

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 29th June 1999
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, Dr 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.

Apologies for Absence – Best Wishes to Mr Lowey

The President: Hon. members, we have apologies this morning from the hon. Mr Lowey, who is, I understand, undergoing an eye operation this day. I am sure the Council will extend its best wishes to him for a speedy recovery.

Members: Yes. Hear, hear.

Copyright (Amendment) Bill – Second Reading Approved

The President: Now, this morning on our agenda we have three items starting with the Copyright (Amendment) Bill, and before calling upon Mr Crowe to take the second reading I would explain that Mr Crowe will take the second reading but will not take the clauses this day; they will be held over until the next sitting. Now, the Copyright (Amendment) Bill and the hon. Mr Crowe to take the second reading. Proceed, sir.

Mr Crowe: Thank you, Mr President. As advised at the first reading, the modern law of copyright in the Isle of Man is contained in the Copyright Act of 1991. The rights of performers in their performances were not protected in the Island until the Performers' Protection Act was passed in 1996. This legislation was introduced in order to enable the ratification of the 1994 Agreement on Trade Related Aspects of Intellectual Property Rights to be extended to the Isle of Man. The Copyright (Amendment) Bill 1999 is intended to update the current copyright and performers' protection legislation in order to keep it broadly in line with changes in legislation in the United Kingdom and with developments internationally.

The Bill, which is not expected to have any significant effect on public revenue, expenditure or manpower, has three main purposes. Firstly, it is intended to achieve compliance with the Council of Europe Convention on Copyright and Satellite Broadcasting. This is to be done by laying down rules for determining which state's law is to apply in relation to copyright in material broadcast by satellite. It also provides for equitable remuneration for performers in accordance with the 1961 Rome Convention where recordings of their work are included in satellite broadcasts, and it lays down transitional rules with regard to pre-1995 contracts between co-producers of a film. These provisions are based on the UK Copyright and Related Rights Regulations of 1996.

Secondly, the Bill adopts certain changes in copyright law made in the UK under their Broadcasting Act of 1996, including the outlawing of contract terms which prevent the showing

of clips of sporting events in news programmes. It also enables the Copyright Tribunal to award interest on certain payments and it also makes it an offence to advertise 'pirate' decoders sold by mail order from an overseas outlet, which can be used to view encrypted TV transmissions without paying.

Finally, the Bill introduces a new kind of intellectual property right called 'database right' which is to protect the person's investment in the compilation of a database, whether electronic or manual. This right is similar to copyright in that it arises with the creation of a database and does not require registration, but differs in that it is infringed by the use as opposed to the copying of the material in it.

This Bill is considered to be important for economic development and its introduction into Manx law will support the ongoing development of a database industry in the Island by ensuring protection for those involved, which is in line with international conventions. Before including in the Bill provisions relating to database right, the Department of Trade and Industry consulted with a number of local companies and representative organisations, and it is worth noting that all of the responses received supported the introduction of database right into Manx legislation. Mr President, I beg to move the second reading of the Copyright (Amendment) Bill of 1999.

Mr Kniveton: I beg to second, sir.

Mr Waft: Just on a point of clarification, Mr President, with regard to the selling on, perhaps, of the lists of people on, for instance, a voters' list for the use of firms or third party to use as they would wish, does this Bill cover that sort of implication and also perhaps the copying of a web site? The government has its own web site and I wondered if there was anything on that that could be copied by a third party.

The President: The hon. Mr Kniveton, do you wish to speak, sir?

Mr Kniveton: Yes, sir, I would just like to add that we certainly should be reviewing our legislation in this connection and keeping it up to date so that it does allow for new developments, as suggested by the hon. mover, which are happening all the time. Now, I understand that acceptance of this Bill will assist or provide encouragement for the film and broadcasting industry now on the Island, so long as there is compliance with the Council of Europe Convention on Copyright and Satellite Broadcasting. Mr President, I believe we should give our full support to this Bill, particularly for the purposes I have mentioned. Thank you.

The President: Does any other hon. member wish to speak to the second reading? Reply, sir.

Mr Crowe: Thank you, Mr President. As far as the database of voters' lists are concerned there are certain exemptions as to the use of parts of database which are public information, but I will clarify that at the clauses stage. As for whether it covers the copying or illegal copying of web sites, again I will pick that point up and come back on that.

I thank Mr Waft for his contribution and support and also Mr Kniveton for his support for this Bill. The purpose of the Bill broadly is to bring our legislation up to date and to take account of the new technology such as satellite broadcasting, and it will help this Island as far as the film industry is concerned and also as far as the small but increasingly important

database industry in the Isle of Man. I think that covers all the remarks, Mr President, so I move the second reading.

The President: Hon. members, I will put the resolution that the Copyright (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.

Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill – Second Reading Approved – Clauses Considered

The President: Moving on to item 2, the Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill 1999, I call upon the hon. Mr Waft to take the second reading.

