standing orders 106 and 107 I think it is only right and proper that I should vacate the chair, not necessarily for protection for myself, but certainly for protection for the chair, and it is my intention, therefore, when it comes to dealing with the Estate Agents Bill, that my deputy should sit in my seat.

Accepting that, hon. members, takes me to a further difficulty which surrounds today's sitting. The difficulty which surrounds today's sitting is that I am given to understand that the Chief Minister and the hon. member for West Douglas both wish to be absent later this afternoon and similarly my deputy, Mr Cannan, equally will be away later this afternoon, if practical, because they are attending on government business. Therefore, hon. members, I have spoken to the hon. member in charge of the Estate Agents Bill, the hon. member for Ayre, Mr Quine, and he is in agreement that in fact the Estate Agents Bill, depending on timing, should be carried over to next week's agenda. Hon. members, I am making that comment so that you will be aware that depending on timing this afternoon and how progress is made with the Police Powers and Procedures Bill I may very well adjourn the sitting at the completion of item 18 on our agenda paper.

Police Powers And Procedures Bill - Second Reading Approved

The Speaker: In that case, hon. members, I call upon the hon. member for Ramsey, Mr Bell, to move the second reading of the Police Powers and Procedures Bill.

Mr Bell: Mr Speaker, hon. members who were members of the previous House may recall that a Police Powers and Procedures Bill was introduced into that House in May 1996 and was given a first reading and that the second reading was moved and after a debate adjourned. The Bill did not proceed further and fell when the House was dissolved in October 1996.

Following the reconstitution of the Department of Home Affairs, the Bill was reconsidered by the departmental members and it was agreed that it should be reintroduced, subject to one amendment. That amendment was the insertion of three additional clauses giving power to the police to stop and search persons or vehicles leaving or entering the Island through the ports in exceptional circumstances. These clauses appear as clauses 4, 5 and 6. Other than the addition of these three clauses, the Bill is substantially the same as the one introduced in 1996, the only other amendments being minor drafting ones.

The Bill is finely balanced between giving additional powers to the police and providing additional rights and protection for persons arrested by the police and taken into custody.

Considerable consultation has taken place on this Bill, including consultations with the police, the Isle of Man Law Society, social services, Customs and Excise, the deemsters, High Bailiff, Deputy High Bailiff, Clerk to the Justices, and latterly in relation to that amendment, the Department of Transport.

As stated in the explanatory memorandum, the major part of this Bill, namely parts I to V and part VII, are based on the UK Police and Criminal Evidence Act 1984 which is commonly known as 'PACE'. Part VI is based on provisions contained in the UK's Criminal Justice and Public Order Act 1994, relating to an accused person's right to remain silent.

PACE has now been in operation in the UK for some 13 years and whilst I think it is fair to say that there were some concerns and teething problems at the outset, it is now, I believe, regarded as an established and effective piece of legislation.

Part I of the Bill before us today deals with the power of the police to stop and search persons or vehicles. A police officer is given power to stop and search a person or vehicle found in a public place or in any other place to which people have access. The police officer must, however, have reasonable grounds for suspecting that the search will reveal stolen or prohibited articles. A senior police officer is empowered to authorise all persons and vehicles in a given locality to be stopped and searched over a period of 24 hours if he believes that incidents invoicing serious violence may take place in that locality. This authority can be extended for a further period of six hours if it is considered expedient to do so.

Part I also contains powers to enable a police officer to be authorised to stop and search any person or vehicle leaving or entering the Island through the ports in exceptional circumstances, these being circumstances in which it is believed that a person unlawfully at large or responsible for committing a serious arrestable offence will attempt to leave or enter the Island, or that proceeds of such an offence will be taken out of or brought into the Island. These are the powers I referred to earlier which were not included in the original 1996 Bill.

Part II of the Bill enables a police officer, if authorised by a justice of the peace, to enter and search premises and seize and retain anything he finds which is relevant to the purpose of the search. Before a justice of the peace gives the necessary authority, he must be satisfied that there are reasonable grounds for believing that a serious arrestable offence has been committed and there is material on the premises which is likely to be of substantial value to the investigation of the offence and is likely to be relevant evidence. A police officer is empowered to enter and search premises without authority if it is for the purpose of arresting persons, recapturing persons unlawfully at large or for saving life or limb. An officer can also enter premises occupied or controlled by a person who has been arrested, in order to search for and secure evidence.

Part III of the Bill replaces the existing powers of the police to arrest persons. It defines what is meant by an arrestable offence and sets out the general conditions on which a police officer may arrest a person. It also deals with the taking of fingerprints, the information to be given to an arrested person and the power to search an arrested person.

Part IV of the Bill makes new statutory provision for the conditions and duration of detention of persons at police stations.

Clause 37 makes it clear that a person cannot be kept in police detention other than as provided for in this part. Clause 38 requires police stations used for detaining arrested persons to be designated for that purpose, and clause 39 requires at least one custody officer to be appointed for each designated police station.

Clauses 40 and 41 set out the duties of the custody officer in respect of arrested persons who have not been charged and of those who have been charged.

Clause 42 sets out the responsibilities vested in the custody officer to ensure that detained persons are correctly treated.

Clause 43 prescribes that the detention of persons in police detention must be reviewed on a regular basis and it sets out the different times at which reviews must take place, both in respect of arrested persons who have been charged and those who have not been charged.

Clause 44 prescribes that a person who has not been charged shall not normally be kept in police detention for more than 24 hours.

Clause 45 enables a senior officer to authorise a person who has not been charged to be detained for a further period of 24 hours, and clauses 46 and 47 enable the High Bailiff to further extend that period that a person can be detained. The maximum period for which a person can be held without charge is 96 hours, and clause 49 requires a person who has been charged to be brought before a court as soon as possible after being charged, if he is not released on bail, and clauses 50 and 52 deal with the release of persons on bail after being charged.

Although the provisions set out in part IV are new in law, most of them have in fact been applied informally for the last three or four years.

Part V of the Bill deals with a number of issues relating to the treatment of suspects and others by the police.

Clause 56 abolishes certain powers currently vested in constables to search persons, and clause 57 makes provision for searching persons detained by the police.

Clause 58 deals with intimate searches and re-enacts and expands the provision of the Criminal Justice (Intimate Body Searches) Act 1994 which is repealed.

Clause 59 gives an arrested person the right to have a friend or relative informed of his arrest. In exceptional circumstances the exercise of this right can be delayed for up to 36 hours on the authority of a senior officer.

Clause 60 sets out additional rights for children and young persons, while clause 61 entitles an arrested person to consult an advocate privately if he so wishes. Again as prescribed in clause 59, the exercise of this right can be delayed up to 36 hours in very exceptional circumstances.

Clause 62 enables a duty advocate scheme to be established to enable free legal advice to be available to arrested persons at all times.

Clause 63 makes a provision for the tape-recording of interviews of suspected persons, and clause 64 sets out the circumstances in which a detained person's fingerprints can be taken without his consent.

Clause 65 sets out the circumstances in which an intimate sample may be taken from a detained person, and clause 66 deals with non-intimate samples. The definitions of 'intimate sample' and 'non-intimate sample' are given in clause 69, and clause 67 contains supplementary provisions about fingerprints and samples which have been taken from arrested persons, and clause 68 requires such fingerprints and samples to be destroyed if the person from whom they have been taken is subsequently cleared of the offence for which he has been arrested.

Part VI of the Bill, which deals with the inferences that can be drawn from an accused's silence, enables a criminal court to draw such inferences as appear proper from the failure of an accused person to explain his actions either when questioned or charged by the police or at his trial. Equally the court can draw inferences from an accused person's failure or refusal to account for circumstances such as relevant marks or substances being found on his person, clothing or footwear or from his silence in respect to his presence at a particular place. However, it is very important to note that these provisions do not in any way take away an accused person's traditional right to remain silent. That has always been and remains within the context of this Bill his right. These provisions merely enable a court to draw inferences from the fact that an accused person has not taken the opportunity afforded to him to explain his actions.

The corresponding provisions in the UK legislation were challenged before the European Court as recently as 12 months ago, but the court ruled that they did not contravene the Convention of Human Rights.

Part VII of the Bill enables the Department of Home Affairs to make codes of practice in connection with the detention, treatment, questioning and identification of persons by the police and in connection with the searches of persons, premises, vehicles and vessels and the seizure and treatment of property found by the police on such persons, premises, vehicles or vessels.

