

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 10th November 1998
at 10.30 a.m.**

Present:

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

The Lord Bishop took the prayers.

Tourist Premises and Amenities – Access for the Disabled – Question by Mr Waft

The President: Now, turning to the question paper, hon. members, I call upon the hon. Mr Waft to ask the question standing in his name.

Mr Waft: Thank you, Mr President, I beg to ask a member of the Department of Tourism and Leisure:

- (i) *What initiatives does your department intend to introduce to improve access for disabled persons to tourist premises and amenities throughout the Island; and*
- (ii) *will your department enter into discussions with other agencies of government with the object of improving access to hotels, glens, et cetera?*

The President: The hon. Mr Lowey of the Department of Tourism and Leisure to reply.

Mr Lowey: Thank you, Mr President. I thank the hon. member for his question.

Firstly, in relation to the premises and facilities which the department itself operates, we have over a long period sought to ensure that our buildings and services are accessible and friendly towards people who are physically disadvantaged. Indeed that principle is enshrined within the corporate values under the heading 'Access' of the department, where we state, 'Services should be readily accessible to all groups within society.'

I would like to draw members' attention to the fact that we do operate a hundred-year-old Gaiety Theatre which has been wherever possible updated to accommodate the disabled; Summerland which is 25 years old, and that particular building is actually the venue for many disabled sports; and the Wildlife Park even in Ballaugh, again which is 25 years old, which is particularly difficult for access for people in wheelchairs, but even there we have attempted with latches and making paths accessible for wheelchairs.

Secondly, in relation to the remainder of the Tourism and Leisure sector we would always encourage others, both in the public and private sectors, to provide proper disabled access within any developments. In relation to the accommodation sector, for example, we actually include disabled access within classification and grading and the Isle of Man Guide identifies accessibility levels.

Finally, the department would be very willing to contribute to an overall government approach to the enhancement of accessibility for all disadvantaged groups. Tourism and

Leisure would be one element in such an approach, which we believe would need to be co-ordinated centrally. Possibly the proposed new disabled access officer, who I am led to believe has been appointed recently, could be a catalyst for this to happen.

I would finally just like to comment on the new swimming pool at the National Sports Centre. I suppose this building has been designed from its inception to accommodate the disabled, but even there with all the expertise and input we have, after it has been built, seen little areas such as the accessibility of telephones and the heights of handrails that needed to be amended, because there is no such thing as an across-the-board disability. There are big people, small people, large people, small people and everybody is different, but we do try, and I welcome the hon. member's question to highlight yet again the need to be constantly vigilant on behalf of the disabled, because they are part of our community.

Mr Waft: A supplementary, Mr President. Are you aware that should this Island legislate for an Isle of Man discrimination Act there will be a right of access to goods and services in both the public and private sectors, more services will have to be accessible and services that are already doing much to help the disabled will be encouraged to do even more so? Will your department be in favour of a disabled discrimination Bill being brought forward in the Isle of Man?

Mr Lowey: Could I say I cannot speak on behalf of the department. I can speak on behalf of myself and as a member of the department, knowing the membership of it, I believe that would be taken for granted. I tend to believe that there is a need and again I think the Isle of Man should be pioneering, not following, in this particular area. We do have a good record, as I have tried to illustrate, with what we have been attempting to do, but we are far from perfect, but I do believe if it is enshrined in law I think it would help and certainly would help the disabled people on the Isle of Man.

Mr Kniveton: Mr President, can I ask Mr Lowey has his department's attitude been directed to trams and trains as well as buses? I know the new buses are now low-floor buses, but can we have the assurance that that policy of low-floor buses will continue, whether they be single or double deckers?

Mr Lowey: Mr President, yes, I can give that assurance. As I said in my reply, it is actually in the corporate values which the department operate under 'Access' where we state, 'Services should be readily accessible to all groups within society.' It has mentioned the trains and the trams. The buses I think he has already highlighted where we have already taken practical steps, but the trams and the trains, as again I tried to illustrate with the Gaiety, it is an old form of transport, but wherever we can we do try to accommodate. I think it is everybody's right to be able to enjoy what everybody else enjoys as of right, and I come back to the question of the hon. Mr Waft when he says, 'Should it be enshrined in law?' The answer in my view is yes.

Mr Waft: Would the member agree with me that the amount of tourist premises available to the disabled could certainly be looked at and improved, and would the department look at the situation with the number of tourist premises available for the disabled and encourage those who do not have the ability, to show the way forward with some financial help?

Mr Lowey: Well, Mr President, can I again refer you to my original reply. In relation to the accommodation sector, we actually include disabled access within the classification and

grading, and the Isle of Man Guide identifies accessibility levels. I agree with the hon. member if his criticism is that it is not all buildings, and one would have hoped that it would be all buildings. Again, most of our stock of buildings are Victorian buildings with steps, but wherever we can we encourage people when they are upgrading to address that particular problem of the disabled, and I do know it is extremely difficult, but in many cases they have actually spent a lot of money to accommodate wheelchairs and disabled groups. Their money is as good as anybody else's.

Dr Mann: Mr President, would the hon. member not agree that the Isle of Man Railways or, rather, the trams have adapted one of their vehicles for the sole use of the disabled?

Mr Lowey: Yes, I can confirm that and again I tried very hard to explain that it is difficult, it is very difficult to get wheelchairs onto a tram and that is why one tram was converted. That tram of course cannot be on every route at all the times, but again we attempt, where we get prior warning, to make sure that that is available for everybody, and again we try to make sure that, as on the buses, people can travel when they want to travel, and that is why it is an ongoing problem which needs to be faced and resolved, and it is expensive, but I think it has got to be faced and resolved.

Manx Currency – Expansion of Use – Question by Mr Lowey

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

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

What steps is the Treasury taking to encourage and expand the circulation and use of Manx currency on the Island?

