

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 5th May 1998
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Mr J D Q Cannan (Michael); Mr W A Gilbey (Glenfaba); Mr S C Rodan (Garff); Hon D North (Middle); Mr P Karran and Hon R K Corkill (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 Speaker took the prayers.

Apologies For Absence

The Speaker: Hon. members, with the absence of our chaplain, whose treatment continues, I also wish to report that leave of absence has been given to Mr Quine, the hon. member for Ayre, who I am told is doing reasonably well and is recuperating nicely, and Mr Shimmin has leave of absence to attend a family funeral this morning.

**New Hospital - Responsibility For Construction And Expenditure - Question By Mr
Cannan**

The Speaker: Hon. members, can we then turn to our order paper. I call upon the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, I ask the Chief Minister:

Who has responsibility for the construction of, and accounting for expenditure on, the new hospital:

(a) *the Minister for Health and Social Security alone; or*

(b) *the minister and members of the Department of Health and Social Security?*

The Speaker: I call upon the Chief Minister.

Mr Gelling: Mr Speaker, political responsibility for the construction of and accounting for expenditure on the new hospital lies with the Department of Health and Social Security, and the minister is ultimately accountable politically to Tynwald.

Mr Cannan: I thank the Chief Minister for his reply and ask him, would it therefore not be appropriate that if the minister is ultimately accountable, then it would be in the best interests of representative government that the minister was an elected representative of the people?

Mr Gelling: Mr Speaker, members obviously have the opportunity of asking the minister questions in Tynwald and in Keys and in fact, as we see today, questions are being asked in Keys of the member who has the delegated responsibility for health, i.e. Mr Karran.

Mr Cannan: Would the Chief Minister confirm that in this hon. House on 24th March he voted for the interim report of the select committee of this House on the Legislative Council and one of its conclusions was that ministers should be chosen from this House?

Mr Gelling: Mr Speaker, as we stand at the moment I have available to me all members of Tynwald to select ministers from and therefore that is the situation we have and that is the situation which I had at the time when ministers were selected and that is the situation, and until such times as that is changed, that is what I would have available to me.

Mr Cannan: A final supplementary, Mr Speaker. Is the Chief Minister therefore saying that he has no confidence in the hon. members elected to this House by the Representation of the People Act?

Mr Gelling: No, indeed, Mr Speaker, that is not the case and I would actually state that the hon. members of the Legislative Council are elected. They are elected there by the elected members of the people, i.e. ourselves here in the House of Keys, and therefore the position which is held, well in fact two positions which are held, in the Legislative Council as ministers are there because if I go back to the seminar that we had only a few months ago, in fact it was the consensus of opinion at that time that there should be representation of the Council of Ministers in the Legislative Council.

TT Course - Suzuki Contract - Question By Mr Singer

The Speaker: Question 2, 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 and by whom was the contract for the Suzuki name to appear on the bales around the TT course signed;*
- (2) *did your department know who the advertiser was to be when the contract was signed; and*
- (3) *what is the income to your department from the deal?*

The Speaker: I call upon the Minister for Tourism and Leisure.

Mr Cretney: Thank you, Mr Speaker. My department was first approached by its TT course advertising agent on behalf of a client in October 1997 concerning the possibility of selling advertising space on straw bales around the TT course. Both at that time and throughout the process of negotiations with the agent my department was unaware of the name of the client, only that it was a bona fide proposition from a company acceptable to the department. The client's name was released to my department upon confirmation of the contract which was received by fax at Sea Terminal Buildings on Monday 10th November 1997.

In direct response to the hon. member's question as to when and by whom was the contract with Suzuki signed, I can advise that the contract was signed on 5th February 1998 by the chief executive from my department.

Finally, the income received from this advertising contract is a commercially confidential matter. On the basis that my department might wish to seek bids for advertising on straw bales at some point in the future I do not consider it appropriate to release this information.

Mr Gilbey: Hear, hear.

Mr Singer: Whilst the hon. minister will not release this figure, would the minister accept that Honda's financial input into this year's TT will be at least 30 to 40 times that of Suzuki and does he not think that his department should have given greater consideration to Honda in their special year, as the department's present methods and policy could have the effect in future years of deterring large investors in the TT who will be wary of being let down as Honda have this year?

Mr Cretney: If I can answer the question in two parts, Mr Speaker, first of all in relation to Honda and the 50th anniversary celebrations which are to take place this year, I can confirm that not only my department but the Department of Home Affairs, the Post Office, the Department of Transport, a number of government departments and statutory boards have gone out of their way to make sure that this celebration will be a very successful one. We have gone out of our way to ensure that because we do recognise the value and the contribution which Honda has made over a great number of years to the event, and that is very much valued and we are sure that that will continue and we wish to co-operate with Honda in ensuring that will continue.

In relation to the specific matter which is in the question, it seems to me that it would be wrong, given that since 1981, 1982 there had been no major advertiser on the straw bales around the TT course, there had been nobody who had expressed an interest before this year in taking on that advertising opportunity, given therefore that Suzuki took that initiative and made an approach to the department, it would seem to me to be ethically incorrect to then go and approach another party. If it had been done on the basis of tender, then that would be a different matter, but the situation is that on this occasion Suzuki saw an opportunity, approached the department and I think it would have been wrong, therefore, to then go behind their backs to another party.

Mr Singer: In the light of that answer, could the minister then explain his comment on Manx Radio regarding this matter when he said, and I quote, 'Honda will have a chance to get their own back'? Does this not appear to be the tourism department playing one manufacturer off against another?

Mr Cretney: Mr Speaker, I am delighted that the manufacturers see the event, the TT races, and indeed the Manx Grand Prix races as essential in terms of promotion of their machinery. That has always been the case since the event started. People have seen that the Isle of Man presents a wonderful opportunity to promote and to sell on their machines to their customers.

What I said was, and I am sure the hon. member is correct in his quote, but what I said was there are lots of other opportunities if Honda wish to take them, if they are concerned about the negative impact of the straw bales advertising. There are 37³/₄ miles of TT course, there are lots of opportunities, and, as I said earlier, we are going out of our way also to help with Honda.

Mr Downie: I would just like to ask the minister if he could clarify the position with regard to the contract for the bales and could he indicate whether the contract is for the supply of the bales around the TT course or is it purely for advertising, and would it be proper for another company to come along and put advertising banners over the top of the bales at strategic

points on the course, as has been the case in the past, or does Suzuki have the sole right now to every corner where there are their bales that cannot be obliterated?

Mr Cretney: The contract is to supply the bales and the bales are to be put in position.

In terms of another advertiser wishing to place their banners or whatever over the bales, I do not think there is anything to prevent that.

Chiropody Treatment For Diabetics - Question By Mr Singer

The Speaker: Hon. members, the next five questions all relate to the Health and Social Security. Some of them are in essence close to questions which have been asked previously, so I would ask members to beware when asking supplementaries. We turn then to item 3 on our order paper and I call again on the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask the member for Health and Social Security:

Do the periods between appointments for diabetics to attend Noble's Hospital for chiropody treatment comply with the chiropodists' recommendations for these patients?

The Speaker: I call upon a member for the Health and Social Security, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I can assure the hon. member that efforts are made to ensure that all chiropody patients are seen within the timescale for the follow-up treatment as determined by the chiropodists in the first place. With regard to diabetic patients, they are seen as a priority and are assessed as soon as possible after their referral.

The chiropody service is operated on a self-appointment basis. This entails diabetic patients telephoning the service when their next appointment is due, to agree a date of an appointment which is convenient to them. During the telephone call the patient will be asked if they have any problems. In the cases where problems exist, every endeavour is made to provide an early appointment. If there are no problems the appointment might be subject to slight delays so as to ensure that the focus of the service is on the patients whose needs are most.

However, it must be stressed that the chiropody service, like others, is affected at times by staff sickness and maternity leave. In such cases timescales may slip, although in the case of long-term leave efforts are made to provide a cover by employing locum chiropodists.

Mr Singer: Mr Speaker, would the hon. member agree that any delay in chiropody treatment for diabetics can result in the speedy onset of severe irreversible problems in the lower limbs and if so, how can the department justify that appointment periods as defined by the chief chiropodist are not strictly adhered to by his department? Is he in fact putting the emphasis onto the patient rather than the chiropody department itself?

