

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 24th November 1998
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Hon R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Hon H Hannan (Peel); Mr W A Gilbey (Glenfaba); Mr S C Rodan (Garff); Hon D North (Middle); Hon R K Corkill and Mr G T Cannell (Onchan); Messrs J R Houghton and R W Henderson (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Messrs J P Shimmin and 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.

Leave of Absence

The Speaker: Hon. members, the member for Onchan, Mr Karran, has permission for leave of absence this morning.

Irish Sea Sailings – Cancellations – Question by Mr Singer

The Speaker: So we turn to our order paper and we commence with the questions. I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I wish to ask the Chief Minister:

In view of the fact that 56 out of a total of 120 scheduled Irish Sea sailings by the SuperSeaCat II in October were cancelled due to the wave height being over three metres, are you confident that the Lady of Mann can cope adequately with the likely level of such cancellations of SeaCat journeys to both the Isle of Man and Dublin this winter?

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

Mr Gelling: Yes, Mr Speaker, at the outset I think I should make it clear that it is not part of the function of the Isle of Man Government to run the Isle of Man Steam Packet Company, nor, I do not believe, is it my place to be the spokesman for the company, but as I understand the situation from the Steam Packet, the figures quoted in the hon. member's question are incorrect and the company remains confident of its ability to maintain its services to and from the Island.

Mr Singer: Mr Speaker, could I ask the Chief Minister, would you not agree, however, that reliance on what you might call a fair-weather vessel in the winter on the Irish Sea is proving to be either extremely poor professional judgement or a could-not-care-less attitude to the people of this Island who have little choice but to rely on the Steam Packet's policy for providing what is becoming a poor-quality service with the SeaCat?

Mr Gelling: Well, Mr Speaker, again from figures that I have gleaned I have found that in fact the significant wave height exceeds three metres less than 10 per cent on average during the winter and that the Steam Packet has had 96.8 per cent reliability with its fast craft up to

the end of October and in so doing with the fast craft they have been able to put on additional services, and I am again informed that this has increased its passenger carrying by 17 per cent since 1996 and vehicle carrying by 48 per cent. So basically what I am saying from the figures that I have been given is that it would appear that they are carrying more vehicles, carrying more passengers and of course providing more services.

Mrs Cannell: Mr Speaker, is the Chief Minister aware that the deputy leader of Liverpool City Council described the SeaCat service as a humiliation to that city and does he not think that a similar unreliable service to the Isle of Man may also be a humiliation to this nation and cause irreversible damage to our reputation as a tourist destination?

The Speaker: Chief Minister, we are getting very only loosely connected to the question but I leave you to respond, sir.

Mr Gelling: I am not aware of the gentleman or lady in Liverpool and the statement but I would think perhaps that he could be referring to the fact of what Liverpool used to be and the huge ships that used to be in the Mersey and I suppose the SeaCat is only a very small craft. But the thing is we were aware of what the fast craft was going to do, we were aware of its limitations, but the thing that was attractive was the 2¹/₂-hour passage journey which was what was being demanded. So therefore before I would say that we could classify it as poor, I think they have put additional services on which appear to be actually good for the Isle of Man.

Mr Downie: Mr Speaker, I would like to ask the Chief Minister is he aware that the *Lady of Mann* also provides back-up for the Liverpool-Dublin SeaCat service and in the event that the *Ben my Chree* should have to go off-service, it is hardly likely that there could be no back-up vessel available for the Isle of Man routes and is he happy with that situation?

Mr Gelling: Yes, Mr Speaker, as I have said the wave height over three metres is under 10 per cent per annum, and I know the *Lady of Mann* is the back-up for that service so I would say it would be very unusual if the circumstances so were created that in fact the *Lady of Mann* would be wanted on both routes because it is there as a stand-by, but I am aware that it is for a stand-by on the Dublin route as well.

The Speaker: The final supplementary, the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you. Chief Minister, you use the words that we know that there are limitations to the SuperSeaCat so would the credibility of the Isle of Man Steam Packet Company not be improved by cancelling the use of the SeaCat during the winter period and bringing in a suitable vessel that the travellers can be confident will sail most of the scheduled trips?

Mr Gelling: Again, Mr Speaker, I must say that I am not a spokesman for the company, I am not aware of their operational shipping systems, but all I can say is the SeaCat and the SuperSeaCat are increasing the amount of traffic coming to the Isle of Man, and I think that is extremely important.

Steam Packet Company – Heysham Facilities – Question by Mr Singer

The Speaker: Item 2, hon. members. Again I call upon the hon. member for Ramsey, Mr Singer.

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

(1) *Are you aware that, when the sailings are cancelled, the Isle of Man Steam Packet Company offers absolutely no facilities to passengers booked on the company's 2.15 a.m. sailings from Heysham to the Isle of Man; and*

(2) *what immediate action will you take to warn the Isle of Man Steam Packet Company that this approach to passenger care is unacceptable and will not be tolerated?*

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

Mr Gelling: Mr Speaker, on this particular question, again I understand the situation from the Steam Packet Company that the first point in the question is not accurate and therefore the second point does not arise.

Mr Singer: Mr Speaker, is the Chief Minister aware of all the details in the letter that I passed on to him and whilst I know that one of the details, where the person said they slept outside, they actually slept in a room with no heat, otherwise I am told and I understand that the letter was accurate, and would you agree with me that the treatment of passengers arriving at Heysham must be improved, particularly for those on foot because they are likely to arrive early, they are in need of food and warmth, and when there is a cancellation of unknown length, booked passengers must be accommodated in hotels and not expected to make their own arrangements at 12 o'clock in the morning in a place that is far out from anywhere else?

Mr Gelling: Mr Speaker, this was an unfortunate case of a young lady who went with her two colleagues at half-term over to the adjacent isle. They arrived at Heysham nine hours before the sailing, and I think that has to be the key point: nine hours before the sailing. Our own Sea Terminal at Douglas opens two hours before the first sailing in the morning, so if they had arrived at our Sea Terminal here in Douglas they would not have got access to the terminal until half past five in the morning. These young ladies arrived at 5 o'clock in the afternoon for a 2.15 a.m. sailing.

Now, having said that, there was an elderly couple who arrived there on foot because they had had an accident in their car. Now, I am asking the Steam Packet to check this one because that elderly couple were in fact found, seen to, and put into accommodation.

Now, I am also told that there is a heat sensor switch in the rooms in Heysham so that it does not matter when you arrive there, even out of hours when the cafeteria is not open, as soon as you walk in the room the lights and the heat come on. Now, in this particular letter the young lady states - well, her grandmother states - that the only warm place was in the ladies toilets. Well, that means that if she got into the ladies toilets she must have been in the terminal to which I refer. So I have asked the Steam Packet to actually check whether the sensor works and whether the heating worked and so on.

But it was unfortunate, but I think the key situation here was that they arrived nine hours before the sailing was due to leave and of course the sea terminal was in fact not open.

Mr Singer: Chief Minister, is the point not that they arrived early, because it is very difficult to arrive, when you are on foot, at 10 o'clock at night, but the fact is that when they had returned around about 10 o'clock at night, having sat in the pub nearby for 5¹/₂ hours until it shut, when they got there and, knowing that the sailing was cancelled, they were not able to get any food, the lady says there was no warmth in fact and she had to sleep on the floor, they were cold and that the Steam Packet offered them a food voucher which would be available at

11 o'clock the following morning, which is hardly suitable, and therefore would you not agree with me that the Steam Packet's special offers are rightly named as 'winter wonders' because this winter you wonder if you will go, you wonder if you will come back, you wonder if you will get a seat and you wonder if they really care?

Mr Gelling: Mr Speaker, again I have to say I am going on information provided to me by the Steam Packet Company and they maintain that even when the sailing is not going to happen the terminal opens at 10.30 and there is a Little Chef at the terminal and that opens at that time even if the sailing is not going to take place. Now, again, I have asked them to check to make sure that in fact it was open because, as I say, I am not in possession of any information other than that it was open. So these are areas that we must check.

But again I say, the agency of government who deals with the Steam Packet is the Department of Transport. I have checked with them and they say that they are getting more co-operation and more help from the Steam Packet than they have ever had. So I think we should be encouraging them to improve their services if that is what required but certainly to give them encouragement because they are actually increasing the traffic on this route.

Mr Cannell: Mr Speaker, but is the hon. Chief Minister aware that on the 2.15 sailings on a Tuesday morning only 41 passengers can be carried because of the importation of dangerous cargo, but no notification is given to passengers in any material that that is the case?

Mr Gelling: Well, firstly, I think, Mr Speaker, that a lot of people will now know that Tuesday is the one to avoid because that is when they carry the dangerous chemicals, but, as I say, I am not aware of that being advertised. I am aware that they have one sailing in the week when they have the dangerous chemicals on board and they have to limit the passengers but this again is something that I am afraid the Steam Packet must get over to their passengers and if they are failing I am quite sure they will take some action to do so.

The Speaker: Hon. members, items 3, 4, and 5 are for written answer and I understand that they have been circulated to hon. members.

Football Pools Companies – Duties – Question by Mr Houghton for Written Answer

Question 3

The hon. member for Douglas North, Mr Houghton, to ask the Minister for the Treasury:

In each financial year from 1988 to 1998 what were the total duties received by the Treasury from football pools companies?

Answer

	£
1988-89	325,608
1989-90	359,591
1990-91	361,736
1991-92	388,175
1992-93	385,584
1993-94	420,856
1994-95	416,299

1995-96	234,470	
1996-97	154,634	
1997-98	<u>120,000</u>	(Probable) Customs and Excise Account for 1997-98 not yet received from UK
	<u>£3,166,953</u>	

School Nursing Service – Question by Mr Cannan for Written Answer

Question 4

The hon. member for Michael, Mr Cannan, to ask the member for Health and Social Security:

- (1) *What is the annual cost of the school nursing service;*
- (2) *how many persons are currently employed in the service;*
- (3) *how many school nurses are employed; and*
- (4) *what is their current job description?*

Answer

(1) Salary costs in respect of the school nursing service for the present financial year amount to £199,100. In addition, there are various other associated costs including administrative support, vehicle and equipment costs, et cetera, which form part of the overall community nursing budget and as such are not readily identifiable in terms of the school nursing service.

(2) The establishment of the school nursing service consists of 8.1 whole-time equivalent nursing staff, with shared support from 4.0 whole-time equivalent administrative secretaries whose responsibilities extend to the total school health service, e.g. speech and language, audiology, school dental service, et cetera.

(3) As indicated above, the school nursing service establishment consists of 8.1 whole-time equivalents, of which presently a vacancy of 0.65 whole-time equivalent exists.

(4) All staff employed within the school nursing staff work to specific job descriptions relating to their individual responsibilities and grades. The core responsibilities for the school health service, of which the school nursing service is a part, encompasses:

- the promotion of the health of schoolchildren;
- the recognition and help of any problems so as to encourage healthy living, in the interest of ensuring children make the most of school life and adopt a healthy lifestyle in the future;
- to provide regular healthcare milestone assessments of schoolchildren in relation to their individual development;
- to work with teachers in providing health education to every schoolchild throughout their school life.

Bus Drivers – Question by Mr Henderson for Written Answer

Question 5

The hon. member for Douglas North, Mr Henderson, to ask the Minister for Tourism and Leisure:

In the last financial year -

- (1) *How may full-time bus drivers were employed by your department;*
- (2) *over what period had each driver been so employed, and what was the total period each driver had been so employed; and*
- (3) *without identifying individuals, what was the gross annual salary, inclusive of overtime, of each driver?*

Answer

(1) During the last financial year 86 bus drivers were employed by the Public Transport Division of the Department of Tourism and Leisure.

(2) Of the 86 employed drivers, 77 were employed for the whole of the financial year, 3 for a period of 11 months, 1 for 10 months, 1 for 8 months, 2 for 7 months, 1 for 6 months and 1 for 4 months.

The following list categorises each driver employed by the division during the financial year on the basis of length of service:

Employment Period	Number of Personnel
Under 5 years	23
5-10 years	30
11-15 years	12
16-20 years	9
21-25 years	10
26- 30 years	2
Total	86

(3) Of those drivers employed by the division for the last complete financial year the gross pay, inclusive of overtime, ranged from £14,396.00 to £22,700.00, the average being £18,575.00. Basic pay for all bus drivers is £11,884.00 per annum.

A Bill to Regulate Trade in Tobacco and Solvents – Leave Given to Introduce

The Speaker: We move therefore on to item 6 on our order paper, leave to introduce, and I call upon the hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Mr Speaker, I beg to move:

That leave be given to introduce a Bill to regulate trade in tobacco and solvents for the purpose of reducing their availability to children and young persons.

I beg leave to introduce a Private Member's Bill to regulate the sale of tobacco and solvents to children. Every 10 seconds someone, somewhere, will die from the results of smoking. Tobacco is a most addictive drug and it is freely available to young persons over the age of 16. These persons can become hooked for life on this substance and it has been determined that the younger the age you start smoking, the more sure it is that you will die of the effects of smoking.

Solvent abuse is now killing more people than ecstasy or any other designer drug. Solvent abuse and under-age smoking are becoming an increasing problem on the Island, and I seek leave to introduce a Bill which will consolidate some existing legislation and introduce new controls that will seek to reduce the availability of these substances to the most vulnerable to these drugs in our society, that is, the young.

Mr Speaker, I beg leave to introduce a Private Member's Bill.

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

Mr Cannan: Ah, it is a southern conspiracy!

The Speaker: Agreed, hon. members?

Members: Agreed.

Estate Agents Bill – Select Committee Report Received

The Speaker: We turn then to item 7 on our order paper. I call upon, again, the hon. member for Rushen, Mrs Crowe, to move the report of the select committee.

Mrs Crowe: Mr Speaker, I beg to move:

That the Report of the Select Committee on the Estate Agents Bill be received and the recommendations approved.

I would like to thank the hon. member of the Legislative Council, Mr Alan Crowe, and then latterly the member for Onchan, Mr Richard Corkill, for maintaining the balance between myself and the hon. mover of the Bill, the member for Ayre, Mr Quine. I would also like to thank the Clerk-Administrator Mrs Cullen for her calming influence and her accurate reporting.

We considered many ways of amending clause 4 to make it more practicable for estate agents to maintain branch offices without undue expense which we felt might be passed on to the consumer, whilst at the same time ensuring that a successful prosecution could be brought against a firm of estate agents in the event of misconduct or incompetence.

The majority view of the committee is that it is not realistic to require an authorised practitioner to be in attendance in an office at all times. After consultation with the legislative draftsman we recommend that each office should have a designated authorised practitioner who does not have to be in continuous attendance but who is responsible for the supervision and management of the office at all times.