Mr Waft: Thank you, Mr President. This Bill is an acknowledgement of the fact that a third of 15-year-old girls are now addicted to tobacco inhalation, and we have a clear responsibility to reduce these numbers. In a recent investigation taking place in the Birmingham area by the trading standards officers it was found that the level of under-age sales of tobacco was 90 per cent, but after visits of the compliance officers and media campaigns they were reduced to 10 per cent.

We in the Isle of Man must take all possible steps to protect the most vulnerable and impressionable youngsters in our society who are targeted by the highly professional multi-million pound conglomerates who are making enormous profits at the cost of inflicting lung cancers and cancers of the mouth, larynx, oesophagus, bladder, kidneys, stomach and pancreas. Smoking causes one in seven deaths from heart disease.

The highly sophisticated media and advertising campaigns are at last being addressed by the United Kingdom and I hope we will be seeking to do likewise in the Isle of Man. Because of the unlimited ability of tobacco companies to influence the governments, especially in the way that revenue from taxation has become an essential part of their budgets, there has been a reluctance to progress legislation to limit their ability to promote the sales of tobacco products. However, at last the tide is beginning to turn and we are beginning to measure the damage to the health of our nation and realise that the stemming of sales of tobacco is the major important factor which will achieve immediate improvement.

This Bill, Mr President, is one small step that we can do which will set us on the road to create public awareness of our determination to lessen the grip of these companies who do so much damage to our health and cause such pain, suffering and grief to young families who are left to cope with the results of watching a family member die prematurely as a result of tobacco. Quite often this is a breadwinner. Apart from the tragic circumstances which the family have to cope with, the cost to the government through the DHSS, health, subsequent social services and benefits has been so large it has never been completely quantifiable. Mr President, I beg to move the second reading of this very important Bill.

Mrs Christian: I beg to second and support the remarks of the mover. It is an area which perhaps needs highlighting on a very frequent basis because of the great difficulty in getting across the message to young people about the dangers of smoking. It is so difficult because when we are young we assume immortality and it is never going to happen to us. This Bill represents a small measure in terms of controlling the availability of cigarettes to young

people. As I have often said with other Bills, it can depend on its effectiveness for proper enforcement, but I feel quite sure that the Office of Fair Trading will be making strenuous efforts to ensure that the Bill is enforced.

Mr Crowe: Mr President, yes, the Bill really highlights the dichotomy of interest that we have in regard to tobacco. The sale of tobacco is legal and it produces a great deal of excise revenue for the government, so on the one hand we are getting a lot of revenue from it; on the other side of the coin are, as other members have said, the health risks and the consequent cost of such health risks. In the UK we have seen that the banning of advertising of tobacco products is to take place, and this should stop some of the encouragement of people to smoke. As far as young people are concerned, I think the difficulty is that once started, once hooked on tobacco, then it is very difficult to come off smoking tobacco.

So I see the success of this Bill will be in the enforcement of the legislation and perhaps the mover might just mention as to how this will be enforced, the sale to young people under 18. Thank you, Mr President.

Mr Kniveton: Mr President, without repeating what has been already said, which I thoroughly agree with, I am delighted with and fully approve the amendment in another place to raise the age to 18 at which youngsters can buy cigarettes, but at the same time no mention has been made this morning regarding solvents, which seem to be getting put to the back of the list as far as this Bill is concerned, shall we say, because we do not see what goes on as regards solvents; most of it is done in private, but I believe it is equally important that the same attention be given to the solvent subject.

I believe that as a government we have a great responsibility to protect our children or young persons. If people in general were dying from another cause, whatever it may be, we would be faced with allegations of neglect. By raising the age to 18 it will bring the restrictions in line with the sale of a number of other goods such as alcohol and fireworks and then everybody will know where they are in this situation. That is all I have to add to what has already been said. Thank you, Mr President.

The Lord Bishop: Mr President, I would like to support this Bill. I wonder if the mover could just make any comment on any comments made by the Office of Fair Trading that they feel they are able with their personnel to help with the enforcement of this, as has been mentioned by various hon. members, and I wondered if he could make any comment to us of statements made by the Office of Fair Trading itself.

Mr Delaney: Just one point in the Bill: as I said in this hon. place before, I totally welcome it 100 per cent. The only thing that concerns me - and maybe the Attorney-General . . . I mean, £5,000 fine or a fine not exceeding £5,000. If we really mean business - and I am one of the people who believes legislation should mean legislation - why have we restricted it to £5,000? If you look at the profit margin in relation to tobacco and the sale of cigarettes that we all seem to go on about, £5,000 to me does not really seem a punishment at all. I would have thought that £25,000 was more like it, if we really mean it what we are saying. Let us show and let us do something different for a change and say we mean it.

The President: The hon. member to reply.

Mr Waft: Thank you, Mr President. I thank the members for their support and for their encouraging remarks.

With regard to the hon. member, Mr Crowe and my Lord Bishop with regard to how it will be enforced, the Office of Fair Trading and the trading standards officers are pledged to promote a campaign with regard to the enforcement of this legislation. It will be their business to make sure all the outlets are aware of the situation and encourage them down the right route. I do not think there will be any problem in enforcing this as there would be to enforce 16-year-olds. So I think the 18-year-old capping can be just as effectively enforced.

