

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 11th May 1999
at 10.00 a.m.**

Present:

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

Secretary of the House.

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, Mr Cretney, the hon. member for South Douglas, has leave of absence this morning and the hon. member for Castletown, Mr Brown, will be joining us later. As the question number 2 is down for answer by Mr Brown, it may very well be that we will be taking that later.

Acute Elderly Care Unit – Future – Question by Mr Braidwood

The Speaker: Turning then, hon. members, to our order paper, item 1, I call upon the member for East Douglas, Mr Braidwood.

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

What plans does your department have for the future of the acute elderly care unit at Victoria Lodge?

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

Mr Karran: Vainstyr Loayreyder, Victoria Lodge is a 12-bedded facility situated at Glencrutchery residential home which was established by the department as an acute elderly care unit in August 1997, consequent upon the closure of the White Hoe Hospital.

The introduction of this facility recognised the problems of managing within the existing units those patients who continue to require National Health Service in-patient care.

Victoria Lodge remains an integral part of the Noble's Hospital acute service provisions, the long-term strategy being that it should more appropriately be met within the main hospital environment. Whether this is possible to be achieved prior to the opening of the new hospital is dependent on a number of factors, not least the availability within Noble's Hospital.

I can confirm the department has no immediate plans to close Victoria Lodge and can assure members that any future decisions regarding the transfer of services will be subject to

prior consultation with the patients, the relatives and the relevant professionals that are involved in the unit.

Mr Braidwood: Mr Speaker, I thank the member for his reply but would he not agree that it is essential for his department to maintain and even increase nursing care facilities for the elderly apart from ESMI bed units?

Mr Karran: Vainstyr Loayreyder, many years ago when I was on the department the last time we did not manage to keep geriatric hospital beds but we did manage to keep the residential homes from being privatised when it was all in vogue. I am sure that it does have an effect that the more beds and the more choice there is in nursing beds, the better chance you have of getting better standards, but at the present time the department has no plans to develop nursing home beds within the National Health Service.

Mr Braidwood: Mr Speaker, would the member agree that his department in the past has made a conscious decision to reduce the number of beds available for nursing care and transfer those patients into the private sector where they have to pay for their healthcare if their financial criterion is above the limits?

Mr Karran: Vainstyr Loayreyder, the position was that it was never nursing home beds, they were geriatric hospital beds. That is what went in the late '80s. That is what caused the growth in private nursing home facilities, but at the end of the day the position is that that was a decision that was taken at that time. Some would argue that the facilities are far superior in nursing homes than ever they were in the original poorhouses which they originally were.

But I do have some sympathy with the hon. member. I would be quite happy to see some nursing home units developed, preferably under the National Assistance Act of the social services division in my opinion, but that is something that the department would have to prioritise within its list of issues of priorities.

Mrs Cannell: Mr Speaker, is the departmental member aware that there is a great deal of concern at the moment with members of staff who are manning the care unit at Victoria Lodge and also with the patients that are residing there in that their understanding is that the department is planning to close down this facility in the not-too-distant future and that there will be nowhere for the patients or staff to be transferred to? Is he aware of these issues? If he is, would he be so kind as to allay any fears of the staff and patients at Victoria Lodge?

The Speaker: The indication given was that it was to remain open. The hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I have given an assurance that at the present time there are no plans to close it. Obviously I think what we have got to get right is that the patients come first and the patients are the ones that we employ the staff for and obviously the patients should be fully informed.

The issue of where the patients have got to go - obviously there would have to be facilities provided and that would have to be done.

But also the staff problem - there would be no problem as far as the staff are concerned because we have got vacancies within Noble's Hospital anyway, and I do think sometimes we can hype things up that ain't really a problem in the first place. These patients will be looked

after. The staff will be looked after. I believe the health service has a good record of looking after its staff.

The Speaker: I think a final supplementary, the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. Can the member confirm that his department's strategy is to encourage a geriatric or nursing care unit in the public sector residential homes for people who will not be able to cope with the residential care and have to go to nursing care and could he give me an assurance that the health service status of those people will not be affected if they go into the nursing care?

Mr Karran: Vainstyr Loayreyder, when I set up social services back in the '80s one of the crazy situations, apart from when we stopped them selling off Glenside and all those places because it was in vogue because they did it in the mainland, the thing we did was bring in extra care facilities because we had the crazy situation where residents were frightened to own up to being sick because they were frightened they would be thrown into Cronk Grianagh and other places. That was why we brought in the extra care units within residential homes at that time.

Now, obviously as life expectancy goes up, the policy was developed then that unless they needed hospital care you went out in a box from a state-run residential home, and I would suggest that that is still the policy of the department, that people go into residential homes, unless they need hospital care they will remain in that home and the home will provide the extra facilities for care that those individuals need. That was one of the initiatives with the psychiatric unit at Glenside so that when older residents got feeble they did not have to leave the residential home.

So as far as the department is concerned it is committed to looking after their responsibilities of these individuals and providing them with the services that they need.

TT Street Party – Site – Risk Assessment – Question by Mr Henderson

The Speaker: Item 3, hon. members, and I call upon the hon. member for Douglas North, Mr Henderson.

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

- (1) *Do you consider there has been appropriate and sufficient liaison between all the members of the department's working party on the siting of the TT street party on the North Quay, Douglas; and*
- (2) *are you satisfied that your department has made adequate assessment of the risks associated with the use of this site for the street party and taken sufficient precautions in respect of them?*

The Speaker: Hon. members, as the hon. Minister for Tourism and Leisure has leave of absence he has given the answer of the question to the departmental member, the hon. member Mr Cannell.

Mr Cannell: Thank you, Mr Speaker. Extensive liaison has taken place between the members of the TT Forum Committee and my department in respect of the siting of this year's street party on the North Quay in Douglas.

The TT Forum Committee, the body set up by my department to consider additional means of entertainment for visitors during the TT period, comprises members from the private sector, the police and fire departments, health and safety, the Department of Transport, Douglas Corporation and officers of the Department of Tourism and Leisure.

This committee has met as a group on four occasions since June 1998. However, a further subcommittee drawn from the TT Forum Committee has also held a further five meetings to discuss organisational issues, including siting. Five additional ad hoc meetings and a further four meetings on site have also been held throughout the year in regard to the planning of this event.

With regard to the second part of the question relating to risk associated with the use of the site, my department has employed the services of an off-Island specialist organisation experienced in undertaking risk assessments of this nature. The assessment highlights a number of issues which are currently being addressed and in respect of this year's event I am satisfied my department has commissioned an adequate assessment.

Mr Henderson: Mr Speaker, a supplementary. Does the hon. member for the department not agree and recognise that at no time since this working party's inception or further subcommittees has any person with interests on the North Quay been a representative on this committee or other committees? Does he think this is fair and will he give an undertaking to seek a representative from people of the North Quay area to serve on this committee as arrangements are being finalised?

Mr Cannell: Yes, Mr Speaker, the department is not averse to considering representation from anybody who feels they have a legitimate interest in this project and, in the interim three weeks to the commencement of this event, is more than happy to entertain anybody who wishes to make their point to main committee or the subcommittees.

Mr Duggan: Mr Speaker, could I ask the member, why is it this year that they have gone for six nights for the parties when last year one night was contentious? It has made it all the worse, going for the six nights.

Mr Cannell: Mr Speaker, an integral part of the TT is the evening's entertainment and, apart from the entertainment being provided where it is viewed as a road safety element to keep people from driving on the roads possibly while under the influence of drink, the street party is very much a main part of the TT festival now, not just concentrating on the races, and the expansion of this into a full week recognises the requirement for this from the visiting fans.

Mr Henderson: Mr Speaker, is the hon. member satisfied that the chairman of these committees he has previously mentioned is a businessman in the brewing trade and has he been able to follow up an impartial agenda in the siting of the event on the North Quay, given the amount of public houses in the area?

Mr Cannell: Mr Speaker, we are concerned that everybody is satisfied in this that the appropriate representation is made, as I said earlier on, and we are satisfied with the integrity

of the chairman of this committee that he will lead it in a business-like fashion and will not allow any vested interest to pervade upon the street party as a whole.

Mr Cannell: Mr Speaker, would the hon. member advise as to why the minister did not see fit at the onset of establishing this working party to bring in the actual MHKs that represent the area (**Mr Houghton:** Hear, hear.) in order to mitigate at an early stage the concerns expressed by the people, and businesspeople in particular, down in the North Quay area? Was that not a mistake by the minister?

Mr Cannell: No, I do not believe it was a mistake by the minister, Mr Speaker, but, as I said, consultations were ongoing. These events are not capable of being fully exploited 12 months, two years' in advance. The idea of using the North Quay came after it was proven by certain people last year, particularly the MHKs for the area, that they did not care to have a repeat of Strathallan but nevertheless we would acknowledge that perhaps in future it might have been wiser to consult with the area's MHKs.

Mr Karran: Vainstyr Loayreyder, would the hon. member for the department not agree that whilst there were complaints made about having the street party at the prom, there were complaints made for losing the street party from the prom, and would he not also agree that it is sad reflection on this hon. House that we have MHKs worrying about a street party being organised when there should be real issues being worried about in this hon. House of national importance as far as this Island and its nation are concerned?

Mrs Crowe: Hear, hear.

Mr Cannell: Mr Speaker, we are talking here of an international event renowned throughout the world. The Island has to make a big effort and many, many people must be inconvenienced, not least, I should imagine, those who have the fortune to reside alongside the most famous roadway in the world for motorcycling. It is down to everybody to make an effort for this. It is a major initiative. The street part will go alongside the event to enhance it and we are satisfied that every precaution has been taken to make sure that everybody's interests are protected, not least with a comprehensive insurance policy which of course the Isle of Man Government holds as a statute.

The Speaker: I return to the original questioner for a final supplementary, the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. My final supplementary, and I must say that this is in the national interests of the Isle of Man and it is certainly every member's position within this House to represent the people of the Isle of Man and on that basis I will ask my final supplementary. Is the hon. member satisfied with the arrangements in place should any property suffer damage as a result of this event and can he give an assurance that no-one will be out of pocket now or when they have to pay next year's insurance premium?

Mr Cannell: Mr Speaker, I am satisfied with that as I have indicated that where any legal liability can be proven the Isle of Man Government, through the Department of Tourism and Leisure, will entertain, through their insurers, any legitimate claim.

Planning Appeal Inspector – Overruling of Recommendations – Question by Mr Cannan

The Speaker: We turn then, hon. members, to item 4 on the order paper and I call upon the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, I ask the Minister for Local Government and the Environment:

- (1) *What are the criteria for overruling the independent planning appeal inspector's recommendations;*
- (2) *how many planning appeal inspector's recommendations have been overruled since 1st January 1999; and*
- (3) *on what specific grounds did you overrule the independent planning appeal inspector's recommendation in respect of planning application 98/0825 (change of use from agricultural workers dwelling to ordinary dwelling: Cronk ny Fessag, Little London, Kirk Michael)?*

The Speaker: I call upon the Minister for Local Government and the Environment, the hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. The Minister for Local Government and the Environment is the appellate body in the final stage in the process of determining planning applications. The powers of the minister to consider appeals submitted to him against decisions taken by the Planning Committee are set out in the Isle of Man Planning Scheme (Development Plan) Order 1982. Schedule 1 of that order provides in paragraph 7(4) that the minister 'shall consider the report of the appointed person and may allow or dismiss the appeal, or may reverse or vary any part of the decision of the Planning Committee whether the appeal relates to that part or not.' Where the minister decides not to accept the recommendations of the independent person he must set out his reasons for the decision he reaches. That is required by virtue of paragraph 7(5)(b) of the 1982 scheme order, schedule 1.

So far as the second part of the hon. member's question is concerned, on only two occasions since 1st January 1998 has the minister not accepted the recommendations of the independent planning inspector. One of those cases where the independent inspector's recommendation was not accepted was in respect of application 98/0825 to which the third part of the hon. member's question relates.

As minister I must be careful not to comment on individual planning applications for fear of prejudicing myself in considering future applications or other actions in relation to an application. However, I feel I can do so in this case to the extent of repeating the reasons I gave in reaching my decision. These were set out, as I am required to do, in the letter communicating the decision. That letter stated that the minister was not satisfied the long-term need for dwellings for agricultural workers, both on this particular farm and in the locality, no longer existed. For this reason the appeal was dismissed with the effect that the decision taken by the Planning Committee to refuse the application on review was confirmed.