We considered that temporary absences of designated authorised practitioners for periods up to 14 days, but we thought that most holidays from the Island now exceed that 14-day period and we considered that 21 days was a more appropriate period.

We looked at the procedure for appointment and notification of temporary cover during absences. We believe that the procedure laid down in these subsections was unnecessarily bureaucratic and recommend that the absences should be dealt with by an estate agency maintaining a register for each of its main and branch office in which an entry must be made in respect of each absence of the designated authorised practitioner, indicating the person authorised to deputise during such absence.

We believe that the procedures laid down in the redrafted clause are now workable and will allow for a successful legal remedy in cases of misconduct and incompetence.

Mr Speaker, I move that the report and its recommendations be received.

Mr Corkill: Mr Speaker, I would like to second the motion before the House and feel that the committee has worked well to amend clause 4 without diluting the impact of the intent of the Bill. I am sure that in an environment such as the Isle of Man, which is a small environment, this system of being able to still allow for the accountability of branch offices of estate agents will work because we are a small environment and none of the branches are really that far distant from the main central estate agency office, and I think this is important because, particularly in retail areas and retailing generally in the Isle of Man today, we do see a centralisation process and I do believe this Bill, if unamended, would have actually accelerated that process with regard to estate agency branch offices and therefore I do believe that is protected, but on the other hand the important aspect, as mentioned by the mover, of accountability with regard to misconduct in those offices is still protected because a person designated from the centre will still be responsible for the activities of the branch office, and I think that is most important.

So I do believe the committee has come up with a compromise clause which should satisfy both aspects of the argument and I have pleasure in seconding the motion.

Mr Quine: Mr Speaker, just very briefly to say that I shall support the recommendations and I do feel that, although we have lost something from the Bill in terms of its enforceability, we have arrived at a clause which strikes a balance perhaps between the different interests and I am therefore prepared to go along with it, but in doing so I must point out that we have had this opinion earlier expressed as to the difficulties in evidential terms of mounting a prosecution, that has been before this hon. House, it has been endorsed by the working party, it has been endorsed by the previous Attorney-General, and therefore we should not be surprised if a point is reached further along the line where we find a prosecution falls because of the evidential problems, but I would not be prepared to throw the baby out with the bath water. We have what I think is a clause that by and large will work and I will lend it my support.

Mr Brown: Mr Speaker, I am aware that this has been quite a difficult one to deal with because of course an amendment to the Estate Agents Bill has been discussed and in the pipeline for quite a considerable number of years and of course some of us do question the necessity to amend even the existing legislation. However, just down to this part of the amendment that is recommended in the Bill, I do think there are real practical difficulties as it is written in the amendment that is proposed in the terms that it says, in appendix 4, 'if for any reason temporarily unable to supervise and manage the business carried on at that office', and I think the important word is at 'that' office, 'for any period exceeding 21 days, the person who is carrying on the business shall appoint another authorised practitioner'. I just wonder about the 21 days because of course we are talking about a specific office and therefore it is easy to work the system to be absent for 20 days running something else and be back into that office, because I think the important word is 'that' office and cover that they never break the 21-day period and therefore never have to appoint another person to supervise 'that' office, and we know we are talking about branch offices, and I know the concern, and we all have it, is that we do not want to see small branch offices done away with because of the difficulties there, but I just think there is no doubt in the way that is worded that that could cause a problem, and I wondered if the committee had given any thought to saying 'exceeding 21 days in any one year', so that in fact they could not abuse the system, or at least it would

reduce abuse of the system, because, as I see the wording there, somebody could make sure they never visit 'that' office for 20 days at a time, visit it one day, as I say, the 21st day and never need to designate an authorised person, and that is nothing to do with holidays, and this has brought in my basis for reading the report is from 14 days to 21 because the committee's view was that they needed to cover holidays and things like that, but I think this opens it up even further than that.

So I think if the member, when they are replying, could cover whether or not any thought was given to 21 days in any 12 months.

The Speaker: Does any other hon. member wish to speak? If not, I call upon the hon. member for Rushen, Mrs Crowe, to reply.

Mrs Crowe: I thank the hon. member for Onchan for his support and also the hon. mover of the Bill, Mr Quine, for his support.

In reply to Mr Brown's concerns, we have covered that aspect and have thought about it in some depth. The authorised practitioner could designate but they would still be responsible. The authorised practitioner would be responsible for the workings of that office. He would be very foolhardy not to go there and supervise and manage that office, but he would still be held responsible whether he was there or not. But we do cover in clause 3F the responsibilities of maintaining a register so that the registrar of estate agents would know exactly who was responsible for that office at that time and I think the fact is that we could not possibly limit estate agents to say, as part of their profession, they are only allowed 21 days holiday a year. Thank you, Mr Speaker.

The Speaker: Hon. members, the motion is that printed at item 7 on your order paper, that the Report of the Select Committee on the Estate Agents Bill be received and the recommendations approved. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Estate Agents Bill – Consideration of Clauses Concluded

The Speaker: That takes us, hon. members, to item 8 on your order paper, the Estate Agents Bill, for further consideration of clauses and it is in the hands of the hon. member for Ayre, Mr Quine. However, the redraft of clause 4 is extensive, as is spelt out in the report which you have just accepted, and I understand that the hon. member for Ayre is happy in fact if we continue with the member who was in charge of moving item 7 to move the redrafted clause 4 which is attached to your report. So I therefore call upon the hon. member for Rushen, Mrs Crowe, to move the redraft, which is appended to the report of the committee, as a new clause 4.

Mrs Crowe: Thank you, Mr Speaker. I refer to appendix 4 in the report of the committee which is the amended clause 4 and it is the amendment of section 11 of the 1975 Act. For section 11(3): 'Subject to section 12 of this Act, a person shall not carry on business as an estate agent unless, in every office where the business is carried on, it is carried on under the supervision and management of an authorised practitioner who is designated in respect of that office by the persons carrying on the business. (3A) An authorised practitioner may be designated under subsection (3) in respect of more than one office. (3B) The name of an authorised practitioner who is designated under subsection (3) in respect of an office shall be

displayed in a prominent position at that office in letters which are not less than 8cm in height (3C) Whenever an authorised practitioner who is designated under subsection (3) in respect of an office is for any reason temporarily unable to supervise and manage the business carried on at that office for any period exceeding 21 days, the person who is carrying on the business shall appoint another authorised practitioner to supervise and manage the business carried on at that office in place of the designated practitioner. (3D) Whenever an authorised practitioner who is designated under subsection (3) in respect of an office is for any reason temporarily unable to supervise and manage the business carried on at that office for any period not exceeding 21 days, the person who is carrying on the business shall cause the business to be carried on at that office to be supervised and managed by a suitable person in place of the designated authorised practitioner. (3E) In determining whether a person is a suitable person for the purposes of subsection (3D), account shall be taken of - (a) the nature of the services provided to customers at the office in question; (b) the qualifications and experience which a reasonable businessman would consider necessary for the proper management and supervision of the business carried on at that office; and (c) whether, in all circumstances, the person concerned is otherwise a fit and proper person. (3F) A person who is carrying on business as an estate agent shall notify the registrar in the prescribed form within 72 hours of the happening of any of the following events - (a) the designation of an authorised practitioner under subsection (3); (b) the termination of any such designation; (c) the appointment of an authorised practitioner under subsection (3C); a notification under this paragraph may include notice of the date on which the appointment will terminate; or (d) the termination of any such appointment if not already notified under paragraph (c). (3G) A person who carries on business as an estate agent shall cause to be compiled and maintained a register showing in respect of each office where the business is carried on - (a) the name of the authorised practitioner designated under subsection (3) and the date of designation; (b) the date of termination of any such designation; (c) the name of an authorised practitioner appointed under subsection (3C) and the date of appointment; (d) the date of termination of any such appointment; (e) the name of any person who, in accordance with subsection (3D), supervises and manages the business in place of a designated authorised practitioner. (3H) The person who carries on business as an estate agent shall - (a) cause the register to be kept at the principal office in the Island of the business concerned; and (b) produce the register to the registrar when required by him. (3I) Where an offence by a person carrying on business as an estate agent was committed with the consent or the connivance of, or was attributable to any neglect on the part of, any authorised practitioner designated under subsection (3) or appointed under subsection (3C), or any person purporting to act as such, that practitioner or person shall be guilty of the like offence as the person carrying on the business and shall be punishable accordingly.'

Mr Speaker, I beg to move that the amended clause 4 stand part of the Bill:

AMENDMENT OF S.11 OF 1975 ACT

4. *For section 11(3) of the 1975 Act substitute -*

“(3) Subject to section 12 of this Act, a person shall not carry on business as an estate agent unless, in every office where the business is carried on, it is carried on under the supervision and management of an authorised

practitioner who is designated in respect of that office by the person carrying on the business.

(3A) An authorised practitioner may be designated under subsection (3) in respect of more than one office.

(3B) The name of an authorised practitioner who is designated under subsection (3) in respect of an office shall be displayed in a prominent position at that office in letters which are not less than 8 cm in height.

(3C) Whenever an authorised practitioner who is designated under subsection (3) in respect of an office is for any reason temporarily unable to supervise and manage the business carried on at that office for any period exceeding 21 days, the person who is carrying on the business shall appoint another authorised practitioner to supervise and manage the business carried on at that office in place of the designated practitioner.

(3D) Whenever an authorised practitioner who is designated under subsection (3) in respect of an office is for any reason temporarily unable to supervise and manage the business carried on at that office for any period not exceeding 21 days, the person who is carrying on the business shall cause the business carried on at that office to be supervised and managed by a suitable person in place of the designated authorised practitioner.

(3E) In determining whether a person is a suitable person for the purposes of section (3D), account shall be taken of -

- (a) the nature of the services provided to customers at the office in question;*
- (b) the qualifications and experience which a reasonable businessman would consider necessary for the proper management and supervision of the business carried on at that office; and*
- (c) whether, in all the circumstances, the person concerned is otherwise a fit and proper person.*

(3F) A person who is carrying on business as an estate agent shall notify the registrar in the prescribed form within 72 hours of the happening of any of the following events -

- (a) the designation of an authorised practitioner under subsection (3);*
- (b) the termination of any such designation;*
- (c) the appointment of an authorised practitioner under subsection (3C):*

a notification under this paragraph may include notice of the date on which the appointment will terminate; or

(d) *the termination of any such appointment if not already notified under paragraph (c).*

(3G) *A person who carries on business as an estate agent shall cause to be compiled and maintained a register showing in respect of each office where the business is carried on -*

- (a) *the name of the authorised practitioner designated under subsection (3) and the date of designation;*
- (b) *the date of termination of any such designation;*
- (c) *the name of an authorised practitioner appointed under subsection (3C) and the date of appointment;*
- (d) *the date of termination of any such appointment;*
- (e) *the name of any person who, in accordance with subsection (3D), supervises and manages the business in place of a designated authorised practitioner.*

(3H) *The person who carries on business as an estate agent shall -*

- (a) *cause the register to be kept at the principal office in the Island of the business concerned; and*
- (b) *produce the register to the registrar when required by him.*

(3I) *Where an offence by a person carrying on business as an estate agent was committed with the consent or connivance of, or was attributable to any neglect on the part of, any authorised practitioner designated under subsection (3) or appointed under subsection (3C), or any person purporting to act as such, that practitioner or person shall be guilty of the like offence as the person carrying on the business and shall be punishable accordingly.”*

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

Mr Brown: Mr Speaker, I know the committee has spent a bit of time on this and there were some interesting discussions, I understand, within the committee on it, but I am concerned that this new amendment in fact, if anything, detracts even more from control in the legislation. Apart from the point that an estate agent might want 21 days holiday a year it still is not clear to me why we have changed from 14 days to 21 days, because if we look at the legislation as it is written under clause 4 and we look at the proposed amendment which now the mover of the amendment has just made, they have altered the 14 days to 21. Under the existing legislation it said the person who is carrying on the business shall ensure that a suitable person is appointed to be and is in attendance to supervise and manage the business at that office in the absence of the designated authorised practitioner. That is where we are talking 14 days. When we are talking of 21 days, as is proposed in the amendment, we are talking there that if they exceed 21 days - and I presume now this is any period of 21, so my point that was raised that they could be absent from the office in sets of 21 is valid - they can then designate another authorised practitioner to supervise and manage the business carried on at that office in the place of the designated practitioner.

We then go on in the next stage to talk about whenever an authorised practitioner who is designated under subsection (3) right we talk about that. Does that only mean the original authorised practitioner or does it mean also another authorised practitioner? Because if that is the case it opens it up even further because then even the other authorised practitioner could then appoint a suitable person, and to me we are in a stage where all we have done is we have said the original person is the authorised practitioner, if they go off for more than 21 days they will authorise another authorised practitioner, but that authorised practitioner can, if he so wishes - or as I am reading it - when it exceeds 21 days, then appoint a suitable person, and I am trying to work out why then we are bothering with that if in fact, if we look at the Bill as printed, it just takes out that middle stage, it just says the authorised practitioner, if they after 14 days are not there, can appoint a suitable person.

It seems to me that we are creating a bureaucratic nightmare and the more we put in the way, of course the harder it will be to take a prosecution if there is abuse, and I understand the difficulty that there is in trying to protect as far as possible where we are controlling a business, which is always a problem when you try and control a business, we are trying to protect the branch offices, and I understand that. I do not want to see everything again centralised in Douglas where all the estate agents are in Douglas and that is about it. So I understand that quite clearly. But I am not convinced that the proposal in here is going to actually do anything to add to that. Potentially my reading of it is that it could cause even greater problems.

I am just very uneasy about this one. I know it has been a difficult one for the committee to deal with and you are tempted to say, 'Why not leave well alone?' because in fact it is working at the moment, there does not seem to be a major problem. There was certainly a concern a few years ago and that was very much based on an individual situation, hence why the working party was set up to investigate it, and I know that because at that time I was the minister responsible for estate agents, and I am just really concerned that whilst in good faith the committee have come forward and have written these terminologies, one is I am not satisfied that the 21 days is necessarily needed as against 14 and furthermore you are adding to not only the day period, you are then adding to the bureaucracy of who is going to be appointed to look at it.

I would be interested to see what the mover of the amendment can try and cover and I know it is quite difficult, this, because it is again a legislative procedure to try and control something, and as I say, maybe it is something we are not able to write in legislation to actually control, and I think that is something we need to be clear on as a House. I have not been, naturally, able to have the lengthy and detailed discussions that the committee had with the legal draftsman and I know this has been a difficult one, but I just wonder if we are actually making the situation worse, not better, because we are actually putting more things in the way which could make it harder for a sub-office, if I use that term, to actually operate because in fact we are saying there has always got to be a designated official. So whereas in the legislation as written it just said a suitable person to be appointed, a suitable person of course, as we understand, does not have to have all the qualifications because ultimately the authorised person has the responsibility and is therefore liable under law for their own business.