With regard to the fines and Mr Delaney's comment on the fines, I think the member has taken advice from the Attorney-General's office as to the fines and whether they would be in keeping with the offence.

Mr Delaney: Mr President, could I just have a clarification? I did ask why we had gone for restricting it to £5,000 or both when, if we really meant it, we should be putting a figure of £25,000 down. What stops us doing that?

Mr Waft: Perhaps the Attorney-General might like to make comment.

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

The Attorney-General: Well, Mr President, I shall try to help. The offences which are created under this Bill are offences which are triable by summary courts - in other words, by the High Bailiff, the Deputy High Bailiff or the magistrates - and in my view it is consistent with the jurisdiction of those courts that a fine of £5,000 would be the maximum fine or, of course, a term of imprisonment not exceeding six months.

Now, if hon. members were looking at a larger fine, perhaps one is then looking at extending the way in which this Bill might be enforced - in other words, it might be referred to the higher courts, to the deemsters, and I would have thought that really the magistrates and the High Bailiff and the Deputy High Bailiff are the persons who would ideally be able to deal with this matter in court and that therefore the £5,000 limit is appropriate. If one wants to extend it further, then it think it really should be going to the deemsters, which you might think is applying a hammer to a relatively small nut.

Mr Delaney: We should mean what we say, with due respect, Mr Attorney.

The President: Hon. members, I will now put the resolution that the Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Turning now to clauses, hon. member, clause 1, please.

Mr Waft: Thank you, Mr President. Clause 1 amends section 6 of the Children and Young Persons Act 1966, which makes it an offence to sell tobacco to persons apparently under the age of 16 years of age. The clause will remove the word 'apparently' from section 6, together with the defence of not knowing or having no reason to believe that the tobacco other than the cigarettes was for the use of the person buying it.

The new strict liability for the offence is offset by the addition of a due diligence defence. The due diligence defence is common in consumer protection legislation and generally requires that persons take positive actions to avoid the commission of an offence - for

example, management systems, training of staff, notices et cetera - and the means of ensuring that the actions they take are adequate. Assistance can be given to the trade by trading standards inspectors and all the advisory leaflets and information will be available to the retail trade. In addition, section 6(2) of the 1966 Act is also amended in respect of vending machines so that, instead of the prosecution having to show that a vending machine has been extensively used by persons apparently under the age of 16, they will now only have to show that the machine has been used by persons under the age of 16.

The clause, as can be seen, has been amended in another place: on page 1 after line 2 there has been an insertion for 'sixteen' to be substituted by 'eighteen'. This was passed and I would beg to move clause 1, as amended, stand part of the Bill.

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

Mr Crowe: Mr President, thank you very much. The question that I see is the identification of the young people, and it comes down almost to identity cards or evidence of this as to whether a person is 15, 16, 17 or 18, and I am sure possibly the schools or the Isle of Man College will have to get involved in some form of identity card which gives the shopkeeper the comfort that allows him to continue in business without the risk of prosecution. So whether this can be as an adjunct to this Bill, some sort of education process to the shopkeepers. . . ?

Mr Delaney: Mine is just one of technicality: why have we got an offence to sell tobacco to persons under the age of 16 and not sell and supply? If we really want to do something, surely it should be made an offence to supply them as well, the same as we have done with so much other legislation.

Mr Kniveton: Mr President, following on from what Mr Crowe has just said, yes, I do believe that one of these days before so very, very long, not only for tobacco, but also for liquor, identity cards will be an absolute necessity, but in the meanwhile it is up to the seller, whoever is behind the counter. He has got to satisfy himself and, if he has got any doubt whatsoever, he must not sell. So the responsibility very definitely lies with him at this moment. Thank you.

Mrs Christian: I think, Mr President, the question of identity cards on a voluntary basis is something that is happening in any case. Certainly I understand that young people through school or college are able to get identity cards which enable them to clarify their age with respect to public houses. I think they use them in school for a wide number of purposes; they have got cards in school now for a variety of services provided in school, through canteen or whatever, which clearly identify who the young people are and, as the hon. member says, the onus is on the shopkeeper, but I have no doubt that if there is an 18-year-old who maybe looks a little younger and who wants to purchase cigarettes, they will be darned sure of carrying something which will identify their age to the seller, so I think this would be a natural process of those who are youthful in appearance making sure they can prove they are older. Those who are rather more mature in their appearance and may pose a problem for the shopkeeper - then the shopkeeper, I think, will be on their guard in those circumstances and will ask for identity.

The President: Reply, sir?

Mr Waft: Thank you, Mr President. I thank the member for elaborating on the problem of identity cards. It is, I think, for the future, perhaps, to help shopkeepers and indeed different sellers of substances to know the identity and the age of the person buying.

With regard to the seller as opposed to sell and supply, this Bill, I think the hon. member must be aware, is for the selling of tobacco and obnoxious substances rather than supplying. Would that be correct, Mr Attorney?