The President: The member of the Treasury to reply.

Mr Radcliffe: Mr President, over the years Treasury has sought to increase the circulation of Manx currency in a number of ways. Since 1991 all cash dispensers on the Island, other than one only at the airport and one only at the sea terminal, have contained Manx notes, which has resulted in the improved limit for the total face value of the issue of notes increasing from £20 million to £35 million. At the peak of the Christmas season in 1997 some £33 million of notes were issued. As at 31st October this year over £28 million of notes were actually out on issue.

For some time now financial assistance has been provided by Treasury for banks - and it is a good expression this - to repatriate United Kingdom coins. This programme will continue and I can assure the hon. member that Treasury is anxious to see as many Manx coins and notes as possible displace these other currencies on the Island. There are currently more than £6¹/₂ million of Manx coins in circulation and I would expect this to increase following the full issue of the £2 coins.

Apart from these measures the only other step that one can see to solve this Manx currency in circulation is for Treasury to make the usage of United Kingdom currency illegal in the Island, and that is a move that I think would not be popular generally and would certainly create unnecessary difficulties for tourists, and I am sure that the hon. member, who is a member of that department, would be less than happy were that to happen.

Members are well aware, and I would like to take this opportunity to make the public at large more aware, that Manx currency in circulation, as opposed to UK currency, does help the Island financially. I sincerely hope that Island residents will, as I indeed do whenever possible, request Manx currency at banks and retail outlets, and I for my part will ensure that in any discussions Treasury has with Island banks they will be reminded that the Isle of Man currency must be the first option and only at customers' requests should an alternative be contemplated.

One final comment - the chambers of commerce exhort us to think local, and I hope their retail outlets, who are all members of those same chambers, will think local when dealing with currency.

Mr Lowey: Can I ask a supplementary?

The President: A supplementary, sir.

Mr Lowey: What practical encouragement does the Treasury give to the banks in following out what I would call the policy of the Treasury to get more notes into circulation, apart from a wish list? Do any of the advisory committees that sit with the banking fraternity and the Treasury address this on a regular basis?

Could I just say that the question was posed by me because after an unscientific poll, I may add, of four of my friends, we put our hands in our pockets and there were no Manx coins at all, they were all English pound coins, and that seemed strange, that in our own land where we have coins there were no Manx coins amongst that and although you say there is £6¹/₂ million in circulation, there was not many in Eddie Lowey's pockets on that particular evening. *(Laughter and interjections)*

Mr Radcliffe: Mr President, just because Eddie Lowey had no Manx coins in his pocket it does not mean to say that if any member right now was to empty their pocket I think they would find a fair proportion of Manx currency among what they carry in loose change.

Practical encouragement, that the member has asked for - well, as I did say, Treasury is providing financial assistance for banks to repatriate English notes and currency back to the UK.

As far as the ongoing consultative committee's processes is concerned, I can tell the hon. member that the Banking Consultative Committee meets four times a year and on four occasions the question is raised, and if all the general public of the Island do as I do and do not accept coins but ask for pound notes out of the till in their change, that would certainly help the problem, which is a perceived one. It is not as great as one could well imagine. I think it is just the actual occasion that the hon. member has mentioned. I think it is just one of those times when there is a preponderance of English currency among the change. But we are taking all practical steps to ensure that everything is right.

Mr Lowey: I thank the hon. member for his reply.

Mr Kniveton: Mr President, the hon. Mr Radcliffe made reference to the profitability to the Isle of Man, what is it worth to the Isle of Man? Is he in a position to tell us, has he got anything with him to tell us in a year what it is worth to the Isle of Man for the issue of Island currency, the profitability to the Island?

Mr Radcliffe: Mr President, there is certainly a profit there. The figures are in the Pink Book, which are a little bit hard to find just on the spot. I can say that the reserve fund for currency is at least something like £4 million over what is in circulation. That money, of course, is invested and the profits from that fund returned to Treasury. We are certainly not in a loss situation. There is a profit annually on that particular fund and of course the more Manx notes and coins that are out, the higher the fund is and the better for the Island in general.

Film Industry – Projects – Promotion – Question by Mr Lowey

The President: Question 3, the hon. Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Department of Trade and Industry:

How many -

- (1) new films are currently planned for production in the Island during the next 12 months;*
- (2) films were produced in the Island during each of the last three years; and*
- (3) personnel (a) are currently employed under your department to promote the film industry and (b) were so employed in each of the last three years?*

The President: The hon. Mr Crowe of the Department of Trade and Industry.

Mr Crowe: Thank you, Mr President. The department is currently evaluating approximately 30 film projects that are aiming for production during 1999. These projects are at varying stages of development and a considerable number will not proceed. Based on our experiences to date it is not unreasonable to expect that between six and 12 films will be filmed on the Island in 1999.

In response to the second part of the question, two films were produced during 1996, 10 in 1997 and so far in 1998 five have been produced. Two more projects are provisionally scheduled to start production prior to the year end.

In answer to the final part of the question, no personnel are employed within the department specifically to promote the film industry. I should perhaps explain that the department has a small team of three officers within its economic development group, one of whom holds a temporary position. His work is related to the department's film industry initiative. They deal with matters such as enquiries, applications, liaison with local suppliers and financial and legal issues rather than actually promoting the film industry. In 1995 there was one officer, while in 1996 the figure was two, including a temporary officer for six months. In each of these last two years other staff in the department have had to be called on to provide additional assistance from time to time.

Mr Lowey: Is the member satisfied that the growth of this particular potential industry seems to be levelling out? Would he not agree with me that in this sort of industry success brings success? So if you wish to be successful you have got to appear to be successful and is he satisfied, with the figures that he has given me, that there is enough potential there for the Isle of Man film industry to proclaim itself as a successful industry?