I am not sure this is going to work and I have to say I am quite concerned about it, and I suppose to some degree we have to acknowledge that the committee has tried to deal with

this themselves, but I have to say it seems to be a bit of a minefield and I think it is likely to get itself into problems.

The Speaker: Hon. members, before any other hon. member speaks, can I make it quite plain that what we have done so far this morning is accepted the committee's report. We are now at the stage where in fact a new clause which is appended to the report is being considered in principle and we will then have moved the clause itself, if you accept that it should be accepted in principle. That is the procedure which we are at at the moment and I appreciate that it is difficult not to get involved in talking about the bits and pieces which are within the clause but that opportunity will come. The hon. member for Ayre.

Mr Quine: Thank you, Mr Speaker. I appreciate that we are debating the new clause as a matter of principle and I will therefore not go into too much detail, but I think the first point I would make is that the existing 11(3) is manifestly inadequate. That is not only the view of three different departments over the time that this matter has been under discussion but it is also a matter of record by the working party, which included two lawyers and also, of course, that has been endorsed by the Attorney-General, so there is no question, there is no doubt in my mind that the existing 11(3) is inadequate. So that is the first point I would make.

So I think that takes us on to a situation, well, what do we put in its place? And as I say, although I may have reservations about the evidential aspect of the new clause - and those reservations are marginal, I concede they are marginal, they are not going to pop up every day in the week - I believe that the approach that has been taken here is a reasonable balance. Essentially what we are saying here is that the owner of the agency is going to have an overall responsibility. In addition to that there is going to be an estate agent who is going to be designated and he is going to have specific responsibility, not necessarily just for one office, but he is going to have specific responsibility and in order to make that work in practice, if there is an absence for a period of time less than 21 days, for the three days rather, he is going to have this authorised person and if it is over 21 days he has to get an authorised practitioner. I think that covers the question of being able to allocate responsibility for any mishap quite comprehensively. Both the owner of the business, whether he be a sole proprietor or a company, and then we go one step further and have an authorised estate agent who has responsibility for one or more offices, and on top of that we have the contingency arrangements for short absences and for longer periods of absence. Now, all right, it may be that that does not cover the whole span, that there are still some little boltholes somewhere along the route. So be it, but they are decidedly smaller and decidedly less consequential than what we have in the existing 11(3).

One final point and that is it should be borne in mind that in this new legislation it not only encompasses a requirement for supervision, which is the provision in the existing 11(3), it is supervision and management, and that is a different level of responsibility entirely, as has been explained to us by the law draftsman.

So I think we have a much superior product reflected in this amendment. So I am pleased to support this new clause in principle.

The Speaker: Hon. members, I then call upon the hon. member for Rushen to respond to the debate which is in principle or in effect the second reading of the new clause 4 as appended to the committee's report.

Mrs Crowe: I thank the hon. mover of the Bill, Mr Quine, I think for explaining most clearly the system that would be in place and I think it would be far less bureaucratic and would keep open branch offices of estate agents throughout the Island, and I think we have worked on that system quite thoroughly and tried to redefine it as clearly as we possibly could.

Mr Quine so fully explained it, it would be foolish for me to go through it all again. Mr Speaker, I beg to move that the amended clause 4 now be approved.

The Speaker: Hon. members, the motion is that the redrafted clause 4, as contained in the select committee report, be approved in principle. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, having agreed the redrafted clause 4 in principle, I invite the hon. member for Rushen to move that that clause now stand part of the Bill.

Mrs Crowe: Thank you, Mr Speaker. I beg to move that clause 4 now stand part of the Bill.

Mr Quine: I am pleased to second, sir.

Mrs Hannan: Vainstyr Loayreyder, I think the biggest change that this makes is that the authorised practitioner may be designated under subsection (3) in respect of more than one office and if that is the case, then I wonder why we need either 14 days or 21 days, because surely if someone can be a designated practitioner under more than one office, why do we need the 14, the 21 days when the office is not covered? I would have thought that because an authorised practitioner could be designated under more than one office, then that practitioner could cover another office for the 14 days as the original Bill because the original Bill said that an authorised practitioner shall not be designated under subsection (3) in respect of more than one office. So I would have no problem with the 14 days if that 14 days or the 21 days was covered by another authorised officer, and my reading of the Bill is that any of the officers - and I would like this to be clarified - could be supervised during the absence of the authorised officer but another authorised officer is appointed for those 14 or 21 days if it should be amended, and I would have thought that that would be the main purpose of this select committee looking at it, to say, yes, more than one office can be covered by an authorised practitioner and before that period of 21 days which is now extended, and I would hope that there is some clarification of that fact.

If my reading of it is correct, then I would feel concerned that the committee has brought this forward at this time when (3A) would seem to cover my concerns that the office was covered at all times but then (3C) allows a period of 21 days when someone could be at the other end of the world but is still responsible for this office. Surely it is possible to designate a locum in this particular instance and I would hope that maybe the mover of the amendment could clarify the situation for me.

The Speaker: Does any other hon. member wish to speak? In that case I call upon the hon. member for Rushen, Mrs Crowe, to respond.

Mrs Crowe: Mr Speaker, I think we are getting a little confused here between an authorised practitioner and a designated official. An authorised practitioner who is a qualified estate agent can supervise and manage more than one office. He can appoint a designated official to run an office but he remains the authorised practitioner in overall control. When that

practitioner wants to leave the Island for a period of more than 21 days he then has to appoint another authorised practitioner who will then be the person who any prosecution would be legally enforced upon. The authorised practitioner would then be a qualified person looking after that business whilst the other qualified person was on holiday. A designated official is the person that could be managing day-to-day business in a branch office under the management and supervision of at all times an authorised practitioner, and that is the reason we extended the time period to 21 days because we felt that was more reasonable than perhaps having to keep notifying the registrar for every time a practitioner was unavailable for a period of less than 21 days.

So it is the authorised practitioner that would have to appoint another authorised practitioner if he was away for more than 21 days, and that is not to be confused with a designated official who would be in charge of the day-to-day management of a branch office. Thank you, Mr Speaker.

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

Now, hon. members, with clauses 5, 6 and 7 having already been moved, that concludes the clauses stage of the Estate Agents Bill.

Road Traffic Bill – Council Amendments Considered

The Speaker: So we move on to item 9 on your order paper which is the Road Traffic Bill in the hands of the hon. member for Ramsey, Mr Bell, and it is for consideration of a Council amendment. I call upon the hon. member for Ramsey.

Mr Bell: Mr Speaker, section 8 of the Road Traffic (Amendment) Act of 1996 inserted a new paragraph 6B in the schedule relating to driver licensing of the Road Traffic Act of 1985 enabling restrictions to be imposed on newly qualified drivers for 12 months after they passed their test, similar to the R-plate system currently operating in Northern Ireland. Regulations made by the Department of Transport will prescribe these restrictions which must include the display of a special mark, an R-plate, and a 50-mile-an-hour speed limit. Breach of the restrictions is an offence.

The amendment is not yet in force but the Department of Transport are now considering bringing it into force as soon as possible. Unfortunately, by an oversight, the 1996 Act did not prescribe the penalty for the new offence and when this was spotted the Attorney-General agreed that this Bill was a suitable vehicle for filling the gap rather than waiting for the proposed Road Traffic (Amendment) Bill. Therefore the amendment before us of schedule 6 to the 1985 Act provides that the offence carries a maximum penalty of a £1,000 fine with discretionary disqualification or three penalty points and I beg to move:

That the Council amendments to clause 6 and schedule 1 be agreed.

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

The Speaker: Hon. members, the motion is that the Council amendment be agreed. Those in favour please say aye; those against, no. The ayes have it. The ayes have it.

Town and Country Planning Bill – Consideration of Clauses Concluded

The Speaker: We turn then to item 10 on your order paper, hon. members, the Town and Country Planning Bill for further consideration of clauses and last week we reached the stage of completing up to and including clause 28. So we start our consideration this morning, hon. members, at clause 29. I call upon the hon. member for Ayre.

Mr Quine: Thank you, Mr Speaker, Clause 29. This clause re-enacts existing provisions relating to the enforcement of control over works to registered buildings and sub-clause (1) makes it an offence to carry out unauthorised works to a registered building.

Sub-clause (2) makes it an offence to fail to comply with a condition attached to a registered building consent, and sub-clause (3) specifies the penalties for contravention of sub-clauses (1) or (2) above. The maximum fine on summary conviction is increased from £5,000 to £20,000. The benefit to the offender of contravention is to be taken into account in setting the actual fine.

Sub-clause (4) gives a defence that the works were urgently necessary for safety or health or to preserve the building but the accused also has to show that repairs or temporary repair or shelter was impractical, the works done were the bare minimum and the department was notified as soon as possible.

I beg to move that clause 29 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 29 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 30, sir.

Mr Quine: This clause makes it an offence to damage or to do anything likely to cause damage to a registered building where it would not otherwise constitute the offence of criminal damage.

Now, sub-clause (1) makes it an offence to damage or do anything likely to cause damage to a registered building or to cause or permit another to do so where it would not otherwise constitute the offence of criminal damage. This covers, for example, the case where the accused is the owner of the building or has the owner's permission to cause the damage.

Sub-clause (2) excludes certain cases from the offence at sub-clause (1) above where the building is excluded from registered building control or where the work done has planning approval or registered building consent.

I beg to move, sir, that clause 30 stand part of the Bill.

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

The Speaker: The hon. member for Douglas West seconds and I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, a very simple amendment to clause 30, simply to remove a redundant word which seems to have crept in during the word-processing, that word being 'building' on line 31, as it says at the moment, 'the intention of causing such damage building', the phrase should be 'the intention of causing such damage,'. Thank you, I beg to move:

Page 29, line 31, omit 'building'.

Mr Gelling: I beg to second, Mr Speaker.

Mr Quine: I would just indicate that the amendment is acceptable, sir.

The Speaker: In that case, hon. members, with no further member wishing to speak, can we take the amendment moved by Mr Rodan. Those in favour please say aye; against, no. The ayes have it. The ayes have it. The clause as amended, hon. members. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clause 31 and it introduces schedule 5, sir.

Mr Quine: Clause 31 with schedule 5 enables the Department of Local Government and the Environment to serve an enforcement notice requiring action to be taken to remedy unauthorised works to a registered building. The clause and schedule largely re-enact existing provisions, with a few changes.

Now, sub-clause (1) introduces schedule 5, parts 1 and 2 which deal with registered building enforcement notices.

Paragraph 1 gives the department power to issue a registered building enforcement notice if unauthorised work is to be done to a registered building.

Paragraph 2 requires the notice to specify the time within which the required steps are to be taken. Different times can be specified for different steps, and Paragraph 3 specifies the time when a registered building enforcement notice takes effect as respects any person on whom it is served and his successors in title at the end of a time specified in the notice, calculated from the time it is served on him. An appeal may be brought within the time under paragraph 8 to the schedule.

Paragraph 4 requires the notice to be served on the owner and occupier and any other person. If it is not served on any of them it is still valid against any others on whom it is served. The requirement to serve it within 28 days of its issue is removed.

Paragraph 5 enables the department to withdraw a registered building enforcement notice - it can, of course, issue another notice - or to waive or relax any requirement of it or to extend the time limit for action. If it does, it must notify everyone concerned.

Paragraph 6 provides that where a registered building enforcement notice requires remedial works to be done, a registered building consent is deemed to be granted for those works, and paragraph 7 provides that registered building consent to retain works the subject of a notice causes the notice to lapse so far as it requires restoration of the building but a prosecution can still be brought for the original works.

Paragraph 8 gives a right of appeal to the High Bailiff against a registered building enforcement notice. The High Bailiff may quash or vary the notice when deciding an appeal under sub-paragraph (1). He can also correct any error if he thinks it would not cause an injustice.

Now, sub-clause (2) to the clause provides that where a step required by a registered building enforcement notice with respect to the building has not been taken within the time allowed, the person who is the owner for the time being is in breach of notice. This makes compliance with the notice an obligation which runs with the land and is wider than the present law under which only an owner who has been served with a notice can be liable.

Sub-clause (3) makes the owner for the time being guilty of an offence if he is in breach of a registered building notice. The maximum penalty on summary conviction is increased from £5,000 to £20,000 and the court is to take any benefit to the defendant into account in fixing the fine.

Sub-clause (4) enables the offence to be charged with respect to a period of time as opposed to a single occasion and successive prosecutions can be brought for persistent contraventions.

Sub-clause (5) gives the owner a defence, firstly that he has done his best to comply with the notice, or secondly, that he was not served with a notice and did not know of it.

Sub-clause (6) precludes the defendant raising a defence on which he could have founded an appeal under schedule 5, paragraph 8.

Sub-clause (7) introduces schedule 5, part 3 which gives the department default powers. Under paragraph 9 of the schedule the department may carry out any steps necessary to comply with a registered building enforcement notice and charge the expenses to any person interested in the land. Powers of entry are conferred for this purpose by clause 43(1)(h). The High Court, in proceedings for recovering any expenses under (1), may split the costs between different persons interested in the land. The defendant is precluded from raising a defence on which he could have founded an appeal under paragraph 8.

I beg to move, sir, that clause 31 and schedule 5 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 31 and schedule 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The hon. member for Ayre, clause 32 and schedule 6 this time.

Mr Quine: Thank you, sir. Clause 32 re-enacts existing provisions under which the Department of Local Government and the Environment can carry out emergency works to preserve an unoccupied registered building or an important building in a conservation area and recover the cost from the owner.

Sub-clause (1) gives the department power to carry out urgent works to preserve a registered building or an important building in a conservation area.

Sub-clause (2) precludes the power being used for an unoccupied building but it can be used for a disused part of an occupied building, and sub-clause (3) enables temporary as well as permanent work to be done.

Sub-clause 4 introduces schedule 6 which makes supplemental provision with respect to the works under this clause, and paragraph 1 of schedule 6 requires the department to give three days notice to the owner of the building. This is reduced from the existing seven days.

Paragraph 2 enables the department to serve a notice on any person interested in the building, for example the owner, lessee or tenant, requiring him to pay the cost of such works and to recover the expenses in accordance with the notice, and paragraph 3 gives a person who is given a notice a right of appeal against it to the High Bailiff on certain specified grounds. The High Bailiff may quash or vary a notice. He can require someone other than the appellant to pay the expenses but only after giving him an opportunity to be heard.