The final part of the Bill, that is part VIII, deals simply with miscellaneous and supplementary matters.

I should point out that this Bill has a manpower and financial implication in two specific areas. In relation to manpower, the need for the appointment of custody officers at designated police stations under clause 39 will require the appointment of five additional police sergeants to provide 24-hours-a-day cover at police headquarters, which is very likely to be the only designated police station. The Bill does not specify the rank of the custody officer but because of the importance of the role it is considered essential it is filled by a sergeant, as it is in the United Kingdom.

Although the only restriction contained in the Bill is that the custody officer must not have been involved in the investigation of the offence for which the detained person has been arrested, all the advice the department has received, including advice from Her Majesty's Inspector of Constabulary, is that in practice the custody officer must be dedicated solely to that role.

We have identified five extra police sergeants that would be required under this legislation at a cost of approximately £150,000. That figure has been approved by Treasury and so have the manpower implications of the extra five staff, so those hurdles have in fact been overcome.

The other main financial implication of this Bill relates to the duty advocate scheme which is dealt with in clause 62. The cost of any scheme that may be set up cannot be accurately estimated, as this depends, obviously, on the take-up. However, on the advice of the Law Society, the department has estimated that the cost is likely within a full year to be in the region of £90,000 to £100,000. Treasury's approval would be needed before a scheme was established but they have informally confirmed to me that that will be granted once the scheme comes into operation.

I should also point out that it will be the responsibility of the Legal Aid Committee to draw up the duty advocate scheme and to manage it afterwards.

This is an extremely important piece of legislation and, as I stated at the outset, it provides a balance between the rights of the police and the rights of persons detained by the police. Although there are a number of new provisions on both sides of that equation, the Bill is also largely a consolidation exercise of existing legislation and indeed common law practice.

I could go on at some length on the detail of this Bill but I would prefer to rest my case, so to speak, at this juncture to allow members to express their views on the Bill. So I would formally now like to move that this Bill be read a second time.

Mr Duggan: I rise to second, Mr Speaker. This Bill, hon. members, as the minister has said, gives the powers to stop and search and to arrest people and seize. In this day and age unfortunately we have problems and people need to be searched for drugs and there are fraud problems, and when you look back to many years ago we used to brag when we used to go past Victoria Road prison, saying, 'There are half a dozen prisoners in there', but now things have changed with the fraud and the drugs situation and what have you, and the police have got a most difficult job, really speaking, because it is a 24-hour, 365-day-a-year job and, as I say, they have got a lot to tackle with the drugs and the fraud and what have you, and this

Bill will go a long way, hon. members, with the powers to stop and search et cetera and give them a lot more powers so they can carry out their duties. I fully support the Bill, sir.

Mr Houghton: Mr Speaker, I also rise to support wholeheartedly the hon. minister in the moving of this Bill. I am sure all hon. members will appreciate that the experience I have gained in the Special Constabulary over 18 years lends reasonable weight to my comment that the effectiveness of policing on the Island has been in many cases rather handicapped, to say the least. The offender has in many ways reaped the fruits of this Island for far too long.

The effects of this Bill, when it becomes law, will sharpen the blunt instruments used by the police, to make them more effective in what we wish them to do, that is, to bring to justice those who wish to offend, those who wish to and on very many occasions do harm our people and all too often they are allowed to get away.

I would ask the hon. minister, though, however, to examine two areas of concern I have which are ancillary to his Bill. The Bill refers specifically to the access of an advocate a duty advocate, when someone is held in police custody. Can the minister assure this House that an effective duty advocate system will be engaged to the satisfaction of growing requests and especially could he guarantee this service during the antisocial hours on a 24-hour basis? May I further suggest that where an advocate fails to respond to his rostered responsibility, he be accountable in some way to the appropriate court. This may assist to defray the possible liability to litigations against the police, where an advocate fails to attend the police station.

Secondly, this Bill will in certain cases attract the extra responsibilities within the custody area, as we have already heard, in particular the duty custody officers. Does the hon. minister intend to deploy extra staff on a permanent shift to custody duties? This, in my opinion, will be largely wasteful in terms of duty time. Or would he advocate a flexible arrangement of duties whereby extra support in respect of custody duties can be supplied on the basis of demand?

In closing, I should like to put on record the pleasure of this hon. House to see our senior training officer with us present in this hon. House today to hear today's important debate. Thank you, sir.

Mr Downie: Mr Speaker, I rise to give my support to the Bill. There are some questions that I want to pose for the mover but first of all I would like to say that I welcome the opportunity that is to be awarded to the power within the Bill to at last bring some measures in to give us greater control of our ports of entry and exit (**Several Members:** Hear, hear.) and I think it has been long overdue and I think that the very threat to the criminal fraternity that there is a possibility that in the future we may be able to have spot checks and other means at our disposal at the ports of entry or exit will be a major deterrent to crime in this Island.

Now, turning to the other items I wanted to make reference to and for some clarification really, in the first section of the Bill, in the very first section, as it were, there is a reference here to 'This section does not give a constable power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.' Now, I have been through the Bill and I have some reservations about what are prohibited articles and I would like to have seen perhaps a list of prohibited articles and ask the mover of the Bill would they extend to articles which are prohibited by international convention? For instance, we are a signatory to the CITES conventions which prohibits the import and export and ban the trade of certain species of wild animals and also

the animal parts. Now, if a person was suspected of dealing in these - although he may be the owner, he may not have stolen them - is this a fit and proper time for him to be stopped and his vehicles searched and indeed actually charged with the offence if he has animals or animal parts which contravene the CITES convention? That is the first point I wanted to make. This trade in illicit and illegal animals and their parts is in fact a very, very big business and one only has to see what is happening with our endangered species to see why the world organisations have put their weight behind this, and it is something that could happen from time to time and it is a question that has been raised with me.

Now, the other area I would like to ask the minister about is under clause 22, the general powers of seizure et cetera, and just to give an instance: 'The powers conferred by subsections (2), (3), and (4) are exercisable by a constable who is lawfully on any premises', and the clause goes on to say, 'that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed' or 'The constable may seize anything which is on the premises if he has reasonable grounds for believing - (a) that it is evidence in relation to an offence which he is investigating or any other offence'. What I want to ask the minister is can he give me an assurance, if perhaps not today but at some time in the future, that these clauses apply to offences which relate to wilful neglect or cruelty to animals? Because there are cases where the police go onto premises and there is a poor dog there that has been kicked all over the house and lying in a corner bleeding, or they go onto a premises where a horse has maybe been tied up for months in a stable or a byre and its feet are overgrown and it is in a terrible condition. Now, under this Act can the police seize that and give it to a responsible body or organisation to look after while charges are being made or has the animal got to be left there?

Now, they are the two areas I would like to address, but I would indicate again to the mover of the Bill my support for this piece of legislation and I think that by and large in the discussions I have had with the members of the constabulary they are looking to give them a lot more support out on the field, and I think the Bill goes a long way to do that.

Mr Kniveton: Mr Speaker, I can go along with very much all of this Bill but there is just one question I would like to pose to the hon. mover the minister Mr Bell, and that comes under part I, powers of stop and search - and I would like to ask him and depending on his reply I will probably come back at a further stage on the powers to stop - does this also cover drivers who are suspected of drinking offences or does this come under some other Bill? Quite simply, that is the only question at this stage I have, Mr Speaker, thank you.

Mr Karran: Vainstyr Loayreyder, I have concerns about this Bill. I think that we should not have a situation where we have an auction and who can be the more law and order member of this hon. House, because I believe that what concerns me about this Bill is the accountability of the police force in the first place and I am worried, as I have said in other places, about whether we have got the horse before the cart or the cart before the horse, and my concern as far as this Bill is concerned is the fact that I feel that until other primary legislation is in force on other issues to do with accountability, and that means that we have some sort of police board that has a broad franchise representing all sections of the community, I am very loath, even though I have a lot of sympathy with this Bill, to vote for it.

My concern as far as this Bill is concerned is I will give you an example. I would love to see a doubling of the drug squad and if I was the minister of the home affairs department I

would love to do it, but the fact of the matter is you could put the money up there but you could not guarantee where the money would go, and what concerns me as far as this Bill is concerned and this whole procedure is it comes from the top and the fact of the matter at the present time is there is no accountability. I believe that until we have such a thing as a proper police committee having some sort of not so much control but accountability by the hierarchy within the police force, I am loath to give more powers at the present time.