Mr Crowe: Thank you for that supplementary question. It is very interesting that the Isle of Man film industry has been as successful as it has been. As you will know from your

membership of the department, the idea of having a film industry was to broaden the base of the economy and it affects many industries on the Isle of Man, many suppliers and so on, and in the early days the Island and the department went through a learning curve as to try and look for films and it was almost prepared to take the good, the bad and the ugly, not that actual film - (*Laughter*)

Mr Lowey: A pity: it was very successful.

Mr Crowe: - but would listen to any proposition, but as the years have gone by the department and its advisers have honed down as to what they are looking for, and the quality of the films being offered to the Island are much better and the scripts are better, and the secret of any film success is the distribution of the film and if the distribution can be pre-sold before the film is made it augurs well for the Isle of Man and I think 'Waking Ned Divine' is one of the ones that is going to be a tremendous boost for the Isle of Man and it will promote the Island as a good place for the film industry, so I hope we have that one as a success and a lot more following from that one.

Mr Waft: Could I ask, Mr President, what advantages are taken to have an initiative with the Department of Tourism to actually promote this Island apart from the names appearing on the credits of the films?

Mr Crowe: Mr President, the promotion of the film is down to the film maker. The promotion of economic development on the Island is down to the Department of Trade and Industry. The promotion of the Island involves the Department of Trade and Industry and the Department of Tourism, and one of the members of the Department of Tourism is on the Film Commission, so they are fully involved in making sure that the Island gets the maximum benefit from this through added publicity of promoting the film, but it has to fit into their normal budgeting process. They cannot chase films around the world just promoting the Island, they have to do it in various methods and having the film badged with the Isle of Man on the film itself at least gets the name across that it was promoted by the Isle of Man Government et cetera.

The President: Are there any further supplementaries? The hon. Mrs Christian.

Mrs Christian: Yes, Mr President, this may not be a fair question, I am not sure, but could the hon. member indicate in terms of promoting the Island in the wider sense that there are no particular exemptions for the film industry from the work permit legislation?

Mr Crowe: Sorry, would you like to rephrase that.

Mrs Christian: Would you confirm or otherwise that there are no exemptions for the film industry from the work permit legislation in terms of promoting the benefits to the Island of the film industry?

Mr Crowe: It is not a question I could answer off the top of my head, so I will research that and give you an answer to that in a written reply.

Mr Lowey: Unless you are a fox you are not exempt.

Road Traffic Bill – Consideration of Clauses Concluded – Third Reading Approved

The President: Right, hon. members, we move on to item 2 on the order paper and we come to further consideration of the clauses of the Road Traffic Bill. You will recall that we

were discussing clause 5 which was moved and seconded at the last sitting and consideration was adjourned to enable further information to be obtained in respect of it. The clause is open for debate.

Mr Delaney: With your permission, Mr President, during the debate on clause 5 there seemed to be a difficulty between us of interpretation and the learned Attorney undertook to come back with a clarification of the situation. May I ask Mr Attorney if he has got that clarification for us now, sir?

The President: Learned Attorney.

The Attorney-General: Yes, Mr President, I wonder if it would be appropriate for me to deal not only with the specific point under clause 5, but there were in fact one or two other matters which I think were of importance within the Bill, upon which I endeavoured to give an opinion, but I am afraid upon further research it appears that my initial opinion is not correct.

The President: Well, I am sure it would be helpful to have consideration clarified.

The Attorney-General: Would it be helpful if I were to refer to just three points, Mr President.

The President: Thank you, Mr Attorney.

The Attorney-General: And I certainly will come back to the point under clause 5.

Mr President, an important question was raised as to the right of a police officer to administer a roadside breath test if the officer noticed a moving traffic offence, such as driving with a defective rear light. The advice which I gave on the 3rd November was that in those circumstances if the police officer stopped the driver and in the course of questioning the driver about the defective rear light he noticed that the driver appeared to be concerned with drink, then the officer would have the right, and I suggested even a duty, to administer a roadside breath test. In fact having now considered the matter further, it is clear, as I say, that my advice was incorrect in that respect and I apologise to hon. members for that.

As was made clear by the hon. mover of the Bill in another place, a roadside breath test can only be administered after an accident or if the police officer has reasonable cause to suspect that the driver has committed a specified offence whilst his vehicle was in motion. Under the Bill a 'specified offence' means either dangerous driving or careless or inconsiderate driving. In the example which was discussed by hon. members on 3rd November, namely where the officer has occasion to stop a driver whose vehicle has a defective rear light, it would not be permissible for the officer to require the driver to provide a specimen of breath for a breath test. On the other hand of course the driver might very well wish to volunteer to provide such a specimen in order to satisfy the officer that he was neither driving whilst unfit to drive through drink nor driving after consuming alcohol over the prescribed limit. In the circumstances of the example, if the officer had reasonable cause to suspect that the driver with the defective rear light had been driving whilst unfit to drive through drink, then if the driver did not offer to provide a specimen of breath for a roadside breath test, then the officer would be able to arrest the driver and take him to the police station so that a specimen of breath or blood or urine might be provided, as is the position under the existing law. As I say, Mr President, I do very much regret having given incorrect advice in that respect.

In that context may I also refer to the concept of driving without reasonable consideration for other persons using the road. It was suggested in the course of the debate on 3rd November that driving with a defective rear light would constitute an offence of driving without reasonable consideration. I wish to make it clear that the offence of inconsiderate driving is similar to that of driving without due care and attention. Driving without due care and attention may be said to mean departing from the standard of driving which would be exercised by a reasonable, prudent, competent driver in all the circumstances of the particular case. It follows that a person who drives without reasonable consideration for other road users can be convicted of driving without due care and attention, because a reasonable, competent and prudent driver would not drive without reasonable consideration for others. However, the corollary does not apply. A person may be convicted of driving without reasonable consideration for other road users only, it seems, if other road users are inconvenienced. So if a defendant drives knowing of a defect in his vehicle, such as a defective rear light, he would be guilty of careless driving and perhaps of dangerous driving, but if he were to be charged with driving without reasonable consideration for other road users, then the prosecution must prove that such other road users were indeed inconvenienced.