Whilst my decision took account of various facts and considerations, it should be noted that the local authority opposed this application on similar grounds.

Mr Cannan: Can I ask the minister, in considering appeal recommendations, is he advised by a civil servant into the action he takes in either approving the recommendations or overruling them, and if so, was he advised by a civil servant to overrule this particular application?

Mr Quine: The answer is no, emphatically no.

Mr Singer: Mr Speaker, if I could ask the minister the following, in a hypothetical case where objectors feel that the appointed independent inspector has not conducted the appeal in accordance, shall we say, with natural justice and has perhaps been obstructive in handling the hearing, what further action can the objectors take if you, sir, have accepted the inspector's recommendation unaware of the way the hearing has been conducted, and secondly, how often is the list of independent planning inspectors reviewed and the inspectors' performances monitored?

Mr Quine: Mr Speaker, of course we are dealing in non-specific terms here but the principle must be that if there is any question of natural justice not being apparent in any part of the proceedings, then of course it is open to an interested part to seek judicial review. I cannot comment further because I do not have and would not wish to comment on any individual application, but that is the position.

Mr Gilbey: Mr Speaker, I would like to ask the hon. minister two questions. The first is, why doesn't he confine overturning inspectors' decisions to matters of national interest (**Mr Cannan:** Hear, hear.) as his distinguished predecessor and fellow member of the APG, Mr Dominic Delaney, used to do? That is the first one, and why does he consider this of such importance that he should overturn an inspector's decision?

What is the point, thirdly, of having inspectors at all if on minor matters like this, which is purely a parochial matter, the decision is overturned by the minister?

Mr Quine: On the issue of why do I not confine myself to the national interest, the answer, I think, must be quite transparent, and I read out the provisions of the order and it is for me to adhere to that order, not to some view that any member or any person may have as to how the order should be curtailed. It is open of course to any member to seek to change the order. That is available to them and that is a matter for this place or another place.

Why do I not confine it to matters of importance? I would believe that the issues involved in any applications are matters of importance.

Perhaps there is a more basic issue and that is why perhaps we do not have a procedure where an independent inspector is the final word in an appeal. That is a proposition which might be attractive to the Minister for Local Government and the Environment but it would surely not ensure adherence to the policies which Tynwald set down. There is an overlay of other matters which have to be taken into account and the procedure provides for that to be done through the minister. The hon. Court determines policies and they also have to be taken into account, not the very strict land use issues which may be available through the evidence to the inspector.

Mrs Hannan: Vainstyr Loayreyder, does the minister, when accepting or rejecting the inspector's recommendation, look at the anomaly that is created by his decision when, in my own area, he rejected the inspector's recommendation to allow UPVC windows of a casement type to match the existing windows but in the same conservation area a government department has fitted UPVC windows in the extension of a development to match the original windows in the main house and what does the minister intend to do with regard to the anomaly that has been created at Cronk ny Fessag when the people living there in the agricultural workers dwelling are not agricultural workers?

Mr Quine: I made it quite clear, Mr Speaker, I am not going to comment on any individual case.

The answer to the first question the hon. member put is quite straightforward and that is that each application will be dealt with and is dealt with on its merits.

Mr Karran: Vainstyr Loayreyder, would the minister not agree that you cannot look at this case on an individual basis and would he also not agree that this case of being able to change the status of what it was originally built for could have implications and actually stop other people who generally want agricultural buildings being built? So would the minister not agree that you cannot accept that this is an individual case, it is a case that deals with the principle of agricultural workers' houses throughout the Island and if he allowed this to happen here, would it not undermine the position of other individuals wanting planning permission and then wanting to change them at a later date?

Mr Quine: Yes, I think I get the position from which the hon. member is coming. There is a directive and that directive is geared to controlling the development of dwellings in the countryside and it is there for good reason, if for no other good reason than because it represents the wishes of this House and another place. There has to be consistency in application. Of course there is in terms of the application of that order, but in each case of course there will be circumstances which vary in each case and they must be taken into account.

Mr Cannan: Mr Speaker, why was not the applicant in this particular case advised that, whatever the outcome of the appeal or the inspector's report, the decision of the Planning Committee would stand because it appears in the national interest not to change the use of agricultural workers' accommodation into ordinary accommodation?

Mr Quine: Well, I think the logic of that defies me. The situation that the hon. member is suggesting is that before a process, an independent and impartial process, of adjudicating in an application is approached he be told, 'There's no point approaching this application: forget it.' That is totally absurd. If an applicant wishes advice from the planning officers in relation to the legislation, in relation to orders, that is available to them and there are numerous people every day in the week going up to the office and getting that advice, but the suggestion that we should say to an applicant in an appeal case, 'Look, without giving you an opportunity to test this before the full process, you're wasting your time', I think is an absurd proposition.

Mr Cannell: Hear, hear.

Mr Cannan: To the minister, how can it be an absurd proposition if it has already been decided somewhere by the minister that by allowing this application which had the support of the planning inspector that his dwelling be changed from an agricultural worker's dwelling to an ordinary dwelling, bearing in mind that the resident himself is not in agriculture, a remote cottage in the hills, how can it be in the national interest to suddenly say, 'Regardless of what the inspector says, I the minister will not adhere to what he recommends'?

Mr Quine: Mr Speaker, the order makes it clear, the order which we are referring to, which controls the development of dwellings in the countryside, lays down the basic policy. There are exceptions to that policy which are also laid down in the order and whether or not an

application qualifies for approval by virtue of those exceptions is a matter which will be adjudicated upon in the course of the planning application. It is as simple as that.

Mr Singer: Mr Speaker, I would like to repeat the second part of my previous question to the hon. minister. Can you tell me, minister, how often is the list of independent planning inspectors reviewed and the inspectors' performances monitored?

Mr Quine: Well, first of all, sir, I should make it clear that the independent planning inspectors are not appointed by the department. They are appointed by the Council of Ministers, nothing to do with the department. It is the best of my recollection they are on I think it is a two or three-year period. I think it is a two-year period, but that is a matter I am not a hundred per cent sure on.

Mr Gilbey: In view, Mr Speaker, of the obvious concern that has been expressed by several members here will the hon. minister reconsider this matter and try and find a way of avoiding this very unfair situation?

Mr Quine: I do not see any occasion to reconsider it. If any member of this hon. House or of another place is unhappy with the existing policy, then I am sure they will exercise their right to bring it forward and have it debated and decided upon. I do not myself see any unfairness within the present procedure. Indeed if you relate our procedure, the procedures here, and the number of bites at the cherry you get here in relation to procedures elsewhere, then this procedure is manifestly fair.

Mrs Hannan: Vainstyr Loayreyder, with regard to plastic windows in conservation areas could I return to the point: why was one individual turned down and a government department, which could afford, surely, to put in sliding sash windows in a conservation area, allowed? Is this an anomaly that is acceptable to the department and the planning office?

Mr Quine: First of all, sir, I do not have to hand and I certainly cannot recollect the particulars of the case which the hon. member is referring to, but there is no question of an anomaly simply on the basis of the premise that she has promoted. As I said, the order relating to windows in conservation areas, windows in registered buildings, was only reviewed 12 months ago. There was extensive involvement from the members of this House and another place in the preparation of that order, so as far as I am aware that order is current and represents the wishes by and large of this House and another place. Each application on its merits will be judged against that order against an expansive procedure which allows for the appeal and full input of the interests of the various parties to a planning application. This morning we have been hearing about the interest of one side of the planning application. Hon. members should bear in mind there are several interests represented in a planning application.

Mrs Cannell: Mr Speaker, would the hon. minister not agree with me that if members of this House are not happy with the present planning law it is open to them to change it and the opportunity to change it has just recently presented itself?

Would he not further agree with me that this House has just spent 10 or 15 minutes or so speaking on parochial issues when we were reminded earlier on that we should be looking at national issues?

Mr Quine: Of course the hon. member is quite right. We have spent many hours in the last two months debating the Town and Country Planning Bill, but I am afraid that is not really the issue. The issue is one of individual constituency interests relevant to a particular case. We had a very meaningful debate on the Town and Country Planning Bill and these issues of course were not raised.

The Speaker: Now, I think we have been right round the House, hon. members, but I call upon the hon. member for Michael to wrap this one up.

Mr Cannan: Can I have the final supplementary? Can I ask the minister, having made an authoritarian decision to overrule the independent, I repeat, independent planning inspector's decision, will he reconsider that decision in the light that perhaps he may or may not continue in office as Minister for Local Government?

A Member: Ooh!

Mr Quine: I would simply comment, sir, that none of my decisions are authoritarian. *(Laughter)* My decisions are taken on the law, taken with the application of logic and common sense and devoid of parochial interest.

The Speaker: Now, hon. members, we still have outstanding item 2 on the order paper. The Minister for Transport has not yet been able to join us and I have the concurrence of the hon. member for Douglas North, Mr Henderson, that that question will be tabled at a later date.

Copyright (Amendment) Bill – Clauses Considered

The Speaker: So we turn then, hon. members, to item 5 on your order paper which is the Copyright (Amendment) Bill for consideration of clauses, in the hands of the hon. member for Middle, Mr North, and clause 1, sir.

Mr North: Thank you, Mr Speaker. The Copyright (Amendment) Bill 1999 is in two parts and I start with part 1 which basically is copyright and performers' right.

Clause 1 makes special provision in copyright law for satellite broadcasts to comply with the Council of Europe Convention on Copyright and Satellite Broadcasting. In particular sub-clause (4) changes the law by providing that a satellite broadcast is treated as made from the place where the signal is uplifted to the satellite but from the place where the signal is first transmitted.

I beg to move that clause 1 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 2, sir.

Mr North: Clause 2, Mr Speaker. This clause confers on the performer of a dramatic musical et cetera performance a new right to equitable remuneration if a recording of his performance or her performance is broadcast by satellite.

In sub-clause (1) this inserts a new section 10A in the Performers' Protection Act 1996.

Sub-clause (2) amends section 13 of the 1996 Act which deals with the transmission of performer's rights to provide the transfer of the new right to equitable remuneration.

I beg to move that clause 2 stand part of the Bill.

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

The Speaker: Hon. members, the motion is 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 North: Mr Speaker, clause 3 overcomes a problem which has arisen with pay-per-view television, particularly of sporting events, as the broadcast being encrypted can only be viewed by arrangement with the broadcaster. He can by a contract term prevent a clip of the event being shown in a news programme, even though that showing would not be an infringement of copyright because of the fair dealing exemption for news reports under section 32 of the Copyright Act 1991. This clause adds a new subsection (4) to section 30 making a contract term void so far as it prohibits the use in a television news programme of an image from another programme where the use would not be a breach of copyright because of the exemption for news reports in section 32.

I beg to move that clause 3 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr North: Clause 4, Mr Speaker, amends the law relating to copyright licensing by enabling the statutory licence for inclusion of sound recordings in a broadcast to be modified by order and enabling the Isle of Man Copyright Tribunal to award interest on royalties in certain cases. I beg to move that clause 4 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr North: Mr Speaker, this clause fills a loophole in the provisions of the Copyright Act 1991 outlawing the sale or hire of pirate decoders which the user uses to view encrypted television transmissions without paying. It is made illegal in the Isle of Man to offer or advertise such devices for sale or hire from an overseas outlet, for example by mail order from the Republic of Ireland. I beg to move that clause 5 stand part of the Bill.

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

Mr Karran: Vainstyr Loayreyder, I have to say that I would like some justification for why we are doing this. At the end of the day we have a situation where we do not ask them to beam these beams down to earth. I cannot see why we should be making it a criminal offence for these unauthorised decoders to be able to be sold or hired in this Island. In my opinion this is a commercial undertaking and I personally feel that we should not support this clause. I understand what the hon. mover is on about, the fact that he is trying to protect the individuals, the multinationals' interests as far as this is concerned.

My argument is that if they want to pollute the atmosphere with these signals, then I do not see why we should be doing their dirty work for them. If they want to make sure that people cannot get the signals from the likes of these products, then the situation should be that they should design things that cannot be easily transmitted or picked up from such devices.

So I cannot support this clause. I understand the argument of the hon. mover and the argument for this, but I do not think that this Island, this small nation, should be bothering to be enforcing this sort of legislation where it is not in our interest as far as that is concerned. The money that would come for these networks would be going off the Island anyways and I cannot see a reason for such a clause being here. So as far as I am concerned I shall not be supporting this.