I have asked the hon. minister whether he would put this to a committee, and I understand his problems, the hon. member for Ramsey. The situation is that I understand when he says, 'Well, who would it go towards? Who are the interested parties?' I am not talking about some of these organisations that talk about civil liberties and who I would be very loath to live under their regimes if they ever got into a position of power, but I do think the general public should be given the opportunity to voice their concerns about this Bill, because I have to say it is all right members tutting over here when we were in this House and were being ridiculed when we were trying to get something done about the drug situation long before there was the epidemic of problems that we have got at the present time, when at the time there was no way of giving guidance to those that were using the taxpayer's money.

I feel as far as this Bill is concerned that, whilst I have a lot of sympathy and I want to support the Bill, I am concerned that if we are not going to get our house in order - and our house is long overdue, as a former member of the home affairs department, long overdue, and I paid the price for standing up and saying what needed to be done at the time - we are going to have a situation where we give more power to the police, and it is not the 90 per cent or 95 per cent or 97¹/₂ per cent of the officers that are good, it is the 2¹/₂ per cent who do the 90 per cent of the damage for the 97 per cent of the good officers, and the position is that at the moment I am deeply concerned.

Now, I think the hon. minister said that there was a limit on detention of 96 hours, but is there a limit under the detention as far as this statutory limit is concerned? Does it cover all sections of this Bill and can a renewed detention be done by the police, being reviewed by the High Bailiff longer, because I am a little bit concerned about this? And I think before members get euphoric about this Bill and about being seen to do something I think we want to make sure that we are helping the law and order situation because the problem is, if you give these powers to people who abuse them, who are not accountable at the present time, you will do more harm to the police force and you will, because I know myself when I ran a youth club I had a police officer in my area who I could work with, who I could go and talk to and say, 'Listen, I have got a problem here with this young one, I have got a problem there with that young one', and it worked. Now, when he was replaced the problem was we got somebody who was more interested in promotion and interested in convictions than resolving the problem and we had a situation where law and order went down the tubes, not went up the tubes, because it was done wrongly.

All I am concerned about with these powers is that we do not allow a situation where we do alienate more people in our community away from helping the police, because there is no accountability at the moment, and I appreciate the problem that the minister has, he has inherited it, but I am afraid I am worried about supporting this Bill and I do believe, hon. members, this Bill should not be thrown through without deep thought and without allowing

people in our community to express their concerns on the contents of the Bill and I hope the mover will consider putting it to a committee.

The Speaker: I call upon the hon. member for Ramsey to reply. Oh, one moment. The hon. member for Garff.

Mr Rodan: Sorry, I did not catch your eye, Mr Speaker.

The Speaker: You are late, sir, but there we are.

Mr Rodan: I appreciate your indulgence, thank you, Mr Speaker. I did expect the debate to go on a bit longer and it is quite right that this Bill has received a warm welcome this afternoon because it is an important piece of legislation. It gives to the police new powers that are badly needed in asking them to do the job on our behalf of investigating crime. So I would certainly like to welcome this legislation and I would say that the police at last have got a proper framework for policing in the Island.

Now, as the minister quite rightly said, the legislation represents something of a balancing act and in May 1976 when we last debated the second reading before it was adjourned then for the debate he did stress that if the Bill is to come into force, we have the right balance between the civil rights of the individual and the ability of the police to carry out their responsibilities as efficiently as possible, and he said words to that effect this afternoon, and that is fine. But there are major changes now to police operations and procedures, which in turn have major implications for really everyone on the Island in the way that the procedures will affect them individually, because with extra powers, whether it is to the police or anyone else, comes an obligation really for extra duties and extra safeguards. So I feel that as no one else has specifically referred to it, it is important to say something about part VI of the Bill, clauses 70 to 74, which modify the right to silence.

Now, the minister was quite correct not to talk about abolishing the right to silence, because that is not, of course, what is being proposed, it is modifying the right to silence. It is therefore, I think, warranted to look into this in a little depth and to ask whether this variation to a long-standing principle in criminal justice is being counterbalanced, if there is the necessary checks and balances by way of safeguards.

Now, we can understand why this provision is in the Bill. There have been problems caused essentially by the conflict between the duty on the one hand of the police to interrogate those who they suspect of having committed a criminal offence and the right of citizens not to say anything that might be damaging to their interest and with the duties of the police, the job we ask them to do, including detection of crime and responsibility for investigating offences, quite rightly they regard it as important that innocent people should provide explanations for the facts alleged against them as soon as practicable, and in practice the research has shown that most suspects do make statements to the police, either to admit or deny accusations. Only a minority are silent, either refusing to answer any questions or refusing to answer some of the questions, and it may well be that the right to silence is exercised most often in the more serious cases and under legal advice tendered to the suspect. Whatever the circumstances, silence undoubtedly could impede a police investigation in establishing the facts of the case and the suspect may then fabricate a defence which is not revealed until the trial, by which time it may well be impracticable to investigate and detect the fabrication.

Now, to prove a criminal offence there must be evidence of guilty knowledge or intent on the part of the accused and in many cases such evidence can only be obtained by actually asking an accused person whether they have an explanation for the conduct that has brought them under suspicion. Obviously suspects cannot be forced to speak, so what part VI is saying is that the prosecution should be able to comment at trial on the refusal of someone against whom there is a prima facie case to explain their conduct. So that is why this is in the legislation.

So we can see that modifying the right to silence may well encourage suspects to provide explanations which may exonerate them and also discourage unscrupulous offenders from hiding behind the right to silence and so escape the consequences of their crimes. But I would ask the minister to say something about the objections in principle which have been made against modifying the right to silence in this way, concerns that have been raised certainly in the Isle of Man and in the run-up in 1994 to the UK Criminal Justice Act, there were very grave concerns raised by the Royal Commission on Criminal Justice, for example, and others, and I think it would be interesting for the minister to report to the House on how some of those concerns have been met in practice since 1994 and whether they were real or imagined at the end of the day.

Such concerns, for example, might be that if adverse comment at trial were to be permissible, wouldn't we have not only more convictions of guilty defendants who have refused to answer police questions but a greater risk of convicting more innocent defendants because they have made admissions to prejudice themselves through the fear of adverse comment at their trial or perhaps because their silence has been considered by the jury to add weight to the prosecution case? In other words there is more to fear, and this was certainly the concern of the majority on the Royal Commission on Criminal Justice. There was more to fear from the increased likelihood of false confessions by vulnerable persons than to gain from the conviction of the criminal accustomed to sheltering behind the right to silence. What assurances can the minister give that these fears in practice are groundless and could he say a little bit more about the safeguards in the Bill to reduce the possibility of this happening? In particular, what about the argument that the circumstances of police interrogation can in themselves be, particularly to a vulnerable suspect, disorientating and intimidating and that an innocent suspect may remain silent because of embarrassment, bewilderment, outrage or protection, protecting his family, or in fact a reasoned decision to remain silent until the allegation against him has been set out in detail and he has had the benefit of considered legal advice? And even with an adviser present, vulnerable people may confess to offences they did not commit if warned that they face the prospect of adverse comment at trial, and as we know, there have been notorious miscarriages of justice across where oppressive questioning has led to false confessions and the right to silence, it has been argued, is the ultimate safeguard against this.

So is there not an argument, quite a good argument that could be made, that the police should be required to look for other evidence by which the prosecution case can be strengthened? If the right not to answer police questions were modified, not removed, but modified, wouldn't adverse comment at trial enable a prosecution case otherwise too weak to secure a conviction to be strengthened in the minds of the jury by the implication that the defendant's silence automatically supported it?

The right to silence has been seen as a cornerstone of the criminal justice system in adjacent islands, certainly, for 300 years, underpinning the presumption of innocence and putting the onus on the prosecution to prove guilt. So what I am saying is that one can still be on the side of the police and wishing to see that they have the proper tools to do the job, as this Bill certainly does, but still ask the House to think and consider carefully about what it is doing when it is being asked to modify the right to silence, because the implications are wider than we think. I think the minister referred to the fact, and I may have misheard him, but certainly - if he did not say so it has already been suggested that any changes to the right to silence may breach article 6 of the European Convention on Human Rights which guarantees the right to a fair trial, so whether that applies in this case or not I think is worth commenting upon.