Now, Mr President, turning to clause 5 and the point that was there raised on 3rd November, reference was made to the consequences of the amendments proposed to be made by virtue of clause 5. It will be recalled that by virtue of clause 5(2) of the Bill a person who is convicted of certain specified offences within a period of 10 years of a conviction of any such offence may be disqualified for a period of five years rather than 12 months as at present. Furthermore, depending on the proportion of alcohol in a person's breath, blood or urine, he is liable to disqualification for periods of two years or three years instead of the existing period of 12 months. I confirm that, contrary to the advice I gave on 3rd November, it is indeed open to the court, if it considers there are special reasons, to order that the defendant be disqualified for a shorter period than the maximum and indeed to order him not to be disqualified.

Mr President, I hope that that clarifies not only the point on clause 5, but also the important points under the previous clauses of the Bill.

The President: Thank you, learned Attorney-General. Now, hon. members, does anyone wish to participate in the debate at this stage?

Mr Delaney: Could I just thank the learned Attorney for his clarification for all the Council of the points that were raised by members and it shows the benefit of this Council looking at particular Bills, Mr President.

The President: Does the Council agree, then, that I should put the resolution and the resolution is, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, turning to clause 6, clause 6 again had been moved and was the subject of amendment and we paused at the stage where the amendment was under consideration for a clarification there, and I think, Mr Attorney, you were going to look at this situation and let us know your views in respect of it.

The Attorney-General: Thank you very much, Mr President. The motion in my name seeks to make amendments to part 1 of schedule 6 to the 1985 Act and those amendments

are to be listed in schedule 1 of the Bill. So schedule 1 of the Bill is to be divided into two parts, namely part 1 which deals with penalties for committing offences contrary to the offences listed in part 1, and in part 2 which provides a penalty for failing to comply with conditions which may be prescribed for driving within 12 months after passing a driving test. Paragraph 6B of schedule 3 of the Road Traffic Act 1985 provides that a person who contravenes any of the prescribed restrictions which might be imposed on a person who passes a driving test shall be guilty of an offence, but by an oversight there is no penalty for the offence under the legislation. The amendment which is in my name seeks to fill that gap. I therefore seek to move the motion standing in my name.

The President: Thank you, Mr Attorney.

Dr Mann: I beg to second.

The President: Does any hon. member wish to speak to either clause or amendment? Do you wish to respond, sir? No? Right. Well, hon. members, we have before us the resolution that clause 6 do stand part of the Bill and to that resolution we have the amendment in the name of the learned Attorney-General. Will those in favour of the amendment standing part of the resolution please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, I will put the clause as amended. Will those in favour of the clause as amended standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. member.

Mr Delaney: Thank you, Mr President, clause 7. This clause gives the Bill the short title and provides for its commencement with a transitional provision. I beg to move the final clause of this Bill.

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

The President: I will put the resolution, hon. members, that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Mr Delaney: Mr President, may I crave the indulgence of the Council to move the third reading, sir?

The President: Proceed with the suspension of standing orders. Is that seconded?

Mrs Christian: Mr President, it is on the agenda.

The President: Yes, in that case that was the assurance given last week. I accept that point. So we come now, hon. members, to the third reading and I ask the hon. member in charge to move.

Mr Delaney: Mr President, I have to thank the Attorney-General. Members will be obviously aware that this Bill now, with the amendment inserted by the Attorney-General and this Council, will have to go back to the Keys, and as the matter of the alcohol content of drivers has been a concern of us and other persons on the Island from the other place and the general public, it is important that this Bill do proceed as quickly as possible. I ask the Council to support the third reading and allow the Bill to take its next course as a replacement in the other place. I beg to move.

Dr Mann: I beg to second.

Mr Lowey: I welcome the Bill, Mr President, and again I take note of what was said by the mover when he said that we will try to educate people by making them fully aware of the new changes in the law. Road Traffic Bills are usually the most complicated legal documents that we deal with, that and licensing laws, so I can quite understand Mr Attorney is in a quagmire, but I think his explanations this morning make it quite clear what is intended in this particular Bill and I think there should be no difficulty at all in the other place accepting an amendment and I am pleased to welcome this particular Bill.

Mr Crowe: Mr President, I would just like to support the Bill and confirm what Mr Lowey was saying about education. I think if this becomes law before Christmas, certainly there needs to be a massive advertising campaign to tell people about the breathalyser and what the implications are of this new legislation.

The President: May I call on the mover to reply?

Mr Delaney: Thank you, Mr President, and thanking Mr Lowey for his support throughout this Bill, and other members. I am very grateful for that.

In relation to Mr Crowe's point, again a very good point is that with a piece of legislation like this - there are, I understand, some 65,000 vehicles on the roads of the Isle of Man - it is very necessary that the new content of the law be got across to the public as quickly and as efficiently as possible, and having spoken to the ministers concerned with this, I have had an assurance that will be the case and I hope that is done very quickly. Whether or not the Bill can be in place by this festive season of Christmas I doubt myself but it will be on the statute book as quickly as the House of Keys are prepared to get it to that place, and that is out of our hands somewhat. Thank you, Mr President.

The President: Hon. members, the resolution is that the Road Traffic Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Sewerage Bill – First Reading Approved

The President: We turn next, hon. members, to item 3 on the order paper and I call upon the hon. Mr Kniveton to move the first reading of the Sewerage Bill.

Mr Kniveton: Yes, thank you, Mr President. The Bill before hon. members is to replace the existing legislation relating to sewerage and sanitation and to introduce new controls over trade effluent. It is in five parts.