Mr Karran: Vainstyr Loayreyder, we have actually taken on chiropodists for the likes of maternity leave. If there is a problem within this service, then I am happy to discuss those concerns with the hon. member. Now, whether you are saying that they should not accept the viewpoint of the individual patient when they say that they have got no problems, I think that would be wrong in my opinion. At the end of the day I am sure that the persons with diabetes know the state of their own feet and understand the gravity of the importance of making sure

that they have prompt action when they have got problems, as amputations are far from unknown as far as diabetic patients are concerned.

Mr Singer: Is the hon. member trying to tell me that a lay person with diabetes who may be in their 70s or 80s is to be the judge of whether they need treatment or not? If the chiropodist, for example, recommends a treatment every eight weeks, is it up to that person to say, 'Well, eight weeks is not suitable. I'd prefer 10 or 11 weeks'? Surely this cannot be the case?

Mr Karran: Vainstyr Loayreyder, the situation is simple. Obviously those that are seen as a priority within the service are seen as a priority. I would quite agree. I have a friend who is blind and very elderly. As I say, she could not see me, let alone her toes. I would hope that the people who are running our chiropody service have enough common sense to realise that those that are most vulnerable are seen as a priority.

I would say as far as it being left to the patients to decide whether they are a priority or not, I do not think that is the way I would like it to be seen. They will tell the chiropodist if they have got problems, but if there are cases where people are falling through the net, we are small enough to be able to take up those cases and rattle the right cages to make sure that this does not happen, but as far as I am aware this does not happen at the present time.

Breast Screening Service - Recall Procedure - Question By Mrs Cannell

The Speaker: Question 4, hon. members, I call upon the hon. member for Douglas East, Mrs Cannell.

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

When do you intend to include a recall procedure within the breast screening service?

The Speaker: Again I call upon the member for Health and Social Security, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, the question of a call and recall arrangement for breast screening was raised during the debate in the hon. Court when the capital cost of the existing breast screening service was approved in October 1996. The then minister of the department advised hon. members that, while such a system had been considered, it was a far more expensive and elaborate option than the on-demand service that had been selected which the department and its advisers believe meets most of the hopes and aspirations of the women of the Isle of Man.

I have to say that my department has been satisfied with the existing arrangements which have been well received by all concerned. In this regard I would like to take this opportunity in this House to pay compliments to the staff associated with the unit at Noble's Hospital for their hard work and commitment to the service since its introduction.

It is of course possible that my department will at some time seek to develop the service further. However, all service developments within the health services will have to be considered on competing demands with other areas within the health service.

Mrs Cannell: Mr Speaker, can the hon. member for health advise members on how many women exactly have used the service since its introduction and, given that the hon. member may well say quite a significant number, does he not then regard that they deserve a proper call-back system to be introduced and that what we have in place today is not a proper breast screening service?

Mr Karran: There has been a total of 1,817 women, up to 28th April of this year, who have undergone breast screening. Sixty-three individual patients have been recalled and there were 17 who were identified with positive growths. We are hoping, I am hoping, that we can do something with cervical cancer with a recall system there. One hopes that one would like to see whether we can do something as far as this part of the service is concerned.

The problem I have is I have a diabetic clinic, I have got the chiroprodists. I have to work within the constraints that I am put under by the Treasury and by the personnel department. If the hon. member would move a motion to give the health services a free hand, I will be delighted to provide the recall service that the hon. member wants.

Mrs Cannell: Mr Speaker, I thank the hon. member for his enthusiasm into liking to see the introduction of a proper breast screening service but can I ask him, can he advise us therefore, how much such a recall system would add to the existing service provided and in so doing would he not agree with me that the evidence of breast cancer on the Isle of Man is marginally higher than that of cervical cancer?

Mr Karran: Vainstyr Loayreyder, I could not argue the point as to whether breast cancer is higher than cervical cancer. I would have thought it would have been the other way, but obviously the hon. member more likely has researched the point before raising it. So I could not argue that point. But there are many other areas where we have concerns as far as there is a disproportionate health incidence problem in the Island, like there are other spheres of illness in the Island where we do not have anywhere near what would be the norm for the size of population.

The situation is that one would like to look at it. It would mean that I would have to find something in the region of 1.8 full-time equivalents to do such a recall service. I would also have to raise something like £115,000-plus in order to provide such a service. Now, they do not seem very large amounts, but as you will see on the order paper, there are other compelling demands on our service and I feel that it is a matter of trying to prioritise which are more important.

So whilst the hon. member is quite right that they are small amounts, all the other small amounts all add up to a significant amount.

Hospital Patient Transport Service - Question By Mrs Cannell

The Speaker: Question 5, hon. members, and again I call upon the hon. member for Douglas East, Mrs Cannell.

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

Are you considering privatisation of the Isle of Man hospital patient transport service?

The Speaker: Again the hon. member for Onchan, Mr Karran, to reply.

Mr Karran: Vainstyr Loayreyder, in responding directly to the hon. member's question, I can reassure her that my department has no intentions of privatising the Isle of Man patient transport service. What I suspect the hon. member is alluding to is some work which has been done by the chief and deputy chief ambulance officers. This entailed reviewing the existing workload of the qualified ambulance personnel to determine whether any aspects of their responsibilities could be done by other parties, which, to be fair, do not require the professional skills. Such work, for example, would be the transfer of patients between home and hospital outpatient appointments. There are a number of options that could be considered, including the engagement of a voluntary sector through a taxi service. However, this is still under review and will have no effect as far as the ambulance service is concerned.

At the end of the day the department's responsibility is to ensure that the resources are properly utilised, with an emphasis always to be on direct patient care.

Mrs Cannell: Mr Speaker, I thank the hon. member for his honest reply. Following on from his reply can I ask him, is he aware, therefore, that meetings have taken place on Wednesday, 6th March and Wednesday, 11th March between the Isle of Man ambulance transport service and the paramedic service to discuss this very issue and that the unions representing those services and those people who work in those services are vehemently against any such move and that at the moment can the hon. member confirm whether or not this is on the shelf for consideration or has it been binned?

Mr Karran: Vainstyr Loayreyder, I will be quite honest with the hon. member. I was unaware of any meetings that have been with the unions and the staff. As far as I am concerned I was not elected to privatise or to make people redundant or fear for their jobs, but at the end of the day I have to be honest with the hon. member that I personally would like to see, if I was talking about the ambulance service, a paramedic service in the south of the Island, I would like to see the ambulance services with the trained staff doing the right job and I do not believe, to be fair, that the right job is to be seeing them as glorified taxi-drivers around the Island. But I must say this, that I feel there is enough work there that needs to be done without any effect on the ambulance services we see at the present time.

The hon. member has been on to me about the issue of a recall system for breast screening. We have members on about other issues. The hon. member for Ramsey has been on about the chiropody service. I am restricted by personnel numbers. This is one of the problems I have got. Now, if I can ease up personnel numbers in one way in order to get the core services improved as far the health services are concerned, that is something that needs to be evaluated fairly and frankly.

Noble's Hospital - Diabetic Clinic - Question By Mr Braidwood

The Speaker: Order paper number 6, hon. members, I call upon the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. I beg leave to ask the member for Health and Social Security:

Has any further decision been taken on the establishment of a full-time diabetic clinic at Noble's Hospital following receipt of the most recent business plan which incorporates input from the general manager of the primary healthcare services?

The Speaker: Again I call upon the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, my department is currently consulting with interested parties, including the Manx Diabetic Group, in order to secure an improved service for the Island's diabetics. At the present time there are two diabetic clinics held in Noble's Hospital every week. A draft business plan proposing, among other things, an increase to five diabetic clinics per week has been circulated within the health service for comment, following which a formal business plan will be submitted to the department. As yet no decision has been taken about the establishment of a full-time diabetic clinic at Noble's Hospital.

Hon. members will be aware that the progress of any such proposal will be subject to the department securing the necessary finance and staffing requirements in order to try and get this improved service off the ground. In the light of the competing priorities with the health services in other areas, that is difficult, but it has my sympathy and my support in trying to get something done as far as this issue is concerned.

Mr Braidwood: Mr Speaker, I thank the hon. member for Onchan, Mr Karran, the member for the DHSS, for his reply but can he confirm that the working party set up to look into a full-time diabetic clinic are in favour of it being established and centred at Noble's Hospital and support its introduction as soon as possible?