We want to be careful, I believe, that if we are bringing a major change of principle into Manx law in this way, then we do not do so simply blindly in our general desire to pass this Police Powers and Procedures Bill, which has so much in it of value. So I look forward to the minister's comments on this.

Mr Brown: Mr Speaker, I welcome this Bill and I think most people do and it is a very important Bill, as the last speaker indicated and I think most speakers have, in terms that it is important as to its implications and potential implications, but I do think within the Bill what is important to recognise is that it clearly lays down what the police's powers are and what procedures they must follow and of course from those, if we get them right, flows safeguarding the public interest, because of course clearly, when you have it laid down in law, if the police for any reason do not comply with the law, then of course that weakens any case they may take against any person and so for that reason I believe this is an important Bill and we should welcome it on that basis.

Now, a number of points have been made and it was interesting that the hon. member for Onchan was on about the situation of accountability, and whilst I have considerable sympathy with the point he made, I do think that that is really for other legislation which relates very much to the person who is accountable for the police, or maybe not as clearly as the hon. member wants, who of course is the chief constable, and therefore clearly from my point of view I think that that is a separate issue, albeit an important issue.

I think it is fair to say from our point of view that one of the issues that caused us the greatest concern and gave us the greatest time to think it through was this point of the right of silence, and clearly when you are being asked to change a situation that has been there for generations, or centuries in fact, we have a considerable responsibility on us as legislators to be satisfied that we make any change and that that change is in the best interests of those people we are talking about and of course that is the community. Of course we should not lose sight of the fact that the police are there to serve the community and safeguard them and therefore any change that we may be asked to make must clearly be in the best interest of the community, and again what you have to look at, I think, is the clauses, part VI of the Bill that the hon. member mentioned, and that clearly has to be 'What is it that we are changing?' And I think if you look at the clauses - and we will get to the clauses, and the minister, I am sure, when we go through it, it is one that may cause a lot of debate - clearly specify circumstances where for a person, if they do not say anything, if they retain their right to silence, it gives the power for the courts then to take into account the inference of them keeping silent, and I think

clause 72 is an important clause on that which should provide the safeguards for the sort of person the hon. member for Garff was talking about who may well be the innocent person who is somewhat frightened by the experience they may go through, and I do not think we should underestimate the experience for a person who has never been in trouble with the police before, who may suddenly find themselves questioned or arrested and find themselves in a situation they are not used to handling, and that can be extremely frightening, it can be very, very much a situation where they feel they have to be defensive, and clearly that must be taken into account. But what we must not lose sight of is that we are talking about a person who retains the right to silence all the way up to the court case and a person who, after legal advice, still wants to retain that right of silence, and I think that is where you have to look at the difference, because when a person initially is questioned or arrested and is frightened, and I do not think we should lose sight of that, who is frightened to respond to questions for whatever reason, that is one issue, but when they get legal representation, if it gets that far, and they are advised after talking to their legal representative that what happened is quite easy to say, 'Well, look, I was there because of. . .', then that should overcome that problem, and what really the legislation is trying to do is get to the case of the hardened criminal, who tends to be in the minority, who tends to sit and say nothing because he has everything to gain by saying nothing, and I believe that that is the issue clearly within this legislation, when we get to it, that we are going to have to consider very carefully.

I believe this legislation is important. It creates a balance. It gives rights to the public. It gives rights to the police. And certainly whilst the police may welcome it and I am pleased they do, I think from that point of view it does put a tremendous responsibility on the force and the chief constable in terms of what they have to do to comply with the law of the land if we pass this legislation, and that then comes back to the other point the hon. member for Onchan was mentioning, accountability, and I do believe personally that question of accountability needs to be defined more clearly because I do believe that over a period of time we have put into place a number of structures, not statutory structures, trying to make the chief constable accountable, and in fact I believe it confuses the issue. We have too many committees that he has to respond to. Accountability has to be clear, it has to be straightforward, it has to be precise, and of course, very importantly, a person, when they are made accountable, has to be in a position where if they do not account for their actions or the actions of their force, then somebody has to be able to deal with that properly. So I think there are two issues there and I think at this stage that accountability is a separate issue for another date.

But the Police Powers and Procedures Bill is an important provision for the Isle of Man and for the people of the Island and clearly demonstrates and defines what actions can be taken in circumstances which the police have to deal with, and I welcome the Bill, I think it is an important piece of legislation, and I look forward to the clauses stage when I believe careful consideration, certainly to part VI, will have to be given and I am sure it will be given, but I do believe that the minister will be in a position to demonstrate that what is being proposed is in the interests of those who are innocent.

The Speaker: The minister to reply.

Mr Bell: Thank you, Mr Speaker. Can I first of all in a general sense say thank you to all those, which in fact I think included everyone that spoke, for their support for the general principle and the general thrust of the Bill. As I said at the outset, it is a finely balanced

exercise that we are trying to carry out here which will strengthen the hand of the police in some areas, whilst at the same time improving the protection of the rights of individuals who come into contact with the police. We have tried very hard to maintain that balance and I hope we will be able to maintain that right through the debate today and through the clauses stage. It is important that we do not lose that sense of balance, otherwise there will be a sense of grievance on one side or the other if they feel that their rights have been eroded.

If I can begin answering the comments made by individual members, Mr Houghton started off by supporting the second reading, and again I thank him for that support. I know he is interested in the subject and we have had some discussion on this matter prior to the debate today. But he has raised two issues with me. One is in relation to the duty advocate scheme. Now, I did say in my introductory speech that there will be a cost implication on this, that there is an estimated, at this stage, £90,000 to £100,000 annual cost, but of course we cannot make allowance for it until the legislation goes through, which actually establishes the duty advocate scheme in the first place, so that will come in once, hopefully, this Bill is accepted and has final Royal Assent. It will be left to the Legal Aid Committee, as I think I indicated, to draw up this new scheme and to work in conjunction with the legal profession to ensure that there is adequate cover.

Now, I, like him, have had some concerns over this as to whether in fact this will be effected, because it is all very well stating the principle that we have got to have a duty advocate scheme, but it has got to be seen to work and be effective, if, going back to what I started with, we are seen to maintain this balance that we are protecting the rights of the individuals as well as increasing police powers.

My department officers have discussed this only in the last few days with the Legal Aid Committee, with the Clerk to the Justices and they are both very happy with the way the scheme is working at the moment. There has been an occasional glitch, I think, where, as the hon. member has mentioned, late at night there have been delays perhaps, not that no-one has turned up, but there have been delays, which are regrettable but perhaps in some circumstances understandable. We very much hope that once we can get this principle agreed we will, with the Legal Aid Committee, be able to develop a duty advocate scheme which is effective and which will solve the very problem that the hon. member refers to.

As far as the duty of the custody officer is concerned, as I stated, the advice which has been given to us is that this position needs to be of some seniority and this is why we are deciding to go for, in effect, the same as the United Kingdom whereby there will be a custody sergeant rota established. It is the recommendation to us that these custody sergeants are designated with this responsibility and this responsibility alone to avoid any possible conflict of interest with, for example, the investigating officers and the case itself, so in a way they have to stay detached from the actual daily operation in case their position can be compromised in some respect. Ultimately, obviously, it will be down to the chief constable and the force management as to exactly how this will work, but the intention at the moment is to keep it as almost a ring-fenced position, particularly bearing in mind the sensitivity of the role that he has to play in relation to handling people coming into custody.

Mr Downie - again I welcome his support and thank him for the comments and support for the police that he has given, particularly in relation to his reference to the checks at the ports. I have to say, I am sure, like the great majority of people on the Isle of Man, had an

assumption that the police have an automatic right of search, not only at the ports, but on the highroad and everything, and have been somewhat surprised, having got into this Bill, now to realise just how limited the police powers have actually been in the past, and now it is not going to happen on a daily basis, but in certain circumstances how much more effective this is going to be for the police to be able to carry out their job successfully.

I could just add to that that my department now has had a number of meetings with the Department of Transport to work out a code of practice with the Department of Transport to ensure that there is full co-operation and understanding on both sides, so that there can be no problems at the sea port or the airport on the very rare occasion when the police require to carry out searches in that area.