Part 1 contains general provisions and imposes duties on the Department of Transport with respect to sewerage and sewage disposal and enables the department by agreement to delegate its functions to local authorities.

The second part deals with sewerage and sewage disposal and empowers the department to lay and maintain sewers and gives owners and occupiers the right to connect with a public sewer, subject to certain safeguards and the payment of prescribed fees. The Bill also provides for it to be an offence to put certain matters into a public sewer, that is any matter that is likely to injure the sewer or drain or to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents. The Bill also provides for

the adoption of sewers and other works by the department and enables the department to enter into agreements with developers for the adoption of a sewer. There is also a provision for an appeal against a refusal by the department to adopt a sewer. There is also a provision to enable a developer to require a public sewer to be provided at its expense, that is, the developer's expense. There are powers also to enable the department to impose a requirement as to drains and sewers and to provide for all public sewers and sewage disposal works to vest in the department and it requires the department to keep the maps of its sewers. It also contains a provision, as in existing legislation - that is important - to enable a sewerage rate to be set. To enable the sewerage rate to be implemented it will require an order to be approved by Tynwald.

Part 3 of the Bill contains a new code for controlling discharge of trade effluent into sewers and requires the consent of the department to any such discharges. It also enables the department to enter into agreements for the disposal of trade effluent.

Part 4 deals with sanitation and enables local government to require building owners to install proper drainage, also to do such works themselves in an emergency. This part of the Bill also requires disused drains to be sealed off and enables the local authority to require premises to be provided with closets and gives the Department of Local Government and the Environment similar powers in relation to workplaces. Part 4 of the Bill also enables the local authority to require earth closets to be replaced with WCs and gives local authorities power to deal with unhealthy streams, pools et cetera. There is also a power to permit local authorities to provide public conveniences.

Finally, part 5 is supplemental and imposes civil liabilities for damage caused by discharges into sewers.

This Bill is not expected to have any effect on public revenue or expenditure or manpower.

I would remind hon. members that there were two amendments made in another place to the original green copy.

I beg to move that the Sewerage Bill 1998 be read a first time.

Dr Mann: I beg to second.

Mr Lowey: While welcoming the particular Bill I notice that most of it is re-enacting existing legislation in one Bill.

Could I ask the hon. member when he moves the clauses stage, where the provisions contained within this Bill are altered or are new provisions, if he could highlight those when he comes to move them, so therefore we can see where they are being changed. For example, I noticed he made a great play at the end to say that there were no implications for the public purse. There could be implications for the private individual because he says they are having the power to enable the local authority to make people connect up to the mains sewer as opposed to earth closets, to use his phrase.

So while there would be no public connection there may be very much a charge on a private individual. So if there are any changes along those lines I would be grateful if they could be highlighted when he moves the clauses so that I think we can be aware where the changes are coming in in this particular bit of legislation. I support the Bill.

Mr Crowe: Mr President, yes, I obviously support the Bill and I thank Mr Kniveton for the helpful explanatory notes that were circulated and I think it is clear that the Bill will formally vest all public sewers, sewerage works and sewerage functions in the Department of Transport which were in some cases with local authorities before.

At this stage I would like to ask Mr Kniveton about consultation with the local authorities and in particular I have before me a letter from Douglas Corporation who wrote to the Department of Transport in August about the question of the financial obligations that local authorities might have and what happens with the outstanding capital loan and interest that may be presently with a local authority but would, I assume, then form part of the department's obligations.

Mr Waft: Mr President, mention has been made in the introduction with regard to the fact that it is very complicated and difficult to administer. I would point out to the department that because of Bills in 1949, 1952, 1959 and 1970 perhaps some of the complications have arisen.

With regard to the Water Pollution Act and the introduction of that, is there any view from the department that perhaps an environmental protection agency should become an independent protection agency rather than part of the Department of Local Government and the Environment?

The President: Reply, hon. member.

Mr Kniveton: Yes, thank you, Mr President. So far as the hon. Mr Lowey is concerned, yes, I take up the point: highlighting changes would be very useful and very sensible too.

So far as Mr Crowe is concerned and the local authorities, I can say to him that there have been discussions with Treasury and the Attorney-General's Chambers and it has been agreed that the arrangements and procedures necessary to transfer the responsibility for the repayment of both capital and interest costs from the local authorities to the Department of Transport following the possible introduction of this new Sewerage Bill should be an accounting exercise rather than a legislation exercise. In other words schedule 3, paragraph 3(1) of the full Sewerage Bill will suffice as a legal framework for the exercise. The first step in the accounting exercise will be to ask each local authority to identify all outstanding capital loans. This will be used to calculate a surrender value of the loan and when this is known the Department of Transport and the Treasury will evaluate the situation. The actual treatment will depend upon the sums involved.

There is no question of the department not taking full responsibility for the outstanding cost of the loans from the local authorities at the time of the introduction or possible introduction of the Sewerage Bill.

As far as the hon. member Mr Waft is concerned, at this stage we have no particular views on the eventual protection as he has requested but I will take this point up with my department. Thank you.

The President: Hon. members, I will put the resolution that the Sewerage Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

European Communities (Amendment) Bill – Second Reading Approved – Clauses Considered

The President: Now, we move on to item 4 on the agenda and I call upon the learned Attorney-General to take the second reading of the European Communities (Amendment) Bill.

The Attorney-General: Thank you, Mr President. As I mentioned when this Bill came before hon. members on 3rd November for its first reading, the purpose of the Bill is to introduce certain provisions of the Treaty of Amsterdam into the law of the Island. The way this is to be done is to amend the European Communities (Isle of Man) Act 1973 which in effect is the conduit through which European Community treaty obligations, to the limited extent envisaged by protocol 3 to the Act annexed to the Treaty of Accession, become effective in the Island.