Mr Speaker, I beg to move that clause 32 and schedule 6 stand part of the Bill, sir.

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

The Speaker: Hon. members, the motion is that clause 32 and schedule 6 stand part of the Bill. Will those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 33 and schedule 7, sir.

Mr Quine: Thank you, sir. This clause introduces schedule 7, which gives the department power to acquire compulsorily a registered building which has been allowed to fall into disrepair. In appropriate cases the compensation payable may exclude any redevelopment value, and paragraph 1 of schedule 7 prescribes the first step in the process. The department is to serve a repairs notice on the owner saying what works need to be done to the building and explaining the following powers. The owner may appeal to the High Bailiff against the notice on the ground that it or the works required are unnecessary. A new provision is made so that the notice cannot be quashed simply because the appellant has to demolish the building.

Paragraph 2 requires the department to withdraw a repairs notice once it has been complied with. An appeal lies to the High Bailiff against a refusal to withdraw the notice.

Paragraph 3 gives the department power to acquire the building and any land forming its site and requires an order to manage or repair it compulsorily two months after service of the repairs notice. If the repairs notice is withdrawn under paragraph 2 the compulsory powers lapse. Having acquired the building the department has a wide discretion as to how it will be used or managed and may let or sell it.

Paragraph 4 provides that where a building has been deliberately allowed to fall into disrepair so that the site can be redeveloped, the department can acquire it at a price which does not reflect any redevelopment value, provided that Tynwald agrees and includes the appropriate direction in the authorising resolution.

Paragraph 5 of course is a drafting provision.

I beg to move that clause 33 and schedule 7 stand part of the Bill.

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

Mr Cannell: Mr Speaker, I have one or two concerns about this clause. It seems to be pretty sweeping. I wondered if the hon. mover could give me a few more details on how he sees this being put into practice, because it looks to me as if it may be capable of some exploitation.

Without referring specifically to any particular site I am sure that hon. members are well aware of some of the buildings around the Isle of Man that have had chequered histories in their registration and deregistration and I am very concerned that developers might possibly utilise this clause to get themselves into a position where they could dispose of a building on the clause as set out here and schedule 7 as a means of actually disposing of those buildings. In other words it could be encouraged that they could be registered as a building of importance and then perhaps later on they would be able to see it compulsorily purchased.

It seems to me that it could cost quite a bit of money to the Isle of Man Government were this course to be taken, although I appreciate that the caveats which have been explained

already to protect this happening would probably be sufficient, but it does seem a laborious process which would have to be gone through and which in itself would cost a considerable sum of money.

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

Mr Quine: Thank you, Mr Speaker. I think there are really few changes here in terms of the underlying concepts. The hon. member's concern appears to be that what we have in this clause could be exploited by the owner of a building. I do not see that as being a real possibility. First of all I would wish to just comment briefly on the position of the owner and the safeguarding of his rights. It is quite clear from this provision that in order for us to move on any question of compulsory purchase it has to be with Tynwald's blessing on a resolution, and what we can do or cannot do will be as Tynwald sees fit to direct us. I think that is the first point I would make here, because I think it is perhaps even more important that we look towards safeguarding the rights of the owner of a building as a first step in these proceedings.

Now, as far as an owner benefiting by letting a building reach a stage where the department is bound to act, I do not see where the benefit would lie for the owner, because if a point is reached and if Tynwald, having heard all the evidence, decides that this is a case where we should act and we should seek compulsory purchase, the benefit is not going to lie to the owner. Any benefit, if benefit there be, or cost, if cost there be, is going to rest with government. So I do not see how an owner in this situation is going to benefit, because in effect he loses that and in any costings the development aspect is taken out of them. So I do not see that it would be in an owner's interest in any way to try to use this provision to seek the redevelopment of a site which is a registered building. I would see it as the opposite. I would see that it would take the profit element out of the equation and he would back off very quickly, so I do not think that really is a concern.

I beg to move, sir, that clause 33 and schedule 7 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 33 and schedule 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. member, clause 34.

Mr Quine: Thank you, sir. Clause 34 applies the enforcement notice provisions in clause 31 and schedule 5, which we have of course dealt with, to buildings subject to building preservation notices and buildings in conservation areas, with certain modifications.

Sub-clause (1) applies clause 31 and schedule 5 to buildings subject to building preservation notices, which of course would be imposed under clause 17, and buildings in conservation areas which are covered by clauses 18 and 19. Regulations made by the department may modify those provisions in the case of buildings in conservation areas.

Sub-clause (2) provides that the expiry of a building preservation notice does not effect any criminal liability for a previous contravention or any liability for recovery of expenses, but any registered building enforcement notice is to lapse.

I beg to move, sir, that clause 34 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 34 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. member for Ayre, clause 35.

Mr Quine: This clause provides for the enforcement of control of advertisements under the new regulation-making powers in clause 22.

Sub-clause (1) enables regulations made by the Department of Local Government and the Environment to require the removal of advertisements and the discontinuance of advertising sites which contravene regulations under clause 22.

Sub-clause (2) enables the regulations to apply with modifications any provisions relating to enforcement notices, and sub-clause (3) makes contravention of regulations under clause 22 an offence, and sub-clause (4) provides that the owner or occupier of land on which advertisements are displayed or the business which is being publicised is deemed to be in contravention and can therefore result in prosecution.

Sub-clause (5) gives the accused owner the defence that he did not know of the display and did not consent to it, but this is a matter which he must prove.

I beg to move that clause 35 stand part of the Bill.

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

Mrs Crowe: Mr Speaker, I would not like the hon. mover of this Bill to think that I think that all legislation from his department is draconian, but last week I did ask for clarification regarding advertisements and as we are on to the enforcement and control of those said advertisements I would like to know if in clause 22(2)(a) regulating the dimensions, the appearance, the position of the advertisements, where they may be displayed, the manner in which they are fixed to the land, all of these require the consent of the department. Now, here we have the enforcement of that, so I would like to know does this cover things like the local drama and operatic groups and their advertising? Does it cover TT advertising? What advertisements are to be covered? Because I think if one was to apply for planning permission for an advertisement for a local show it might well be over and gone before it was received.

I would just like clarification on the sections regarding advertisements and what advertisements have to be regulated and why they have to be regulated. Thank you, Mr Speaker.

The Speaker: Does any other hon. member wish to speak? In which case I call upon the hon. member for Ayre to reply.

Mr Quine: Yes, I recollect Mrs Crowe raising this last week and I was under the impression I responded, because I do recollect drawing to her attention clause 45(1) which in fact specifies what an advertisement amounts to and what it does not amount to, so I think I responded to it then. Some of the matters which Mrs Crowe has referred to are matters of detail and quite clearly they are going to be covered by the regulations and so that will be addressed when we reach that stage and I have no doubt that Mrs Crowe will have her input and have her say at that time.

What we have at the moment is the provision to make those regulations which are covered by clause 22 and we have matters which are embraced by way of advertisement

which are covered by clause 45(1), and if Mrs Crowe wishes to get any further details, of course I will be pleased to discuss it with her and let her have any further and better information that she needs, but of course the regulations we are referring to, to be made under clause 22, have yet to be addressed.

I beg to move, sir, that clause 35 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 35 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 36, hon. member for Ayre.

Mr Quine: Clause 36, sir, gives the Department of Local Government and the Environment and local authorities new powers to remove advertisements which contravene regulations under clause 22.

Sub-clause (1) enables the department or a local authority to remove contravening advertisements.

Sub-clause (2) excludes the power where the advertisement is displayed in a private building, and sub-clause (3) restricts the power where the advertisement identifies the advertiser. The department or local authority must first give him at least two days' notice of its intention to remove the advertisement, and sub-clause (4) excludes sub-clause (3) above where the advertiser's address is not given and the department or local authority does not know and cannot find out who it is.

I beg to move, sir, that clause 36 stand part of the Bill.

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

Mr Gilbey: Mr Speaker, this clause refers to section 22 and section 22 says, 'Regulations may restrict or regulate the display of advertisements so far as it appears to the Department to be expedient in the interests of amenity or public safety' and it goes on, 'Without prejudice to the generality of subsection (1), regulations may provide for - (a) regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed' and therefore it is very all-embracing, this, regarding what can and cannot be displayed. But then we come back to this clause 36 which says the department or local authority may remove or obliterate any placard or poster which appears to be displayed in contravention of the regulations under section 22, which regulations I have briefly read out. That means that literally they could come along and take down any poster or placard or obliterate it, either or both. But then we move to sub-clause (2) which says, 'Subsection (1) does not authorise the removal or obliteration of a placard or poster displayed within a building to which there is no public right of access.' So at least they cannot come into your own home if you decide to put up posters and obliterate them or tear them down.

However, I think that it is quite wrong to say that this should be limited to buildings to which there is no right of public access, because if you consider it, all offices have a right of public access, people go in and out, particularly if you take the main hallway here. It has a right of public access, people are expected to go in to pass through it to pay their vehicle licences, to give a good example. Now, that means that, theoretically at any rate, the planning officers could say they did not like the placards or posters in the hall here and could come

and tear them down or obliterate them, and I cannot believe that this is the intention and I therefore think the wording should be altered so it does not authorise the removal or obliteration of a placard or poster displayed within a building. One can see the reasons for having control over placards or posters put outside a building, but frankly I think that it should be up to the owners of buildings what they put in their own halls and vestibules -

Mrs Crowe: I quite agree.

Mr Gilbey: - and accordingly to cover this point, Mr Speaker, I have tabled the amendment in my name that on page 33, line 2, omit the words 'to which there is no public right of access' and that would therefore result in this power not being extended to the interior of any building and I beg so to move:

Page 33, line 2; omit 'to which there is no public right of access'.

Mrs Crowe: I beg to second, Mr Speaker, and I agree. I am very worried about this clause and the implications of this clause.

Mr Brown: Mr Speaker, I think we do need to be careful on this one and I hope that the mover of this can maybe respond. To me the important word is a public right of access. For example, the hon. member in his presentation said about lots of people go into offices and, for example, lots of shops display posters on their windows and so on, but the public does not have a right of access, the public are invited into those buildings by the owner of that property, because if they had a right of access, then you cannot close off that right, and I think it would be helpful if the minister could actually try and clarify that point for us as to what they mean by right of access and maybe give some examples, but to me there are many buildings in the Isle of Man and nobody has a right of access to them. They do not have a right of access into your house, they do not have a right of access into a church hall, they do not have a right of access into government buildings, they do not have a right of access into shops, so presumably it is very limited where people have an actual right of access, and it is that terminology, I think, that may well cover the point that the hon. member for Glenfaba seems to be concerned about. If we take that out, then of course it is just 'a placard or poster displayed within a building'.

Now, I wonder if we are really arguing over something that is actually not worth arguing over, but that is dependent on the terminology and where the legislative draftsman and the department are coming from, where for they talk about where the public there is no right of access, and I have given examples as I see it where people, we might perceive, have a right of access but they do not because they are actually invited in by the person opening up their shop or opening up their offices and having a public counter, and I think that is the difference.

It is quite an important one to get right and clearly I am sure nobody wishes to see people taking down placards or posters in, for example, shop windows or garage windows, and I think that is covered. I do not think that is affected. In fact if you want you could argue and if we see what goes on, the area of concern might well be that under this they may not be able to have posters or placards up, for example in a field or in a garden where they might be opposing something -

Mrs Crowe: Yes.

Mr Brown: - but that is a different issue and that certainly has not been covered by either the member for Rushen, Mrs Crowe, or Mr Gilbey, the member for Glenfaba.

So again I think it is an important one to get right and I think the important words there are 'public right of access'.

The Speaker: Hon. member for Ayre, did you wish to speak to the amendment, sir?

Mr Quine: Yes, if I may, sir. I feel that regarding the public right of access my understanding of this of course is quite different from an invitation. It is my interpretation that if you have a private premises and you open for business and people are invited to come in to do business, that is a different situation, but I will clarify this for members and I will get the law draftsman's view upon it.

So far as the amendment is concerned I have no great difficulty. I have discussed the amendment with the hon. member for Glenfaba and I am content to accept the amendment.

The Speaker: Does any other hon. member wish to speak? In that case I call upon the hon. member for Glenfaba to reply to the amendment.

Mr Gilbey: Mr Speaker, I should like to thank the hon. member for Rushen, Mrs Crowe, very much for seconding my amendment.

Regarding the point of the hon. member for Castletown, I understand from the learned Clerk - I hope I have got it right and it might be better for him to explain it himself - that there could be a right of public access when there is an invitation to enter a building, such as there is a clear invitation for people to enter the government offices next door to us. It is quite clear that people are invited to come in. You can stop that invitation by closing the doors, but I would get him to explain the situation.

But in any case it seems to me it is much safer, as there is doubt about this matter, to cross out the words 'to which there is no public right of access' because I think everyone in this hon. House agrees that it should not apply to places like the interiors of offices, whether government offices of anyone else's office, and if we say 'within a building' we are much safer. Thinking of another building to which it could be said there is a right of public access is a railway station, which is usually open 24 hours a day in some places, all through the year, and there are other public places that are buildings that people can go in where they think they have got a right of access, so I think it would be much safer - *(Mr Downie interjecting)* Well, if Mr Downie would like to make a speech I am sure I am happy to sit down and let him. If, Mr Speaker, there is any doubt, isn't it better to be on the safe side and cross out the words here 'to which there is no public right of access'? It seems to me the deletion of those words can do no harm at all and if there is doubt there would then be no doubt at all. I beg to so move.

The Speaker: The hon. member for Ayre.

Mr Quine: Yes, I am happy to accept the amendment which the member for Glenfaba has put forward.

I think we are getting ahead of ourselves in some of the concerns that have been expressed here today, because as I have pointed out, clause 22 refers to our ability to make regulations, and that is going to be the effective legislative document when it comes to the detail in applying the provisions of this. So I think we are, perhaps, anticipating concerns that may not be with us when we have progressed this matter to the full extent.

But I think that is all I need to say, sir. I simply ask members to support clause 37.

The Speaker: Well, we are actually dealing with clause 36 and to that, hon. members, we have the amendment as moved by the hon. member for Glenfaba. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it. Clause 36, as amended then, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, hon. member, we can turn to clause 37.

Mr Quine: Thank you, sir. This clause gives the department new powers to apply to the High Court for an injunction restraining a breach of planning control or registered building control. This power is useful where criminal penalties are insufficient deterrent to stop flagrant or persistent contraventions because of the High Court's powers to punish contempt of court by fines or imprisonment, and sub-clause (1) gives the department power to apply to the High Court for an injunction to prevent an actual or expected breach of planning control. It can do this instead or as well as serving an enforcement notice, bringing a prosecution et cetera, and sub-clause (2) enables the court, on an application under sub-clause (1), to grant an injunction restraining the breach. Breach of an injunction is a contempt of court and may be punished by fines or imprisonment.