Mrs Hannan: Vainstyr Loayreyder, could I ask the mover if these decoders are known to be produced? He mentioned the Republic of Ireland, but are they produced, where are they produced, and are they imported here at the moment? Is this the reason for introducing the legislation? And if they are and if they are made in such numbers, is a £5,000 fine enough? I realise they can have two years' imprisonment and an extended fine, I suppose, if the offence is greater, but I just wonder whether something like this would go for trial on information other than a summary conviction and £5,000 might not be an awful lot of money to risk.

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

Mr North: Yes, Mr Speaker, a very interesting point raised by both the members.

I think the basis of this one, if I could just try and explain to the hon. member, is that the Isle of Man is operating within a Copyright Act and we need to be seen to be regulated like most other developed countries in the world and if the hon. member is suggesting that we should allow pirate decoders to be used on the Isle of Man to enable people to receive Sky or whatever without paying for it, that is really setting us up as some sort of banana republic, and the hon. member is always shouting about that and I just cannot understand his logic on this one. We are just at the moment in partnership. There is a film being made on the Isle of Man at the moment; our partners in this are B Sky B, Sky Films. Does the hon. member think that they will continue to work with a country that is encouraging pirate decoders to enable people to defraud not only B Sky B but the performing rights that the performers receive and people on those channels? I think if he just thinks it through I would not like to see the Isle of Man set up as some back door for pirate decoders. We are not in that market. Look at the trouble that we are taking to get our regulations right in all the other spheres, in finance, banking, insurance, shipping. Is he suggesting seriously that we should not have this clause in and that we should encourage pirate decoders? Hon. members, I am sorry, I just do not agree with the hon. member at all.

Of course as the hon. member for Peel asks, where are these decoders made? I do not know specifically but there are some available, I believe, in America and they are shipped in to various countries where they may be available, but I do not think that the fines would deter somebody if it was a massive market. The Isle of Man would be a small market and I think that that fine and the potential of a prison sentence certainly is the deterrent that I would think should be in the Bill. I beg to move clause 5 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Duggan, Braidwood, Cannell, Downie, Mrs Hannan, Messrs Corkill, Cannell, Gelling and the Speaker - 18

Against: Mr Karran - 1

The Speaker: Hon. members, just the one vote was cast against, 18 votes were cast for, clause 5 therefore passes and we move on to part 2 of the Bill databases and I call upon the hon. member to move clause 6.

Mr North: Mr Speaker, this clause, clause 6, defines 'database right'. It is a property right in a database in which there has been a substantial investment in its compilation.

Sub-clause (1) creates a property right, for example a right which is capable of ownership in a database, defined in clause 19, in which there has been substantial investment in its compilation, for example in obtaining, verifying or presenting the information in it.

Sub-clause (2) makes it clear that the existence of database right in a database is not dependent on there being copyright in it. It does not have to be a literary work for the purpose of the Copyright Act 1991.

I beg to move that clause 6 stand part of the Bill.

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

Mr Karran: Vainstyr Loayreyder, could the hon. mover just clarify? I have no problems with this clause, but can he just clarify the point when it talks about 'database right'? Does it mean about programming, and is it talking about programmes that would be in the database? Would that be covered as far as copyright is concerned, if he can just clarify that point?

The Speaker: The hon. member for Middle to reply.

Mr North: Thank you, Mr Speaker. Yes, this would include parts of a programme, a substantial part, or anything that has been created by someone who has designed or manufactured the software themselves, written the database. I beg to move that clause 6 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 6 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. member.

Mr North: Mr Speaker, this clause specifies who is the maker of a database and therefore the first owner of a database right in it under clause 8. It is normally the person who makes the investment in it, for example the commercial initiative and risk. I beg to move that clause 7 stand part of the Bill.

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

The Speaker: The motion, hon. members, is that clause 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, hon. member Mr North.

Mr North: Clause 8, Mr Speaker, provides that the maker of a database is the first owner of the database right in it. I beg to move that clause 8 stand part of the Bill.

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

The Speaker: The motion, hon. members, is that clause 8 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, hon. member, and I think it introduces schedule 3.

Mr North: Mr Speaker, clause 9. This clause provides that the unauthorised extraction or use of the information in a database amounts to an infringement of database right and therefore may be controlled by the owner of that right. I beg to move that clause 9 and -

The Speaker: It refers to it, sir. You wish to take it later, fine. It refers to it in (4), sir, but never mind.

Mr North: Yes, it does, sorry.

The Speaker: We will just deal purely with clause 10.

Mr North: - that clause 9 stand part of the Bill.

The Speaker: Yes, clause 9. Hon. members, the motion is that clause 9 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, hon. member.

Mr North: Thank you, Mr Speaker.

Mr Karran: A point of order, Vainstyr Loayreyder. The previous clause was not seconded, was it?

The Speaker: Yes.

Mr Karran: It was?

The Speaker: Hon. member.

Mr North: Mr Speaker, this clause provides that database right lasts for 15 years from the end of the year when the database is completed or first published. I beg to move that clause 10 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 10 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr North: Mr Speaker, this clause specifies the qualification for protection of database right, subject to extension to give reciprocal protection for our overseas compilers. It is limited to a database whose maker is a British national, an Isle of Man resident or a company or other body formed under Manx law and based in the Isle of Man. I beg to move that clause 11 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then, sir, to clause 12 and maybe clause 13, introducing schedule 1.

Mr North: Thank you, Mr Speaker. This clause allows small items of information to be extracted from a database which has been published to be extracted and used without breach of database right, and a contract term taking away that right is void.

Clause 13 with clause 1 provides other exemptions for the use of databases without breach of database right.

I beg to move that clause 12 and clause 13 and schedule 1 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 12, 13 and schedule 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14 and 15, sir.

Mr North: Thank you, Mr Speaker. Clause 14 enables data to be extracted from a database and used if the maker can not be identified and database can be assumed to have expired.

Clause 15 - this clause provides that in legal terms and in legal proceedings to enforce database right certain matters do not need to be proved by the claimant.

I beg to move that clause 14 and 15 stand part of the Bill.

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

The Speaker: The motion, hon. members, is that clause 14 and 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, sir.

Mr North: Clause 16, Mr Speaker, applies various provisions of the Copyright Act 1991 to database right and they include the transmission of the right by assignment and licensing of extraction and use of data, the assignment of the right in a database and several other matters. I beg to move that clause 16 stand part of the Bill.

Mrs Cannell: Mr Speaker, I am happy to second and reserve my remarks.

The Speaker: The motion, hon. members, is that clause 16 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17 and schedule 2, sir.

Mr North: Clause 17 introduces schedule 2 which makes provision for the granting of licences to extract and use data in a database. I beg to move that clause 17 stand part of the Bill.

Mrs Cannell: Mr Speaker, I am happy to second and reserve my remarks.

The Speaker: The motion, hon. members, is that clause 17 and schedule 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 18, sir.

Mr North: Mr Speaker, clause 18 gives the Isle of Man Copyright Tribunal jurisdiction to deal with proceedings under schedule 2 and applies the relevant provisions of the Copyright Act 1991 to such proceedings.

Sub-clause (1) gives the Isle of Man Copyright Tribunal jurisdiction to deal with applications and references under schedule 2. I beg to move that clause 18 stand part of the Bill.

Mrs Cannell: Mr Speaker, I am happy to second and reserve my remarks.

Mr Karran: Vainstyr Loayreyder, can the minister tell this hon. House who is on this tribunal and how it is set up, because the previous clauses give me a little bit of concern? If there is information that the likes of the police would want off any database, have they got a right to ask for that information off a database as far as that is concerned?

The Speaker: The hon. member to reply.

Mr North: Yes, Mr Speaker, I do not know who is on that tribunal at the moment but I will find out for the hon. member and give that at the third reading.

Sub-clause (2) applies part VIII of the Copyright Act 1991 to proceedings under schedule 2 and it contains the following sections: the Isle of Man Copyright Tribunal and then the membership of the tribunal, the jurisdiction of the tribunal, the general power to make rules and costs, proof of order and the appeal to the court on a point of law.

I beg to move that clause 18 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 18 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, the hon. member for Middle, Mr North.

Mr North: Clause 19, Mr Speaker, amends the Copyright Act 1991 principally to define 'database' and to exclude databases from copyright protection if they do not involve intellectual creation by the author. It also exempts from copyright any act which would otherwise infringe copyright but is exempt from database right under one of the exemptions of this particular part. I beg to move that clause 19 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 19 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20, sir.

Mr North: Clause 20 defines various terms used in part 2 and excludes the loan of a database from control by the owner of database right. I beg to move that clause 20 stand part of the Bill.

Mrs Cannell: Mr Speaker, I am happy to second and reserve my remarks.

The Speaker: Hon. members, the motion is that clause 20 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Our final clause, 21, sir, and schedule 3.

Mr North: Mr Speaker, clause 21, and this clause introduces schedule 3, contains supplemental provisions and I beg to move that clause 21 stand of the Bill.

Mrs Cannell: Mr Speaker, I am happy to second and reserve my remarks.

The Speaker: Hon. members, the motion is that clause 21 and schedule 3 stand part of the Bill. 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 – Clauses Considered

The Speaker: Hon. members, we then turn to item 6 on our order paper which is the Children and Young Persons (Sale of Addictive and intoxicating Substances) Bill 1999, in the hands of the hon. member for Rushen, Mrs Crowe. Clause 1.

Mrs Crowe: Thank you, Mr Speaker. Smoking as a mass habit is a phenomenon of the 20th century. So too is smoking as a mass killer. As I speak, the principal avoidable cause of premature death, the addictive habit of smoking tobacco, will kill 13 people, 13 people every hour of every day of every year. The Bill before us today will help to reduce that mortality rate, to prevent the onset of smoking, especially amongst teenage girls, in order to avoid the damaging effects on the foetus during pregnancy and the damage done to infants by parents who smoke.

This Bill seeks to prohibit the development of tobacco-dependent addiction by controlling sales of tobacco to the most vulnerable group: our children. The targets and goals of this legislation will be to give the young people of our Island a better chance to enjoy a full and healthy life. This cannot be done if we as a government do not tackle the problem of tobacco and solvent addiction.

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 16 years of age. The clause will remove the word 'apparently' from section 6, together with the defence for not knowing or of 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 a means of ensuring that the actions that 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. I beg to move clause 1.

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

Mr Karran: Vainstyr Loayreyder, I believe that we should be more progressive as far as smoking is concerned, not only as the member for Health, but I do feel that if we declare that alcohol is an adult occupation, I do not see why smoking should not be seen as an adult occupation.

I personally believe that the legislation does not go far enough. I believe it should be raised from 16 to 18 because I believe that that is the age of majority. This is one of the biggest killers to kill us and has the most effect as far as our National Health Service is concerned and I believe that what we should be doing is raising the age to 18 as far as this issue is concerned.

I do hope that some hon. member will second my amendment because I do believe that that is the way forward as far as this is concerned. I beg to move:

The Speaker: Now, hon. members, we have had circulated, I understand, an amendment which Mr Karran is currently moving where it says, 'Page 1, after line 2, insert "(a) for "sixteen" wherever occurring substitute eighteen," and re-number the subsequent paragraphs.' My understanding is that the remaining part of that amendment is actually referring to clause 2. We are currently dealing with clause 1 and it would be my intention to just deal with the written word 'sixteen' to the written word 'eighteen' if it gets a seconder.

Mrs Crowe: I beg to second, Mr Speaker.

Mr Gilbey: You cannot.

Mrs Crowe: Right.

Sir Miles Walker: Mr Speaker, I have support for the intentions behind this amendment and I am pleased to second it.

Mr Duggan: Mr Speaker, we live in the real world. You can get married at 16. I think it is absolutely ridiculous. Sixteen is adequate, I feel, and I think 18 is ridiculous. They will still get cigarettes and I think it is completely wrong and I will not support the amendment.

Mrs Hannan: Vainstyr Loayreyder, I think years ago there might have been a case for 18 but in this day and age when we have so much health education in the school, we have life education, where I suppose the children in a way are bombarded with education as to what they should and should not do, it is the point I made at the second reading. If we make a taboo of something it is then more adventurous to go out and try to seek these substances, whether it is alcohol or whether it is tobacco, and what I think we should be doing is saying that at 16 - I am quite happy to protect people until they are 16 - I do believe that after the education that we have given them, which might not have been the case years ago when people did not know the dangers of smoking, they had no idea, and in the United States of America huge amounts of money have been paid to local authorities to deal with some of the issues that are being discussed this morning about the health and the extended healthcare of people, but I do feel, like the member for Douglas South, that we can impose these things upon people. How are they policed? But there is a number of people out there who will feel that this is something that they should now go after, whereas maybe they have not in the past, because it is seen as being taboo by adults, and I think we have got to try and get this balance. All the people that work with drugs and drug education say, 'Don't say "Don't", say that this can cause this, that and the other and if you look at it properly you would never start on that', and I think that is the way that we should continue to proceed. If people are going to be what I would call 'adventurous' and go out looking for these substances, I think they will find them even more challenging now if we raise the age to 18.