The other main point, I think, that the hon. member for West Douglas has made relates to cruelty to animals, trading in animal parts et cetera et cetera. I am told that certainly part of his question is answered by the fact that under the Wildlife Act of 1990 the police do have powers for stop and search and detention of people believed to be in possession of such, I think, animal parts as well as plants and birds et cetera et cetera. So there is already a power there covering that point, and I think the other aspect of it is that if in fact the police, during the carrying out of a search, find evidence of an offence, then there is the right to seize that evidence at that time. But I would point out that this power is not a random one. It is not within the remit of the police to be able to stop cars willy-nilly at random. There has to be a specific reason for this search and it has to be identified to the driver or the individual that is stopped as to what they are looking for. So the police cannot, as might be described in some quarters, go on a sort of fishing expedition and stop cars at will on spec. They do have to identify what it is they are going for.

The hon. member for Onchan refers to drink-driving, and I would suggest that this debate will continue in the not-too-distant future when the debate on the breathalyser comes along and if it gets to the floor of the House of Keys, that particular issue then will be decided on at that stage.

The other hon. member for Onchan, Mr Karran, raises his usual concerns, and I recognise the point that he is making in relation to accountability, but at some stage you have got to recognise that the police have an authority to establish their own management in relation to operational matters and that it is unacceptable for the politicians to be involved in the day-to-day operation of the police. If we get into those realms I think we will be in a very dangerous situation altogether and I think it would leave politicians extremely vulnerable, and I certainly have no intention as minister, while I am in that department, of getting into that area myself. The responsibility, the clear responsibility, for operational matters of the police rest with the chief constable, and I believe it has to stay there.

However, I would point out to the hon. member, in case he is not aware, that the Police Authority has been considerably strengthened of late, that I have amalgamated the old Police Authority with the political members of my department to form a new strengthened police committee and I will shortly be, with the approval of the Council of Ministers, reorganising the Police Consultative Committee, which the hon. member may remember consists of representatives from all round the Island, and the chairman of that committee will also be a member of the new Police Authority. So I hope that the Police Authority, which was set up by Tynwald, will reflect a wider range of views within this hon. chamber because the membership

is appointed on a regional basis and also the views of the public will be brought to our attention more effectively by the presence of the chairman of the Police Consultative Committee being on that committee as well.

As far as putting the Bill out to wider consultation in terms of allowing the members of the general public to speak on it, I would suggest that we as elected members are here to reflect the views of the general public, that is why we are put here in the first place, and I think any views which are passed on to members will be reflected on the floor of this House via the members' contact with the community. I think it would be impractical in this particular instance to put a Bill of this nature out to wholesale consultation, any more than we would do on virtually any other Bill that comes along.

I would also point out, and I do think this is an important issue, that in clause 75 my department has the authority, and will in fact before the Bill becomes law, to establish codes of practice for the police and these are quite rigorous and they will formalise what exists at the moment in so far as if police enthusiasm goes over the top there will be disciplinary issues taken up against those police officers who do not comply with the regulations contained within the Bill that we are putting forward. I think there are a number of controls there which will prevent any over-enthusiasm on the part of the police and will in fact help to limit the possible damage which could be done in terms of the good relationship which is required for effective policing between the public and the police. The police cannot do their job properly unless they have the co-operation of the public and it is essential that a good relationship is maintained there and I am absolutely sure the vast majority of the police force recognise that too and will adhere to that.

The only other point the hon. member has raised is a reference to the new proposed limits on detention without charge. The maximum time we are recommending in here is 96 hours. That is after approval by the High Bailiff. I would just tell the hon. member that this situation prevails at present, but it is at present a voluntary code carried out by the police in anticipation of this Bill actually becoming law. In reality, if they did not have this voluntary code, there is in fact no control over the length of time a member of the public can be kept in police custody without charge. It is an open-ended thing. So this is actually improving the situation, it is not making it any worse, and it is formalising it within a recognised structure of control on handling people coming into custody. So this is improving the rights of the public, not taking them away.

I thought I had got away with it at that stage and then, unfortunately, someone woke Mr Rodan up. (*Laughter*) I do not know if I can answer every point that he has raised but I will do my best. He first of all, again, supports the Bill, and I welcome that, and has suggested that this now is a proper framework for future police procedures, which is absolutely right. A lot of the powers and rights within here that the police can now carry out, do in fact operate at the moment but it is based on common law practice or voluntary codes of practice within the police force, and this Bill will formalise those situations and make it very much more clear for the police themselves, and the public, to recognise exactly the framework that they are having to work within.

The main point, though, that the hon. member has raised refers to the right of silence and the abolition of the right of silence and I can only reiterate what I said at the outset, and emphasise the point, that this Bill does not remove the right of silence, and I have to make that

absolutely clear: the right of silence, as experienced at the moment, will stay exactly the same for those who wish to adhere to it. But if I could just read out a small piece just to show where the changes do take place: 'The new provisions will permit a court to draw such inferences as are appropriate in four basic sets of circumstances' - there are four particular areas - 'where a suspect fails, when questioned under caution or charge, to mention facts later relied on as part of his defence and which is reasonable to expect him to have mentioned at the outset; (b) where an accused fails without good cause to give evidence or answer questions at trial; (c) where an arrested person fails or refuses to account for possession of objects, substances or marks when requested to do so; and (d) where an arrested person fails or refuses to account for his presence in a particular place, again when requested to do so.' These changes, I have to say, are fairly fundamental but they do not remove the right of silence. They merely allow the court in future to take note of these silences and to put their own interpretation on it. At present the courts do not have that right, but of course that is not to say that they do not unofficially take that into consideration themselves.

The issue itself obviously raised a lot of concern when it was first brought in in the United Kingdom and it was in fact challenged by an individual from Northern Ireland just over 12 months ago, in 1996, in the court of human rights. The Northern Ireland legislation was, I think, identical to that in the United Kingdom and in fact is reflected by our legislation here today, and after debate in the court of human rights it was found that this change in legislation does not infringe an individual's human rights, civil rights. So it has been tested, it has been found to be secure, and I am happy to accept that.

I would just point out to the hon. member, though, from my own personal point of view that this was the one area, when the Bill was raised in this hon. House 18 months ago, that I had the greatest concern over and he may well remember that it was my motion at that time to have the debate adjourned, quite simply because I felt that we had not had enough time to consider it and in particular to consider this area. The rights of an individual and its compliance with the court of human rights is something I have felt very strongly about for a great many years and I can assure the hon. member that I would not support anything in a Bill which in any way infringed on the right of that individual in the sense that it clashed with his rights under the European Court of Human Rights.

I believe a lot of the points that he has raised have been considered. One point that he has raised of course is whether in fact, not necessarily because of intimidation but because of the methods of interrogation and perhaps the personality of the individuals who were being interrogated, they may be coerced, if you like, into making statements which later on may be proved to be false or whatever. But I would point out that there is a clause within here which again controls interviews and particularly relates to the taping of interviews, which gives a very clear area, I think, of assurance that this intimidation that the hon. member fears will not take place. The individual of course also, under the duty advocate scheme, will have the right to immediate access to legal advice as soon as he is charged and again one would hope that the lawyer will make sure that his rights are safeguarded.

Although I fully understand where the member is coming from, my understanding is that the points that he has raised have been considered, but the Bill itself, the Bill as drafted, is secure enough to prevent that situation happening and I have to say that I, after some early doubts about it, am now convinced that that is the case and I am prepared to move it forward.

I know the hon. member raised quite a number of points in there and I have to say I do not know the answers to every individual bit that he raised with me. Because there were so many of them, I could not actually write them down quickly enough. But if the hon. member is still unhappy with the answer I have given on that particular issue, if he would contact me afterwards I will ensure that any further clarification could be given at the clauses stage to put him in the picture.

The only other point then that was raised was by Mr Brown, and again I thank him for his support and I thank him for his co-operation on finding a way forward on granting the police access to the ports to ensure that the right of search applies to the port areas as well. I think we have now got over that problem and we have now found a good working arrangement which will ensure that the difficulties perhaps which we have had in the past will no longer occur again.

The only other point, I think, that the hon. member raised is once again the issue of accountability. He has stated that he believes this is a separate issue for future debate, and I would agree with him. I have given my view on accountability. I understand the member's views that the police have got to be accountable to government, but we need to be very, very careful as to how that accountability is actually carried out and that we do not find ourselves overstepping the mark into areas which are clearly operational matters and are not the realm for politicians, even though from time to time we might not always agree with the methods that the police have carried out on particular issues.