Sub-clause (3) enables the rules of court to provide for injunctions to be issued against unidentified persons, for example where it is not known who is carrying on a contravening use.

I beg to move, sir, that clause 37 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 37 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We will deal, hon. member for Ayre, with clause 38 and 39, sir.

Mr Quine: Yes, indeed, sir. Clause 38 restricts private prosecutions for a breach of control and imposes a special time limit for prosecutions, and sub-clause (1) requires prosecutions for offences under the Bill to be brought only by or with the consent of the department or the Attorney-General. This is to prevent vexatious private prosecutions.

Sub-clause (2) imposes a special time limit for prosecutions under the Bill. They must be brought within six months of sufficient evidence coming to the prosecutor's knowledge or within 12 months of the offence, whichever is longer, and sub-clause (3) enables a certificate to be given as to the time when sufficient evidence came to the prosecutor's notice.

Moving on to clause 39, this is the standard form provision enabling the responsible officer of a company to be prosecuted for an offence committed by the company, and sub-clause (1) enables a director or other officer of a company or body corporate to be prosecuted for an offence committed by the body for which he was responsible, and sub-clause (2) applies the same rule to bodies which are run by their members, for example a building society. The responsible members can be prosecuted.

I beg to move that clauses 38 and 39 stand part of the Bill.

Mr Rodan: Mr Speaker, I beg to second.

The Speaker: Hon. members, the motion is that clauses 38 and 39 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 40, hon. member.

Mr Quine: Thank you, sir. This clause makes new provision for participation by amenity bodies in the planning process. The department may establish a new consultative body in place of the Advisory Council on Planning and the Environment and may include provision in a development order or regulations for consultation with designated voluntary amenity bodies.

Sub-clause (1) enables the department to establish a consultative body to represent bodies concerned with the environment and the economy or planning, and sub-clause (2) requires the department to consult with the new body and to have regard to its advice.

Sub-clause (3) enables a development order or regulations under the Bill to enable the department to designate voluntary amenity bodies and provide for consultation with them on, for example, planning applications, registered building consent et cetera.

I beg to move that clause 40 stand part of the Bill.

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

Mr Cannell: Mr Speaker, I was not certain there. It was not lack of attention but the hon. mover did say there was to be a new advisory body to be set up which presumably replaces the previous Advisory Council of Planning, but I wonder whether that embraces every group's needs really. I would seek an assurance on this, that it does give members of the former ADCO the right of seeking a review and appeal and overcome the previous situation where they were apparently denied those rights as interested parties.

Mrs Cannell: Mr Speaker, I again rise to my feet in relation to this and the involvement of the outside organisations in planning, really to seek some kind of confirmation from the minister as to whether or not such an organisation will have any kind of party status in relation to reviews of the planning department and indeed appeals. I do appreciate that the existing situation is in an advisory capacity alone and there is and has been for some time now a degree of frustration, shall we say, from some of the organisations that fall into the advisory committee capacity that they can only have input to a degree and then after that the door is closed in their face and they do not have any more teeth or any kind of party status, and I believe it would be advantageous if they were given party status, even if it were just at review hearings. Thank you, Mr Speaker.

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

Mr Quine: Thank you, sir. What is embraced by clause 40 includes an expansion of the consultation process. The first step that would be taken here is that we would establish in place of the Advisory Council on Planning and the Environment a body which would have represented on it interests concerning the environment, the economy and planning and that body is going to have an input into planning legislation, planning orders, to make sure that in putting the foundations in for planning we have input of interested parties. Now, yes, that is replacing the Advisory Council on Planning and the Environment but what we are putting in its place is going to fulfil a much more fundamental role. Now, that is step one.

Now, secondly, by virtue of sub-clause (3) we will be able, by development order or by regulations, to designate voluntary amenity bodies and provide for consultation with them on planning applications and registered buildings and so forth.

So two different things. Instead of the one body that we have at the moment, which is a body called the Advisory Council on Planning and the Environment, which is concerned purely

with the planning applications and the registered buildings and so forth, we are going to provide two bodies, two levels of input. One will be this higher-level body which is going to be concerned with the basic elements of planning, our orders, our legislation, and they are going to have an input into that and then we are going to additionally provide by order and give accreditation to certain other bodies who will have an input into the planning control processes, as opposed to the planning development processes. So this is broadening it.

Now, in terms of what the specific rights of the latter bodies will be, that is a matter which is going to be covered by development orders and regulations, and Tynwald Court is clearly going to have the final say as to how far those rights go. That will be a matter for Tynwald Court. We will make our recommendations, having consulted, having taken it to the department first and then the Council of Ministers, and we will then come forward to Tynwald Court and they will have the final say.

Now, I am of course aware that certain what you might call environmental and ecological groups interested in the environment and the ecology of matters on the Island feel that they would like further powers than they have got. That is a matter which will be considered. But let me also say that as the minister I am aware that there are parties who are not concerned with the economy and the ecology and they want to know why they do not have these rights. They want to know why they are not represented. This is not a one-sided situation. A balance has got to be struck between the legitimate expectations of people who give up their time to pursue environmental matters and so on - perfectly legitimate and they have my full support - but there are other interests equally important to the wellbeing of this Island and some of those interests say, 'Why are we not getting these same rights?', and in the process of consultation that is going to take place now and our deliberations within the Council of Ministers we are going to have to strike a balance between these different interests and their competing claims, but that is a matter for the regulations or a matter for a development order. I am simply making the point today that it is not a one-sided arrangement. There is a range of interests which will have to be taken on board and upon which we will have to take an opinion before we get it to Tynwald Court.

I beg to move that clause 40 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 40 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 41, sir.

Mr Quine: Thank you, Mr Speaker. Clause 41 makes new provision requiring the Department of Local Government and the Environment to keep registers of applications, decisions, notices and such matters relating to planning.

Sub-clause (1) requires the department to keep registers of applications, decisions, notices, certificates et cetera relating to planning control and registered building control. The contents will be prescribed by regulations made by the department.

Sub-clause (2) requires the registers to be public, and sub-clause (3) enables the registers to be kept on a computer.

I beg to move that clause 41 stand part of the Bill.

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

The Speaker: Thank you, hon. member. I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. This is a simple amendment to clause 41 which inserts a word which was missed out in the course of word-processing. Clause 41 requires the department to keep public registers of various planning matters, for example planning approvals, planning applications, enforcement notices. The clause was supposed to read, 41(1), the department shall keep registers containing prescribed information with respect to (a), (b), (c), (d) et cetera. That is the information to be contained in each register would be prescribed by regulations made by the department. The word 'prescribed' was missed out by accident and this amendment puts it back in. Thank you, Mr Speaker. I beg to move:

Page 35, line 19; after 'containing' insert 'prescribed'.

Mr Gelling: I beg to second, Mr Speaker.

Mrs Hannan: With regard to 'prescribed', I wonder could the mover clarify the position of what this prescribed information will be. Obviously it will not be all the information on planning approvals, so could he describe what the 'prescribed' is?

The Speaker: The hon. member for Ayre speaking to the amendment.

Mr Quine: Well, I think we have a broad indication, sir, already as to the nature of the information but the short answer to the hon. member is that when the regulations are being drafted, detail will be built into those regulations and they will be considered by Tynwald Court.

I beg to move that clause 41 stand part of the Bill.

The Speaker: Steady: you are moving ahead of yourself.

Mr Quine: Oh, it is only the amendment. I beg your pardon, sir.

The Speaker: Does any other hon. member wish to speak to the amendment? In that case I call upon the hon. member for Garff to reply to the amendment.

Mr Rodan: Thank you, Mr Speaker. Yes, it is quite clear what the word 'prescribed' means and how it is defined. Clause 45 of the Bill, the interpretation clause, defines 'prescribed' as meaning prescribed by regulations and 'regulations' mean regulations made by the department. So it is clear that the regulations will set forth what is to be the extent of the information prescribed. Thank you, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 41 stand part of the Bill. To that we have the amendment moved by the hon. member for Garff, Mr Rodan. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Clause 41 as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Ayre, I think I omitted to give you the opportunity to wind up to that debate but nevertheless, I am sure you are happy.

Mr Quine: I think I got it in earlier, sir.

The Speaker: Clause 42, sir.

Mr Quine: Clause 42 re-enacts existing provisions enabling the Department of Local Government and the Environment to keep old documents, for example plans submitted with planning applications, on microfilm. The power is extended to enable them to be kept in computer-readable form. I beg to move, sir, that clause 42 stand part of the Bill.

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

The Speaker: Hon. members, the motion is that clause 42 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 43, hon. member for Ayre.

Mr Quine: Clause 43, sir. This clause gives the department rights of entry on land for various purposes connected with planning. They are based on existing powers for enforcing registered building control but extended to cover other controls under this Bill.

Sub-clause (1) gives a person properly authorised in writing by the department power to enter land for a series of purposes which are specified in that sub-clause.

Sub-clause (2) imposes certain obligations and confers certain powers on a person exercising rights of entry under sub-clause (1). He must produce his authorisation, can take others with him and any necessary equipment, he must give at least 24 hours' notice to enter unoccupied property, must leave the property as secure as he found it and may not enter a dwelling except with a warrant.

Sub-clause (3) gives power to apply to a JP for a warrant to obtain entry in certain cases, and sub-clause (4) requires a notice of the application for the warrant to be given where it is sought because admission has been refused or is expected to be refused, and sub-clause (5) provides for a warrant not to remain in force for more than a month, and sub-clause (6) applies the Local Government Act 1985, section 36, to powers of entry under this clause, and that section 36 makes it an offence to obstruct a person exercising rights of entry and also makes it an offence for such a person to disclose a trade secret discovered in the course of entry except where the disclosure is for official purposes.

I beg to move that clause 43 stand part of the Bill. The hon. member for Douglas West, Mr Downie, to second?

Mr Downie: Yes, I rise to second, Mr Speaker, and reserve my remarks.

Mr Rodan: Mr Speaker, this simple amendment corrects a drafting error. The word in clause 43(2)(c), line 11 should be 'occupied' not 'unoccupied'. The requirement of this clause is that a person going on private land in pursuance of a statutory power of entry must give the occupier at least 24 hours' advance notice. Obviously this applies to occupied not unoccupied land. Therefore there requires to be a correction and I beg to move:

Page 38, line 11; for 'unoccupied' substitute 'occupied'.

Mr Gelling: I beg to second, Mr Speaker.

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

Mr Cannell: Yes, thank you, Mr Speaker. Speaking to the main clause rather than the amendment, I wonder if the hon. mover could supply a small informational point as to whether

he interprets this clause as catering for the needs of members of local authorities and indeed Members of the House of Keys.

My understanding of it was that previously entry to some of this land or buildings had been denied to members of local authorities and in my constituency that caused a difficulty in connection with the building which we have been talking about this morning, which has not been named but I am sure everybody knows which it is, and I think it is a reasonable point to make and I would like his assurance that this covers that.

The Speaker: I call upon the hon. member for Garff. Do you wish to say anything?

Mr Rodan: I do not require to reply, sir.

The Speaker: I call upon the hon. member for Ayre, then, to reply to the debate.

Mr Quine: Well, I think the clause is quite clear, sir. Any person duly authorised in writing by the department may at any reasonable time; the department may authorise any person. It is not immediately apparent to me why an MHK would want such an authorisation. There may be some odd situation but I cannot envisage that, but with the local authorities of course, there could possibly be a situation. But certainly as far as the power is concerned, any person duly authorised in writing by the department. Thank you, sir.

The Speaker: Hon. members, the motion is that clause 43 stand part of the Bill. To that we have the amendment circulated to you on the white paper as moved by the hon. member for Garff, Mr Rodan. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 43 then, as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We go on to clause 44, hon. member for Ayre.

Mr Quine: Clause 44, sir, requires Tynwald approval for development orders and regulations and requires orders designating conservation areas to be laid before Tynwald. I beg to move.

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

Mr Gilbey: Mr Speaker, as the hon. minister has said, this clause under sub-clause (1) provides for development orders and regulations under this Act shall not have effect unless they are approved by Tynwald, which I think is totally right and proper in view of their great importance to individuals, but sub-clause (2) says, 'An order under section 18(1) (conservation areas) shall be laid before Tynwald as soon as practicable after it is made.' Now, I think we should look to see exactly what we are referring to by turning back to clause 18(1) and this has the heading 'Designation of conservation areas' and it says, 'The Department shall determine which parts of the Island are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, and shall by order designate such areas as conservation areas.' Therefore we are talking about the orders designating conservation areas.

Now, I believe that they are of equal, or in some cases greater, importance to individuals than development orders or plain regulations. We have to realise that a conservation order could be instituted in respect of a town or village which is fully developed and therefore no-one would expect any changing of zoning or anything but, as a result, if it becomes a conservation area what people can do to their properties, their freedom of action in respect of their

properties, is greatly limited. To take an example, they are in a much more difficult position if they want to put in uPVC windows or doors et cetera and therefore this is vitally important and I believe that such orders in respect of conservation areas should be subject to approval of Tynwald, not laying before.

I know it can be said that members should pick up things laid before, but it is not the same as an order that requires Tynwald approval and I do think in order to protect the rights of all those whom we represent this very important set of orders should not be laid before but should be subject to direct Tynwald approval, and to that end I have moved the amendment that has been circulated in my name which says, 'Page 39, line 11; for clause 44' - and that is the clause that is set out - 'substitute - "44. Development orders, orders under section 18(1) and regulations under this Act shall not have effect unless they are approved by Tynwald."' That has the effect of course of ensuring that Tynwald approval is not only required for development orders and regulations but also orders in respect of conservation areas. I beg to move:

Page 39, line 11; for clause 44 substitute -

'44. Development orders, orders under section 18(1) and regulations under this Act shall not have effect unless they are approved by Tynwald.'

Mrs Crowe: I would be pleased to second the amendment, Mr Speaker. I think as a matter of principle that these orders should not be laid before and should be debated in Tynwald. Thank you, Mr Speaker.

The Speaker: The hon. member for Ayre, Mr Quine, speaking to the amendment.

Mr Quine: Yes, to the amendment, sir. Just to indicate that I have no difficulty with this. The number of orders that is going to come forward for conservation areas is going to be very few indeed and if members are minded to have more orders put before Tynwald, well, so be it. We have to bear in mind that there is a planning process. There is a statutory requirement first of all for the local authority to be involved in these decisions and there is a planning process which underwrites them and they then come forward. But I have no difficulty with it. I think it is a matter of minor significance.