Mr Karran: Vainstyr Loayreyder, they are very supportive of having this introduced as soon as possible but they are wanting me to introduce about several to a dozen other things as well that have compelling needs as well.

I have to be honest with the hon. member. I feel that it is something that needs to be done. It does concern me that there seems to be a large increase in the number of diabetics in our community. So I do see it as a priority and I am hoping that one will be able to give good news on this subject in the near future.

Mr Braidwood: Mr Speaker, does the member agree that the establishment of a full-time clinic as soon as possible at a cost of £63,000 per annum would result in substantial savings to the DHSS in preventing complications arising from diabetes if it is diagnosed and treated in its early stages?

The Speaker: I feel that question has been asked comparatively recently but nevertheless, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I am happy for any hon. member to ask what question they want to ask and this is the place to ask it.

I totally agree with the hon. member that I want to see this, I see it as a priority, but at the end of the day I have to live within the constraints that are put on me from the personnel department and from the Treasury. I think that it would be money well spent. I have done my bit to try and make sure that finances are made available, but there is still the problem with this issue in that we have not got the staffing level. We have not got the staff to be able to run this clinic. I have to take the required staff from somewhere else to provide this service. That is the problem I have at the present time.

Mr Braidwood: Mr Speaker, the member has talked about financial considerations but can he confirm that Dr Alison Blackman, who is the acknowledged clinical expert in diabetes, is to be upgraded from clinical assistant to associate specialist so as to retain her expertise in the field of diabetes?

Mr Karran: Vainstyr Loayreyder, I am fairly sure that that will be the case but I think it would be wrong for me to get into individual cases within this hon. House.

I would make an assurance to the hon. member for East Douglas that I am as committed as himself to try and get something done about this problem, but when I have the problems of having to deal with all the other competing demands - breast screening, chiropody, I could do with somebody, a nurse for Parkinson's disease, I could do with someone doing so many other issues like MS as well and many other issues such as more community nurses for children - I have to weigh it up and try and make sure that we have the resources and make sure that we put the priorities where they must be. I would put this high on our priority list.

The Speaker: Hon. members, once again the Court clock has exceeded the half past 10. 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 Cretney: I beg to second, Mr Speaker.

The Speaker: I take it we are agreed, hon. members?

Members: Agreed.

New Hospital - Construction Cost - Question By Mr Rodan

The Speaker: In that case I call upon the hon. member for Garff, Mr Rodan, to ask the question standing in his name.

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

What is the latest estimate for the total construction cost of the new hospital?

The Speaker: I call upon the hon. member for Onchan, the member for Health and Social Security, Mr Karran, to reply.

Mr Karran: Vainstyr Loayreyder, to answer the hon. member's question, the present estimated cost of the construction of the hospital is about £111,700,000 or £13,600,000 more than anticipated in July 1996.

All members will be invited to a presentation of the revised budget forecast next Tuesday, in advance of the motion seeking authority to revise the budget which the minister will be moving in the sitting of Tynwald in a fortnight's time.

Mr Rodan: Mr Speaker, I thank the hon. member for Health for his reply. Could he confirm that when Tynwald approved the hospital in 1996 the cost of £73 million had added to it an element to anticipate possible inflation in the construction industry costs of the Isle of Man to £98 million? Is it now the case, can we deduce from his answer, that this inflationary

element was not enough or has the specification in the hospital design been changed since 1996?

Mr Karran: Vainstyr Loayreyder, I have a lot of sympathy with the hon. member's concern about the inflationary and market forces allowance. I myself and we within the department have expressed concern as far as that is concerned. What we have is that he is right: it was £98 million. Primarily developments were £1/2 million roughly, design fees were £4 million, construction costs were £65 million, inflationary and market forces were £27 million, which should add up to somewhere in the region of £98 million, as the hon. member says.

The present breakdown of the costs at the present time is imposed changes by planning. Statutory changes in relation to fire and environmental health have taken up £1.7 million. Delays through planning have taken up £8.5 million. Service developments, such as the change in the fact that we feel that day hospital provisions need to be substantially increased, have been £2.5 million, and direct client costs have been somewhere in the region of £800,000 to £900,000.

As I made it quite clear, as one of the hon. members that fought the new hospital, one of the reasons why I took on this position was that I want a frank and open debate throughout the construction of this hospital and at the end of it to learn from the mistakes. Some of the issues that have come along as far as the hospital is concerned will be rectified for other capital projects, such as I hope that we will not see £800,000 being spent on direct client costs in the future.

Mr Rodan: Mr Speaker, will the member agree that while delays in the planning system may not have been anticipated, what has happened in effect is that members of this House have been invited to sign an open cheque and what other unanticipated costs can we expect to see before the final figure in that open cheque has been filled in?

Mr Karran: Vainstyr Loayreyder, it will be up to the department to be strong and say, 'This is where it stops.' The fact of the matter is there will always be unforeseen issues that you cannot allow for.

One of the things that I would say is that, regarding the amount of money for inflationary and market forces, I believe that that should not be just read, that it should be used. We have got a good man in as a capital projects man now, in fact something must have gone wrong for government to employ somebody of such ability in such a place, but he is a good man and I believe that we will be able to put some sort of control on this hospital.

I do not know whether the hon. member himself actually raised the concerns concerning the new hospital, like myself. I believe that what we need is to be firm as a department and make sure that costs ain't allowed to escalate.

Mr Cannan: Can the member tell us whether the new enhanced cost of £113 million includes the infrastructure costs of access roads, sewerage and other public works?

Mr Karran: Vainstyr Loayreyder, it is not £113 million, it is £111,700,000. I think that we have got to make sure that we try and keep to these costs.

As for issues within the department's responsibility, then that is the cost that we foresee for the building of this new hospital. Obviously issues such as sewerage, new roads, issues that this hon. member raised with this hon. House when so many members went against this

hon. member's proposals for an alternative site will have an effect, but let this hon. House be under no illusion. I have made sure that whilst I have been in there, as poacher turned gamekeeper, we are going to try and put some control on this and we are not going to try and hide everything away and if there are mistakes, we are going to learn from the mistakes this time so they are not repeated on any other schemes that in my opinion should not go ahead.

Mr Singer: Mr Speaker, the hon. member has given various reasons why there has been this unanticipated large increase on the original estimate. Is there anybody else he would like to put the blame on whilst he is on his feet, other than his own department?

Mr Karran: Vainstyr Loayreyder, I have always tried to be fair within this hon. House, maybe obnoxious, but fair with this hon. House. Now, I think the hon. member is quite wrong to say that as far as this issue is concerned. If I was building this hospital the way I wanted to build this hospital, then it would not be done. There were certain things that were put together. The construction formula was all put in place long before this department member took office in the DHSS. This hon. member does not need lectures from the hon. member for Ramsey or from the hon. member for Michael about the sewerage or the road structure or the fact of the amount of accommodation that will be needed for staff, as I stood up in another place and was told it was not the case and once again government bludgeoned the issue through.

What this House has to remember is we want a first-class health service. We want to attract quality consultants to this Island. The issue of whether we should have gone for this site or not this site is over. We are too far down the road. There are many of us who would be wise after the event, but at the end of the day what we have got to do now is get on with the issue, learn from the mistakes and make sure that we do not repeat these mistakes if you lot go like sheep and put Meary Veg as the new sewerage plant or the incinerator.

So I think the hon. member is wrong to blame the department completely. There are issues where we are tied down, and some would say that a certain amount of blame can be laid for these costs on those who delayed the process in the first place and having silly environmental situations where we are putting up six-foot or seven-foot sod hedges, Manx traditional sod hedges, when most of the Manxies would be five foot or six foot at the time when they were supposed to be constructed. There are certain things that we have no control over which I personally do not agree with but we have a principle: we need a decent hospital. We made the decision and we have got to get it done now and it does not mean that we have got to allow them to have a free-for-all.

Mrs Cannell: Mr Speaker, would the hon. member for Health not agree with me that the additional costs that he has advised us upon this morning are largely due to the fact that the procurement method was fundamentally flawed, the way in which the packages have been organised has been fundamentally flawed in terms of retention moneys, thereby local companies having perhaps to put in larger sums than they would have done otherwise, and that all of this, the way in which the package has been put together for the whole of this scheme, has been the main culprit for adding on these additional costs?

Would he not further agree with me that issues such as high Manx sodding in order to screen, in other words mitigation measures, were measures imposed by the planning inspector as part of the planning process which is a democratic right for the people of this Isle of Man when faced with such a scheme?