So I am sorry to go on at length but this is a very important Bill. I hope I have been able to answer hon. members' questions. There will be a marathon session next week on the clauses, I am sure, which will give members a chance to pick up on perhaps more particular points, but I would just generally like to thank hon. members for their support. It is appreciated not only by myself but also by the police themselves who sometimes feel a little alienated from the politicians. I am sure the message that will be sent out from this hon. House today of wholehearted support for the police and their actions will be very welcomed by the troops out on the street who sometimes have a very difficult job to do and they will be reassured by our support and the fact that this Bill now is moving on towards, hopefully, a satisfactory conclusion. So I beg to move, Mr Speaker.

The Speaker: Hon. members, the motion is 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.

Procedural

The Speaker: Now, hon. members, irrespective of what I said at the commencement of this particular session, I think it is right that we should endeavour to finish the agenda paper which was properly and correctly distributed, in which case I feel that, because of the time, there is still time in which the second reading of the Estate Agents Bill could easily be handled and at this stage therefore I will ask my deputy to come forward and take the chair, please.

The Speaker vacated the chair, which was taken by the Acting Speaker.

Estate Agents Bill - Second Reading Approved

The Acting Speaker: We will continue with our agenda and I will invite the hon. member for Ayre, the Minister for Local Government, to bring forward the Estate Agents Bill, item 19 on our agenda.

Mr Quine: Thank you, Mr Acting Speaker. In 1990 a working party was set up consisting of His Honour Arthur Luft CBE MLC, and Mrs Rosemary Penn JP, and Mr Maurice Fargher to examine the law relating to estate agents and in particular they were asked to consider a report by the director-general of the United Kingdom Office of Fair Trading on estate agency. They were also asked to look at other matters specified in their particular remit. The working party concluded their examination and a white paper was issued in June 1993. So it was a very extensive exercise.

As pointed out in their report, they considered existing legislation and views submitted and there was full consultation and they considered provisions made in other jurisdictions and they considered the responses to the public consultation exercise and they arrived at certain conclusions to which I shall refer a little later, but if I could first of all just basically set the scene on the existing legislative state.

The existing principal legislative provision is the Estate Agents Act 1975, together with rules made under that Act. Unlike the United Kingdom, estate agents in the Isle of Man are required to be registered and to meet certain professional standards. There is an estate agents tribunal for the hearing and determination of disciplinary cases.

The United Kingdom Office of Fair Trading report contained four general conclusions and 15 specific recommendations to effect greater control over estate agents. Not all of these recommendations were applicable to the Isle of Man situation. However, a number of items were considered by the working party as relevant to our situation. These recommendations, which were made by the working group, were considered by two departments, the previous department and the current department, and this Bill has flowed from those deliberations.

Now, the Office of Fair Trading expressed concern that certain contract terms could be misconstrued or misunderstood and it was felt that guidance should be given as to the meaning of these terms and in particular three terms were identified: 'sole selling rights', 'sole agency', and 'ready, willing and able purchasers'. New definitions for these terms have been recommended by the Office of Fair Trading which have been endorsed by the working party and will be given effect through the rules, that is, subject, of course, to the legislation before us now finding favour with this hon. House and another place. Also raised was the issue of misleading statements or, if you wish, misdescription of property.

Now, the need is, as explained in the report, to address the constant and deliberate use of misleading statements by estate agents.

Clause 1 creates the offence of property misdescription. The offending statement must be made about a prescribed matter, which are identified in the legislation, and in the course of an estate agency business statements must be misleading to a material degree.

Clause 2 introduces the schedule which contains the enforcement powers of the department to investigate and enforce the provisions of clause 1, the offences created under clause 1.

A defence of due diligence is introduced by clause 3. For a person to avail himself of this defence it is necessary for him or her to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offences. It would be open to a defendant to submit that he was relying on information supplied to him by another party. There is an obligation on any party seeking to rely on this defence to give seven days' notice to the prosecution of his or her intention to rely on that defence.

A further matter raised in the Office of Fair Trading report and endorsed by the working party is addressed in clause 4. There is a need for a registered estate agent to be in charge of each office. Clause 4 provides that every office where estate agency business is carried on will have a designated authorised practitioner in charge and that person's particulars shall be prominently displayed in that office. Such authorised practitioner will be required to be present in that office, subject to an exemption for temporary absence not exceeding 14 days. For such a period of absence a suitable person, not another estate agent, a suitable person, may be placed in charge of the office for those short periods of absence. Should the authorised practitioner be absent for a period exceeding 14 days, another authorised practitioner must be appointed to be in charge of the office.

Several matters are addressed by clause 5 which amends schedule 2 of the 1975 Act. This schedule specifies matters in respect of which rules may be made. A new paragraph 3A to schedule 2 will be inserted which will replace the present vague powers to refer offences to the estate agents tribunal with a power to specify offences which may be so referred. By way of example, this amendment would enable rules to be introduced which would cover such matters as the bidding up of prices on the basis of false information and discrimination against buyers who will not submit to tie-in arrangements, matters which were, as I say, dealt with by the working party and taken as part of their considerations.

Estate agency business in the Isle of Man is reasonably well regulated and as a consequence complaints are relatively few. Be this as it may, it is important that the position be periodically reviewed to maintain high standards and to ensure that those dealing with estate agents receive adequate protection and reassurance, and I repeat: the purpose of this legislation is to protect those who deal with estate agents. For the ordinary man in the street his dealings in obtaining a house is probably the largest and most important transaction that he will ever undertake.

Mr Speaker, I beg to move that the Estate Agents Bill 1998 be read for a second time.

Mr Braidwood: I beg to second, Mr Acting Speaker, and reserve my remarks.

The Acting Speaker: Thank you. Does any member now wish to speak? The hon. member for Douglas North, Mr Crowe.

Mr Crowe: Thank you, Mr Acting Speaker. It is quite clear from the representations that we have received from estate agents that universal acceptance has not been given to the provisions of this legislation. There are a few matters arising from this Bill which I have discussed with Mr Quine during the last few weeks and now wish to comment on in this debate.

The main issue that is causing concern is the question of having all estate agency offices manned by a designated authorised practitioner all of the time, and this is contained in clause

4 of part 2 of the Bill, and this condition would apply except for temporary absences of up to 14 days. I understand that the present regulations under the 1975 Act are to be amended so that more people will come within the definition of 'authorised practitioner' and this may go some way to easing the concerns regarding this requirement.

The need to have a designated authorised practitioner available for most of the time at each office does have a cost implication and I trust that the department will consider having further discussions with those estate agents who will be affected before the Bill comes to the clauses stage.

There are other concerns on the new rules which some feel may lead to bureaucratic restrictions on an estate agency practice. It has also been drawn to our attention that letting agents will not be brought within the framework of this Act and is a subject that the minister may wish to include in future legislation.

The question we must ask ourselves is, is this Bill, in its present form really necessary, will it provide better consumer protection or will it cause an added tier of bureaucracy with no added benefit? That is the question. It may be that we should this Bill considered by a committee of this House and is an option that we should consider. Thank you, Mr Acting Speaker.

Mr Singer: Mr Acting Speaker, like the last member and other hon. members, I have been contacted over the last few weeks by estate agents on the Island who are concerned at the perceived need for some of the measures that are present in this Bill, and I believe that it is helpful to air these matters and to hear the reply of the hon. minister as to the reasoning behind some of these clauses.

Under part 2, the amendment to the 1975 Act, it is questioned particularly by businesses run by a single practitioner why an authorised practitioner who is absent for 14 days or less has to notify the registrar 72 hours in advance. The absence, particularly for a short time, may well be for an emergency, and the authorised practitioner will not be able to give that 72 hours' notice. For periods of absence over 14 days an authorised practitioner not already designated to another practice will have to be in attendance and that person's name notified to the registrar. There is doubt as to the presence on the Island of enough qualified and probably retired practitioners to provide the necessary cover.

The Bill, the Estate Agents Bill, as the hon. minister says, is designed to protect the public. I think that one of the public's main concerns is gazumping, and the public perception is that it is the fault of the estate agents. The estate agents tell me that by law they have to forward a higher bid to the vendor and it is then up to the vendor to decide if the higher bid is accepted. The advantage to the estate agent on an increased sale of, say, £5,000 is about £75 and the subsequent loss of goodwill, and this Bill does not make any change to gazumping.