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

Mrs Crowe: Thank you, Mr Speaker. I fully support the amendment appropriately brought forward by the member for Health, Mr Karran, to increase the age at which our young people can buy tobacco from 16 to 18. Eighteen is a common enforcement age for all dangerous products, and tobacco is amongst the most dangerous that we sell by retail. We enforce the sale of fireworks to children under the age of 18, the sale of solvents and many other dangerous products, and as I cannot stress enough, tobacco is probably the most dangerous substance that is sold.

The age limit is also in place in many other countries. Guernsey will not allow children under the age of 18 to purchase cigarettes, neither will any states in the USA, which is a place that was mentioned by the hon. member for Peel, Mrs Hannan. There is a common enforcement age and it is enforced throughout the states in recognition of the number of children that are dying prematurely as a result purely of smoking tobacco.

Mr Gilbey: Mr Speaker, I think this question of the age of 16 or 18 is a very difficult thing and probably as a whole we have not got our minds quite right on this - some things are 18, some things are 16 - and I cannot agree that this should be increased to 18. Whatever you think about smoking, it is something people are entitled to do if they wish to do so. When you compare what people can do at 16, they can marry, which is surely a much weightier matter than possibly occasionally smoking a cigarette. *(Mr North interjecting)* They can have sex, which may lead to children, which is surely a far more serious matter.

Mrs Crowe: It does not kill you, though.

Mr Gilbey: They can actually drive motor cars and the danger on the roads of young people driving cars is infinitely greater, surely, than that they may have a pull at a cigarette and therefore I think that we would be wrong to increase the age in this matter.

Mr Cannan: Hear, hear, Walter. They used to smoke at Eton when they were 14.

Mr Henderson: Mr Speaker, I rise to support the amendment and as far as I am concerned the age could go right up to 95. Having been a healthcare professional and given copious amounts of care to people suffering from respiratory problems due to mostly their smoking habits, and certainly throughout a lifetime, I can only say this is an excellent appendix to the main private member's Bill that is going forward this morning.

Also I would draw to hon. members' attention that during these formative years this is the time where young people are mixing together, going out to discos and forming peer relationships where pressure is brought to bear on all of the group to conform to group norms and if that happens to be smoking, there is considerable pressure on individuals who are not conforming to group norms to actually partake in smoking activities, so the age should, in my opinion, be raised so as to protect individuals who may not wish to smoke but feel forced into it.

But nonetheless the most important issue here is people's health, and as far as I understand it, much of the medical damage that can be caused by tobacco inhalation from cigarettes is caused in these early and formative years, and the hon. member for South, Mrs Crowe, is quite right. The amount of diseases and so on that are attributable to smoking is untold and at the end of the day this government will have to pick up the tab at the other end when people are admitted to hospital, to acute beds and so on, for respiratory problems and

heart problems and in the end they may very well end up in medical wards for longer stay and rehabilitative care for respiratory problems and heart problems, again which I have extended my experience to in assisting with in my former job as a healthcare professional. So I have no problem in supporting this amendment.

Mr Shimmin: Mr Speaker, whenever we try and put in an arbitrary chronological age for any sale or use of anything it is an unsound and unsatisfactory way but it is the only mechanism we can use. It is more to do with the maturity and the developmental stages of a young person as to whether they are appropriate to make a decision for themselves. In order to make that decision we put in laws and we put in ages.

I agree very much with my friend for Peel, Mrs Hannan, when she talks about the encouragement for people to experiment. By saying no, it is an unsatisfactory way forward. However, we have an unsatisfactory way forward in alcohol and drugs and the experimentation still takes place and it will still take place, whether it will be on cigarettes, alcohol or drugs.

Having agonised over this decision for some time, I am not comfortable with my decision but I have to believe that, on balance, to support the amendment will actually safeguard the more vulnerable young people and give them an opportunity of saying no and being able to say no with the full weight of the law behind them. (**Mrs Crowe:** Hear, hear.) It will never stop those who are going to choose to experiment, but what we have is a culture now where vulnerable people are being enticed into experimentation by the more worldly friends and peers they have and if we can give any encouragement to destroy the addiction for people to cigarettes, then I believe we have an obligation to do so. I do not believe it is a solution but I believe it is a genuine attempt to try and encourage young people to say no at an early age and if we can give them an extra two years, then I believe on balance that is probably the best way forward.

I do find it anomalous when young people can have cars, when they can have motor-bikes, when their parents and others can influence them exceedingly well from the age of 16. I am very uncomfortable with young people, young adults, leaving school at the age of 16, going into a workplace, being able to perform the normal functions of full members of society, yet we are putting in an arbitrary age, if the amendment goes through, of 18 before they would be able to purchase cigarettes.

I am convinced that people will find a way around this system, as they find their way around any system, therefore my balance of decision is purely on those vulnerable people. If anything takes away the opportunity I believe we will at least have begun to take a step forward and therefore I will support the amendment.

Mr Rodan: Mr Speaker, until the previous speaker I was going to say that it was time an element of common sense was brought back into this debate but the previous speaker brought rational argument to bear and thoughtful argument on this difficult question of arbitrariness of age and indeed what is reasonable.

Now, there is no doubt that the use of tobacco is antisocial, damaging to health and, in the words of the hon. member for Rushen, one of the most dangerous substances sold, is the way it was put, but I would remind the House it is nonetheless a legal substance. It is not banned. It is legal, it is a legal activity. It may be an undesirable activity, but it is a legal activity

at the moment and it therefore seems to me on balance the question must boil down to the exercise of free choice in a free society by responsible people. So the question then becomes at what appropriate age is the exercise of free choice and responsibility exercised, and the hon. member for Peel was the first to raise this issue and the fact that education plays a most important role in developing young adults to exercise that free choice and the choices that they will have to make in their life and while the age of 16 arguably may not be an appropriate point at which we say, 'Yes, beyond this point you are entrusted to exercise free choice as a responsible individual', I feel provided we have in place the necessary life education within the educational system and the provision of information, at present I believe we should not be saying to 16 and 17-year-olds, 'You are not trusted to exercise one of the choices out of many choices you will be obliged to make as a responsible individual because you are not old enough.'

The hon. member for Glenfaba rightly pointed to anomalies in other areas, the age of legal consent for example, but it does seem to me that we would be better placing our trust at present in the provision of information to its fullest extent and the educational system to convey that information to our young people to make a choice on what at the end of the day is still a legal activity open to adults. It is the point at which we say, 'When are you an adult in this context?'

By all means carry the debate to its logical conclusion and ban the use of tobacco products in their entirety, but as things are at the moment I would prefer the balance of trust in young people to rest with the decision to be made at the age of 16 for the time being unless persuasive arguments are raised otherwise.

Mr Brown: Mr Speaker, I have sympathy with the view that we should look to increase the age to 18, but I am getting a little bit concerned that we are in danger of making policy very much off the hoof in terms of not thinking it out. We do not seem to have an overall policy except of course 16 being the normal age.

Interestingly, on 16th March 1999 we signed a Bill in Tynwald, it received Royal Assent and it was announced in Tynwald that it had been passed on that date, the Children and Young Persons (Protection from Tobacco and Liquor) Act 1999, a Bill that we had just passed through the branches, and we said 16, and that is within six months, and there is a danger, whilst I say I have every sympathy with the move by the hon. member, that we as legislators are making legislation the wrong way.

These are things that affect our community. We are talking about the law of the land. I do not know, and I am sure all members do take it seriously, but I think it is the most important job we do, and it is very, very important, if we are going to enact legislation and especially one that will actually put limits on our people, their freedoms, what we like, what we do not want them to do, that if we are going to do that, there is some basis for that legislation.

It seems to me - and as I say, I am tempted to say 18 - that it seems like a good idea. The hon. mover is genuine about it, because he has mentioned this some time before, that he would like to see it 18, but the point is it will still not be an offence as far as I can see, because I have quickly looked up the Children and Young Persons Act of 1966, for a person under 18 to smoke.

So the point I have a concern about is the policy of what the House is trying to achieve and the danger is because we have just passed and received Royal Assent on one piece of legislation which is an Act to deal with the same issue, we now have before us a private member's Bill which is endeavouring to do another piece, and I do not criticise that, it is trying to do that, but it was linked up to the original amendment and the original Act. We are now starting to amend it without really maybe understanding the full implications of that. So that causes me serious concern.

We have on our table possibly an amendment that will be presented later on in the Bill and whilst I cannot go into the detail of that, it shows that we are trying to do something without really considering the implications of what we are trying to achieve and I do think it is absolutely vital that this House, if it is passing legislation, determines absolutely clearly where it is trying to go. What is it we want for our children? What is it we want in terms of control on tobacco, on drink or whatever it might be, for the future? And it is very easy to say, 'Let's raise it to 18', and as I say, I am tempted to go that way, that would certainly be my view, but the implications of it I do not think we really understand and if we have doubt, we have two choices: we either reject the amendment and stay with the private member's Bill as it is written or we have one other choice and that is to send it to a committee of the House to look at cross-referencing all these components to make sure that we have the policy right.

Now, my view at this stage, my leaning at this stage, is that we should reject the amendment because it is out of synch with the main Bill and because I am very concerned that we are actually trying to determine policy individually in this chamber without thinking out the consequences of that policy, and I do not think that is our job. Our job is to make sure that what we are doing will actually be practical, it ties in with the rest of the legislation and that it is effective, and I do not know what the age limit is and whether there is one, that it is an offence for a young person to smoke, I do not know what it is, but it is certainly not an offence in the Children and Young Persons Act of 1966 for a child to smoke. It is an offence to sell but not an offence to smoke.

So the question members have to consider is what are we trying to achieve? And my only caution is that the 18 sounds good, but is it appropriate here to do that without thought as to what we are trying to do, and I think the only advice I can say and the way I am going to lean is that, regarding the mover of the Bill, the private member's Bill, at least that Bill has been put together as a component of the main Act, and if we need to change it to 18 or whatever further down the road, then let us consider that as a separate issue.

I would urge caution on this because the danger is we will end up with something that will be all out of synch and could cause even greater problems, and I have a great sympathy with the hon. mover of the amendment that 18 is the way forward, but I am worried that we are doing it on the hoof and not thinking it out properly, so I would urge caution.

Mr Cannell: Mr Speaker, unless I am much mistaken, we appear to have something of a discrepancy between the notion of banning smoking for certain ages and the sale of tobacco substances at certain ages. We are not talking about banning smoking at any age. We are talking here in this Bill of the prohibition of selling the requisite tobacco products.

You will not stop people smoking but you can educate them that it is antisocial, and I would respectfully point to the most recent success which social legislation has had which is

drink-driving. The young people these days, as has been said by many in the press, are no longer tolerant of drink-driving. They do in general not do it, with obvious exceptions, because over a long number of years it has been pointed out to them that it is an antisocial thing to do, so they do not do it. That has been achieved by a long and hard programme of education, but the main thing is that that now is backed up by legislation which continually penalises heavily those who choose to offend that law, to break that law.

However, here what we are talking about is a measure ostensibly designed to prevent self-damage, whereas drink-driving is usually more aimed at actually making other people suffer the breaking of the law, in other words designed to prevent that. But what we are talking about here is trying to prevent self-damage and that is the rub.

I would prefer not to support the amendment of 18, and I do not find that sits easily as a member of the health department for all the obvious reasons which have been explained about respiratory diseases, but it is nevertheless a fact that it is down to individuals' choice because if we are going to talk about smoking cigarettes possibly creating difficulty for hospital services, what about the many other self-inflicted endeavours which see people end up in hospital, of which not least is drink, drugs as well? And of course, as I know to my cost on many an occasion, self-inflicted sports injuries put great strain on hospital services which might not otherwise be. There is no better example than people requiring hospital treatment because they have actually injured themselves, they have created therefore self-damage, but that is actually just tolerated. It is accepted as part of the social fabric of any place, that people will participate in sports and of course some of the sports that I am more generally associated with are in fact more generally dangerous than some others but many other sports which are non-dangerous still produce hospital cases. But what right do we have to tell people that they cannot do this?