The Bill seeks an amendment to section 1 which is the interpretation section of the 1973 Act so that the Treaty of Amsterdam falls within the definition of the 'Treaties' or the 'Community Treaties'.

I would emphasise that the Island's well-established relationships with the community will not be affected by the Bill, nor will any added obligations or duties which are not already within the ambit of protocol 3 have been added to the Island's obligations.

The Treaty of Amsterdam was the subject of a report to the Council of Ministers earlier this year by the Advisory Unit on European and External Affairs and a copy of that report has, I think, been circulated to hon. members for background information.

The Treaty of Amsterdam is a very considerable document and I would not at this stage, unless hon. members wish me to do so, seek to identify or define any further the obligations of the treaty. Perhaps that can be held over to the clauses stage later this morning. With that, I beg to move that this Bill be now read a second time.

Dr Mann: I beg to second.

Mr Crowe: Mr President, I thank the Attorney-General for sending out this report by the Council of Ministers and what struck me under clause 2.3 of this report is that it mentions the Treaty of Rome and it said, 'The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.' Then it goes on to say, 'Without more this would have applied the Treaty in its entirety to the Isle of Man. However, the UK managed to secure an amendment of Article 227 by the addition of an extra paragraph (5) which provided that: "This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and the European Atomic Energy Community signed on 22nd January 1972."'

Now, having looked at the Bill, and I know the Attorney-General will probably give us some further explanation, but the Treaty of Amsterdam is certainly a lengthy document and one that I have not read and presumably you have read fully and have learnt and probably had it on your bedpost overnight, but are there any gaps that we should be aware of or any safeguards that the Isle of Man needs to put into our legislation just so that we are not accepting something which in years to come might rebound on us? Thank you, Mr President.

The President: Are there any further observations? Reply, Mr Attorney.

The Attorney-General: Yes, thank you very much indeed, Mr President. The question raised by the hon. member is indeed a vital question and one which has caused me concern and I have checked with the draftsmen within my chambers as to the history of the 1973 Act.

There is no doubt that the Island's obligations are those which are contained within protocol 3. Those, as hon. members will be aware, relate to customs matters and quantitative restrictions and also in respect of agricultural products where there is a special trade regime.

Now, although the Treaty of Amsterdam is drafted in very wide terms, so that, for example, we see in article 2 of the convention, which is one of those that applies, the Community shall have as its task by establishing a common market and an economic and monetary union and so on and refers to a high level of employment and of social protection, equality between men and women and so on. All these general principles which apply within the Treaty of Amsterdam do not have any effect directly within the Isle of Man by virtue of this proposed Bill.

The proposed Bill is actually saying that in so far as our relationship is restricted to customs matters, quantitative restrictions and agriculture, only within the ambit of those matters is the Treaty of Amsterdam to be implemented as part of our law through the conduit of the 1973 Act, but we are not creating any new obligations such as in the area of discrimination or human rights or anything like that, any new EC rights which are not already there by virtue of protocol 3.

It may be that, say, in the area of human rights the Island will wish to embrace the new developments on human rights, but that will not be by virtue of the EC, it will be by virtue of perhaps consultation with the Home Office and elsewhere where the Island considers that it is only right that we should comply with basic international standards and norms. But there is no possibility in my understanding that this Bill will create any new obligations other than those already contained within protocol 3.

The 1973 Act already lists quite a number of treaties which apply to that very limited extent within protocol 3, and I think we have all been able to conduct our affairs internationally, knowing that our obligations are those contained within protocol 3.

Mr Crowe: Thank you. Mr President, can I just comment, please? So what you are saying then is that there are no fundamental changes. If the UK bring in legislation, does that automatically impact on us, as we are responsible to that member state in any of the legislation you have talked about, employment or discrimination? Does that immediately impact on the Isle of Man or do we have to go through Tynwald subsequently to adopt, or not adopt as the case may be, any new legislation the UK might implement?

The Attorney-General: Well, Mr President, this of course raises the very basic constitutional position of the Isle of Man which is considered in the Kilbrandon report and which of course is the subject of ongoing discussions at present with the Home Office. I think the well-accepted position is that the United Kingdom would not seek to legislate for the Isle of Man in the area of discrimination legislation or human rights legislation or indeed any other area whatsoever without the express consent of the Isle of Man, and of course invariably the proper course and one which Tynwald seeks to encourage and which indeed I encourage is

that legislation should be enacted locally, in other words there should be an Act of Tynwald to introduce new legislation, albeit that it deals with an international flavour, and that it would not be appropriate for the United Kingdom to legislate for us.

The President: Hon. members, I will now put the resolution that the European Communities (Amendment) Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses, sir. Clause 1.

The Attorney-General: Thank you very much, Mr President. Clause 1 of the Bill effects the definition of the 'Treaties' and the 'Community Treaties' as those definitions appear in section 1 of the European Communities (Isle of Man) Act 1973 and it is proposed that within a sub-paragraph (k) the relevant provisions of the Treaty of Amsterdam and certain related Acts, namely articles 2 to 9, article 12 and the other provisions of the treaty so far as they relate to those articles, and certain protocols adopted, other than the protocol on article J.7 of the treaty, should be included within the 1973 Act. I think it would be appropriate if I very briefly just referred to those articles 2 to 9.

Article 2 states that the European Community Treaty shall be amended in accordance with certain provisions. We are concerned only with amendments to the European Community Treaty there.

Article 3 deals with the treaty establishing the European Coal and Steel Community and amendments to that treaty. Of course that only has a very academic application as far as the Isle of Man is concerned.

Article 4 again deals with the treaty establishing the European Atomic Energy Community and amendments to that treaty which again has no effect so far as the Island is concerned, and article 5 deals with the election of representatives of the European Parliament and amendments to that, and article 6 deals with the amendments which are to be made to the European Community. In other words it deals with the deletion of certain lapsed provisions of that treaty, and article 7 again deals with the amendment of certain lapsed provisions in the treaty establishing the European Coal and Steel Community.