In protecting the public, estate agents do not handle cash. Terms of sale are drawn up by the advocates, not by them. The estate agents say that they have public safeguards through the authorised practitioner's financial bond with the registrar, with the Royal Institute of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers, and of course the registrar can cancel registration of the estate agent if necessary through the estate agents tribunal. The only people who handle cash, as the previous speaker said, are persons acting

as property managers, and they are not covered by this Bill. Because of the safeguards the estate agents say that the premises need not be managed individually by an authorised practitioner, although one should be designated to supervise. They point out it is not compulsory, for example, for a doctor to be present at a children's clinic or a bank manager to be present in the bank at all times, nor does a bank manager have to inform an official body when he will be absent, and a bank manager would also have access to cash where an estate agent would not.

The overall view expressed to me by the estate agents is that they totally agree that the public should be protected but they feel that the proposals, particularly under item 4 on page 4, that is (3B), (3C), (3D), and (3E), are oppressive, as they feel there are already adequate safeguards in place to delete from the register any estate agents who are inadequately conducting their businesses. I would like, therefore, to hear from the hon. minister why the department has thought it necessary to bring forward those particular parts of the Bill and if it is in fact in response to misdemeanours committed by estate agents on the Island. Thank you.

Mrs Crowe: Mr Acting Speaker, I realise that this Bill has been an unusually long time in preparation but I am concerned at the recent lack of consultation, both with estate agents and with others concerned. For instance, the Board of Consumer Affairs was not included in any recent consultation despite the fact that we enforce the misdescription of properties and we have done so since 1991, and I might add in all that time we have had no complaints. However, there are complaints, as the hon. member for Ramsey, Mr Singer, pointed out, about gazumping and I feel that it is of great concern to the consumer, and I do think that the Bill could have encompassed the contracts of sale within this Bill.

There are a number of areas that the estate agents on the Island are concerned about and I am sure others will be considering amendments at the clauses stage, subject to further discussions with the minister.

The Acting Speaker: Does any other hon. member wish to speak? The hon. member for Onchan, Mr Karran.

Mr Karran: Lhiass-loayreyder, what I am only concerned about, and I have got no problems with the Bill, is I tend to sympathise with the hon. member for Douglas North in the fact that maybe a committee would be a good idea. I am all for safeguards but I am concerned about there being a certain amount of protectionism towards the estate agents, far too much so. We hear in this hon. House how people are always shouting about market forces and freeing things up and here we have here a very cosy arrangement and there is the old saying when we used to say about the street with the 40 thieves, they used to say it just happened to be 40 advocates on that street, but they actually charge less for purchasing a house than an estate agent charges for doing the conveyancing of a house and there is something desperately wrong when you have a situation where you now find that you can actually get your conveyancing done a damn sight cheaper than you can actually sell a house and I would imagine there is less professional need in being able to sell a house than making sure that you have the proper title to the property that you are buying.

So I just feel that when we get to the clauses stage I do hope that members will consider the balance that we are not creating a closed shop. My argument that I had with certain people as far as this is concerned is they said, 'Oh, well you have got to have training.' I think the

point of the matter is you have got to know the lay of the land at the time more, and what the market will stand is more important than anything else as far as getting an adequate valuation on a property.

But the problem I feel with this Bill is that we are just encouraging the closed shop arrangement we have here when there are other places in the adjacent isles where they do not have estate agents at all, for example in certain parts of Scotland that I know of. I feel that I want to see a way of opening it up. The important thing needs to be there must be the safeguard of a secure bond for where an individual operating needs to be covered, but whether he has got a pseudo degree or whatever it is from the adjacent island should not come into the equation in the first place. I would hope that what we will be seeing is a way of opening up, protecting our people. We understand the present legislation is a farce, it has no teeth, but it does make sure that there is a closed shop there as far as that is concerned, and I just hope that the hon. member for North Douglas is successful and maybe we can find a way of giving the protection to the consumer as far as estate agents' duties are concerned but not allowing ourselves to turn a nice legislative cosy shop because at the moment if there was a little bit more competition there, maybe the percentage charges they are charging at the moment would come down if it was opened up a bit more.

Sir Miles Walker: Mr Acting Speaker, I just want to dissociate myself with the remarks of the hon. member for Onchan, who has just sat down. I do not believe that the present legislation is a farce. I think it has gone a long way to regulate what can be quite a difficult trading area and that is underlined to me because it is very many years since I have had a complaint from a constituent about the actions of an estate agent and I do believe that the last one I had was on the gazumping issue and not anything to do with the regulations that are in place at the moment. So I think that the present legislation has served the Island well and I can remember its introduction and I can remember the way it was introduced, which allowed those that were in business at that time to stay in business and so on, and I think it is probably right now that the issue is looked at again, having had this legislation in place for more than 20 years in fact, in 1975.

I have to say, though, that I largely associate myself with the remarks of the hon. member for Ramsey, Mr Singer, in clause 4 and I am certainly not convinced that it is practical or indeed in the consumer's interests, let alone the interests of the trade itself, to require a designated or authorised practitioner on the premises at all times. It seems to me that that is a step too far. I have to say that the estate agents who have been in contact with me are supportive of the Bill and are supportive of regulation, but it is this particular issue which seems to be causing difficulties.

If we think about the remarks the hon. member for Onchan, Mr Karran, and the closed shop situation that he was alluding to, I suppose anything that makes it more difficult for people to set up in this sort of business closes down the options as far as the general public are concerned and so the more you raise the overheads, the more you put in practical difficulties in the way of people opening up business, then the fewer people will be involved.

I look forward to the clauses reading of this Bill. I am not yet convinced of the need for a committee, although I will listen to that case when it is made, and I would be interested if the mover of the Bill could give more explanation to the possibility of the designated authorised practitioner being widened and the description that has been suggested, I think, by other

speakers, that that is in fact in his mind, and I think it would interest a number of people to know in what way he sees that being done to make clause 4 more practical.

Mr Brown: Mr Acting Speaker, listening to some of the comments that have been made here, I think it would be helpful, and I would suggest to the minister if I may, if he could circulate the report of June 1993 to members, because a working party was set up to look at the Estate Agents Act at that time, which the member has referred to, and I think it would be helpful if members were privy to that report because then they could see the thinking behind the working party's considerations and why they suggested certain changes and hopefully it will help members understand where this has come from, and I think time has passed on since 1993, but in fairness not a lot has changed since 1993 and I think that the report is as relevant today as it was in 1993 and may help to answer some of the points that have been raised by members, and if it does not, well that is fine, but at least they will have had the opportunity, I would suggest, between now and the clauses stage to read what it was the working group thought and why they recommended certain changes to the legislation which is now before the House, and basically that is the point I think that is worth making and I would just say that.

The Acting Speaker: May I call upon the mover to reply?

Mr Quine: Thank you, Mr Acting Speaker, sir. The hon. member Mr Crowe said there appears to be no universal acceptance. If we are talking about the position taken by estate agents, that is perfectly true. Indeed some of the submissions that have been made to me have little or nothing to do with the protection of the individual who seeks to buy or sell a property, they have been made in the context of trying to even the playing-field for commercial reasons, so I am not surprised that there is no universal acceptance by estate agents because I think they are coming at it from a different position from what this hon. House is and what the department is. The position from which we are coming is the protection of the man in the street who wishes to buy or sell a property.

Now, if I could turn now to this question of the requirement that a designated petitioner be present, and if hon. members will bear with me I will read just a short portion from this report, and as the hon. member for Castletown has suggested, I will gladly make this report available to all members, I think they will find it helpful, but so that I can address this particular point that has been raised, I think this would be useful and this starts at section 5.1 of the report. It says, 'Section 1.3 of the Estate Agents Act 1975, in the view of the working party, is not sufficiently precise in its terms. It is the opinion of HM Attorney-General that the intention is that every branch of an estate agent's business is required to be under the day-to-day supervision of a registered practitioner who should be the manager of that branch. It would not be sufficient in his view' - that is, the Attorney General's view - 'for the supervision to be exercised by an authorised practitioner whose normal place of business was another office', and that is the premise from which this suggested amendment flows. Then it goes on, 'In its interim report the working party considered that the Act should provide that each branch of a business should have an authorised practitioner designated for that branch and that branch alone as a manager. It was noted that the present enactment uses the term 'supervision'. An authorised practitioner might well supervise a branch from afar, e.g from another branch. We consider that the term 'management' would better express the degree of responsibility that should be imposed on the designated authorised practitioner. It would be more satisfactory if the name of the authorised practitioner designated for a particular branch of the firm was

registered with the Register of Estate Agents and his name should be displayed in the branch office. It was also felt that the firm should be permitted to appoint an authorised practitioner to deputise for the designated authorised practitioner where he is absent through illness or on holiday for more than three days.' Now, we have gone well beyond that. We have gone from three days, we went to seven days and as a consequence of further consultation have now gone to 14 days. If you go any further I would suggest you may as well cast it aside and let the ordinary man in the street fend for himself. It was where an estate agent was considered a sole practitioner in the business which he carried on and was absent by reason of illness or holiday he should have been authorised to designate a person who was not an authorised practitioner to manage the business during his absence, but the authorised practitioner should remain responsible in every respect for the acts and omissions of such a designated person. Now, that is the basis from which this amendment has flowed.