I am not an advocate of smoking. I have not smoked, strangely, despite my parents being lifelong smokers. My father from the age of five until he died at 80 smoked constantly, so I grew up in an environment where smoking was the norm, and those of my age would be more used to there being more smokers than fewer. That is not the case now.

But what we are talking about here is the sale of tobacco, not the actual practice. It may be that in future years, and the way it is going with the way-out people, they are going to ban smoking from just about everywhere anyway. It will no longer be a pleasure because people cannot be bothered to go outside every public building, they cannot be bothered to be viewed as lepers because they happen to want a cigarette. That may well create its own effect and the practice may well die out, and as we will be hearing later on in another amendment possibly to come, of course advertising of cigarettes continues to be more and more outlawed, and that is where the education element comes in again. But who are we to tell people that they cannot go and buy cigarettes at 18? That is fine. We can tell other people that they might be injuriously affected, we can tell them of the dangers of it, we can preach, we can persuade, but I do not think that we can honestly tell people of nearly 18 years of age, 'You are unable to buy cigarettes.' It is freedom of choice. You can be in charge of powerful machinery at 17 years of age if you wish to do and cause immense damage to yourself and to others. As we have heard, though not on the same theme, you can get married. That might be a more risky business. You can do all sorts of things. You can travel the world. You can buy a house. It is

choice and it is down to responsibility and individual application of whether they are convinced that smoking is a danger.

They do not get told that they should not eat vast amounts of fatty substances, which can cause heart attacks. No-one tells them they cannot eat gigantic steaks or anything. Okay, they get told that they cannot stay out late because they have a responsibility to be in at work the next morning. No-one demands that. It is an equal hazard.

But what we are talking about here is if we actually ban it, it will not make a substantial difference to those who are committed to smoking. The practice will go underground. That is all that will happen. Those who are smoking will not say, 'Because you cannot go into a shop and buy them I won't get them.' They will get someone else to get them or they will obtain them by other means and they will continue.

What we have got to do is to educate people the same way the sustained campaign of drink driving has been done that it is an antisocial practice and that it also is extremely bad for you, but it is no use whatever legislating to say to people who are fit for a variety of other practices, which are equally dangerous, 'You cannot do it.' Is that a democratic way of continuing?

Sixteen, fine, because you are coming out of school in the main then and you are viewed as children, but I do not believe that this Island has the right to tell people of nearly 18 years of age what they can and cannot do within, as the hon. member for Garff has said, what is a sustainable legal practice. If we were talking here about banning smoking, the debate would be entirely different, but we are not. We are talking about buying the product.

The Speaker: I call upon the hon. member Mr Karran to reply to the debate on the amendment.

Mr Karran: Vainstyr Loayreyder, I would just like to say to the hon. House I feel that there is a certain amount of double standards as far as this is concerned. There have been some good inputs into this debate, especially from the hon. member for West Douglas and the hon. member for North Douglas with his hat on.

I find it rather amazing. We talk about the freedom of choice, but I will hope that my hon. colleague, with the hon. member for South Douglas and the hon. member for Glenfaba, will be talking about the freedom of choice so that they can lower the age of alcohol to the age of 16 and maybe they will be bringing private member's Bills in for the age of consent for homosexuality at 16, and maybe if they are talking about the freedom of the individual that we can have some sort of consistency as far as this is concerned. But we are not, we are not talking about freedom or consistency, we are talking about an issue, in the case of the hon. member for Glenfaba with his Treasury hat on, that brings in £13 million a year in tax. We are talking about the hon. member for South Douglas who maybe has immunity like the farmers as far as agricultural issues as the undertaker, one of the biggest prime causes of premature death in our society, which is not argued. There is a good argument, a very good argument, as far as that is concerned.

My hon. colleague talked about the freedom of choice. Well, if we are talking about the freedom of choice and we want to change it so that we adults can sell to minors an addictive product, then fair enough, but let us see some amendments on this floor saying, well, let us

have alcohol, let us have everything at 16, and when we talk about cars and sport, well I have got no problem with sport because I wish I had done more sport because I would be a damn site more healthy than I am today maybe if I had kept up some sport with a few sporting injuries.

But the point is we talk about cars, and what we are looking at here today is the old saying of 'Beggan ny veggan ny share' 'Little by little it gets better.' Now, what we are talking about today is we are talking about selling products that are dangerously addictive to minors. Maybe tomorrow we will get rid of them being able to smoke under 18, but today we are talking about selling a product that is based for adults to children, and until they change the law of the age of majority from 18 they are children. Why have we changed the laws on cars so that now you cannot drive a car at 16, you have got to pass a test and we have changed the laws so that we have brought in R-plates so that you have got to be restricted to 50 miles an hour? We have brought in legislation about motor-bikes. We cannot jump on a Harley Davidson now at 16 and buzz off into the sunset because we have a situation where you have to pass your test before you can get anything over a 125. That is what a caring, sensible society does. It chips away at these issues until it can sort them out.

So I do hope my hon. colleague will change his mind as far as that is concerned because I think it is important that we do chip away. 'Beggan ny veggan ny share' is one of the old Manx sayings: 'Little by little we get it better.' We want evolution. How many times have I heard in this House evolution and not revolution? This is one of the ways we get it.

Now, we heard from the hon. member for Castletown, but has he really got his parliamentary hat on or has he got his Council of Ministers hat on as far as this issue is concerned? Because a week ago he was complaining that there should be amendments, why 16 and not 18? So have we got the consistency right as far as policy on the hoof? The fact is that we talked about it in the Select Committee on Drug Abuse which reported back in when? December 1988: 11 years ago. I cannot understand how this hon. House can say that this issue has been dragged out like a rabbit from a hat when the fact is this was one of the issues that was raised and debated in this House back in December 1988 which went on for about three years, if I remember rightly. So this hoof - absolutely rubbish, absolutely no good at all.

What we are talking about here, and I do hope the hon. member for Castletown realises, is we are talking about a law. We recognise this as a dangerous product that has addictive sides to it, very addictive sides to it. We are talking about, as adults, should we be allowed to legally sell it to kids? Now, you might be right, we should maybe stop kids from being able to smoke it. But the issue in front of us today is whether we should do that issue as far as selling it to children is concerned. Now, I believe that we should do that today.

I thank the hon. member for West Douglas and I understand and I agree with him. I find that you think about the issue and the legitimate issue that the hon. member for Peel brought up about when you say, no, it makes people want to do it more, but I think about the point that the hon. member for West Douglas brought up as far as helping the weaker ones that are under pressure, peer pressure. It helps them as far as this is concerned and this is the point, it is about trying to stop that addiction, because I know so many people who have said, 'Oh, I wish I'd never started. I wish I'd never started. I cannot give up.' I have got a sister who should never have started, cannot give up, tries to give up.

But the point is this: we are the legislators and we want evolution, not revolution. That is what we want and I believe this amendment today is about evolution. We are not going to ban smoking overnight, but we work and we chip away at it, and I feel that this hon. House should support the amendment in front of us, because I have to say that marriage is not addictive and it does not kill usually -

Mr Duggan: Try it, Peter.

Mr Karran: - and as a person who has this forte of more likely ending up with more matrimonial problems that he could not add his own to them, I have to say that it is not addictive and it does not kill. Cigarettes do and cigarettes are addictive and should we adults be legally allowed to make profit by getting kids hooked on this addictive substance?

Driving is not addictive. I know it can be fatal and I know that this House has done issues to chip away. We have got R-plates on, we have restricted motorcycles. Insurance companies have restricted young drivers purely where the premiums are concerned.

It is illegal to sell alcohol to young people, an addictive substance, and it is not illegal for youngsters to drink alcohol, but this is giving this the same priority and the same credence as alcohol, so I cannot understand why it should not be made illegal to purchase tobacco by people under 18. I cannot understand that.

We should not be encouraging it, we should not be trying to make profit out of our kids' long-term health problems, because that is what we are doing, and as I said in this hon. House not so long ago, we will be spending well over a million pounds this year on respiratory drugs, a million pounds. Now, admittedly this clause will not get rid of that, I am not saying that, but it will have a sizeable effect on that issue.

We are the adults and this House has got to work out one issue: does it believe that we should be allowed to make profit and sell cigarettes to kids? Now, if that is your form of capitalism and your form of a caring society, it is not my form of a caring society. We have responsibilities and I hope this hon. House will support my amendment as far as this is concerned.

The Speaker: I call upon the hon. member for Rushen, Mrs Crowe, to wind up the debate on clause 1.

Mrs Crowe: Well, I think the debate has been fully debated around this issue and I, Mr Speaker, would just beg to move clause 1.

The Speaker: Right, hon. members, the motion is that clause 1 do stand part of the Bill and to that we have the amendment as moved by Mr Karran on page 1 after line 2 insert 'for "sixteen", wherever occurring, substitute "eighteen".' Hon. members, will those in favour of the amendment please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Sir Miles Walker, Mrs Crowe, Messrs Henderson, Braidwood, Shimmin, Downie, Singer, Bell, Karran, Corkill, Gelling and the Speaker - 12

Against: Messrs Gilbey, Rodan, Brown, Houghton, Duggan, Mrs Cannell, Mrs Hannan, and Mr Cannell - 8

The Speaker: Hon. members, the voting is that there have been 12 votes cast for the amendment and 8 votes cast against. The amendment therefore carries.

We now put the clause as amended, clause 1, hon. members, as amended. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Braidwood, Shimmin, Downie, Singer, Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 15

Against: Messrs Gilbey, Cannan, Rodan, Brown, Duggan, Mrs Cannell and Mrs Hannan - 7

The Speaker: Hon. members, the voting is that there have been 15 votes cast for, 7 against. The clause as amended therefore stands part of the Bill. We then turn to clause 2 and again I call upon the hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. Clause 2 inserts two new sections into 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.

A 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. Mr Speaker, I beg to move clause 2.

Mr Gelling: I beg to second.

The Speaker: Thank you. The hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, the amendments that are in front of you are consequential on the amendments as far as clause 1 is concerned. I beg to move:

*Page 2, line 20; for '16' substitute '18'
line 33; for '16' substitute '18'.*

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 2 stand part of the Bill. To that we have the consequential amendment that where it is written '16' it becomes '18'. Will those in favour of the amendment please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Houghton, Henderson, Braidwood, Shimmin, Downie, Singer, Karran, Corkill, Gelling and the Speaker - 14

Against: Messrs Cannan, Brown, Mrs Cannell, Mrs Hannan and Mr Cannell - 5

The Speaker: Hon. members, the amendment carries with 14 votes being cast for, 5 votes against.

So clause 2 then, hon. members, as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, before we take clause 3 I think you have also had circulated to you a new clause in the name of Mr Karran and that will require an amendment of the long title and short title as a consequence of the new clause. I think this would be the appropriate place in which to move the new clause and at this stage, therefore, I would ask the hon. member for Onchan.

Mr Karran: Vainstyr Loayreyder, can you just clarify the point? Is it the amendment to the long title or am I moving the actual clause itself first?

The Speaker: Your paper, sir, says that the amendment of the long title and short title is as a consequence. I would suggest that we actually move the amendment to the long title and get that out of our hair and then you can have the new clause if you get that passed. If we do not get the amendment, hon. members, to alter the long title we cannot introduce a new clause.

Mr Karran: Vainstyr Loayreyder, I would hope that this hon. House would support the amendment of the long title to this Bill in order that this important issue should be debated. I believe that if members read the proposed new clause it does only affect issues that ascertain from our country, from our jurisdiction.

I hope that hon. members will give me the courtesy of allowing the long title to be amended in order that we can debate fully the details of my new clause. I so do beg to move:

In the long title : after 'Trading:' insert 'to prohibit advertisements promoting tobacco products;'

The Speaker: Do we have a seconder, hon. members? Hon. members, we fail to have a seconder so we shall move -

Mrs Hannan: I will second, Mr Speaker.

The Speaker: The hon. member for Peel has seconded. Does any hon. member wish to speak to the amendment? The hon. member for Glenfaba, Mr Gilbey.

Mr Gilbey: Can I ask, Mr Speaker, what happens if we alter the long title and we have then done that and then the new clause is not passed? I should think I would like to have your guidance and the learned Clerk's guidance on this because it seems to me you then have an extraordinary situation where you have a Bill with a long title which does not reflect the contents.