The Attorney-General: Yes, that is quite right, Mr President.

Mr Waft: Thank you.

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.

Mr Waft: Clause 2, Mr President, inserts two new sections in the Children and Young Persons Act 1966. A new section 6A will make it an offence to sell, by retail, cigarettes other than in prepacked quantities of 10 or more in their original packaging. This will prevent the sale of single cigarettes or smaller quantities which may have been affordable for children.

The new section 6B requires the exhibition of warning notices in a prominent position at premises at which tobacco is sold by retail. Every vending machine for the sale of tobacco must also have a warning notice exhibited. The dimensions of these notices may be prescribed by regulation and are subject to Tynwald approval. Again, the due diligence defence is provided as in clause 1, and again, with the amendment page 2, line 20 for '16' substitute '18', and line 33 for '16' substitute 18. Mr President, I beg to move clause 2 stand part of the Bill.

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

Mr Kniveton: Mr President, I do welcome this particularly. This selling of single cigarettes goes on generally throughout the Island. Young people come in and ask for one or two Benson and Hedges or whatever they want (*Interjection and laughter*), mainly because, of course, they have not got the cash flow and they also know, if they buy three or four, that they will probably smoke all those in one evening so they can get themselves rationing by just buying one or two that particular evening, and it does go on; it goes on throughout the Island. I have seen it going on and I am sure other hon. members have seen the same thing in their own local shops - local shops more so than the big stores. The packets opened are at the back of the counter and if somebody wants two, whatever, they will get their two, provided their age is right - sometimes under-age, I am afraid.

Mr Delaney: I know this private member's Bill has been given a lot of thought, but, as I have said to the Council as a sinner and a practitioner of this dreadful habit, I want to just point out that this clause is defective in one thing. We talk about selling in packets of 10 or more; I do not see anything about rolling tobacco, and, as an observer of humanity, the fact is that because of the price of cigarettes in the packet - and it is cheaper with rolling tobacco - it does not stop anybody as I can see it selling or getting tobacco in smaller quantities.

Now, the smaller packets, as I understand it, are about £7 at the moment, but the time is coming with the price of tobacco when people will be selling it in smaller quantities because of the cost of it. I mean, I am a practitioner of this habit and I see what is going on and I see the

kids - because I live near a school - actually rolling their own cigarettes, which worries me, and I have reported the fact.

I am surprised that we did not cover all avenues in this particular Bill as, because of the difference in the price, rolling tobacco is more popular than it ever was before with the old cigarette papers and the situation is we have not covered for this. I am sure the member means right on this, but we should have covered all aspects of it and that is just my private, personal observations of this clause. It is not going to make a ha'porth difference on 10 or more, that side of it, if you have not also covered the other side, which is rolling tobacco.

Mr Crowe: Mr President, the point that I see as the hardest to police on this one is the vending machines for selling cigarettes which are in shops and so on, and I think it is going to be very difficult for a proprietor to have his eye on the shop and have his eye on the vending machine if he will get a lot of young people in his shop, so again, as I mentioned under the enforcement, it is going to put this tremendous onus on the shopkeeper to keep an eye on his vending machines.

The President: Reply, sir?

Mr Waft: Thank you, Mr President. I thank the members for their support. I take a note of Mr Kniveton's concern about the open packets, which he has had evidence of. With regard to Mr Delaney and the rolling tobacco I do not think that is covered in the Bill, and this only covers the sale of cigarettes, as I understand it, Mr President.

Mr Delaney: Do you see the point I am making?

Mr Waft: Yes.

Mr Delaney: We are covering smaller quantities, but it will not solve the problem of 10 cigarettes.

The President: Continue, sir.

Mr Waft: Thank you, Mr President. I do not think this has been highlighted as a particular problem as regards the children; it has purely been the cigarette situation.

The President: Do you wish to comment?

The Attorney-General: May I just intervene? Sorry, Mr President. If I can help, in answer to the point raised by the hon. Mr Delaney, in fact when one looks at the definition of tobacco in the Children and Young Persons Act 1966 we see that tobacco includes cigarettes and smoking mixtures intended as a substitute for tobacco, and the expression 'cigarettes' includes cut tobacco rolled up in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking. So I think, Mr President, although I am not unfortunately a practitioner in this area, that perhaps that does cover rolling tobacco of the kind that the hon. member is concerned about. (*Mr Delaney interjecting*) 'Cigarettes' would include material in such form as to be capable of immediate use for smoking.

Mr Delaney: Yes, I take that to be -

The President: Hon. member, you -

Mr Delaney: I have had a fair crack, but I think you will find the point is made clearly.