Mr Rodan: Mr Speaker, just speaking to the amendment, I think it would be important to clarify that when the hon. member for Glenfaba refers to orders in respect of conservation areas - and in his remarks he did seem to imply that he was talking about orders governing policies in conservation areas, for example windows and matters of this sort - of course clause 18(1) to which he is referring is the order designating geographically a conservation area. I am sure that is what the hon. member meant but the impression may have been given that he was talking about orders relating to policies in conservation areas when of course what is intended is of purely local concern of interest to people in the geographic area to which the conservation area is proposed, and as the hon. minister has indicated, before such a designation takes place there is a statutory consultation with the local authority and local people will have been very much involved in the proposed designation of the conservation area. It is a local concern. However, if the House feels that it would be appropriate for Tynwald Court to get involved in the designation of specific local areas as conservation areas, which has already been discussed in that local community, then of course it is free to do so.

I make these remarks just to emphasise the distinction that was envisaged, when drafting the Bill, between orders and regulations in a general sense and in an Island-wide basis, including matters related to conservation areas, and orders relating simply to local conservation areas which have been through a local consultation process. Thank you, Mr Speaker.

Mr Brown: Mr Speaker, I stand up to oppose the amendment. To be quite honest, I do not see the logic of saying with regard to a conservation area that that order has to be specifically approved by Tynwald. The whole basis of that order is to give public notice by laying it before Tynwald and if a member of Tynwald is not happy with that order he, at a subsequent meeting, can raise the issue and oppose the order.

Now, I have to say over the years the one thing I have found about the member for Glenfaba, with the greatest respect, is he does not have much real sympathy for protecting our natural and developed environment. Now, where we have got our developed environment, conservation areas, the hon. member made the point, and if you had listened to what he said, his main argument was about an individual who might want to have plastic windows, about an individual who might not want this or that or the other. Absolute nonsense. This is about a collective basis. This is about the integrity in terms of architecture of a town, a street, a village or whatever it is that is deemed important enough, after consultation, for it to be given this special status. I wonder how the hon. member marries it up that if you register a building you do not need to do any order, you do not need to lay an order before Tynwald to seek Tynwald approval, and that can have far greater impact on the owner of a property than a conservation area can.

So I have to say I think we are going overboard on this one. There is absolutely no reason in legislative terms to actually say that Tynwald should specifically approve an area where it has been zoned as a conservation area.

The department has a job to do. For that department, under clause 18, it has been laid out how it is to carry out a procedure. Imagine a situation where Tynwald Court could have an individual at the Bar arguing the case that they do not want their property within an area made a conservation area and Tynwald then drawn into an argument that has been through all the consultations and then Tynwald, as we have experienced, tends to find itself in a situation that it feels uneasy with and you actually could be in a position where you neutralise the effectiveness in the department in this important area.

Now, I know the minister has said he is quite happy to take it. I hope the minister, while I understand that to some degree, will actually not accept the amendment, based on the point that it is an amendment that is unnecessary. We are talking about an administrative role of the department here and the order is laid before Tynwald to give notice that it has zoned an area or a street or whatever it is.

We are here to say that we are to protect the integrity of a town, street or village and we want to have this sort of plan put into place.

The point that the hon. member said about it might affect people and whether they can have uPVC windows or whatever - that is a valid point, but that will be taken into account by the department when it decided that they should actually make this area a conservation area. The problem we do have is that we make these areas conservation areas, then everybody

tries to back out of it because they do not, when an individual constituent gets on to them, then agree to support the principles of conservation areas. They like to support their constituent and say, 'Well, you're all right. We're happy for you to have uPVC windows in. Don't you worry about it.' The point it might destroy the whole character. The right uPVC windows in that are designed so that the bars look right and everything is done right, that is fine, but have we actually seen what has happened in some of our towns? Castletown, Peel, Ramsey - we have had windows put in there when there was hardly any control that have actually totally destroyed the nature of a building.

Mrs Crowe: That is true.

Mr Brown: So as far as I am concerned I would hope members will stick with the Bill as it is written, the order would be laid. There is still an opportunity, if a member really is concerned about it from his constituency, to raise the issue by a resolution that he puts down, and also it is very, very likely that the member for the Keys will have been involved in the consultation exercise anyway, as has happened in the past.

So I just think this is going overboard, it is unnecessary and I hope members will support the Bill as it is written, which is to allow the department to do its job in an administrative way.

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

Mr Gilbey: Yes, Mr Speaker. Thank you. I would like to thank the hon. member Mrs Crowe for seconding the amendment and I am glad that the hon. minister is prepared to accept it. He did mention the point that there is a consultative process before a preservation area is set up, but so is there a consultative process for a development plan, a village plan. So I cannot see why, because there is a consultative process, we should not have Tynwald approval for these orders under 18(1) because we have consultation the same way for development plans.

Now, the hon. member for Garff, Mr Rodan, said was I referring to the basic conservation order, and of course I was. I was referring to what is in 18(1) which says, 'The department shall determine which parts of the Island are areas of special architectural or historic interest, the character or appearance of which' et cetera 'and shall by order designate such areas as conservation areas.' That is what I was referring to and nothing else. I merely referred to controls on windows, which I well realise are quite a separate matter, to show that such things were much tighter in a conservation area than they are in a non-conservation area. Indeed that is the whole purpose of having a conservation area, because in a conservation area, as the hon. member for Castletown has intimated, there are higher standards imposed, but I was not arguing about orders for these higher standards, I was merely pointing out what a difference it could make to people living in a conservation area.

Again Mr Rodan said that it was a very local matter whether there was a conservation area. I would argue that if you make a village like St John's or a large part of it a conservation area, and I only mention that as an example of one place but it could be anywhere else, it is really no more local than a village plan which can cover a very small area, as we have and will see.

The hon. member for Castletown - I am not against keeping areas worth conserving as they are for posterity in such places as Castletown, but I am sure he would agree that the

degree of control that is exercised in a conservation area such as Castletown is likely much greater than that which is exercised in certain parts of Douglas and other areas in this Island and again I would say to him that I was merely pointing out in regard to windows the effects that an individual could have imposed as a result of his property being in a conservation area.

The hon. member for Castletown then said Tynwald should not be drawn into an argument. Quite frankly, when you are talking of not an individual property in a conservation area but an area being designated as a conservation area it seems to be just as logical that Tynwald should be able to discuss that as that they should be able to discuss a village plan which may cover an area of approximately the same area.

Now, he is actually wrong, the Secretary tells me, in saying that Tynwald can vote down a laid before order, and this is the very point that I am getting at, that I do believe on conservation area designations which affect a number of people in an important way they should be something that Tynwald can turn down if that is Tynwald's decision and I think Tynwald should have the right to consider, discuss, and if they wish, vote against something that can very much affect the properties belonging to people who could be affected by such an order and therefore I do hope that the hon. minister will continue to support this amendment as he said he would and I hope this hon. House will support it.

The Speaker: You are now given the opportunity to tell us. Hon. member for Ayre, do you wish to reply to the debate, sir?

Mr Quine: Yes. I think I have made my decision quite clear, sir. I do not see any issue here of great principle. I do not see any issue which is going to either bring upon Tynwald or bring upon the department any great amount of work. We are talking of a very occasional order in relation to a conservation area and I am perfectly content for this hon. House to take a view upon it. I have no difficulty with the amendment for the reasons that I have indicated because I think it is a matter of marginal consequence.

If we were to look at the broader issue of matters which should go before Tynwald, many of which in my view should not be going before Tynwald at this time, that is a different and much more important issue, but as far as this Bill is concerned I have no strong feelings whatsoever. I beg to move, sir.

The Speaker: Hon. members, the motion is then that clause 44 stand part of the Bill and to that we have the amendment circulated on the white paper in the name of the hon. member for Glenfaba, Mr Gilbey. Will those in favour of the amendment please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Cannan, Quine, Mrs Crowe, Messrs Houghton, Henderson, Duggan, Mrs Cannell and Mr Cannell - 9

Against: Messrs Rodan, North, Sir Miles Walker, Messrs Brown, Cretney, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Gelling and the Speaker - 14

The Speaker: Hon. members, the amendment fails to carry, 14 votes cast against, 9 votes cast for.

Hon. members, we then put the clause in its original form. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 45, hon. member for Ayre.

Mr Quine: Thank you, Mr Speaker. This clause provides for the interpretation of certain terms used in the Bill.

Sub-clause (1) is a drafting provision, and sub-clause (2) defines various references.

I beg to move, sir, clause 45 stand part of the Bill.

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

Mrs Crowe: Mr Speaker, I wish to add an amendment to this clause and it concerns 'permanent' and the permanence of these advertisements. I am concerned with clause 22 and clause 35. These are all-embracing clauses and I think that we are in a difficult position unless we clearly define 'advertisements' and I would like to add before the words 'employed wholly or partly for the purposes of permanent advertisement'. That is in clause 45, line 20 and then, carrying on, a clear clarification of 'permanent' means employed or used for a period not exceeding 21 days.

The Speaker: The amendment has not been circulated but I do have it properly in front of me and signed.

Mrs Crowe: I would seek for the department to clarify it for me but I think we do need, in permanent legislation and not in regulation, to define the actual advertisements that we are referring to in clause 22 and clause 35. Thank you, Mr Speaker. I beg to move:

Page 39, line 19; after "purposes of." insert "permanent".

Page 40, line 24; insert-

" 'permanent' means employed or used for a period exceeding 21 days."

The Speaker: Hon. members, for purposes so that everybody is absolutely plain on what the amendment is we will ask the learned Secretary to read it for you so that you have exactly what it is.

The Secretary: There are two elements to the amendment, hon. members. The first element is on page 39, line 19, which reads 'employed wholly or partly for the purposes of,' and this part of the amendment inserts the word 'permanent' so that that part of the sentence reads, 'employed wholly or partly for the purposes of, permanent advertisement, announcement or direction' et cetera. And the second element of the amendment is on page 40, line 24 where it inserts a definition of 'permanent' and the definition of 'permanent' means employed or used for a period exceeding 21 days.

The Speaker: Is every hon. member plain now what the amendment proposed is?

Mrs Crowe: Sorry, Mr Speaker.

The Speaker: Do you wish to continue further with your explanation, Mrs Crowe?

Mrs Crowe: No, Mr Speaker. I think it is made perfectly clear in that we are talking about not advertisements for local shows or the like. We just need some clarity about these advertisements and I bow to the hon. mover of the Bill if he can clearly explain to me what we are talking about and not the fact that it will appear in regulations. We need to have it clearly

defined in primary legislation what we are talking about by way of 'advertisement'. Thank you, Mr Speaker.

Mr Gilbey: I would be very pleased to second that, Mr Speaker. I think it covers a point that several hon. members have expressed concern about and that is that under these very strict rules about advertising and advertisements of different kinds people should not be prevented from putting up temporary notices such as those now at Kirk Michael objecting to a certain planning proposal, such as those at election times, whether by-election or general elections, such as those advertising agricultural and other events, and this seems to me perfectly reasonable. Actually I always thought that something did not need planning permission if it was not there for 30 days. So the fact that only 20 days is suggested seems to me more than reasonable and I cannot see what possible harm is done by having this here and I would have thought it safeguarded certain things about which people were worried and therefore I have great pleasure in seconding.

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

Mr Quine: Yes, indeed. No, I oppose this amendment, sir. When we put together a Bill we put together that Bill on the advice of law draftsmen. They are people whom we must assume have a knowledge as to how to structure legislation, and the position has been made quite clear. We are here essentially providing by definition what 'advertisement' is and by clause 22 we are making provision for the provision of regulations to bring those provisions into practical effect. That is the position and to me that makes perfectly good sense. If we start making amendments to matters of this nature in substantive legislation I can see us back with amendment Bills at not infrequent intervals, and that is not the way that we should go about it. We should stick to the established principle that we have regulations to carry this forward and that gives us the control we need along with the flexibility that we need to adjust to changing circumstances if that is the requirement.

So I cannot support that. I think in principle it is wrong for us to try to in effect include a prohibition within a definition because that is effectively what the hon. member is trying to do.

Now, as far as the practical effect of this is concerned, just reflect for a moment what this would mean. It would mean that there would be no control, virtually no control over advertisements for 21 days and then what? Twenty-one days, 21 days. The practical effect of this is to strike out virtually from this clause control on advertisements. That makes no sense whatsoever. If this amendment had been a matter of serious intent I have no doubt the hon. member would have consulted with the law draftsman and consulted with the department, as other hon. members have done, and we could have looked at the impact and the import of proposals such as this.

But in my view this amendment should not be supported. The approach that is taken in the legislation is manifestly sensible. We are providing, we are saying in broad terms - well, in fairly specific terms - what an advertisement is and we are providing for regulations and those regulations are subject to Tynwald control. Tynwald will have to approve or disapprove those regulations. But to just blindly - because that is what is happening: this has been done on the spur of the moment - throw in a fundamental matter such as permanency and then tie all regulations to accepting that whatever regulations are made are going to be built around that I

think is folly and I invite hon. members not to support this amendment: certainly do not do that because you will be acting blindly, if nothing else.

The Speaker: Thank you, hon. member. I want to make it quite plain that the House will judge whether it is folly or not but in fact the hon. member has moved an amendment and she is perfectly entitled at this stage to do so. Does any other hon. member wish to speak? No. In that case can I call upon the hon. member for Rushen, Mrs Crowe, to reply.

Mrs Crowe: Thank you, Mr Speaker. I did consult with our learned Secretary who I believe does have a degree of expertise in legal drafting (**Members:** Hear, hear.) -

Mr Cretney: He has got lovely curly hair!

Mrs Crowe: - and I would like to point out to the hon. mover that it is not unusual to find a definition and in fact if you look at the top of the page you will find ‘ “building” includes any structure or erection. . . but does not include any plant or machinery’, so there clearly you have a definition in your own drafting of the Bill at the top of page 40.

I was only seeking that we should have clearly placed in primary legislation what advertisements we are referring to. We have the planning department who are all-encompassing in clause 22 and 35: every advertisement that anyone wants to place on the Island. Now, you tell me that in regulation you will clearly define, but I think there should be a clear definition in primary legislation of what you are seeking your enforcement powers for. Thank you, Mr Speaker.

The Speaker: The hon. member for Ayre to respond to the debate.