The Secretary: Mr Speaker, hon. members, I think there are two issues here. The first is you cannot move amendments including new clauses to a Bill outside the long title and clearly if you look at the long title the proposed new clause is outside it. If, as the hon. member for Glenfaba suggests, we had a situation where we amended successfully the long title and the new clause failed, we could amend the long title to bring it back into line with the contents of the Bill.

The Speaker: The hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I accept the intent or the motive behind the mover's amendment but really, in looking at it, it is fraught with some difficulty. For instance the cricket season is upon us; Manx Radio bring us the results of the Benson and Hedges tournament. Is this going to be an offence under this particular section?

We have also got the added difficulties where if people are watching sport on TV, Eurosport, satellite TV beamed into their homes, as was indicated early on, would the licensing authorities be committing an offence by allowing cigarettes or tobacco advertising?

The particular clause to me is a minefield really and I personally think that we have gone far enough today to try and remove (**Mr Houghton:** Hear, hear.) the availability of cigarettes and tobacco to young people and I think that by going the whole hog, as it were, and trying to outlaw or prevent the publishing, the display or communicate or cause to be, to apply this to all the different tobacco products I think would be a legislative and a policing nightmare and I think that we should just take stock of what has happened in the previous clauses and really give some thought to whether this new clause would not leave us in a position that would present great difficulty to people in the Isle of Man.

The Speaker: Hon. members, if I may, just before we get into a debate, I appreciate the sentiment of the hon. member who has just resumed his seat, but I would suggest that what we are trying to ascertain at the present time is purely dealing with the long title, not the new clause which is in front of you. So in other words, what is actually before the House is whether or not the House is prepared to accept that the long title should include 'to prohibit advertisements promoting tobacco products'. The hon. member for Castletown.

Mr Brown: Yes, Mr Speaker, I am quite happy to support the amendment to the title to enable us to debate the issue that has been put before the House. I have a different view on the practicalities of the new clause, but I would like to hear the hon. member making his case for it and this House discussing it on this occasion, and the only appropriate way to do that is to support the amendment of the title and if it subsequently fails we can then re-amend the Bill.

Mr Cannan: I roughly say the same thing. We are in an extraordinary, radical position this morning. Here the House has accepted that smoking should be prohibited under the age of 18. Now we are moving a step forward.

Mr Cannell: No, we haven't.

A Member: Selling.

Mr Cannan: Selling, I beg your pardon. Now we have moved a step forward that every advert shall be an offence, and that is quite out of control and I think the implications have already been said by the member for West Douglas, and Mr Speaker if we approve the change of the long title and then we turn down the new clause are we able, and I am asking this as a point of guidance, are we able then to revert to the original title?

The Speaker: Yes, we can do, sir. I think that was made perfectly plain before. We can certainly revert back to the original long title without any difficulty. The hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Mr Speaker, I do not have very much to add to the comments of the member for Castletown. It is something which on a global scale has been looked at. The new

clause contains all of those issues which may have been raised as concerns by two of the previous speakers and therefore we ought to debate it in order to see whether they stand up to scrutiny. So I would urge members to support the amendment of the long title so we can debate this issue.

Mr Cannell: Mr Speaker, just on the same note, it is important that if we are to debate the clause that the hon. member for Onchan, Mr Karran, intends to put, we do actually allow this debate to take place.

Mr Karran: Vainstyr Loayreyder, I thank hon. members. Obviously this is not where we get into the detail and I will be happy to explain to the hon. member for West Douglas the issues that he has raised and other members. I do hope this hon. House will support the amendment in front of them so that we can debate the issue of advertising. I beg to move.

The Speaker: Hon. members, the amendment which I propose to put in front of the House is that which is printed under the words where it says, 'Amendment of long title and short title in consequence of new clause: "In the long title: after 'Trading:' insert 'to prohibit advertisements promoting tobacco products;'. Will those in favour of that amendment please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, having accepted the amendment to the long title it now gives us the position where we can have a new clause introduced and I think this is the appropriate stage in the Bill and I call again upon the hon. member for Onchan to introduce his new clause.

Mr Karran: Vainstyr Loayreyder, this is a piece of legislation that many jurisdictions throughout the world have debated, and we saw not so long ago when the UK Government and the British Labour Party were all in favour of this until a certain motor racing organisation got involved and muddied the waters as far as this is concerned.

This amendment deals with any event within the Isle of Man and under the jurisdiction of this country. When the hon. member for West Douglas was asking detailed issues over the principle, this would mean that any sporting event in the Island could not advertise cigarette produce. This would also cover any sporting event or any event dealt with on the Island that was under the jurisdiction. So if the likes of road racing is concerned that happens in San Mareno, Bernie and the boys will have nothing to worry about as far as advertising sponsorship is concerned.

What we are trying to do here today is say that within the jurisdiction of this country we should ban advertising of cigarettes, of tobacco produce, and I believe that again this is an issue where we should be leading, not following the adjacent isle. We are a country in our own right. When I hear people saying, 'Well, why worry about advertising?', people pay out millions on advertising. They would not pay it out if it did not work.

I believe that this hon. House should support this proposal, the proposal in front of us today and say that yes, we morally think it is wrong, the advertising of cigarette products by Manx Radio or any form of media within the Isle of Man, or sporting events, it is morally wrong and should be outlawed in this country. That is what I am saying today. But as far as any event that is outside this country is concerned, then we have no jurisdiction.

So I believe that we should support this amendment today and we should go again chipping away as far as the reign of this addictive drug that has done so much damage to our people, and I beg to move that this new clause be moved:

That the new clause (Advertisements) be agreed in principle.

Mrs Hannan: Vainstyr Loayreyder, I rise to second the principle of this. I certainly think that it is all very well to say advertising does not work. In certain circumstances I believe advertising does work and it encourages people to use substances such as this. It is not the answer to trying to help children and young people with regard to addictive and intoxicating substances, but I do believe that this is something that we can do as opposed to imposing something which is taking away choice. This does not take away choice, all it says is that advertising should not take place and therefore I would support it and second it. Thank you.

Mr Brown: Mr Speaker, I again have considerable sympathy for this issue and in fact it is one that I gave thought to before we got to this stage of the Bill and I have to say that what becomes obvious are the implications of what is being proposed. The hon. member in the amendment has clearly demonstrated that there is a way of allowing the multinationals and so on to continue to advertise within the Island, and that is one obstacle overcome, but what I do have a concern with is the overall implications in terms of what will it do and how will it affect the Island? I am not a supporter of smoking and I need to make that clear. I do not smoke. My view has always been that I do not encourage people to smoke. But where do we go? Because at the end of the day any law we make has got to work and it has got to be practical and we have got to consider the implications. For example, as regards shopfronts where at the moment there are signs up saying about cigarettes or whatever, tobacco products, shelving, vehicles, would in itself it be an offence to have a packet of cigarettes on an open shelf because a cigarette has virtually an advert on it which is saying the name of the cigarette? I do not know, and the danger of going down this road without giving this careful thought is we will end up in enacting legislation that will be one heck of a mess, and the implications will come back to us so that we have to start trying to sort it out. That is not the way to deal with it.

What we need to do if we are going to do this, in my view, is that if the House agrees to the principle, then I certainly shall be moving that it goes to a committee when we get to the clause, because quite honestly it is illogical to pass a major piece of legislation like this here, without notice to the public, (**A Member:** Hear, hear.) without notice to those who are affected, giving them at least the opportunity to have their say, and find ourselves in the situation where we may have enacted something that really is absolutely impractical.

There may be a compromise in it, I do not know. For example, when I gave my thoughts about it one of the things was the big notice-board when you come round the roundabout by the Sea Terminal which has got a massive big - what? I do not know - 20 foot by 15 foot advert for cigarettes. Well, maybe it is that bit we should outlaw, but not necessarily when somebody walks into a cigarette shop. But I do not know how to word it, I do not know whether that is the right way forward, but I certainly feel uneasy about the basis of what the hon. member has got before us or is suggesting we do and therefore whilst I will support the principle, I certainly would not support the new clause, and if I am successful I certainly would promote it going to a committee.

Mr Cannell: Mr Speaker, I have to say that I find this is a proposed measure which is far too sweeping. It is laudable, as always with my hon. Onchan colleague; of course he has great sincerity in promoting these. But let me point hon. members respectfully to a few of the potential ramifications of it.

You are virtually banning anything to do with tobacco products in the Isle of Man, and that does not necessarily just mean cigarettes. Advertising of tobacco products or advertising of any product is a question of spending millions of pounds internationally, and yet the majority of countries, Germany excepted, appear to still condone it. We see the spectacle of motor racing competitors, where they have names of tobacco products on their protective clothing, being forced to cover them up with tape in certain countries, and yet it is permitted in others. So it does not mean that everybody is sold on it. But I do not think we should be sold on it in the Isle of Man either because it would embrace - unless I am enlightened by the hon. amendment's mover otherwise - sponsorship and that is where the difficult area comes in. It is not necessarily just advertising, it is sponsorship, and although we have not had the fortune to enjoy many of the major world events in the Isle of Man, we still nevertheless have had a share of them, the most successful of which, I would suggest, was years ago and much lamented, the Rothmans International car rally, where they sent squads of people to the Isle of Man to promote the event, and would that that was the case today. It was marvellous at the time. But no-one suggested for a moment then that Rothmans appearance in the Isle of Man to sponsor their rally should be withdrawn because of the element of their sponsorship of tobacco products. In fact everybody, as I recall, went wild for having the association of an international company, which in fact came from southern Ireland on that occasion, and perhaps that was for reasons known to themselves. Maybe it was easier to stay outside Britain which did in fact appear to be heading helter-skelter down a road of banning anything to do with the advertising of cigarettes. But they have backed off and so have most other countries because in fact the advertising has been shown to be to a degree subliminal. It is not necessarily that you will start smoking because you see adverts for Rothmans or Benson and Hedges. I am reliably informed that that is brand-producing. In other words they are going for brand promotion within the product of tobacco, in other words attempting to sway people that they should smoke Marlboro instead of Benson and Hedges, not that they should take up smoking, or that they should be smoking more.

But when you come to sponsorship you come to a minefield in sport, and can you imagine the Department of Tourism and Leisure being approached even to have a minor event, not necessarily a world-class event? But many of the minor events enjoy the sponsorship of tobacco products and tobacco-related products, and are we going to say down at the offices at the Sea Terminal when one of these companies ring up and say, 'We're considering promoting a golf day at the Castletown course and it is going to be sponsored by Benson and Hedges', 'Sorry, go away, we don't want your money because it is going to convert a few more people to your product.' I am afraid that is not entertainable at all, and if I can put a few more examples in, of course you would expect me to mention the TT races where a number of leading competitors do enjoy sponsorship from cigarette companies and have in the past. Are we going to say that all those machines will not be brought to the Island bearing their advertisers' logos? Because I know the first thing they would do, they would say, 'We shall go and ride elsewhere where our product will be exposed to a better extent.' Now, we do not have television live coverage of the TT races, we are working on it of course, as we

always are, but it has improved considerably in recent years with the appearance of the many other sports channels which television actually now puts and is likely to increase. We are going to say at a time when there are going to be 200 digital channels coming on line to the majority of households shortly, 'We're not going to have anything from the Isle of Man allowing cigarette advertising.' We would be cutting our own throat in that respect.

We have John Player Specials, a long time ago maybe, but we did have them. They may come back as they change their product. Two of the Formula One car sponsorships have in fact changed in the last year and in fact the leading company of British American Tobacco attempted to run their two cars in different colours to get that branding across on television.

Are we going to say when we hold our motor sport events, not major ones maybe, but the Ramsey Hill Climb is a very respectable event and half the cars there are enjoying the knock-on effect of the sponsorship of the others, they are ex-Formula One cars running on the Ramsey Lhergy Frissel Hill Climb plastered in cigarette advertising, are we going to say, 'Don't come over' or 'Cover your depots up' or whatever? I do not think so. We are not going to tell the Skoal Bandit Suzuki, the Embassy World Snooker Championship, Marlboro McLaren or anybody else, 'You don't come here and promote your sports event', no more than we are before where only half an hour ago we were pointed to the discrepancy in drink advertising. Many, many drink advertising sponsored products take place, not just connected with sport, very respectable activities. The Whitbread Round the World Yacht Race is a drink-sponsored sporting event. So if we are going to be consistent, as I was urged to be half an hour ago, then, yes, let us have a look at all these things that are supposed to be dragging the Isle of Man down, our people here are being weaned onto drink. I am sorry, but we have never had a bigger problem with youngsters drinking over here, (**Mrs Cannell**: Hear, hear.) despite our best endeavours. It is fashionable to do it, and as soon as you produce products which go under the guise of pop containing vast amounts of alcohol, that is the sort of thing we should be addressing, where you go out and kid people under 16 that they are drinking orangeade and in fact it is in fact highly loaded with alcohol. That is the way we should be going forward and getting shut of some of those things, as we attempted to do.