Mr Karran: Vainstyr Loayreyder, £8.5 million of this increase is through delays through planning, delays by many in this hon. House trying to point-score as far as the issue is concerned. I do not need any lectures from that hon. member or any other hon. member in this hon. House. I fought, put amendments forward for a more suitable and sensible site. I lost that. What I am not prepared to do is lose sight of the important issue that this Island needs a first-class health service. (**Several Members:** Hear, hear.) I want to try and attract the sort of consultants we need on this Island. The biggest problem I have got at the moment is that it is seen as a cul-de-sac as far as career increasing, going up the ladder, so I have to have some sweeteners and I believe the new hospital will be one of those sweeteners.

As far as the issues of the way we have decided to go through a management structure, that is something that was decided before this hon. member was in that position. Personally speaking, if we were looking at high unemployment at the present time, it would have been a godsend that we had gone down a package measure in order to create the employment on the Island. It is just fortunate that we have low unemployment on the Island at the present time, so that really it maybe was not the most efficient and effective way of going about it. But no-one in this hon. House, unless they think that they are some sort of Mystic Meg, would be able to work out whether we were going to have such a boom in our economy.

Bus Shelters - Question By Mr Rodan

The Speaker: We move on, hon. members, to item 8 on our order paper and again I call upon the hon. member for Garff, Mr Rodan.

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

- (1) *Is your department responsible for providing bus shelters; if so*
- (2) *what was the annual budgetary provision for the last two financial years;*
- (3) *how many have been built;*
- (4) *what is the 1998-99 budget provision for bus shelters; and*
- (5) *how many bus shelters are in the present construction plans of the department?*

The Speaker: I call upon the Minister for Transport, the hon. member for Castletown, Mr Brown, to reply.

Mr Brown: Mr Speaker, with regard to part (1) of the question, I can confirm that my department is responsible for providing bus shelters throughout the Island.

In answer to part (2) of the question, budgetary provision for bus shelters is made within my department's general maintenance budget and during the financial year 1996-97 an allocation of £25,000 was identified, with £21,090.56 being expended. For the financial year 1997-98, £6,000 was allocated, with £4,421.16 being expended.

In answer to part (3) of the question, the number of bus shelters erected during 1996-97 was nine and for 1997-98 one shelter was purchased as a replacement for the bus stop at School Road, Onchan.

In regard to part (4) of the question, for the financial year 1998-99 no specific budgetary allocation has been identified within the general maintenance budget. However, I can confirm that we hope to be able to progress the provision of bus shelters at the following bus stops:

the Strang crossroads, Braddan; the new Southern Group Practice, Port Erin; Janet's Corner estate, Castletown; and Baldrine Park, Baldrine.

In answer to part (5) of the question, with reference to this final part I am advised that presently we have on record 23 bus stops where there are proposals to provide bus shelters. Whilst the provision of bus shelters remains my department's responsibility, I can confirm that it is my intention to progress with the provision of bus shelters to meet the demands of the travelling public, although of course budgetary priorities will be taken into account.

Mr Rodan: Mr Speaker, can I ask the minister is it his department's intention to transfer responsibility for the construction of bus shelters to the transport division of the Department of Tourism and Leisure and will he agree, if this is the case, that the issue will receive greater priority than his department has been able to give it so far?

Mr Brown: Yes, Mr Speaker, I can confirm that my department has made representation to the Department of Tourism and Leisure with a view to transferring responsibility for the provision of bus shelters to that department and as the member who was minister of that department up to December 1996, certainly it was the view when I was minister, and I think it is echoed by my colleague who is presently the minister, that it would be more appropriate for bus shelters to be under the control of that department.

However, whether or not it will get a greater priority will very much depend upon the political will within any department as to how much they are willing to allocate for the provision of bus shelters, and I think it is fair to say that over the last five years there has been a greater investment of bus shelters by the Department of Transport than had previously been the case.

Clearly it is important that there is a retention of a power by my department to be able to provide bus shelters where we are undertaking schemes, as it would be ludicrous for my department to, for example, develop a bus lay-by or a new road layout and then not be able to provide a bus shelter there and have to wait for another department. So we are in negotiations and we hope to get to a stage where the two departments can actually come to Tynwald for a transfer of those functions.

Mr Rodan: Mr Speaker, as his department has made no budgetary provision at all for 1998-99 for provision of bus shelters, will he be recommending to the minister of the Department of Tourism that he bids for proper budgetary provision and will the minister agree that more people will be encouraged to use the buses if in fact they have shelter from the elements and is this not an important part of the strategy for increasing bus usage and therefore priority should indeed be accorded to bus shelters?

Mr Brown: Yes, Mr Speaker, I am absolutely convinced that the need for bus shelters is an absolute priority if you are going to have an effective bus service. Hence why my department has not made specific financial provision within our general maintenance budget which after all is only an internal matter in terms of identifying funds you may or may not use throughout the year when we are actually putting together our estimates, and that is of no consequence in terms of the department progressing the provision of bus shelters, and as I detailed in my response to the hon. member, the initial answer, in fact we intend to put up a number of bus shelters during this financial year. Some of those shelters that I mentioned are in fact part of other larger schemes and therefore, because of the way the department operates, it is not necessarily important to identify specific amounts of money for the provision

of shelters, as the overall general maintenance vote is in the hands of the department as to how it wishes to spend that money.

**Planning Committee - Appointment Of Members -
Question By Mr Cannan For Written Answer**

The Speaker: Hon. members, that draws to a conclusion the oral part of our order paper. Item 9 on the order paper is for written answer and I understand that the written reply to that question has now been circulated to the hon. members.

Question 9

The hon. member for Michael, Mr Cannan, to ask the Minister for Local Government and the Environment:

- (1) *Who have you appointed or reappointed as members of the Planning Committee since taking office as minister;*
- (2) *what are the criteria for appointment of members of the Planning Committee; and*
- (3) *will you supply members with a curriculum vitae of each member of the Planning Committee?*

Answer

I am responding to the question in the name of the hon. member for Michael on behalf of the Minister for Local Government and the Environment who is unable to be with us today.

Before I answer the specific questions I think it is appropriate to explain to hon. members that under paragraph 2 of schedule 1 of the Isle of Man Planning Scheme (Development Plan) Order 1982 the department has power to appoint a committee, to be called 'the Planning Committee', to exercise on behalf of the department the functions specified in that schedule. The schedule also indicates that the Planning Committee shall consist of (a) one or more members of the department, other than the minister; and (b) one or more other persons, not being members of Tynwald, who shall be appointed by the department.

The powers of the Planning Committee to determine applications are not absolute, as there is a right of appeal against its decisions. This involves a hearing of all the evidence by an independent planning inspector who makes his or her recommendations to the minister who then makes a final determination.

I can confirm that, following the minister's appointment, the department appointed the hon. member for Garff, Mr Rodan, MHK, being a member of the department, to be the Chairman of the Planning Committee with effect from 16th December 1996. The minister is indebted to Mr Rodan for agreeing to take on this complex and time-consuming task in such a highly contentious area of government activity.

The department also reappointed Mrs Audrey Roberts, Mr Terence Kendrick Marston, Mr John Raymond Cannan and Mr Douglas Alfred Duggan to be the other members of the Planning Committee with effect from 24th January 1997. These appointments are at the pleasure of the minister who intends that they should be reviewed periodically.

Mrs Roberts tendered her resignation to the minister and the department then appointed Mrs Gabrielle Theresa Mary Edwards to take her place with effect from 19th November 1997. This appointment is also subject to review after two years.

There are no set criteria for appointment of persons to the Planning Committee but the department seeks to identify reputable individuals with strength of character, preferably with local knowledge and relevant experience, possessing the ability to apply the policies set by the department objectively and robustly. Such individuals must be willing to accept an appointment to exercise the functions specified in schedule 1 of the 1982 order.

It has been the practice of the department to try to identify persons resident in different parts of the Island by inviting nominations from members of Tynwald. To this end the department has been looking in recent months to identify a suitable person from the west of the Island who might be asked to accept appointment.

As positions on the Planning Committee are not advertised, nor applications invited for them by other means, the department does not request a curriculum vitae from those it appoints. However, relevant information is obtained about those who are nominated for consideration to ensure that an informed decision is taken in the Island's best interests.