Mr Quine: Thank you, sir. I think I have said my piece on this, sir. We have an amendment which is fundamental to the whole operation of these regulations relating to advertisements. We have gone through the second reading, we have gone through the whole passage of legislation and we are now asked at the last moment to take on board, albeit a matter of one word perhaps in the definition or certainly in the first part of the amendment, to take that on board, and that is going to knock the whole impact of the whole import of what these regulations were intended to achieve out of the window, and, hon. members, it is quite clear from the hon. member she has given us no indication of the practical effect of doing that and it would be unreasonable for me to be asked to do that when it has been just dropped on us now. I am afraid, as much as I would like to give a fuller assessment of the impact and the import of that amendment, I am not in a position to do that.

But my bottom line remains the same. The approach taken is that we define ‘advertisement’ and then we apply regulations just to say to what extent they will be applied, and there is a whole range of matters covered in clause 22 which will allow us to be as all-embracing or as relaxing as we wish, and that will be what Tynwald will be supporting or rejecting, as the case may be, but to accept an amendment of this nature, as fundamental as this now, I think is a very hazardous procedure to follow and I do not recommend it to this hon. House.

The Speaker: Hon. members, the motion is that clause 45 stand part of the Bill. To that we have the amendment as moved by the hon. member for Rushen, Mrs Crowe. That amendment inserts ‘permanent’ and a definition of ‘permanent’. Will those in favour of the amendment please say aye; against, no. The noes have it. The noes have it.

Clause 45 in its original form, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 46, hon. member for Ayre.

Mr Quine: Thank you, sir. This clause introduces schedules 8, 9 and 10 which make transitional provisions and consequential amendments and appeals.

Now, sub-clause (1) introduces schedule 8. Paragraph 1 preserves the development plan order of 1982 and any local plan order still in force as an area plan for the purposes of this Bill, and paragraph 2 enables a development order under clause 8 to provide for the determination of a planning application pending at commencement, and paragraph 3 provides that an existing planning approval is deemed to have effect as a planning approval under this Bill.

Paragraph 4 provides that a planning application which has been dealt with under the special inquiry procedure at commencement of this Act is to be continued under that procedure, but any planning approval granted is to have effect as an approval granted under this Bill, and paragraph 5 enables a prior breach of planning control to be dealt with under part 4 of the Bill.

Paragraph 6 makes transitional provision for existing planning agreements which will be enforceable under the pre-1977 law relating to restrictive covenants, and paragraph 7 preserves in force any amendment made by an Act repealed by this Act and the transitional provisions in the Town and Country Planning Act of 1991.

Sub-clause (2) introduces schedule 9 which makes consequential amendments, principally substituting references to this Bill for references to the Acts which preceded it, and sub-clause (3) introduces schedule 10 which makes consequential appeals of the Act superseded by the Bill.

I beg to move, sir, that clause 46 stand part of the Bill.

Mr Rodan: Mr Speaker, I beg to move an amendment to clause 46 relating to schedule 9:

Page 62, after "10." insert -

"(1) In paragraph 14(2) of Schedule 1, for paragraph (c) substitute -

"(c) reasonable access to the church has for a period of at least one month following the giving of the notice been made available to officers of that Department for the purpose of recording it, or that Department has stated in writing that it has completed its recording of the church or that it does not wish to record it."

(2)"

Hon. members will recall that an amendment was passed to clause 15 which had the effect of transferring the responsibility for making a record of a registered building before its demolition, alteration or extension from the Manx Museum and National Trust and to the Department of Local Government. Now, there is a consequential amendment required following that decision and this amendment that I am moving deals with that.

It relates to works affecting a church of the Established Church which by law must be authorised by a faculty granted by the Consistory Court. The position is that under the Care of

Churches and Ecclesiastical Jurisdiction Measure (Isle of Man) 1992 which is referred to in schedule 9 a faculty relating to a church which is a registered building or in a conservation area is not to be granted until the Manx Museum has been given a chance to record it. So this corresponding amendment to what we did with clause 15 is required to this 1992 measure in schedule 9 so that it refers to the department instead of the Manx Museum, and the wording in the amendment is identical to the wording in the current Care of Churches and Ecclesiastical Jurisdiction Measure with the exception of the words for 'the Manx Museum and National Trust' being replaced by 'the Department'. So, Mr Speaker, I beg to move this consequential amendment.

Mr Gelling: I beg to second, Mr Speaker.

Mr Quine: Just to indicate that the amendment is clearly acceptable, sir.

The Speaker: In that case, hon. members, perhaps I will put it direct to the hon. House that we have clause 46, schedules 8, 9 and 10, and to that we have the amendment moved by the hon. member for Garff, Mr Rodan. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

The clause and schedules as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The hon. member for Ayre, perhaps we could take clauses 47 and 48, sir.

Mr Quine: Thank you, sir. Clause 47 applies planning and other controls to the whole of the Island and enables them to extend to the territorial sea.

Sub-clause (1) applies planning and other controls of the Bill, as I indicated, to the whole of the Island.

Sub-clause (2) provides that regulations made by the department may prescribe the operation of the Bill to development or works in the territorial sea, subject to modifications but otherwise the Bill will not extend to territorial waters.

Clause 48. This clause gives the Bill its short title and provides for its commencement on an appointed day or days.

I beg to move, sir, that clauses 47 and 48 stand part of the Bill.

Mr Rodan: Mr Speaker, I beg to second.

The Speaker: Hon. members, the motion is that clauses 47 and 48 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. That concludes our deliberations on the Town and Country Planning Bill.

Children and Young Persons (Protection from Tobacco and Liquor) Bill – Clauses Considered

The Speaker: So we turn then to item 11 on your order paper, the Children and Young Persons (Protection from Tobacco and Liquor) Bill, in the charge of the hon. member for Ramsey. I call upon the hon. member Mr Singer to take clause 1, sir.

Mr Singer: Thank you, Mr Speaker. May I first thank all hon. members for their support at the second reading.

Clause 1 amends section 6 of the Children and Young Persons Act 1966 which regulates the sale of tobacco to persons under 16 years of age, that is, the direct purchase of or the direct sale of tobacco to a person under 16 years. This clause makes it an offence for a person to buy tobacco on behalf of a person under 16 years of age and to supply tobacco or cigarette papers for the use of a person under 16 years.

Mr Speaker, I move clause 1 stand part of the Bill.

Mr Downie: I rise to second, Mr Speaker, and reserve my remarks.

The Speaker: Thank you, hon. member. I call upon the hon. member for Castletown, Mr Brown.

Mr Brown: Yes, thank you, Mr Speaker. Hon. members will remember that at the second reading stage I did express concern about this clause in that as it was written it would mean that it was an offence for a person to knowingly supply tobacco or cigarettes to a person under the age of 16 even if, for example, they were in their own home and the person so supplying was a parent, and I, as members may well recall, felt that this really was going a little bit far in terms of parental responsibility versus legislation and I do think that it would cause quite some considerable difficulties where we are talking about what happens in the home privately.

Now, my view is straightforward. I am not a supporter of smoking and certainly would do everything I can to promote young people not smoking and not taking up smoking. So my stance is absolutely clear. As former Minister for Health and Social Security I in fact was very much involved in setting up a number of initiatives with other departments and our department alone to try and get through to children that smoking was not good for them, it is bad for their health and so on and so on. So as far as that is concerned I do not have a problem.

But as far as this specific clause is concerned my concern relates purely to where a person under 16 happens to be in the home and their parents, for whatever reasons and I hope there are not many but for whatever reasons, are content to allow their child to smoke. I do think it is wrong to make that a criminal offence. So I have an amendment which is before the House which is there for members. They have had it now for a couple of weeks and I beg to move the amendment standing in my name"

Page 1, line 13; for "2,500." substitute -

"£2,500.

(1C) In proceedings against a person for an offence under subsection (1B), it is a defence for him to satisfy the court that he is the parent or guardian of the person to whom the tobacco or cigarette papers were supplied and that the supply took place in private."

The Speaker: With no hon. member wishing to speak, I call upon the hon. member for Ramsey, Mr Bell.

Mr Bell: Yes, I have a small point or question to ask, Mr Speaker. I am sure that there will be no disagreement amongst members in this hon. chamber this morning about the need to persuade and educate young people away from the dangers of smoking and if this Bill before us in some small way can support that approach, then I have no problems in supporting the Bill itself. The question I would like to ask, though, really revolves around the practicality of

legislation like this. It is very easy to bring in populist measures through this hon. chamber which give the public the impression that we are actually doing something to tackle this problem, but I would like the hon. member to explain in more detail perhaps as to how he sees the measure being policed once it is passed, how he sees this provision giving the police practical powers - and I assume it is the police that are being expected to carry out the terms of this legislation - how he sees it in practical terms that the police will be able to identify who has been supplying youngsters with the cigarettes, or cigarette papers we are talking to. This is an extremely difficult area to prove and I would suspect that if this legislation, as I am sure it will, goes through today, the impact will be marginal at best on the ability of the police to round up wrongdoers who are caught under this legislation.

The concern I always have in these situations is the dangers that are generated when this type of legislation comes in from the point of generating confrontation between the police and young people on the Island. We have to try and build bridges and build respect between young people and the police and I do have a concern that measures like this, which in practical terms will make very little difference to solving the problem in hand, will do wider damage to the relations between the police and young people, and I would like an assurance from the hon. mover that in his view at least this will not happen and I would like an explanation as to how he sees the police actually operating in this area.

Mr Gilbey: Mr Speaker, I will second the amendment by the hon. member for Castletown, at the very least so that it can be debated by this hon. House.

I think there are very major points that are brought up by his amendment. For example, the question of parental responsibility. How much are we taking all the responsibility from parents? And there could be a case where it was the lesser of two evils for a parent to give his child or her child cigarettes. For instance, supposing the child was quite determined to smoke and the parent knew that if cigarettes were not supplied they would either be stolen from the parent or they would be stolen from someone else, might it not be better in that case for the parent to actually give the child a cigarette?

So I do not think this is as easy a matter to deal with as might at first appear to be the case. Furthermore, as the hon. member for Ramsey, Mr Bell has said, it is going to be very difficult to enforce when you come to parents and guardians. Is the law enforceable in any case? Unless you have people snooping through the windows of houses, who is to tell if a parent gives a cigarette to their child or a child of which they are guardian? So I think this should at least be debated.

The Speaker: The hon. member for Ramsey, Mr Singer, speaking to the amendment.

Mr Singer: Thank you, Mr Speaker. May I thank the hon. member for Castletown for consulting with me on this amendment and I have been aware of this amendment for a while now.

This amendment does reflect the comment of the Department of Home Affairs and whilst I am sure that hon. members of this hon. House, like myself, are asking themselves what kind of parent is going to ply a young person with tobacco products with all the known health risks, on the principle of parental responsibility I am happy to tell members that I do accept this amendment and I would ask hon. members to do likewise.

With regard to the comments by Mr Bell, of course I did read out the comments of his department at the second reading and the department, apart from picking up this one point that has been raised by Mr Brown, say - and I will repeat what they say - they support the provisions contained in the Bill apart from this one of the cigarette, and I am sure, hon. members, that if they foresaw the difficulties that my colleague for Ramsey foresaw, then they would not have written that they supported the Bill. So they obviously believe that the Bill will be a help to them in being able to identify the direct supply to under-age, in this case now, drinkers, under-age children who are given alcohol by people who should know better, and I hope that they will be able to use this. I am sure they will be able to identify those people if the liquor is handed to young people in a public place and I hope that members will agree that the older people should have the responsibility, know better, and that if they do not know better then they should be taken to court for that.

Mr Duggan: Mr Speaker, I support the Bill and it will take some steps towards the cases that we have got outlined in the past regarding people buying drink and then supplying to young ones outside off-licences, which I have mentioned in this House before.

As for the clause, I find it very difficult really because to some extent the parents are condoning the young ones to have the cigarettes and the drinking. It is quite known as a fact actually that youngsters do tend to drink behind their parents' back. Generally there are cabinets left open and they experiment, I think, and they start drinking at a very early age. Only recently we have seen in the paper this week where there is an appalling case in the High Court regarding a young fellow who had been drinking from 11 and you see the consequences of that.

So I find it rather difficult with the amendment but I am undecided whether to support it or not.

Mrs Hannan: Vainstyr Loayreyder, I share some of the concerns of the member for Ramsey with regard to this legislation. I understand the reasons for the prosecution of people who purchase and procure drink for young people in the street, I understand that, but we are saying then that it is not an offence for a parent. And there is a difference between alcohol and cigarettes. There is some report which has been recently published which states that the earlier people start smoking the more addicted they become and the more likely they are to die of smoking-related illnesses and therefore it is of concern to me that it should be seen to be perfectly acceptable for parents to procure cigarettes - even if it is in the home - for these children, because of the long-term damage which cigarettes can do to young people and of course older people.

If you are going to use that argument, there also is the other argument that somebody needs an illegal drug because they deem that it helps that person's illness or whatever, and there has been a lot of discussion about that recently, cannabis especially helping people with pain or multiple sclerosis, if we are going to use that, if it is all right for cigarette smoking, maybe that argument could be used in relation to illegal drugs. People have been prosecuted for procuring drugs for people in the past and I am concerned that this is then extended, that it is all right for parents to give their children, but not all parents have the same knowledge that it is dangerous and with cigarettes, once children start smoking and it is acceptable for them to smoke, that will go on and on then and more children will see that it is acceptable: 'My father

lets me, so why doesn't your father let you?' One father smokes, the other father does not. One mother smokes, the other mother does not. It is then very, very difficult.

In a way a glass of wine might be seen by the parents as being something which then takes the taboo from alcohol, but then that can get out of hand when children then take to taking alcohol from the home or procuring people to get it for them in the street.

My understanding was - and maybe the mover of this legislation could inform the House - that it is now possible for police to remove alcohol from young people. Now, I do not think it has to be a bottle marked with 'alcohol' on it. I think it could be a coke can which is filled with alcohol if the police consider that that could possibly be alcohol. Unless you are going to get a bottle with 'alcohol' written on the side of it for them to come along and remove that bottle, which they are not going to do, all the information I have had of children and young people removing alcohol from the home is that they take it from one container marked 'alcohol' and put it in another container which is a soft drink and mix it with a soft drink so that the police would not know. In this instance surely the same thing could happen.

The Speaker: Hon. member, I am sorry to stop you, but we are dealing with clause 1 which is tobacco. Clause 2 will deal with the alcohol.

Mrs Hannan: Well, I am using it as the same sort of difficulty that there is. The mover then has the opportunity to satisfy me on that particular one. But I am concerned about tobacco and cigarette papers and all of that being made available to young people anyway and the amendment is suggesting that it should be all right, parents have the knowledge, have the understanding and they are taking that parental responsibility, and it is the continuation of smoking and I think smoking is probably more detrimental to young people over their lifespan than alcohol maybe because not all people become addicted to alcohol, whereas once people tend to start smoking they continue to smoke.