So do not try to tell me that we can just unilaterally switch off all advertising, laudable though it would be. We might as well just turn the lights out. I am afraid it just does not work like that. People will still smoke despite us having recently decided that it will be 18 instead of 16. They are still going to do it. All we have done is told them they cannot go in a shop and buy them. I would like to see the figures which will make any difference on that. Perhaps there will be, and let us hope there will. But I do not think it will be served by having a Bill or having an amendment as this is which sets out as it is printed on the paper anyway, although I will hear some counter answers, no doubt, in the summary, but it is far too much, too far, too early. By all means, as the hon. member for Castletown has said, let us have a look at it in detail and see if there is any merit in taking out some of it, but not across the board.

Mr Cannan: Mr Speaker, I think we want to look at this radical clause very closely: 'No person shall in the Island, - (a) publish, display or communicate; or (b) cause to be published, displayed or communicated; any advertisement to which this section applies' - right across the board. As has been said, does a little sticker in a pub for Embassy cigarettes mean it is being displayed? Does a restaurant menu folder when you turn the pages at the end and it says cigars available, or cigarettes? Is that infringing it, promoting it?

I believe the intelligence of the people outside is of a higher standard than we are thinking. (**Mr Cannell:** Hear, hear.) They know whether they want to buy cigarettes or whether they do not. They know whether they want to smoke or whether they do not. As a parent of a mature family, they do not smoke. They see all these adverts. They have choice. We are highly educating and spending millions to educate our people. Suddenly, because they see an advert on a steamer trip to Dublin for duty-free cigarettes, is that going to turn them on to smoke? Are we going to ban that? Are we going to ban every conceivable form of saying, 'Cigarettes are on sale here'? Because that is what this means. I ask members to just look at the wording, 'cause to be published, displayed or communicated; any advertisement to which this section applies', and the section applies to any advertisement which promotes, whether directly or indirectly, tobacco products of any nature, or the use of any such product, for smoking, inhalation or chewing. So a notice by a newsagents saying, 'Cigarettes on sale here', in accordance with this - and, yes, the man is nodding, the mover of the Bill is nodding - is an advertisement to be banned. Well, why don't you say cigarettes are banned altogether? Because if that advert says, 'Cigarettes on sale here', and it is in (b) and (2) that this is to be illegal, then, people, it is all underground, and as the member for Onchan has said, we have alcohol. Because it is advertised all over the place, alcohol, it does not mean to say that people will deliberately go and drink more drink.

People are intelligent. We are spending millions - and I am repeating myself - on educating people to think for themselves, and they do think for themselves, and the reason why smoking has gone out of fashion is not because adverts have been banned, it is not because the cigarette companies have wanted to reduce their sales, far from it, they have done their best to promote it, but intelligent thinking people, which people are, have decided for themselves in a free choice society, have listened to the other arguments and said, 'Smoking is bad for your health: I'm cutting it out.' It has not been cut out by the wish of the cigarette companies, it has been cut out by the intelligence of the people we represent, and to actually bring in this sort of thing which, if you read it and think about it, suggests that in a restaurant, coming round on the thing where it states cigars are available after dinner, it promotes, whether directly or indirectly, tobacco products of any nature, this really is a step in legislation, a step too far.

The newspapers arrive. We read in the newspapers available to all, so any advert indicating anything to do with the media from the UK could possibly be illegal because it could possibly be challenged under number (4), 'A person shall not be guilty of an offence under subsection (1) if the advertisement is published by means of any media which is produced outside the Island and is intended principally for distribution outside the Island.' Well, are the English national newspapers printed deliberately for publication outside the Island?

Mr Karran: Of course they are.

Mr Cannan: There are so many implications in all this clause that really I would not even support it going to a committee. It is a step far too far altogether. It will mean that the sale of cigarettes is then underneath the counter. A shop cannot say, 'Cigarettes on sale here', so you go into a shop if you want to smoke and say, 'Do you have cigarettes?' and the chap will say, 'Yes', and produce them from under the counter, because if they are in a case above the counter it is promoting cigarettes.

Mr Cannell: You used to say, 'Something for the weekend.'

Mr Cannan: I ask members to read carefully what is written here. Thank you, Mr Speaker.

Mr Singer: Mr Speaker, what the previous members who have spoken in this debate seem to have pushed to the side is that this is a new clause to the Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill, not adults, it is children and young persons we are particularly interested in today and smoking, as I understand it, appears to be on the increase, particularly with the young. Anti-smoking advertising has not appeared to work with the young people, and certainly anti-smoking advertising will not work very easily with older people who are already addicted to the drug. The banning of tobacco advertising does not seem to be reducing smoking, particularly in the young, and large increases in tax seem to have little effect on reduction.

Now, the exposure to Isle of Man specific advertising, which is this amendment, for example the advert on the billboard or the sign over the shop, will not in general make people smoke more or make them start smoking. After all, the sign over the shop makes no difference: people know where they can go and buy cigarettes.

But I think we have to consider what is the principal of tobacco advertising, and I think that the hon. member for Onchan, Mr Cannell, picked that up in saying that the principal of tobacco advertising is not mainly to increase smoking but to persuade people to change their brands. It is exactly the same as advertising washing powders, that a washing powder is better than another washing powder, so change to that washing powder, and it is for this reason, the principle of tobacco advertising, that I do not believe that this amendment will do what the mover expects it to do and therefore I will oppose it.

Mr Shimmin: Mr Speaker, one of the steps towards this has already been taken some years ago in the adjacent Island when it banned TV advertising of tobacco products, the reason being because advertising works, and the mover of the new clause made it very clear that they would not be spending millions of pounds each year unless advertising worked. Contrarily, we then spend millions on education to try and stop the advertising work when it is harmful towards people.

But the most insidious and dangerous part of advertising is the subliminal nature of it, where it is around us all the time. We are not clear, we do not remember where we have seen the advert, but it is there all day every day around our lives. Now, we have a tolerance to that and most people would find, quite rightly, that they would not be encouraged to start or cease smoking because of some changes like this.

With regard to some of the problems raised by Mr Cannell for Onchan and the member for Michael, Mr Cannan, I believe that parts of those are already meant to be addressed within the new clause. If we look at the production of things from off the Isle of Man, that is covered. More of a concern is the sponsorship angle.

Now, I personally am strongly opposed to the sponsorship by tobacco companies of any events, but they are a feature outside this Island which we have no control over. We would have no control over Benson and Hedges cricket, but we would, possibly, have control over Benson and Hedges Isle of Man cricket, and that to me strikes the difference, whether we would be tolerating it for advertising and sponsorship on the Isle of Man rather than something from the adjacent Isle or elsewhere.

The problem I have with sponsorship is where does it end? Is it acceptable for local teams - football clubs is an example - to be sponsored by a local bank? Certainly many of them are. Is it acceptable for them to be sponsored by a brewery? I am sure some of them have involvement with some of the alcohol products. Is it acceptable for them to be sponsored by, for example, Benson and Hedges? Let us take it a step further. Our schools now relying more and more upon sponsorship and support from the private sector? Would we tolerate eight-year-old children playing netball or football wearing shirts sponsored by Benson and Hedges? Of course not. We have to decided where to draw the line.

Now, I believe that this new clause is well intentioned, but as it is a week for rumours I would not like to start a new one, but for the second time today I will have to support the member for Castletown, Mr Brown. (*Mr Cannan interjecting*) It is something whereby I believe that the intention is sound, the belief of Mr Karran is good, and I believe that we should be leading the way. However, there is so much uncertainty expressed within this House that at this stage, sadly, I cannot support it.

But I do believe that it is something which should go at some stage for consultation in order to look at the implications. I believe it is right and we should lead from the Isle of Man to do something along these lines. We all know the sort of things we would support. What I am unsure of is whether this clause satisfactorily allows that to happen without having a knock-on effect.

So I will not support the new clause. I believe the new clause should be taken for consultation, possibly by the health department or by the Office of Fair Trading, in order to go for consultation to ensure in the future that maybe something along these lines is brought forward. At the moment I think too much uncertainty means that I will not support it.

Mr Corkill: Mr Speaker, I was not going to speak in this debate and I hope I will not speak for too long. But there are one or two issues that have been raised by hon. members which I felt quite uncomfortable about. Let us make it quite clear, hon. members, that advertising is only a function which occurs when it pays. Advertising budgets are reviewed year on year and they do not happen unless they pay.

Now, I was glad when the hon. member for Ramsey, Mr Singer, reminded us that this Bill is to do with young people.

I would also say to hon. members sport, motor sport, the excitement that goes with these issues is put alongside young people. That is part of being youthful, and I think it is a wonderful thing that youth is interested in these sorts of things. So it is hardly surprising that that is where all the advertising occurs, because let us make no mistake about this: the advertising is directed at young people because that is the future market. Let us face it, the old market dies off, probably prematurely because of the product.

Mrs Crowe: Certainly.

Mr Corkill: Now, in terms of motor sport I would be very interested to know in terms of the Isle of Man the depth and the nature of sponsorship from tobacco and how important that is to the Island, because I do not know. You see a certain amounts of it, but what would happen if it was not there? So there is an issue there which has been raised which I do not know the answer to.

What I do know is that I went to a lecture by one very famous Mr Jackie Stewart who is sponsored by the HSBC bank and he was quite clear in his announcement that he had no intention of seeking or entertaining tobacco sponsorship for the Stewart formula one team, and I commended him for that, as others do, and maybe that is the sign of the future, that the tide is turning, that perhaps people do not want to see it associated with sport as much as they have done in the past. He obviously wants to run a successful team and he actually raced cars with tobacco sponsorship on them himself when it suited him in years gone by, but maybe the tide is turning and maybe the advertising in that area is not as useful to the producer, to the companies who produce the product, as it once was.

The hon. member for Castletown, Mr Brown, mentioned a committee. Maybe a committee might find the answers to some of these things. I do not know. But I cannot support the clause the way it is because it is impractical. I do not think it draws the line between on and off Island in a sufficient manner that it will be enforceable or useful. But I do commend the hon. member for raising the issue and having the debate on it because it is something I feel very strongly about. I have seen the results of smoking first-hand for many years. It is something which should be discouraged and any way we can explore to do that is worth exploring. I do not believe this clause, this new clause, will actually produce that, but I would like to hear more from the hon. member when he winds up.

But let us make no mistake about it, advertising of tobacco is directed at young people, and this argument that has been put abroad by the tobacco industry that in fact it is to do with changing brands, I do not believe it. It is more statistics and more statistics and at the end of the day I would suggest that cigarette smoking has probably been the cause of more statistics than anything else that has ever happened. Thank you, Mr Speaker.

Mr Rodan: Mr Speaker, my concern about this clause is that it is radically changing the thrust of the legislation, as others have said, from being principally a children and young persons Bill amending the law relating to the sale of tobacco and certain intoxicating substances to minors, amending it to something far broader.

Now, it was perfectly legitimate for this House to decide that it wished to alter the definition of 'a minor' as far as the sale of tobacco is concerned from one age to another age. It has done this and that was within the scope of the Bill. I do not believe it was necessarily appropriate to do that, for reasons stated at the time, but this has been done. But what we have now is a clause that is considerably broadening out the issue of advertising which is not exclusive to minors. It is not the exclusive province of minors, this question of advertising.

It is a perfectly legitimate matter to regulate and to control advertising which is directing and promoting the sale of tobacco to everyone, whether minors or not, and it is legitimate to regulate and control it because it is promoting smoking as an activity, with its known health risks, or equally promoting differentiation of brands. I believe this is the justification that the industry offers for advertising. So these are quite wide issues and of course it is legitimate to wish to regulate because advertising and the money spent on that runs counter to the efforts of health education, both formally within the education system and the wider issue outside the education system.

But of course what we are talking about, again I would remind the House, is a legal product. It is a legal product and adults are educated to exercise their choice in the use of this

product responsibly. The question of advertising runs counter to those efforts to exercise a choice on the basis of the best information available.