The Department of Local Government and the Environment is pleased to place on record its appreciation of the work of the Planning Committee and its thanks to the individuals who serve on it, in whom it has every confidence.

Mr Cannan: A point of order, Mr Speaker, sir. In the written answer it states 'Mr Speaker, I am responding to the question' and later on it says, 'I can confirm'. By whom is the response being made? It is signed by nobody, sir. Who is the 'I'?

The Speaker: I assume that the question is on the order paper, sir, and I have not read the response myself yet but I assume that it is the Minister for Local Government and Environment.

Mr Cannan: With respect, sir, it says, 'I am responding to the question on behalf of the Minister', so who is responding on behalf?

Mr Braidwood: Mr Speaker, in the absence of the Minister for Local Government and the Environment, can I say that Mr Downie, the hon. member for Douglas West, has the delegated responsibility at the present time for the acting minister for the Department of Local Government and the Environment.

The Speaker: He may have the delegated responsibility and that presumably is the response which the hon. member for Michael wished, but the minister ultimately is still responsible.

Mr Cretney: He is the minister now. *(Mr Brown interjecting)*

Bill For First Reading

The Speaker: Could I then turn to our order paper, item number 10, hon. members, and I call upon the learned Secretary.

The Secretary: The Road Traffic Bill, Mr Bell.

Street Traders (Amendment) Bill - Third Reading Approved

The Speaker: Then we turn to item 11 on our order paper, the Street Traders (Amendment) Bill, down for third reading, and I call upon the member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. The Street Traders (Amendment) Bill 1998 has received first, second readings and it was also this House and hon. members dealt with the clauses stage last, where the provisions under the Bill were actually amended to include a section for a notice to be made public to the public either using a newspaper, a poster to be displayed in any street which is subject to a street designation order, equally that the order, prior to the approval of Tynwald, such notice shall be displayed. There was also the inclusion of a mechanism for consultation with the consumer affairs board, prior to a local authority actually seeking to set a licence fee, and also an appeal mechanism was introduced via the amendment stage which covers a refusal to grant a licence to a street trader or in the other case if a street trader's licence were to be revoked. The House has supported those amendments at the clauses stage and has supported the readings throughout. The Bill is now ready to be passed on to the Legislative Council for their due consideration.

I thank hon. members for the input that they have put into this Bill and for the comments, and the most useful comments and criticisms, the constructive criticisms that have been made, and I thank members for their tolerance in this matter. I beg to move, Mr Speaker.

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

Mr Brown: Mr Speaker, as hon. members know, I have opposed the principles contained in this legislation from its second reading and through clauses and I of course still oppose the principles of this legislation.

I believe it is bureaucratic, and that can be easily seen in the legislation, and also an unnecessary piece of legislation that the Isle of Man does not need. It enables, as I have said all the way through, any person who has private land to be regulated for the purposes of retailing and no matter how long that time is, now, if we pass this legislation, we are going to permit, subject to Tynwald approval, people to be regulated on their own private land if they wish to retail, not in anything else but purely retailing, street trading as we call it.

If there was to be long-term usage, then of course rightly we have powers in planning to actually require an individual or a company or whatever to seek planning approval. But up to that 28-day period we already allow within planning law for a person not to have to seek planning permission for what is a one-off use and therefore I believe this Bill is totally unnecessary.

During the clauses stage I endeavoured to change the Bill and was successful, as the hon. mover has said, in three areas. However, unfortunately, by 11 votes to 11, my amendment to exempt resident companies or resident individuals who wish to trade in the Isle of Man, which is impacted now by this legislation if we pass it, I endeavoured to get them exempt so that it only applied to non-resident traders.

I think it is worth reminding hon. members that during the second reading and the clauses stages members who continually stood up to support this legislation specifically spoke of non-resident traders, they did not speak about resident traders. Therefore we have now got

a piece of legislation which is going to impact on everybody who wishes to trade in the Isle of Man on private land.

Mr Downie: Quite right.

Mr Brown: I believe that is not quite right. It is clear that people have rights in a democracy and these rights are being eroded by this piece of legislation. We have one specific problem in Douglas that has caused this and members have reacted and, I believe, overreacted. We are changing the law of this land because of one situation.

I believe that we already have a situation where non-resident traders can be controlled. Whether or not they wish to trade on private land is a matter which we should take into account. But we do live in a democracy and therefore we are in a situation where people should be able to trade.

If a person, as I understand it from representations I have had, objects to a nuisance being next door to them till all hours of the night, there are other laws to control that and we are getting mixed up between one case and another. If somebody causes a nuisance, then there are laws to deal with it. Because those laws have not been enacted, because maybe the individual did not seek an injunction, we are now being asked to change the whole law of this land to make a situation where private land can be regulated, and what you have to think about, hon. members, is what the law allows the future to do, and what it is going to do is it is going to allow Tynwald Court ultimately to regulate private land where it is off a street. Any open space they are going to be able to do, whether it is your garden, whether it is a field or whatever. That is what this law will say, and I would urge hon. members who oppose that principle to oppose this Bill at third reading and also those members who opposed the netcatching local resident traders, 11 of you who voted in favour of allowing them to be exempt and were not successful, to join me in voting this Bill out at third reading stage, as it is clearly an unnecessary piece of legislation for this Island of ours.

Mr Gilbey: Hear, hear.

Mr Downie: Well, I would like to put an opposing view, Mr Speaker. Although I have some feeling for where the member for Castletown is coming from, there are enough safeguards in this legislation, there is an involvement here with the local authorities, people on the ground level who understand what is going on and what is required in their own area, and there is also a very adequate appeal procedure.

I just hope that during the next four to five weeks the hon. member from Castletown will bring himself into Douglas on regular occasions and see some of these operations taking place first-hand and then maybe he will be able to realise some of the problems that we have to live with in the town, and I would urge him to have a look at a situation which is already developing on Peel Road, where we have got an area there where there are about a dozen cars dumped. (*Interjections*) A lot of people are aware of what is going on: a local authority function. This is another quasi-local trader.

As far as I am concerned, if we leave this issue to just off-Island traders, there are so many loopholes and so many ways people can come in here through the back door and get a relative to start a small company or register a company, the legislation will not be worth the paper it is printed on.

I am aware that it has quite strong implications within it but I am satisfied that it is the right course of action to take and members should support it.

Mr Gilbey: Mr Speaker, I would say I entirely agree with the remarks of the hon. member for Castletown. I am sure he is completely right and that if we pass this we will be making a great mistake. He is right in that it should not apply to resident traders and he is right that it should not affect private property and land.

Regarding the hon. member for West Douglas, Mr Downie, if he and other members for Douglas want this so much for Douglas I would have no objection to another Bill that just covered Douglas, but why cover the rest of the Island? If Douglas wants this, certainly I would not deny them having it, but why should it cover the rest of the Island, areas such as Castletown, where it is not wanted?

Mr Cretney: Just two points if I could, Mr Speaker. It seems to me that the point made by the hon. member for Castletown in relation to local traders is one which could be subject to question in as much as some of these people who do come to the Isle of Man and about whom concern is expressed from time to time form themselves into local companies or relationships with local companies and so would get round his concern.

The second part is in relation to concerns about a quasi-local trader or whoever is selling cars, which we have all seen and which we all think does not look right when it is happening. There are powers in the planning legislation to put a stop notice there.

Members: Hear, hear.

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

Mrs Cannell: Thank you, Mr Speaker. I am a little bit disappointed perhaps in the comments made by the hon. member for Castletown and also Glenfaba but they are not totally unexpected, given their total opposition throughout.

Can I just say, in response to the comment that the legislation is over-bureaucratic, that the very three amendments moved by the hon. member for Castletown have indeed made it bureaucratic, whereas before it was relatively simple and easy to apply. Nevertheless the amendments, I feel, were good amendments and were supported by this House and indeed myself.

The hon. members also said that there is a problem and we need to take account of that. I have to, and I know I do not have to, remind my colleagues here in Douglas and also Onchan, but I am here today because we are seeking to take account of the issue, of the problem, which has been the problem for many years. That is why I am here this morning at the third reading stage with the Street Traders (Amendment) Bill because it appears to be the only sensible vehicle to put in those measures which are necessary to curb the unnecessary part of street trading, the undesirable, the unregulated street trading, and I do not think I have to remind the hon. member for Castletown, but I will just in case he needs reminding, that many of these people who are trading, not all, but many who have traded on such private land in recent times, also the question has been asked of them as to whether or not what they are selling is indeed legit and in fact I was approached by a member of the police and also a member of the retail associations in Douglas who pointed out to me that many such traders in the past operating on private land have been trading in stolen goods.