The President: Hon. members, I will put the resolution that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Mr Waft: Mr President, clause 3 inserts a new section 6C into the Children and Young Persons Act 1966 which replaces the existing provisions of section 29 of the Criminal Justice Act 1991. The new section will create an offence of supplying substances, solvents, to persons under the age of 18 knowing or suspecting that fumes are likely to be inhaled for the purpose of causing intoxication. The introduction of the suspicion into this offence has been included to overcome some problems experienced elsewhere, where the prosecution has had to prove that the offender knew or had reasonable cause to know that the purchaser was buying the substance for the purpose of inhalation and intoxication. Mr President, I beg to move clause 3 stand part of the Bill.

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

Mr Crowe: Mr President, I think again this comes down to the intention of the person who is buying it. We are all aware of glue sniffing and people inhaling aerosol sprays, but a shopkeeper who is selling glue et cetera for do-it-yourself and home handymen, or hairsprays being sold with aerosols - that is the genuine use of that. They cannot know what is in the mind of the buyer of that, so I think there is a reasonable defence here that the person who, in the normal course of his trade, is selling for the legitimate business of selling solvents or aerosols, then he has that legal cover that he is doing his normal trade. So I think it will make illegal the person who was trying to buy it but it gives the defence for the shopkeeper.

Mrs Christian: Mr President, I think this is a particularly difficult clause for the shopkeeper, but the answer will be, if people are buying it for a legitimate purpose, to send someone who is over 18 to get it if they want it quantity. (**Mr Delaney:** Hear, hear.) It must be then a matter for the shopkeeper to make a judgement on children who are buying these substances and, whilst it may be an inconvenience if Mum or Dad have sent a child down to do some buying for them and they are refused, I think that has to be accepted as one of the by-products of a Bill which is being changed to give protection to children, really.

The President: Reply, sir?

Mr Waft: Thank you, sir. I thank the hon. member for explaining the problems of the underage person trying to purchase these commodities, and it is a case of the seller must be aware of where there are problems obviously presented to him. A lot of the cases - they need to know what is going on, and that is the problem of over-18s purchasing such goods. However, this just points out to the seller the problems that we have discovered and that we are trying to put it right.

The President: Hon. members, the resolution is that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr Waft: Clause 4, Mr President, inserts two new sections into the Children and Young Persons Act 1966. A new section 6D confers enforcement functions and powers on the Isle of Man Office of Fair Trading in respect of the offences under sections 6 and 6C of the Children and Young Persons Act 1966. The powers provided to the Office of Fair Trading are taken from the Consumer Protection (Trade Descriptions) Act 1970 but are common to many

consumer protection statutes. The new section 6E imposes a personal criminal liability on the negligent directors and other officers of companies which are in breach of section 6 to section 6C of the Children and Young Persons Act 1966. Mr President, I beg to move clause 4 stand part of the Bill.

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

The President: Does any hon. member wish to speak to this clause? If not, I will put the resolution that clause 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. And finally, sir, clause 5.

Mr Waft: Mr President, clause 5 provides for the short title of the Bill and for its commencement by the appointed day order. Mr President, I beg to move that clause 5 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Limited Liabilities Companies (Amendment) Bill – Second Reading Approved – Clauses Considered – Third Reading Approved

The President: Hon. members, we turn now to item 3 and the Limited Liability Companies (Amendment) Bill, and I call upon the hon. Mr Radcliffe to take the second reading.

Mr Radcliffe: Thank you, Mr President. This is a short Bill promoted by Treasury to amend the Limited Liability Companies Act 1996 and this is in order to extend the range of commercial opportunities available to limited liability companies formed under the 1996 legislation and to remove a redundant feature of that particular Act.

It may be helpful to hon. members to remind members of some of the aspects of the operation of the 1996 Act which we are now seeking to amend. The original intention of that Act was to legislate to provide for an alternative business form which is extremely popular and widely used throughout the United States. This corporate form began life as the creation of the Wyoming Companies Act 1977 and combines a partnership-like management structure with the limited liability characteristic of conventional companies. It is popularly referred to as an LLC.

Irrespective of whether or not an LLC is a foreign or domestic entity, it is generally capable of attracting the tax treatment of a partnership in the USA together with an attendant minimisation of reporting requirements. To date the concept has not yet been widely embraced on this side of the Atlantic, although there is progressively an increasing interest in this type of business form.

When introducing the legislation in 1996, Treasury did not expect that there would be a rush to the doors to form LLCs, and it is true to say that the hundred or so formations per annum to date have been very much in line with initial expectations, given that we, the Isle of Man, have been pioneering this on this side of the Atlantic.

However, since the enactment of the legislation in 1996, there have been a number of changes, one of which includes a different means of assessment to tax for both domestic and foreign incorporated LLCs in the principal market of the United States. The new regime there no longer requires that an LLC carries the certainty of limited duration, and this is a characteristic essential to obtaining partnership treatment for tax purposes. The 30-year duration imposed under sections 1(1)(b) and 7(1)(b) of the 1996 Act is therefore now redundant. More importantly, though, it has been identified that the removal of this feature will create new commercial opportunities for the use of limited liability companies formed under this Act.