It would seem to me more appropriate to deal with advertising completely separately from this Bill which is a Bill to do with minors and not least for a reason that others have advanced, that the clause itself is so fraught with practical difficulty as to be unenforceable. Without wishing to be repetitive, the new clause, for example, would allow somebody conducting legitimate business, the retailing of the legal product of tobacco, for example to display in their tobacconist's shop a poster produced in England advertising 20 pence off Benson and Hedges' brand, for example, but sub-clause (4) makes clear that it would be illegal for the tobacconist to have a hand-written sign saying, '20p off Benson and Hedges.' That would become illegal under this clause. So quite clearly an awful lot more work has to be done on this quite proper issue of controlling advertising of tobacco, an issue which, as I say, is not exclusive to the interests of minors and therefore should be dealt with quite separately from this legislation.

Mr Cannan: Hear, hear.

Mrs Crowe: Mr Speaker, I would agree with the hon. member for Onchan, Mr Corkill's contribution to this debate. I would support the move to insert the new clause into the Bill that seeks to deny the wealth of the tobacco companies influencing our children, as they surely do.

I am certain that, if not today, shortly we will follow all other countries and ban the advertising of all tobacco products and I think it would be nice to be in the forefront for once of that kind of legislation because the advertising does influence our children and it is an encouragement to them to smoke, for all the reasons that the hon. member for Onchan, Mr Corkill, mentioned: the excitement, the sport. It is all linked and there are thousands of pounds, millions of pounds, spent on promoting a product which, as has been pointed out, is killing off half. I think for every thousand 20-year-olds that smoke today, 500 of them will die directly as a result of tobacco products. Thank you, Mr Speaker.

Sir Miles Walker: Mr Speaker, I find myself being aligned to many of the arguments produced by the hon. member for Onchan, Mr Cannell. I thought he made many important points and I do not believe the implication of this Island going it alone in this field can be anticipated. I am sure there will be problems down the road. It seems to me that there are some issues that are better dealt with internationally than nationally and it seems to me that this is one of them, and we can think of others such as money laundering, proceeds of drugs and all those things. Dealing with those issues on a national basis really does not have much impact on the worldwide problem, dealing with them internationally does, and I think that is the same with tobacco advertising.

I have no doubt that my hon. colleague Mrs Crowe is right, that in a short period of time we will be being faced with international conventions covering these issues. I think that that is the best way to deal with them, and I do not agree with her when she says this Island should be at the forefront with this sort of legislation.

I am troubled, and perhaps the hon. member in charge of or promoting this new clause can clarify the situation, but we do know that there are many sporting events outside the Island that are supported by the tobacco firms, and we think of the Embassy World Snooker Championship and so on. If those advertisements reach our ears through national television or

national newspapers, I presume, under the way this suggested clause is written, that nobody will be committing an offence, but if they reach our ears by way of Manx Radio reporting on the Embassy whatever-whatever, it cannot be said that that Manx Radio broadcast is intended principally for distribution outside the Island. Their remit is aimed at the Isle of Man audience. So where would they fit in legally if they were reporting one of these international sporting events sponsored by a tobacco company with that name up front? And I suppose the same question also comes to mind if we think about Border TV. They are required as part of whatever it is these days, their reason for broadcasting, their franchise, to broadcast to the Isle of Man. We make up 10 or 15 per cent of their audience. How are they fixed legally if they are promoting and advertising one of these international sporting occasions which we are all interested in and they create a large audience? They are advertising those directly to the Isle of Man. It seems to me in contravention of the sort of legislation that is being proposed here today.

I think we are better not going it alone on this one and waiting for the international moves which I am sure will come and at that stage I am sure that we should fit in with them quite properly. I would vote against this new clause.

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

Mr Karran: Vainstyr Loayreyder, I believe that the hon. member for Rushen has a point. It is whether we follow or we lead and I believe that we should lead. My philosophy in being a member of this hon. House is that one has the ability to try and develop the society that one wants within this country, not try to adopt a society from another country or the ways of another country. So I understand it is a matter of philosophy.

The issues that he brought up are very valid issues. He asked me if the Embassy World Snooker Championship would not be able to be the World Snooker Championship or whether it would be the Embassy World Snooker Championship, a very valid point. I would argue that the snooker championship would be the Embassy World Snooker Championship because that would be its title. If Manx Radio was to say the World Snooker Championship which was advertised by Embassy, then they would be breaking the law.

The issue would be that, yes, we would never be able to host the Embassy World Snooker Championship in the Isle of Man because it would be creating a criminal offence, but that issue is something that is not going to happen because we missed the boat and that is why I have always said that what we have got to do on sporting events is to find the up-and-coming sporting events and advertise their events until they do. If we had done it 20, 25 years ago, the snooker championships, we could have had them in the Isle of Man for a pittance 25 years ago and what we have to do is look at things that are coming up. So the issue of that, of a snooker championship or any big national sporting event that is sponsored by a tobacco product, would not happen in the Island.

So the issue is Border TV. Border TV is predominantly there for the broadcast off-Island, is not in the jurisdiction of this country and consequently it would have no effect because it is being produced outside the jurisdiction of this country. So I think that does clarify the position as far as the hon. member for Rushen is concerned.

The hon. member for Garff says this is a children's Bill but I believe we should not be running away from the fundamental point and the fundamental point is should we in this

country be allowing advertising of tobacco products? If we are, if we believe we should, then do not support the amendment, but if you do believe that we should not be supporting advertisements to promote products that kill a large section of our community, then the hon. member should support.

Now, he has a very valid point. If a handwritten ad is put out, is it a criminal offence if it is not handwritten but it is actually produced from the adjacent isle? Then I would say that the case would be that advertising a tobacco advert that is mass-produced outside the Island could not be used in our shops. It is just like the point that maybe the hon. member for Michael, who lost the plot a bit, actually found the plot slightly when he was talking about having cigarettes on a shelf. I would say that that would not be covered under this new clause, that the fact is that that is not advertising by putting it on a shelf. So there would be no question of having to put it under the shelf out of sight. That in itself would not be seen as being advertising.

I think the hon. member for Ramsey, Mr Singer, is naive if he thinks that the fact that they advertise in order to get existing ones to go from Benson's or the likes to Silk Cut or whatever. It is all about the perception of how cool you are when you are smoking. That is what it is about. That is the bottom line and I think my hon. colleague here for Onchan was so right in summing it up as far as this is concerned. It is naivety on this House's part to think that they come along and do it out of the goodness of their hearts. We are not talking about the producers of an industry that spend millions. We are talking about the producers of an industry that spend billions globally as far as this is concerned.

To be honest, I have some sympathy with the hon. member for West Douglas and I can see his concern as far as this clause is concerned. It is far-reaching. Government is not easy. We are paid to make decisions for the general good of our people and every five years our people have the right to say, 'Well, I'm sorry, Mr Karran, I'm not voting for you because I don't agree with you. You're the person who stopped the adverts going on the TT bikes' or 'You're the person who stopped the adverts going on the front of the local newspaper shop for Benson and Hedges.' That is the risk that we take, but I am afraid I have to say to the hon. member for West Douglas that is what it is all about, being in this House. You have to make decisions.

I believe that my other colleague for Onchan is quite right, there is big money involved, and he is quite right that there are implications as far as this piece of legislation is concerned, but at the end of the day this legislation will not come in until it has Royal Assent and if there are the problems that he believes he perceives as far as this is concerned, I am sure in the other place they will make sure that any anomalies that are in the piece of legislation will be ironed out.

The point that the hon. member for Castletown brought out with it being such a controversial piece of legislation, of whether it should have gone to a committee or not, is something that will be left to the realms of the academic, as it has no amendment as far as that is concerned, but I do believe that there would have been a sincerity there that maybe somebody would have sent it to a committee.

I believe that this House should support this amendment today and bite the bit and lead instead of following. I believe that we should support this amendment today. I think it is an absolute nonsense if we do not support this amendment today because it is about glamour,

sophistication. It is about exhilaration. That is why they advertise these issues and I believe this House should support support my new clause and lead, not follow. We are in here to produce the laws of the land for this country. We should not be saying, because the adjacent Island has done it, that we should follow. We should make the decision on the basis of this Island, what we believe is right. I actually believe it will do so much good if this clause will be supported today. It will help to put this country on the map, not take it off the map. I beg to move.

The Speaker: Hon. members, the chair tries to be helpful. We have dealt with the long title of the Bill which is to prohibit advertisements promoting tobacco products. We have now been having a debate on the principle of the control of advertising and that, hon. members, is what I wish to put at this time. Will those in favour of the principle of the new clause please say aye; those against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mrs Crowe, Mr Brown, Mrs Hannan, Messrs Karran, Corkill and the Speaker - 6

Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Messrs Houghton, Henderson, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Bell, Cannell and Gelling - 17

The Speaker: Hon. members, there were 6 votes cast for, 17 votes cast against the principle of the new clause. Therefore, hon. members, it fails and we can simply move on to clause 3. I call upon the hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. 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 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 Speaker, I beg to move.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 3 stand part of the Bill. Will those in favour please say aye; those against, no. We go on to clause 4, hon. members.

Mrs Crowe: Clause 4, Mr Speaker, 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 section 6 and section 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.

A new section 6E imposes personal criminal liability on 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 Speaker, I beg to move clause 4.

Mr Gelling: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 4 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, hon. member.

Mrs Crowe: Mr Speaker, clause 5 provides for the short title of the Bill and for its commencement by the appointed day order.

The Speaker: Second, sir?

Mr Gelling: Yes, I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye. Now, hon. members, it would seem sensible in fact if we at this stage re-amended the long title so that we reverted to the original print which is in front of your green Bill. Would you be content, hon. members, if we so did?

Members: Agreed.

The Speaker: Thank you, hon. members.

Limited Liability Companies (Amendment) Bill – Second Reading Approved

The Speaker: We then turn to the Limited Liability Companies (Amendment) Bill at item 7 on your order paper. I call upon the hon. member Sir Miles Walker.

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

I have caused an explanatory memorandum to be circulated to members which I hope has been useful and I am also aware of the proposed amendment about which Mr Gilbey has circulated a brief and I trust that that will be dealt with in due course.

So it might be helpful as background to remind hon. members of some of the aspects of the operation of the 1996 Act which we are now seeking to amend.

The original intention of the 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 a creation of the Wyoming Companies Act of 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 United States of America, together with refined reporting requirements.

To date the concept has not yet been widely embraced on this side of the Atlantic, though there is progressively an increasing interest in this type of business.

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

However, since enactment of the legislation in 1996 there have been a number of changes, one of which includes a different means of assessment of 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 a certainty of limited duration as a characteristic essential to obtain a partnership treatment for taxation purposes. The 30-year duration imposed under sections 11B and 71B of the 1996 Act are therefore now redundant, but 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 that opportunity by meeting with the chairman and other executives of Lloyd's and by the advancing of 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, though at present we are still talking conservatively and a modern estimate of the number of LLCs might well be a doubling of the current rate of formations to around 200 per annum.

In the brief that I circulated I did describe, I think, the opportunities that exist with the Lloyd's market and there is no point in repeating those at this stage.

So just 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.

So in summary, this is a modest, relatively straightforward Bill of three clauses which it is believed will result in a narrowly focused but worthwhile opportunity for development in the diversification and pursuit of new business opportunities available to this Island. This is in keeping with the 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 an advantage over our competitors.

So, Mr Speaker, with those few words, I beg to move that the Limited Liability Companies (Amendment) Bill of 1999 be read a second time.

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

Mr Gilbey: Very quickly, Mr Speaker, the hon. mover did refer to the amendment, details of which I hope have been received with a covering note by all hon. members. If any hon.

member has not received the information, if they would let me know I will make sure they get it. The purpose of sending it out early was to give hon. members the maximum notice of this proposed amendment.

The reason why this Bill has been chosen is because this Bill may be used as a vehicle for collective investment schemes and therefore it will, hopefully, have this amendment added to it.

The Speaker: Hon. member, do you wish to reply to the debate?

Sir Miles Walker: I do not think so, Mr Speaker. I think what has been said has been explanatory.

The Speaker: Hon. members, the motion is that printed at item 7 on your order paper, that the Limited Liability Companies (Amendment) Bill be read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Thank you, hon. members.

The House will now stand adjourned till Tuesday next, 18th May, at 10.30 a.m. in Tynwald Court. Thank you, hon. members.

The House adjourned at 1.04 p.m.