Mrs Crowe: Well, that is a police issue.

Mrs Cannell: Well, it is a different issue but nevertheless the message that has gone out is that such trading on private land is not regulated and so if you are careful you can also perhaps try and fool the police. Fortunately for us we have had vigilant police and they have kept a close monitor on this situation and have dealt with it very quickly.

Just to try and allay the fears expressed by the hon. member for Glenfaba when he said if Douglas wants it why doesn't Douglas just bring it in for Douglas and leave us all alone, if I could remind him that support has come from Michael Commissioners, Castletown Commissioners, Ramsey Commissioners, Peel Commissioners, Port Erin, Patrick Parish Commissioners, (**A Member:** Hear, hear.) Onchan District, the Isle of Man Chamber of Commerce, Douglas Town Council, Laxey Village Commissioners, Ramsey Chamber of Commerce, Port St Mary Commissioners, Jurby, Ballaugh, Andreas, Malew, the Department of Local Government and the Environment and the Department of Trade and Industry. Now, those people want to see this regulation in. They want to see a power there for them as a local authority to be able to, when it is necessary and when it is appropriate, regulate such street trading. There is nothing dynamic in this particular amendment Bill. It is merely a safeguard. It is merely passing on a little bit more power to the local authorities, which I felt that we were all in support of: the decentralisation of local government affairs.

Regarding the 28-day period planning criterion, of course we all know that if a street trader sets up and is gone within that 28-day period he has already done his business, he has made his money and he has left, either to the other end of the Island or off-Island, and of course he does not fall under that particular piece of legislation, so there is a loophole there and I believe the Street Traders (Amendment) Bill will help to close that loophole and will make things and trading in particular fair for all on the Isle of Man and all who visit our shores. I beg to move, Mr Speaker.

The Speaker: Hon. members, the motion is that standing at item 11 on our order paper, that the Street Traders (Amendment) Bill be now read a third time. 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, Rodan, North, Sir Miles Walker, Messrs Houghton, Crowe, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Downie, Singer, Bell, Karran, Corkill and Gelling - 16

Against: Messrs Gilbey, Crowe, Brown and the Speaker - 4

The Speaker: Hon. members, the Bill is now read a third time with 16 votes being cast for and 4 votes cast against.

Public Order Bill - Third Reading Approved

The Speaker: We turn then to item 12 on our order paper, the Public Order Bill, again down for third reading, and I call upon the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I wish to give a third reading to my private member's Bill which will effectively address many issues with regard to public order on this Island. Hon. members will recall my concerns that without this legislation certain situations

which result in violence cannot be brought to a halt before the inevitable takes place. But it is not just the threat of actual violence which my Bill addresses. It of course also deals with circumstances where a person or persons have an anti-social and abusive attitude towards other members of the public who are going about their business in a peaceful and law-abiding manner. Why should the hooligan element of our society be allowed to intimidate and deny the peace and tranquillity of our people?

I am quite satisfied that this legislation will prove to extinguish many situations which may lead to violence. I am also quite satisfied that this legislation will be warmly welcomed by the constabulary and members of the public, as I firmly believe it will go quite some way to stemming this growing social disease. Mr Speaker, I beg to move.

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

Mr Brown: Mr Speaker, as members will recall, at the clauses stage I certainly had a number of reservations with regard to this legislation and whilst I welcome any additional fair powers to be given to the police to ensure that they can adequately carry out their responsibilities and whilst I understand there can be occasions where this Bill will now be of benefit, I think I have to put on record my continuing concern over clause 3 and the point that a person can be guilty of an offence if they use insulting words et cetera.

Clearly from my point of view, whilst I understand the point the hon. member is making and why he is bringing this legislation forward, there is a clear balance which has to be attained in any society, any free society anyway, and I have to say that my concern on this is one that a person can now, if we pass this legislation, actually accuse a person of using insulting words, and that individual will now have to protect themselves by fighting that accusation, and of course what we are doing by this is swinging the onus onto the innocent party, or what may be an innocent party, now to fight to protect their name or to defend themselves, and I do think that that is something that is a major change that we are making. We should be very careful about such major changes. Whilst they may well be required in other societies, the question has to be do we require it in our society?

I provide no support for individuals, whoever they are who abuse police officers undertaking their duties. I have no support for that at all. But I do think we have to be careful where we are saying that one individual in our society can accuse another individual in the society of using insulting words and then the one who may not have done that but has been accused of it is the person who is going to have to defend themselves, and that is the concern I have about this piece of legislation. That is specifically based on clause 3 of course and that was what causes me concern.

One other issue I did raise at the last reading of this was with regard to clause 5 where a constable may arrest without warrant anyone he reasonably suspects of committing an offence, such as the one I have said which is covered by this Act, and within 28 days a police officer has the right to go into any person's premises without a warrant. My hon. colleague the member for South Douglas, Mr Cretney, endeavoured to move an amendment to provide a warrant to be issued for the police to be able to do this and unfortunately he was unsuccessful at the clauses stage in getting support for what I think was quite an important safeguard for individuals in our society. Whilst that is the case, I have, since that reading, just cross-referenced this with the Police Powers and Procedures Bill which we have just passed through

this place which will become law in the not-too-distant future and I have to say that that does provide a slight safeguard, but I have to say not as good as a constable requiring a warrant.

It is very important for us as legislators to recognise that there are always two sides to a story and my concern about this legislation is that many innocent parties can be put into a position where now they will have to defend themselves on the basic say-so of one individual who says, 'That person used insulting words in a public place', which could be in a church hall, it could be in a youth club or whatever. Whether or not that will happen is irrelevant. It is what the law will allow to happen, an individual will be able to do that, and it is a major change in our law that we are talking about here and I have to say, as I mentioned to the hon. mover, my concern that the consultation had been relatively limited. His consultation had been with the police and his consultation, I think he said, had been with the Department of Home Affairs and that was it -

Mr Houghton: And Education.

Mr Brown: - and Education, and therefore this major change in our legislation, especially I am talking about back to clause 3 now, is being made without any lengthy consultation or consultation at all really with the public who are going to be affected by this.

So I do have concerns about this legislation. I think it is in certain parts of it very important legislation and I support all those clauses except I have a problem with clause 3 and clause 3 gives me quite a concern. We as legislators of course can be popular by passing anything that sounds good. We are not here to be popular, we are here to protect the public interest, and that is the balance between governing people and ensuring they also have rights and freedoms within our Island. I believe clause 3 takes that step too far, I think clause 3 oversteps that margin and therefore I am not at this stage satisfied that I will be supporting the third reading but I will be interested to hear what the member says in reply to these points I have raised and certainly I hope that the government will keep an eye on this new legislation, if it is enacted, to ensure there is no abuse and that if clause 3 causes a problem I would hope that in the near future if there is a problem, then the law would be changed to rectify that situation. But I do believe this is quite an important change in our law about the Isle of Man society, how we are, how we all live together and this is going to give the ability for an individual to actually accuse somebody of something and that individual then has to defend themselves and instantly is put in a case of having to prove their innocence, and I believe that is a major change we should be very careful about before we pass.

Mr Karran: Vainstyr Loayreyder, I supported this Bill at its second reading and its clauses stage. I feel if the hon. member for Castletown was so concerned about this Bill, why didn't he move it to a select committee? I think that is something that he should have done if he had such fundamental concerns.

I would say that my concerns are that whilst I want to support the police force in being able to be as effective and as efficient as possible in protecting the quality of life, I am concerned about this Bill I am more concerned about this Bill since the clauses stage, since the actions of government.

One of the issues that was mentioned was the fact of people having legitimate political protest and I said in *Hansard* that political protest would be a legitimate defence as far as why this Bill could not be used against them, but I am concerned when I see a government that is

prepared to go round vandalising peaceful protesters' property as far as the incinerator is concerned. It does give me concern that if they are prepared to go round vandalising their legitimate thing using government money and government resources to steal their posters and placards and then say that - (*Interjection*) I feel that with the hon. member for Castletown it would be a dialogue with the dead as far as trying to ever admit there is something wrong with his beloved government. That is one of the reasons why -

Mr Brown: A point of order, Mr Speaker. The hon. member is making an accusation without any explanation of what he is saying. He is accusing the government of the Isle of Man, whether I am a member of it or not, which he is as well, of vandalising people, and I think when a member makes a statement like that in public he should at least have the courtesy to explain for those of us who do not know a thing about what he is talking about, and that is the only point I made.