The principal opportunity which has been identified has been that of corporate capital vehicles for the Lloyd's insurance market. Research and advancement of this proposition by a leading local bank and others in the industry has confirmed the existence of an attractive market for foreign capital investment into Lloyd's. Indeed, Treasury has supported the initiative to develop this opportunity, because we have had representatives meet with the chairman and other executives of Lloyd's and we are supporting the initiative by advancing this Bill. This opportunity will extend to others in the industry with appropriate clients having an interest or potential interest in the Lloyd's market, although at present we are still talking conservatively, and a modest estimate of the number of LLCs might well be a doubling of the current rate of formations to around 200 per annum.

I can give a lot of background on Lloyd's, but it is as an aside, almost, to the Bill in front of us, but could I say that in 1994 Lloyd's council, the managing body, moved to permit corporate providers of capital to the market for the first time. This has the advantage of providing limited liability in relation to an individual's ultimate exposure, but with this came increased regulation and complicated the style of participation in Lloyd's. For United Kingdom investors in Lloyd's, one of the solutions has been the Scottish firm or partnership which has become a popular medium but, for various reasons, there has not been an equivalently styled medium of choice attracted to foreign investors, and this is where it is hoped that the LLC will help to fill the gap, as it offers a simplistic management tax and reporting structure. However, it is only through removal of the LLC's 30-year duration limit that it will meet with the approval of the Lloyd's governing council.

Lloyd's market aside, our modified LLC legislation may also find other attractive markets, as, for example, it may also pave the way for consideration of its future use as an attractive vehicle for local professional incorporations, presuming here upon possible changes in other areas of law and bearing in mind the likelihood of the United Kingdom bringing forward new limited partnership legislation for professional firms in the near future. I should say that amendments to other legislation are actively being examined to allow for LLCs to become vehicles for collective investment schemes where it has been identified that a further beneficial, if restricted, market exists.

Turning to the revenue implications of the Bill and ignoring the benefit of additional taxable earnings arising to the industry, the identifiable benefits are conservatively estimated to be direct revenues from fee and duty income in the order of £40,000 per annum.

In summary, Mr President, this is a modest and a relatively straightforward Bill of three clauses which it is believed will result in a relatively narrowly focused but nevertheless worthwhile development in the diversification and pursuit of new business opportunities

available to the Island. This is in keeping with Treasury's belief that it is right and important to continue to seek out and move upon new commercial opportunities where these are uncontentious and especially where it is possible, with a degree of innovation and foresight, to achieve a competitive advantage over our rivals.

Mr President, I beg to move that the Limited Liability Companies (Amendment) Bill 1999 be now read a second time.

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

Dr Mann: Mr President, I thank the mover for now identifying the interested party who has been persuading Treasury to come forward with this Bill. I did not quite clearly understand, in the earlier remarks, the change in Isle of Man taxation which will occur as a result of this change. The impression I get is that we would no longer be able to tax, and the benefits then forward would have to be to the services provided. But the question I wish to pose is, why originally was the 30-year limit imposed? There must have been a very good reason in the first place and, although you now claim that that is redundant and unnecessary, there must be a good reason why it is redundant and unnecessary, and before I would support this Bill, I would like to know why it was originally necessary and why it has suddenly become unnecessary.

The President: The hon. Mr Delaney.

Mr Delaney: No, Mr President. It has been said.

Mr Crowe: Mr President, I would just mention the well-worn cliché that the only constant is change. We live at a time of great change in financial markets and in types of corporate structures and I think there is a constant demand for different types of companies and we are competing against many other jurisdictions. So I am quite happy to support the Bill if it does promote new opportunities to help the finance sector of the Isle of Man.

The President: Reply, sir?

Mr Radcliffe: Thank you, Mr President. I would first of all thank the hon. member Mr Crowe for his support. Certainly change has to take place if we are to keep pace with the development in other parts of the world, and there is no sense or no use in just sitting back and saying, 'We have legislation. That is going to do us.' We have to be innovative and move on at all times.

In regard to the hon. Dr Mann's comments, there are taxation changes but there will be no substantial loss in tax take, as I understand it. The 30-year time limit was imposed in the 1996 Act, again as I understand it, which was following upon the Wyoming concept of legislation in the United States. We were competing there; we were setting up a similar type of structure on this side of the Atlantic, and because the time limit was in their legislation we followed suit. That time bar has been removed now on the other side of the Atlantic, and we are going to be static if we do not at least remove it and give people the opportunity to form similar type companies on this side of the Atlantic. We are, I would suggest, the leaders in this particular field at the moment and, if we are to remain leaders on this side of the Atlantic, we have to keep pace with what goes on elsewhere. I beg to move, sir, with those comments, that the Bill be read a second time.

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

Mr Radcliffe: Thank you, sir. Clause 1(1)(a) and (b) deal with the necessary repeals in the 1996 Act by deleting sections 1(1)(b) and 7(1)(b) respectively, and these are the sections which specify the duration limit of an LLC to be 30 years.