Article 8 - a similar tidying-up operation in relation to the European Atomic Energy Community Treaty, and article 9 deals with the establishment of a single council and a single commission of the European Communities and vests certain powers in certain single institutions and certain functions, all of which really have very peripheral, if any, relevance at all to the Island, but the importance of it is that if perchance any of these amendments fall within the purview or the ambit of protocol 3, then we have to have regard to those obligations, but as I say, it is in my view highly unlikely that they will have any real impact whatsoever.

Article 12 simply provides for the renumbering of the treaty in the light of the amendments which have been made to the treaty.

The reference to article J.7 of the Treaty on European Union refers to common, foreign and security policy. It does not relate to European Communities and therefore does not relate to the Isle of Man in any way whatsoever.

I beg that clause 1 of the Bill do stand part of the Bill.

Dr Mann: I beg to second.

Mr Delaney: Mr President, I have been reading the Kilbrandon report, a copy of which I have in front of me, and the more you read it the more confusing it gets and it is certainly written in language which is way out of date as far as this Island and its community is concerned. But in relation to this Bill one thing that really has worries for me and those that come after me in the future is that looking at 1396 of the Kilbrandon report, and I will quote from it, I will read it actually so members may be au fait with that at this moment, may have read it in the past, but as I read it, 'The relationship between the United Kingdom and the Associated States, in so far as this is a matter of law, is defined by the Act. The relationship has, however, been elaborated and refined by agreements which the United Kingdom has made with each of the States. These agreements provide for consultation and collaboration in matters affecting United Kingdom responsibilities for defence and external affairs. In particular, the United Kingdom Government undertakes to consult the Government of an Associated State before entering into international obligations with respect to it. If it considers that legislation is required in the interests of its responsibilities for defence or external affairs, it will request the Government of the State either to signify agreement to its enactment in the United Kingdom (such an agreement is not necessary as a matter of law) and I take it this is their law, the one quoted - 'or to take steps to secure its enactment in the State itself. If the State sees difficulty in acceding to such a request, there will be the fullest practicable consultation between the two Governments; and if this fails to produce agreement and the United Kingdom Government still requires the legislation, it will give the State Government as much notice as possible of its intention to secure enactment of the legislation in the United Kingdom.'

Now, that is the one of all these recommendations and things to be done that although we have the courtesy of going through these, and this might not be the problem, this particular Bill, but it is quite clear and it is clear in this sort of language that any future agreement that the European government is going to bring in or any changes it wishes to make, all the British Government does is say, 'Right, we'll consult with you but even if you don't agree' - according to what seems to be the principle here - 'We'll do it anyhow'; even though they might give us six months to think about it, they are still going to do it. So really we are, in this sort of legislation, just going through the motions of pretending that we have some control of our destiny, and I do not believe this to be the case. This is not the danger, this Bill, it is the principle of it, and I am very concerned, as we get down the road further and further in future generations of members of this hon. place and the other place, we are so tied up and unless we start renegotiating all this and finding out where we really are, all this becomes superfluous. This can come through virtually in wheelbarrows and it is automatic, and that is my concern, that it is quite obvious from reading some of these recommendations in Kilbrandon and some of things enclosed in it that their perception across the water is completely different from what the will of the Manx people and its representatives is, and I am not so much concerned about this Bill as the start of the treadmill that is going to start turning and we are going to be on it.

Mr Lowey: My views are the opposite maybe of Mr Delaney's because I think this particular Bill concerns me, after listening to the Attorney-General's introduction of it, because we are passing here a Bill that has no effect really on the Isle of Man at all. The list he read out is really not going to impinge on us, and I think here we are rushing to put this into place but all the parts that will have an effect on people we are not touching at all.

But if I can come back to the point made by Mr Delaney, my big concern there is that if you do not have that in the relationship how do you deal with it if the Isle of Man decided, or the private sector decided, that there was a very lucrative trade in arms to Iraq or to Bosnia or what have you and we were internationally bound not to partake in that. It might be profitable for the Isle of Man to do it, but it would be wrong for us to do it, and I think the UK would have a right then to say, 'Hang on, you're not carrying on with that sort of business.' So I see where you do have to have discussion and I think acceptable standards have to be in place.

I am going to ask the question why are we introducing a Bill to comply with the Treaty of Amsterdam that has no effect on us while leaving out all the bits that could very well have an effect on us, even the good bits? And I am certain within the Treaty of Amsterdam there are good bits that will have an effect, and I do not see any rush by the Government of the Isle of Man to implement those at all, but we are in a rush to implement the parts that will not have an effect. That is Irish and, forgive me if I am being racist, but you know what I mean. That is a little bit of a conundrum for me.

Dr Mann: I can appreciate where Mr Delaney is coming from, and reading the Kilbrandon report of course does leave interpretation very open and, as the learned Attorney has said, there are current discussions going on to bring Kilbrandon up to date, if you like. But to choose this particular Bill as the reason to question it is, I think, misplaced because if you go into the history of the European Communities Bill, it was one situation where the UK Government did what it was supposed to have done, and Mr President was part of the negotiating machinery that ended up with the protocol 3 situation. Now, the protocol 3 situation was a perfect example. At the time it was a bit hairy but it produced a situation where the responsibilities and intentions of the associated states were taken notice of and were enacted and so all of this has followed from a true consultation process that did actually result in an agreement and a change of our situation in relation to the European Communities.

So I appreciate what you are saying because that is a live issue at this particular moment, but this particular Bill actually is the wrong thing to argue the case because I think this actually shows that it was done properly and the consequences may appear to be ridiculous but in fact they are part of the original agreement.