The Speaker: The hon. member for Onchan can continue with an explanation.

Mr Karran: Vainstyr Loayreyder, the hon. member knows well what I am on about.

Mr Brown: No, I do not.

Mr Karran: I mentioned the fact of all the anti-incineration signs have been ripped up and taken away at government expense by employees of this government, and one of the reasons why I am concerned about this Bill is the fact that one of the things that concerned me at the second reading stage and the clauses stage was the fact that legitimate political protests would not be affected by this piece of legislation. That is why I put in Hansard my concern that this would not be used in this way, this piece of legislation. But when I hear of government departments who cannot repair roads, who cannot do many other things, using their staff's time to go around ripping up people's posters I think it is wrong and that is what concerns me. I believe that what we have got to make sure of when we are doing legislation is that that legislation is not open to abuse.

I believe in free speech. I know what it is like to be character-assassinated and the likes of signs put up against individuals personally. But what I am concerned about with this piece of legislation is it being used, as the Public Order Bill is being used in the adjacent island, to legitimise controlling public protest about issues that they feel that they need to express their concerns on. That is what concerns me about this Bill, and I am concerned now that when I see this Bill and when I see on the agenda paper a Bill by the home affairs department to do with breathalysers when the fundamental issue of accountability of the police force needs to be addressed, then I am concerned that we have once again got the cart before the horse, and that is what I am concerned about.

I am very worried about supporting this Bill because I am worried that it will be used as a way of stopping people or used as a weapon against people who want to legitimately protest about a political issue. That is what concerns me, and that is something that does concern me and it is all right some in this House saying, 'Oh, Lord', but the fact of the matter is it is something that we are laying down in the laws of the land today and I am concerned about that issue.

I do hope the hon. member can assure us because I think the only point that I do agree with the hon. member for Castletown on is when he talks about somebody being forced to

defend himself. It is a very expensive option to try and defend yourself in a court of law, especially when you cannot be guaranteed to get your legitimate costs back for the defence of your good name. So I think the hon. member, as far as that is concerned, has a valid point, that you could end up with somebody being potentially prosecuted for such an offence under this Bill and ending up having to defend themselves at a lot of cost.

I am concerned about this Bill. I do not know whether I will support it at the third reading stage.

Mrs Cannell: Mr Speaker, I do not think we should delude ourselves this morning in the principles that were set behind the mover bringing forward this Bill, and those principles were very clear. It was to put a mechanism in force against brutish behaviour, loutish behaviour, people running the streets insulting others, intimidating, provoking, harassing, causing alarm and causing distress. There was nothing in legislation and there is nothing in legislation to counter for that, and this is the very principle by which the mover brought forward this private member's Bill.

I have no hesitation in supporting the Bill and I have had discussions with people since its clauses stage and they are very, very much in support of such provision being brought forward in legislation.

As far as I am concerned clause 3, which is the provision for dealing with harassment, alarm or distress, is one of the most important clauses contained within the whole of the Bill and without it it would seriously reduce the powers under this particular Bill, and I have to say that there was an opportunity at the clauses stage for any member of this hon. House who felt aggrieved to come forward with an amendment. Now, I know that the hon. member for South Douglas, Mr Cretney, moved an amendment to clause 5, but there was no such proposal moved for clause 3 and yet we hear this morning how fundamentally bad and iffy clause 3 is and so therefore the member for Castletown has now, it would appear, convinced the member for Onchan to not support it at the third reading stage, and I find that deeply disappointing.

Mr Brown: I voted against it.

Mrs Cannell: I concur with the consistent behaviour of voting against this Bill by the member for Castletown and so therefore that does not surprise me. What does surprise me is the view from the member for Onchan who is reading into this particular clause and provisions within this Bill all manner of things which are really quite outrageous because I too am a defender of free speech, free liberty and being able to voice your views politically in a public situation with a degree of freedom, and I say a degree of freedom. I do not concur that that should fall to some level whereby that public speaker or that person voicing a political opinion at a rally, a march, an open meeting or anything should use insulting behaviour or insulting language to get that message across. I do not support that at all. There are ways of getting a message across without having to reduce oneself to that.

Regarding the comments made by the hon. member, I just have to correct him on this where he talks about - and it was also touched upon by the hon. member for Castletown - if someone were to use the provisions under clause 3 of accusing a person of such behaviour under the clause, then that person would be in a defensive position and have to defend himself. Well, surely I do not have to remind hon. members that under the law you are innocent until proven guilty (**Mr Houghton:** Hear, hear.) -

Mr Karran: And you have got to pay a lot of money to do it too.

Mrs Cannell: - irrespective of what the crime is that has been alleged, and with regard to the costly experience of going to court and everything else and defending yourself, it is a matter of fact, I have to inform the member for Onchan, that if you go to court and defend yourself it is far cheaper than engaging an advocate to do the same, and that comes through bitter experience, I might add, but hopefully it would not get to that stage.

What is here is a clear message that we will not tolerate people who use language or behaviour which is going to intimidate, harass, alarm or distress, and I think that is a good thing because it is telling society, and particularly the younger elements of our society at times, that we will not tolerate this behaviour because if it starts at that level, then we all know what happens when they get to adult age. It can lead into all sorts of problems.

Regarding the clause that gives the freedom of the constable to arrest without warrant, again provided that is used in the correct circumstances I do not have a problem with it, but there is always criticism in here of individuals within the police force, indeed fairly recently of the chief constable, and I would not defend that particular situation, but I would defend situations where we have good men and women employed by the police who go out and they need on occasion such assistance to be able to make an arrest without a warrant and obviously it will be noted, the comments that have been said by the hon. member for Castletown, and I feel the message will go back and indeed has done on other occasions that the police will not look upon these provisions and think, 'Oh well, we're going to go to town with this and we are going to use this and we in turn will go out and harass somebody else.' Far from it: they are a responsible police force, they need the tools to be able to do the job.

I hope that hon. members will support this Bill at the third reading because this piece of legislation is needed and it is needed today. Thank you, Mr Speaker.

Mr Gilbey: Mr Speaker, I really feel that the hon. member for Onchan's references to the government tearing down notices are quite irrelevant to this Bill but I really do think that they ought to be answered in case the wrong impression is given.

I think we have got to be very careful about this whole question of notices and slogans being written up. They should basically, I believe, legally, and also from the point of pure good manners, only be put on the property of people who have been asked if they can be put up and who have agreed to it.

Now, clearly the Department of Transport can not give permission for notices to be put up on road traffic signs. A number of such notices I have seen recently round the Douglas area. This must be wrong because it must actually constitute a danger if people cannot read the notices properly. Similarly, how can the government agree to people writing notices on roads, as has been done outside the Nunnery? If you once start this we could have everyone writing notices everywhere, you would have the appalling situation you have in much of the adjacent isles where you have graffiti all along the railway lines and in many other places, and taking all government departments' property, how can they allow people to put up notices or write slogans? They could be seen first to be encouraging unenvironmentally friendly behaviour and, secondly, to be taking sides, and therefore I think the government must be right, if people put notices on their properties, to take them down.

I would also say that there are plenty of people who are happy for signs to be put up to support causes they believe in. I have seen a number of these on private property and that is where they should be put, and I frankly believe if you are fighting a campaign it is quite counterproductive to put notices on public property and also on the property of people whose permission has not been sought.

The Speaker: I call upon the hon. member for Douglas North to reply to the debate.

Mr Houghton: Thank you, Mr Speaker. If I make the comments first with regard to Mr Brown's concerns, I do thank his support for most of the Bill and the points that he makes therein.

I have to reiterate where the hon. member makes his point about insulting words, similar to, say a bar room conversation where there is plenty of abusive words being said but not with any intent, not intentionally to abuse anybody usually in that place. If it is, then of course they do commit an offence, but generally speaking people using colourful language wherever they go, not in intentional abusing behaviour, do not commit an offence. So it is not as if there is going to be an issue where the floodgates open and everybody in a bar would be arrested and so on. That simply would not happen at all.