Sub-clause (1)(c) of the first clause inserts a new section 7(1A) into that Act, and this has the effect of stating that the duration of a company shall not be limited to any fixed period of time except where this is fixed by the articles of organisation. The option available to an LLC to fix the duration of its life and dissolve its affairs at any time it shall determine remains as before, except that this is no longer subject to the overriding 30-year provision. However, it is necessary to reinstate the appropriate words here as part of clause 1(1)(c) to allow this, as they are otherwise lost from the Act as part of the repeal of section 1(1)(b) of the 1996 Act.

Sub-clause 1(1)(d) is a consequential amendment for clarification of the wording of section 27(a) of the 1996 Act in the context of the removal of the 30-year limit. There is a substitution here of the word 'fixed', as it appears in the Act, by the words '(if any) fixed by the articles of organisation.' This has the effect of changing the requirement under section 27(a) of the 1996 Act concerning dissolution after a certain fixed period for a period under which it will happen only if agreed to by the members and specified in the articles of organisation. The resultant treatment of an LLC under this clause will then be broadly consistent with the position of a conventional company formed under the Companies Act 1931 as amended, in that an LLC has continuity of life unless a resolution of the members, or other factors, come into play to trigger the dissolution process.

Clause 1(2) in this Bill is intended solely to pick up a small error in the wording of the original Act by replacing the word 'or' at the end of paragraph (b) in section 14(1) with the word 'and'. This amendment is not of significant consequence other than the opportunity has been taken to clarify the reading of this section and to make the correction in this particular Bill. Mr President, I beg to move that clause 1 stand part of the Bill.

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

Mr Crowe: Mr President, I think it is a good idea to have a choice of a fixed period or an unlimited life. I think it will be very useful to have these options. Even though the requirement for the USA to have fixed periods for a company has fallen away, by keeping the flexibility there could well be other jurisdictions in the world that insist on having fixed periods for companies of this type for their residents or citizens. So I can see there is almost a bonus in having to change the legislation. So, again, I am happy to support this.

The President: Does any other hon. member wish to speak? Reply, sir.

Mr Radcliffe: Thank you, Mr President. I thank the hon. Mr Crowe for his remarks and, as he rightly said, options and flexibility are essential in the markets that we are in and we have to keep pace and be ready for what is available to us. I beg to move, sir, that clause 1 stand part of the Bill.

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

Mr Radcliffe: Thank you, Mr President. Clause 2 deals with the application of the Act to new companies to be formed in the future. It also deals with the options available to companies formed prior to the Bill coming in before us and clarifies the position of those concluding the process of formation at the point when the Bill comes into operation.

Sub-clause (1)(a) of this clause applies to the operation of clause 1 of the Bill to every limited liability company formed after the commencement of it coming into force, but is subject to sub-clause (5) of this clause, which I shall come to later, concerning certain companies at a stage of concluding the process of formation.

Sub-clause (1)(b) in effect provides for the operation of clause 1 to apply to any other limited liability company which wishes to extend or amend its articles of organisation. In other words, where an existing LLC is concerned, its members may exercise their rights under sub-clauses (3), (4) or (5) in this clause and resolve to amend the articles to adopt the new regime to allow for continuity of the company.

Clause 2(2) in this Bill is inserted for the sake of clarification, to confirm that the operation of clause 1 does not in any way extend automatically to LLCs formed before commencement of the Act except in so far as the option available under clause 2(1)(b) to amend the articles of organisation as exercised by the members.

Sub-clause (3) provides affirmation that a limited liability company to which clause 1 does not apply to it may, by amendment of its articles, elect that it does apply to it. By including this, an existing LLC should be able to eliminate any doubt that it has the powers to exercise the right to remove that 30-year duration limit.

Sub-clause (4) of clause 2 is really a reminder and a statement of affirmation that where a limited liability company has amended its articles in conformity with sub-clause (3), then the provisions contained in section 7(4) and (5) of the Limited Liability Companies Act 1996 shall apply to it. These provisions respectively ensure that amendments to the articles of organisation are in conformity with the members operating agreement, or made with the consent of all of them, and also deal with the requirements for the changes to be registered with the Chief Registrar in the prescribed form.

Sub-clause (5) of clause 2 serves to provide that sub-clause (1)(a) shall not extend to certain limited liability companies formed coincidentally at the time of the commencement of the new Act on the basis that the articles of organisation of these companies were delivered to the companies registrar before its commencement. This measure is to provide for certainty of the cut-off point for application of this Bill in respect of companies concluding the process of formation, but does not preclude such newly formed companies electing to adopt the powers under sub-clause (3) of clause 2 to utilise the measures contained in clause 1(1) to remove that 30-year duration limit.

May I summarise by confirming that it will provide the ability for all LLCs, whether already formed, having just concluded the process of being formed or to be formed in the future, to fall within the new regime unless, in the case of established companies and those having just

concluded the process of being formed, they choose to remain subject to the 30-year duration. The net effect of the clause is that all companies formed under the Limited Liability Companies Act will have the choice of continuity of life or the ability to fix a duration for the company or to dissolve the company at any time. As I have already said, this will place companies formed under the Limited Liability Companies Act 1996 in a position which is not dissimilar to that of companies formed under the Companies Act 1931 as amended.