Mrs Christian: Mr President, I would just like to endorse that view and perhaps disagree to some degree with the hon. Mr Lowey because although this does seem, as the Attorney-General has indicated, to have no direct consequences, unless we do track the changes on the base agreement there is a great danger as time goes on that we get into a tremendous tangle if we do not also acknowledge those changes in our own legislation.

With regard to the other comment about there are good things going on in the European treaties that the hon. member would like to see adopted here, I think this is a clear example where if we want good things to happen here we should be doing it ourselves, not on the coat-tails of some European agreement, and whilst I would not disagree with him that there may be examples of good practice or whatever or good changes adopted in Europe, it is not a reason for us to get further tangled up in those sorts of treaties, but a good reason for us dealing with those matters independently ourselves in the Island.

Mr Delaney: Just a clarification, if I may, Mr President. I do not disagree with Mr Lowey about the need for legislation or an improvement, and I agree with Mrs Christian that we

should be doing it. My concern is that I believe this little piece of paper here, the people that come after us are going to be sitting with wads of paper like this coming through and if you do not agree with it, it is going to go through anyhow. Now, I agree with Mr Lowey, as I said, about the need for good things, but please let us know where we start and where we finish, because I am getting the impression coming and after listening to certain hon. gentlemen in another place across the water their interpretation of the Isle of Man's relationship with Europe and with Britain into Europe is quite different than what a layman like me reads in here, because I understand our relationship from this was with the Crown, but it seems to be that whichever King may reign in Parliament over there, they are the masters and it is a different body altogether.

It is just that I am taking this opportunity, maybe unfairly and maybe the hon. Dr Mann is right, but I have to make my point somewhere and the Chief Minister is aware of my point because I spoke to him several months ago of my concern as an individual about what is happening and I just want to make sure. It is not the little piece of paper or its contents or what is not in it, it is the way that it is actually interpreted by the people outside the Island and us and the people, worse still, in Europe, because they do not see the Isle of Man, they see Britain with a little piece of rock sitting off the coast of Britain, and that is the problem we are going to have.

Mr Waft: Could I just make a comment, Mr President? I was a bit concerned that mention was made by the Minister for Education with regard to current discussions to bring Kilbrandon up to date. Perhaps the Attorney-General might elaborate on what discussions have been taking place with regard to bringing Kilbrandon up to date and where we are with that one. Who is taking part in the discussions and to what end? Thank you.

The President: May I call on the Attorney to reply.

The Attorney-General: Thank you very much, Mr President. I am very grateful to hon. members for the very interesting questions which are very relevant to the Island's present constitutional position.

If I could deal first of all with the hon. member Mr Delaney and his reference to Kilbrandon, it seems to me that Kilbrandon is a dangerous document in so far as it can provide an answer to almost any question which is put to it and whether you are seeking to support the Island's well-established constitutional position, which is that we are a Crown dependency with independence so far as internal matters are concerned, or on the other hand if we are in the Home Office seeking to prove that the UK Crown, through the government for the time being, has the right to legislate ultimately for the Island, you will be able to find the relevant paragraph.

Now, as it is, I believe that this Bill in fact reflects the existing constitutional position which is that the Island does enact its own legislation to incorporate EC obligations to the limited extent which is required under protocol 3. This is not a question where the UK Government is seeking to impose legislation on the Island. True, there is consultation between the Home Office and the Island, but it is the Island's legislature which is enacting this Bill, if hon. members see fit. So I see it that this is entirely consistent with the existing constitutional position as we understand it.

Now, if I could just couple that with the question raised by the hon. member Mr Waft, so far as Kilbrandon is concerned it has of course been subjected to rather intense scrutiny in the past months in the context of the Island's ongoing debate with the Home Office and others because of course we have to define our relationship with the European Community and the OECD, we have to defend our case which is that we are not a tax haven as defined by the OECD because that might have some very severe repercussions for the Island and its economy.

I think that all one can say is that the best we can do at present is to agree to disagree with those who say that they have the right to legislate for the Island in the ultimate analysis. What one can say is that it is unprecedented for the UK Government to seek to legislate for us and it is well established, not only in Kilbrandon but also, more importantly, by convention and by practice, that so far as our internal government is concerned, including taxation, we have legislative independence and that of course is a stance which is being defended as hard as we possibly can in the ongoing negotiations with the Home Office and with the international bodies.

So far as the hon. member Mr Lowey is concerned, there is no harm in my view that the United Kingdom Government flags up those areas of international law and international obligations where perhaps we have fallen behind the times in terms of social legislation, discrimination, human rights and so on and to that extent I have no problem with the United Kingdom having a persuasive role in keeping us up to date with international law, but I do feel, as I have said, that in almost all the cases let us hope that that can be done by our domestic legislation and it will not be enforced upon us by the United Kingdom or by Europe. On the other hand if we so blatantly fall below our international obligations, I suppose we have only ourselves to blame if there is then a very strong move to legislate for us.

I do agree with the hon. member Dr Mann that this really is not the appropriate time to debate the wider constitutional issues but I think the points he makes were very well made, and I do accept that protocol 3 in fact represented the best interests of the Island as then identified by them and it was a very good compromise that was spotted then by those then in Tynwald and their advisers and it has, I think, served us well to date.

So far as the hon. member Mrs Christian is concerned, I think she put it very well when she mentioned that we must track our EC obligations. I entirely agree with that, but I also agree, as she has said, that we should enact our own legislation independently whenever that is possible.

So although we have perhaps widened the debate in a very interesting way, in fact this Bill represents a consistent approach by the Island. It has from time to time implemented certain provisions of European treaties which have particular effect on us within the very narrow confines of protocol 3, and I hope, Mr President, that with those comments I have answered the questions.

The President: Hon. members, I will put the resolution that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

The Attorney-General: Thank you, Mr President. Clause 2 is merely the short title and commencement clause and I beg to move that clause 2 do stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Now, that, hon. members, concludes our public business for this day. The Council will now sit in private.

The Council sat in private.