Similar to accusations that the hon. member makes about circumstances where one individual will go to, say, the police station and report another for using abusive language with intent, let us say, against that individual, that has got to be similar now to, say, somebody reporting a motoring offence, say driving without due care and attention, somebody goes to a police station to report the hon. member for driving without due care. The evidence still has to be taken by statement and in a case like that it is quite clear that possibly the police officers concerned would not go and arrest somebody straightaway off the street. That usually happens in a case where somebody is actually found committing. In a situation like this they would be reported for summons but the arrest situation would still be in place.

The 28 days - the hon. member is most concerned of course about the 28 days situation. If I can give a scenario to make it clear on the point I made during the consideration of clauses for the requirement to have a 28-day arrest period, if somebody had been seriously threatened in a nightclub by two people with pseudonyms of, say, Big Mal and John the Jug - because that is what the police are dealing with, they are not dealing with John Houghton and Tony Brown and full names and addresses et cetera, they are dealing with these pseudonyms: Big Mal - if they do not know who Big Mal or John the Jug are, they have got to go back, if it is a serious issue, and wait for those two people to come out of the entertainment complex, say the following week or the week after that, and then have the ability to lift that individual if he will not come to the police station there and then. They have to have that 28-day period to be able to do their job properly, which is what is clearly required. We must remember that under the Theft Act the police have for ever to investigate a theft. I do not see a problem with 28 days being given to something like this, especially for it to be applied in cases of serious cases of people being threatened because it has got to stop and this is the only way to stop it, is the police being able to go and investigate a matter and put a stop to it. That is what the police need. They need those tools to be able to do that. That is the reason why I put this in here. It is a safeguard for the public as well. Needless to say Big Mal or John the Jug, when we find out what their proper names are -

Mr Duggan: They're going to be looking for you.

Mr Houghton: Indeed. Some of us have heard about John the Jug. (*Interjections*) By the way just for the benefit of members' interest, there are about three people going around with the pseudonym of John the Jug that I know of (*Interjections*) but there is only one, yes; the hon. member for South Douglas is right on that.

The hon. member then goes on about consultation and the sheer lack of consultation. My consultation went out to education, it went to the probation service and, needless to say, it went to the police, but in my case, with the experience that I have, what better consultation for me to tell you about the experiences that I have had, the frightening experiences, hon. members, that I have had as an unpaid special constable, 10p an hour that is taxed, but as somebody who is obviously doing it for nothing to be threatened, abused and intimidated in a public place to one very serious case which I would now say when this legislation goes forward, if and when it does, would be a serious case of affray which took place in Laxey Glen Gardens one evening in November about three or four years ago whereby these excitable adults, who were all drunk, wished to take myself and my regular colleague up the Glen and saw our heads off. Some of you perhaps would be quite pleased if that had taken place. (*Laughter*)

Mr Karran: Some of us thought your heads had already been sawed off! (*Laughter*).

Mr Brown: They couldn't find the saw!

Mr Houghton: Now, they had the still saw, it was in the back of the van, the van door was open, and they were going to do it. It did not take place, so the assault did not take place, the attempted murder did not take place. So all those other serious offences did not kick in. But what did take place was a very serious situation of affray, and this was being witnessed by young children who were coming out of a youth club at the Working Men's Institute across the road. This was in Laxey - in Laxey! Disgraceful. (*Interjections*) Of all places, and just the reason why I emphasise Laxey is that it could happen anywhere and it has happened since and I can tell all hon. members it is going to happen more and more, I am sorry to say, but that is what is happening. The public are sick and tired and this is the reason why on every platform candidates for local elections and now the coming by-election in Onchan are all talking about law and order. Hon. members, this is law and order because it is going to deal with the disorder. We do need a few policemen about to do the job, I appreciate that. That is the hon. member for Ramsey, the hon. minister. That is his job to supply the troops to the streets. But when the police get there they then need to be able to deal with the situation and not tittle-tattle with it.

For information of course this legislation, for the hon. member Mr Brown who was on about and obviously is mostly concerned with clause 3 of this Bill, this clause is very similar, if not quite identical, to section 5 of the United Kingdom Public Order Act which my private member's Bill is based upon. That has well and truly been tried and tested in the United Kingdom and I am quite sure if the legislation in the UK was flawed in any way, then it would have come to notice now. It has not, it has very well worked in the UK, and that is the reason why I based my private member's Bill on that, because it is totally appropriate.

Finally, to deal with another of the hon. member's concerns about prosecution and of course the situation of defence, that it will cost somebody a fortune to defend themselves, I

thank the hon. member for East Douglas, Mrs Cannell, when she says that of course each person who has been accused is innocent until proven guilty. We all understand that; that is quite right. But in less serious circumstances to do with the three substantive clauses in my Bill, anything less serious and, say, which was acted on at that time by a police officer, when the paperwork is put together, inevitably a prosecution would not take place. Can I say this, that you hear very often about the police being busy, and they are very, very busy at weekends, and say there have been 40 arrests which have taken place last weekend and 50 the weekend before. Hon. members, look at your papers the following week. Do you see 50 prosecutions or 40 prosecutions? I would say that you probably see about 20 per cent. It is hard to say, but about 20 per cent of those arrested persons that weekend are actually prosecuted, simply because a lot of those circumstances relate in a way to drunkenness and so on and the police have decided, when they have looked at the case in the true light of day, that it is not in the public interest to prosecute that individual, and that is the reason why there are already now a high number of arrests but a very low number of prosecutions. That also deals with other issues where the police can caution people and so on and so forth. But that is the reason, because that particular individual situation is not within the public's interest to do so, and that is the safety mechanism I would offer to the hon. member for Castletown in so far as this is looked at in the cool light of day by the police prosecutions, even if it gets that far. It first has to go through the paperwork from a constable to his commander, his inspector, and he then decides whether there is a prima facie case for them to be worked up towards prosecution. That is what takes place and it is decided at those very early stages whether or not what that individual was arrested for is worthy, in the public interest, to have him prosecuted, and I do hope that reassures the hon. member for Castletown.

Moving on to Mr Karran, I appreciate that he says now he did support previous readings and so on, and I could not understand what he was getting at with his government vandalism and so on. The only thing I can say is that vandalism does not come under this particular issue.

Government property - if members of the Department of Transport are taking notices down from government property, as long as those notices are not in any way offensive - that is what is dealt with in this Public Order Bill: if they are offensive - but if they not offensive, if they are just these ones and of course if they are spraying it on a road, well that is criminal damage to a road or what-have-you. That has got nothing whatsoever to do with this Bill. Only if there were offensive personal remarks made in abusive terms would this Public Order Bill, if/when it becomes legislation, actually kick in.

I do thank Mrs Cannell also for her support to the main in the Bill and in her clearing up in the principles of the bringing of this Bill, that it indeed brings a mechanism in place, and the way that she distinctly explained the ins and outs of how she understands, quite accurately I might say, the operation of this Bill here.

Also to Mr Gilbey - he sought clarification again on these notices. I do hope I have clarified, hon. member.

Mr Gilbey: Yes, I am quite happy.

Mr Houghton: You are quite happy. Yes, thanks very much. I thank you for that. Just to clearly emphasise that anybody putting these notices up about the incinerator, the current

situation, that as long as they are not insulting or abusive words that are on there, it has got nothing to do with what I am trying to move in this hon. House today.

Hon. members, just to close by saying, and I thank you all for your support and interest in this, it is most essential that this legislation comes into being just as soon as possible. It is what the members of the public want, not just what the constabulary wants - the constabulary wants sharpened tools to do the job - but it is what the public want. The public is sick and tired, sick and tired, hon. members, of being intimidated, of seeing loutish behaviour. Why should they put up with all this nonsense on the streets and these individuals be seen to get away with it? It has got to end and I beg to move.

The Speaker: Hon. members, the motion is that standing at item 12 on your order paper, that the Public Order Bill be now read a third time. 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 Gilbey, Cannan, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Crowe, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Downie, Singer, Bell, Corkill, Gelling and the Speaker - 19

Against: Mr Karran - 1

The Speaker: Hon. members, the motion carries in the House with 19 votes being cast for and the 1 vote being cast against.

Hon. members that concludes our order paper for this morning. The House will now stand adjourned until Tuesday next, the 12th May, at 10.00 a.m. here in our own chamber. Thank you, hon. members.

The House adjourned at 11.50 a.m.