I beg to move, sir, that clause 2 stand part of the Bill. There were amendments in the other place, Mr President. I beg to move that the amendments also stand part of the Bill.

Mr Waft: I beg to second, sir.

Mr Crowe: Mr President, having established the principles in clause 1, the hon. Mr Radcliffe is obviously dealing with the practicalities and the procedures which follow but, just to digress, I would ask the hon. Mr Radcliffe if the department of Treasury which handles commercial development, or international development, are maintaining a watching brief on other countries? Companies are like cars: you can have blue ones, red ones or whatever; you can have limited, unlimited, hybrid companies, and people are always trying to design and tailor companies to suit different situations. So I would just like to be assured that the Treasury are keeping a watching brief on other jurisdictions.

The President: Reply, sir?

Mr Radcliffe: Thank you, Mr President. I am happy to give that assurance. We certainly are not just sitting back and saying we have done all we can. We must be aware of developments in other parts of the world and we must try and tailor our legislation to suit our requirements but also to take cognisance of what is going on elsewhere. I beg to move, sir, that clause 2 stand part of the Bill.

The President: Hon. members, the clauses that we are considering, of course, are in the amended form. They come from the House of Keys. I will put the resolution that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2A, sir.

Mr Radcliffe: Thank you very much, Mr President. This was a new clause which was inserted in the other place. It is an amendment of the Financial Supervision Act 1988 to allow various new wording to take place to cover the purposes of this particular Bill. I beg to move, sir, that new clause 2A stand part of the Bill.

Mr Waft: I beg to second, sir.

The President: Does any hon. member wish to speak to this proposed new clause? If not, I will put the resolution that clause 2A do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir, short title and commencement.

Mr Radcliffe: Thank you very much, Mr President. I am indebted to you. Clause 3 deals straightforwardly with the Bills's short title and commencement. Sub-clause (1) states that the Act may be cited as the Limited Liability Companies (Amendment) Act 1999, and sub-clause (2) states that the Act shall come into force on such day as the Treasury may by order appoint. The ubiquitous provision for different days being appointed for different purposes is included here should it be needed. This clause was also amended in the other place. Our members

have probably, or hopefully anyway, got a copy of the amendment before them. It is again to embrace the involvement of the Financial Supervision Commission in this particular Bill. I beg to move, sir, that clause 3 stand part of the Bill.

Mr Waft: I beg to second, sir.

Mr Crowe: Can the hon. Mr Radcliffe just give some indication of when he expects the appointed day or days to be brought in?

Mr Radcliffe: Well, I am not in a position to give a definite date, Mr President, but the hon. member can rest assured that once this Bill is law we shall be moving on it and certainly, as I stated earlier, to move we have to be progressive; we just cannot sit on our laurels. We are in a competitive market. We are, I was going to say, a world leader, but certainly a world player in the financial markets and we just will be moving along at a reasonable pace without rushing the thing too much, shall I say. We shall take cognisance, think about it and at the appropriate time we will move forward, sir.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Mr Radcliffe: Mr President, could I move suspension of the appropriate standing order to allow for the third reading of this particular Bill to be taken here today?

The President: Certainly, sir.

Mr Radcliffe: So can I formally move the suspension of standing order 22(2)?

Mr Waft: I beg to second.

Dr Mann: Mr President, on this occasion I would support the third reading.

The President: Do I take it the Council are agreed?

Members: Agreed.

The President: Thank you, hon. members. Proceed, sir.

Mr Radcliffe: Thank you very much, sir. The Bill has had a reasonable examination here this morning. The reason why I am seeking the suspension of standing orders is that three months is rather a long time to wait for this particular legislation to be finalised. Certainly there are interested parties who are awaiting the outcome of the Bill and I think it would be lax of the Isle of Man in general were it to lose the opportunity by not moving forward on this particular Bill. The opportunities are there; people are waiting. I have been asked to seek Council's support for the suspension. As you well know, I am at times a little loath to do that but in these particular circumstances I felt obliged to succumb to the endearments of those who asked. So I beg to move that the Bill be read a third time and do pass.

The Lord Bishop: May you be forgiven!

Mr Radcliffe: Thank you, Bishop!

Dr Mann: Whilst I am supporting the third reading -

The President: Are you seconding it?

Dr Mann: Yes, all right, I will second it. While supporting the third reading on this occasion, I would like to correct the mover's statement that he is 'normally loath'. He is not normally loath, but we are accepting it on this occasion!

Mr Crowe: Mr President, I am very happy to support this on the third reading, to have it put into place as soon as possible.

Mr Delaney: I am supporting, too, Mr President, but it reminds me in my mind's eye of Dickens' words from David Copperfield: 'I am a humble man, Mr Copperfield'!

The President: Hon. members, the resolution is that the Limited Liability Companies (Amendment) Bill be now read a third time and do pass. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a third time.

And that, hon. members, concludes our public business this morning. Council will now sit in private.

The Council sat in private.