We have had His Honour Deemster Luft and another very well qualified, indeed legally qualified person, along with Mr Fargher who is a very experienced member from the department and they have looked at this and they have taken the evidence, taken into account the consultation process and this is what they have recommended and you will see that their considerations have, to whatever extent, been influenced by the view of the Attorney-General.

Basically what is proposed, if I could just try to crystallise this, is this, that for each office or branch, whatever you wish to call it, of an estate agent there will be a designated official. If that designated official is in terms of his absences up to a period of 14 days, the cover can be provided by another suitable person and that designated suitable person can be on a standing basis. He can designate: 'This member of my staff will be the person who is going to stand in for me when I am absent from the office.' So there is no great administration attached to that. He designates that person and that person is there to stand in for him and cover for him in terms of short absences or even a longer absence up to 14 days: simple and straightforward. It is only when he goes beyond the 14 days, that is when he is required to find another authorised practitioner, another estate agent, and I do not think that is unreasonable at all. So far from being oppressive I think the provisions are common sense.

Mr Crowe makes the point that letting agents are not within the Bill, and that is perfectly true. Property management is a matter which is being looked at separately. It is not within this Bill and is not intended to be within this Bill.

Is the Bill necessary? Should it be sent to a committee? I believe this Bill is very necessary and I pointed out in my introduction to the Bill why it is necessary, and I will revert to that in a moment when I am dealing with complaints, but I believe this Bill, hon. member for North Douglas, is very necessary and I think there is a general consensus that it is necessary.

Mr Singer again has raised the point of a single practitioner. I really do not see what the difficulty is there. I have explained the position in terms of short absences up to the period of 14 days. I would assume that a sole practitioner, I would hope that a sole practitioner is going to have a suitable member of staff in his office who can stand in for him for these periods of absence up to 14 days and if he is running the business in accordance with this Bill he will be required to find an authorised practitioner to stand in for him for a period over 14 days, which, I repeat, is substantially in excess of what was recommended by the working party in their report: they recommended three days.

Now, moving on again to a point raised, another point raised, by Mr Singer and that is the matter of gazumping. Gazumping is not dealt with in this Bill. I recognise the interest that there is in making provision for gazumping. During my time in this House I think we have looked at it on at least three occasions and it has been raised on at least three occasions anyway and discussed. But the position as far as we are concerned is simply this. The solution that has been proffered time and again in terms of our situation is to follow Scotland, follow the Scottish system. Now, there are shortcomings in following the Scottish system and we will have to consider, if that is the way that members want to go eventually - but it would not be, I would suggest, through this piece of legislation - whether we can take that on board, because if we follow the Scottish system, before you make a bid you are going to have to have your finance in place and you are going to have your house surveyed and you are going to have to put up front, in other words, considerable expenditure and you may or may not be successful in your bid. That is the point that has been made in this report here which evaluates that particular system. Now, it may be that hon. members feel that that is an acceptable system. I have reservations about that.

Now, the second reason why I have not attempted to bring it forward in the Bill of course is simply this. I think hon. members will be aware that a fresh look at this whole matter of gazumping is now taking place in the United Kingdom and I look forward to seeing that Bill. They have intimated in the press releases that they are trying to find something falling short of the arrangement in Scotland and I look forward to seeing what that report brings. So that is why it is not in this Bill.

The point has been made by Mr Singer that he feels that it is not necessary to have a designated official for a particular office because they are not handling money. I think that, to a large extent, may be the case, but that is not the entire risk factor as far as a person wishing to buy or sell a house goes. We are talking about his ability to get professional advice, we are talking about advice that he may receive which, if it is not competent advice, could end him into a very regrettable situation, so there are other considerations apart from whether an estate agent is sitting there with somebody else's cash in his hand, and again members will see that that point is brought out in this report.

Mrs Crowe raised the matter of lack of consultation. I have written and apologised to Mrs Crowe for the lack of consultation with the Board of Consumer Affairs, because that is a fact. This has been going on indeed for several years and it is regrettable that her department has not been consulted or was not consulted until somewhat belatedly. So that I accept and for that I apologise, and Mrs Crowe knows the reasons for that.

But it is certainly not so that the estate agents have not been consulted. They have been consulted ad nauseam. It is one thing to consult. It is another matter to get agreement with them as to the course of action which is being proposed, because they are looking at it from their business point of view and we are looking at it from the point of view of protecting the man in the street. So they certainly have been consulted with.

Mrs Crowe said 'No complaints.' That is not the situation and if I could just explain the position, at the moment if there is an alleged offence, under the rules it can be referred to the estate agents tribunal, but it has to be an identified alleged offence. Now, we are seeking to create specific offences here, so I would not expect to see a long list of offences being referred to the estate agents tribunal because we have not created them, and that is the

problem and that is why we are now amending the second schedule to provide for specific offences which can be brought into play. But let me just say this. At the present time my department is looking at four complaints. We have four complaints current at this time. They may not slot into offences presently within the second schedule or which can be provided for within the second schedule, but they are nonetheless complaints and we have four which are current.

Mr Karran - I thank him for his general support for the Bill and he raises an interesting point, but I think it is not one that is peculiar to estate agents and that is whether, in respect of certain activities by putting down, stipulating professional qualifications et cetera in all the situations where we have done that where that is necessary, in doing that we have not perhaps created a very limited market and created a monopoly for these people. It is an interesting point and it is one that I have reflected on on more than one occasion, but I think when we are dealing with estate agents it is probably the only real option that is available to us, because if we are talking of practising estate agents who need to get bonds raised, need to raise indemnity insurance, quite frankly if they did not have qualifications I do not think they would raise those bonds or raise that insurance. So there is that other side to it here. But I accept that he is making a serious point and certainly as far as the principle is concerned it is one with which I have a certain amount of sympathy.

Sir Miles has raised one or two points. I thank him for recognising that after such a period of time there is a need to look afresh at this legislation and I think that was recognised, as I say, way back in 1990 when this ball first started to roll.

I think I have intimated or indicated to the hon. member for Rushen that the position in regard to complaints is not perhaps what it seems. We have to look at complaints which are referred to the estate agents tribunal in relation to what is available within the existing schedule. In terms of complaints from the public we have to look at that somewhat separately unless and until we have the amendments which are proposed in this Bill.

Again the point was raised about whether or not there is a need to designate a practitioner on a dedicated basis to a particular office. I think I have dealt with that one and I have read from the report and I hope the reasoning is readily apparent.

There is only one further point that I would round off on and that is there has been a suggestion that this matter should go to committee. I do not think that this is a suitable matter for a committee. It has come from a committee. This is a matter which has come from a committee, a very in-depth exercise already, and I see no point in this matter being referred to a committee. It has been long in its gestation. It will be even longer if it goes to another committee. The issues are quite simple. They are ones which we can confront at the clauses stage and if hon. members have serious concerns I have no doubt between now and then they will discuss with me and if they have amendments we will see whether the amendments they are suggesting are acceptable or otherwise, but certainly putting it to a committee, I think, would be self-defeating. Having not just gone a full circle, we would be going round the circle twice.

Thank you, Mr Acting Speaker. I beg to move that the Bill receive its second reading, sir.

The Acting Speaker: I now move to the House that the Estate Agents Bill 1998 be read a second time. Will all those in favour say aye; those against say no. The Bill is read a second time.

The House will now adjourn to a sitting in this chamber on 10th February 1998 at 10 a.m. Thank you, hon. members.

The House adjourned at 4.27 p.m.