Mrs Crowe: Mr Speaker, I agree with many of the hon. member for Peel's views and I totally oppose this amendment, and as for Mr Gilbey to suggest that smoking is the lesser of two evils, smoking kills. The younger people start to smoke the sooner they will die. It is one of the most addictive drugs that is freely available and I totally oppose the fact that we should allow parents to offer their children cigarettes. Really. I do not think there should be any acceptance of the amendment or any acceptance going out from this House that a cigarette might be the lesser of two evils. Thank you, Mr Speaker.

The Speaker: I call upon the hon. member for Castletown, Mr Brown, to reply to the debate on the amendment.

Mr Brown: Yes, thank you, Mr Speaker, an interesting debate on this issue which I think clearly demonstrates the mix-up in our own minds as to what we would like to see. Clearly, if we are really serious about smoking we should be banning cigarettes totally -

Mrs Crowe: Yes.

Mr Brown: - and that is fine. I am one who as a child smoked and packed in when my pocket money ran out, to put it mildly, and I am sure I am not alone on that. Many children experiment with smoking and many children do not continue to take up smoking.

I think it is really coming back to the basis of what I am trying to achieve in the amendment. As I said in my introduction, as far as I am concerned we should do everything

we possibly can to discourage people - not just children, anybody - from smoking. No problem at all on that because, as we know, smoking can also affect those who are not smokers but are in the same environment, and we could then take this clause even further and say it is illegal for parents to smoke in the house where there are children in the room.

Mrs Crowe: Yes.

Mr Brown: The problem is proving it and when we make laws the laws have got to be able to work. There is no point us passing it because it seems a good idea. It has to be logical, it has to be able to work. It is illogical to make an offence, a criminal offence, of a parent passing a cigarette to their 14-year old. I might not agree with it and I am sure we all disagree with it, but there has to be some parental responsibility. Government, the legislators, cannot make laws to control everything. It is impossible. So therefore we have to balance up, when we are passing laws, whether or not those laws are practical, can they work and how far do we go in extending the law into the home?

My view is straightforward. The clause as it is written, I do not believe, is going to be practical. I think it is going to create problems and I seriously think there will be a problem if ever there is a case and the first parent who has given their child a cigarette, who might be 15 years and 10 months old, is then fined up to £2,500 because they did that and somebody happened to report it.

So I think we have got to be realistic about it. If we want to stop smoking, that is a separate issue. I do not disagree with the points that have been made by the hon. member for Peel, Mrs Hannan, but that is a different issue. Before us here we have the issue of that.

I think it is worth just touching on the point, whilst I understand again the concerns about smoking, alcohol can be just as dangerous. Do not think that a child under a certain age cannot be affected by alcohol. Of course they can, we know they can. They can die. They have died. So we know there is a different effect from cigarettes, but alcohol has another effect: it kills people if they are not reasonable about it.

So where do we go? In this same Bill we are going to, if the House passes it, allow a child who is with a parent or a guardian, under the age of 18, to drink in a public place, yet we are not going to allow them to have a cigarette in their private home. Now, we must make sure, if we are passing this sort of legislation that the hon. member has moved as a private member's Bill, the Bill is as balanced as possible to make it sensible. So therefore all I am saying is - and this is all I am saying in my amendment - and I quote: 'It is a defence for him to satisfy the court that he is the parent or guardian of the person to whom the tobacco or cigarette papers were supplied and that the supply took place in private.' That is all that I am saying because I do not believe it is practical to go that step further.

I thank the hon. mover of the Bill for accepting the basis of that amendment. We did discuss this in quite some detail to try and get the balance right. I also thank Mr Gilbey for making sure it went to the floor of the House, and I would say that whilst members all have strong views on this issue, we also have to make the law practical and workable and I believe the clause as written is unworkable. Therefore I hope members will support my amendment put here before them in good faith.

Mr Singer: Mr Speaker, it was said by the hon. member for Peel that if this amendment was accepted it would appear that we were endorsing parents giving their children cigarette and tobacco products. I do not believe that is true because, as I said rightaway, I do not know how any parent could even think of doing that, but some parents will. Now, I accept the argument put forward by the hon. member for Castletown.

If I can reply quickly, although it is to do with clause 2 but to Mrs Hannan, she is quite correct. The police can seize alcohol from under-age persons in a public place. They can also seize tobacco products from those under-age people. The people, though, that certainly the second clause will be tackling are those people who are irresponsibly supplying those young people.

The Speaker: Hon. members, the motion is that clause 1 stand part of the Bill. To that we have the amendment circulated to you on your white paper in the name of the hon. member for Castletown, Mr Brown. 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 Gilbey, Cannan, Rodan, Brown, Houghton, Henderson, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Singer, Corkill, Cannell, Gelling and the Speaker - 15

Against: Mrs Crowe, Messrs Cretney, Duggan, Mrs Hannan and Mr Bell - 5

The Speaker: Hon. members, the amendment carries, 15 votes being cast for, 5 votes cast against.

So we then put the clause as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. Clause 2 inserts a new section 74A into the Licensing Act 1995. The new section makes it an offence to act as an agent in buying or to supply liquor for consumption by a person under 18 in a highway or public place. A defence is included to permit supply for consumption in circumstances where there is supervision by a parent or guardian or adult relative, and I would like to refer once again to the comment of the Department of Home Affairs last week and if I could read this sentence which says, 'It is noted that in clause 2 there is a defence if liquor is supplied for consumption or is consumed by a person under the age of 18 years whilst under the supervision of a parent or guardian or a relative over 18 who was responsible for his supervision. The police concur with this defence which recognises that the ultimate responsibility should rest with the parent, guardian or relative.' Similarly, I had the full support of the Department of Education.

The hon. member for Rushen, Sir Miles Walker, raised the question at the second reading why there was no definition of 'highways' or 'public place' in section 74 of the Act when there was a definition in section 75. I have taken advice from the Attorney-General's Chambers and the information supplied to me is that the new section 74A is built on the foundations of section 74 and must therefore be consistent with the terminology of that section. Section 74 itself uses the expression 'highway or other public place' but does not provide a definition. Section 75, as the hon. member for Rushen pointed out, does provide a definition of 'public place' for the specific purposes of that section but it is not applicable to

section 74, nor the proposed section 74A. Sections 74 and 75 were sourced from different legislation, and this clause is specifically linked to section 74.

For the purposes of sections 74 and 74A a 'public place' is a place to which members of the public at large can and do have access. It does not matter whether access by the public as such is by legal entitlement or by invitation or with permission and can even include access to a place where some payment or small formality, for example signing a visitor's book, is required.

Highways are specifically mentioned because the courts in England have decided in the past that the expression 'public place' might not in some circumstances include a highway. In each case that might come before the courts the question of whether something occurred in a public place will depend on circumstances and the court will make a judgement based on the facts and by applying principles somewhat similar to those that I have just mentioned.

I hope this explanation makes the matter a little clearer to, well, the hon. member is not here, but to the House.

I move clause 2 stand part of the Bill.

Mr Downie: I rise to second, Mr Speaker, and reserve my remarks.

Mr Bell: Mr Speaker, just a couple of points, I suppose. First of all I want to clarify the statement that was made by the hon. mover to begin with that the difficulties which I referred to in the previous clause, which are equally applicable to this particular clause, were not foreseen by my department at the time of consultation. I can assure the hon. House they were quite clearly foreseen at the time of discussion but we decided that we would not object to this legislation going through because, whilst it may make the situation in both cases marginally better, it would not make the situation materially worse and we had no wish to stand in the way of a private member's Bill coming forward and therefore we offered our support for it. But the situation which I outlined in the first clause equally applies in the second one and that is an identification by the hon. mover, which he did not do in reply to my first questions, from a practical point of view how this is going to be policed.

Now, I raised this point at the second reading that whilst, yes, there is a concern about under-age drinking and, yes, there is undoubtedly a supply of alcohol reaching young people illegally via off-licences and to a lesser extent public houses, the overwhelming amount of alcohol which gets into young people's hands comes from the home and it is the example set by parents in particular, and I again can include the parental attitude to smoking in this particular context. It is the attitude that is generated within the home which encourages young people to drink and in this particular clause we are giving a specific defence to parents who wish to give their children alcohol within the home.

Now, I am not arguing one way or the other on that one but what I am saying, or trying to point out, is just how difficult then it is for the police afterwards to take firm action against youngsters and those who have supplied alcohol to those youngsters when in fact we are providing a defence for the largest source of supply to youngsters in this particular Bill. It is a frequent occurrence, very sadly, I have to say, that the police, whilst in pursuit of their duty, and as the hon. mover rightly said, they have the power to take alcohol off young people if they are caught in the street with it, but frequently the policy of the police is to take those

youngsters home with the alcohol and confront the parents with what has been going on. Now, I have been told on a number of occasions by the police that when that situation applies, not only are the parents not grateful for the support given by the police, but they are actually quite abusive to the police and accuse the police of interfering with the social activity of their children. By the time that the children are dropped off at home, or rather as soon as the police have gone after that action, the children are immediately allowed out again by the parents and the alcohol goes with them and the offence continues.

So I think it is simplistic in the extreme to assume that bringing in a minor measure like this is going to have any meaningful impact on the supply of alcohol to under-age children until - and I do not offer a solution at the moment because I know it is a very fraught and complicated matter - there is some measure of responsibility instilled in the parents to prevent their youngsters having access to alcohol in the first place.

There is no doubt there is a problem in some areas with under-age drinking. We have to do our best, our utmost, to try and address that and persuade people, or young people in particular, to take a more responsible attitude to it, but that responsibility has to be generated in the first instance by the parents, and I find it difficult to reconcile the motivation, the genuine motivation, behind this Bill in the first place and the willingness within that Bill to provide a defence for the main suppliers of alcohol who are in effect causing most of the problem.

So with those words I would simply finally ask if the mover of the Bill once again could identify from a practical point of view how he sees the implementation of this working and how he sees the police actually being able to benefit from having this legislation.

Mr Houghton: Mr Speaker, I rise to support clause 2 of this Bill and possibly, with my experience in the special constabulary, (*Interjections*) I am able to answer the hon. member for Ramsey, the previous speaker, with his concerns with this. It is purely a practical basis for which I rise on this occasion for which the hon. member's Bill will close the appropriate door in so far as when police officers see the offence that will come forward being disclosed, they will be able to deal with it on a found committing basis, not necessarily on a retrospective basis. So when they actually have occasions where the hon. member points out that these people are brought to the parental home and then of course - and he is quite right - the parents then send the kids back on their way, virtually just as soon as the police officer has left, the person who commits the offence by buying this liquor on behalf of the child is able to be reported for summary prosecution later. So that is the practical effect that will take place here, hon. members, the offence being committed at the time, not on a retrospective basis. Thank you.

Mrs Hannan: Vainstyr Loayreyder, it does cause me some concern, this legislation, I must admit. Whereas in the previous piece, clause (1), as amended and accepted by the House, there is such a thing as parental responsibility and if it is done with their consent, then it is a defence, in this legislation we have got a relative over 18 who is responsible for his supervision. Now, who actually decides that someone one day over 18 is responsible for the supervision of brothers or sisters or whatever? So that does cause me some concern because we are saying in certain instances the parent or guardian, and I can understand that, but where we say a relative over 18 who is responsible for his supervision, I think you would then have to go to the parents and say, 'Is this person responsible for this child's supervision?' Therefore it concerns me that the parent would probably say in this instance, 'Yes', and I think because of not wanting any of them to get into trouble they would probably deal with it

themselves then, but in the instance mentioned by the two previous speakers where the child is brought to the parents, the children have been drinking and then the parent allows them to go again, surely that is the parent or the guardian taking responsibility and saying, 'They are okay that they can consume it because I said they can.' That is the difficulty that we have with this legislation.

It does give a defence and obviously the House has accepted that because of the amendment to the first clause, but it does concern me, by I think what has been said by the two previous speakers, that the legislation that we have got to take alcohol off young people on a highway and other public place is probably not working because of the parental attitude towards drink, and I do not think this piece of legislation is going to help that.

I think what we have got to do is to try and get over to people that tobacco and alcohol are dangerous substances, not just the ones that we have created as illegal substances, and that these mind-altering substances are of concern to us and they should be of concern to parents and I am concerned that we are placing under this legislation a responsibility to someone over the age of 18 and I am not sure how the police are going to satisfy themselves on that.

The Speaker: Does the hon. member for Castletown wish to speak? In that case, hon. members -

Mr Brown: Mr Speaker, I will be very short.

The Speaker: The hon. member for Castletown. Hon. members, I would really like to complete this Bill before we break for lunch, if possible.

Mr Brown: Just very briefly, I just really want to make two points, I think, based on what has been said. I think you have got to break this second clause into two components. The first part, which relates to clause 2(1), in fact is very helpful in terms that I understand the problem the police have is where most of the offences that are committed are with persons who are not related and who are going into an off-licence to buy alcohol. That is not an offence because they are over 18. They then give it to a younger person and that is not an offence because to hand it over is not an offence, and then, of course, the young person consumes it. Yes, on one side you have the ability to confiscate, but there is a gap there in the middle. So I welcome that bit.

I think as far as the second part under clause 2(2) is concerned, that is really a bit of a suck it and see because we do not know how it will work and I think the point is there is a real difficulty in trying to be practical in this legislation, for the very reasons that have been mentioned here today, and I think we should at least, on this, give it a chance and see how it works and, if necessary, amend it later.

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

Mr Singer: I will try and be brief, Mr Speaker. The hon. member for Ramsey, Mr Bell, said that the Department of Home Affairs had decided not to object rather than say they actually had no straight objection to the Bill. They have in fact said they support the Bill, they support the provisions of the Bill. That is not deciding not to object. So I welcome very much their support.

As far as the motivation is concerned, the motivation for this Bill did not come from me, it came from youth leaders who approached me on the particular worries that they had of youngsters being supplied with alcohol quite openly in the street and no action being able to be taken against the supplier who, as I said before, should have known better.

I hope that this will be more than of marginal help to the police. I certainly, as I say, hope that they will, in the terms identified by Mr Houghton, be able to take action and that this Bill will have an effect in keeping alcohol away from the young people. We have to do our best.

Now, there was an interesting article I had handed to me that was in *The Scotsman* on the 9th October which says quite clearly the senior health promotion officer said tobacco was the biggest killer, alcohol was second before drug abuse and they are actually querying whether the balance of spending on education currently is disproportional in that too much is spent on drug abuse and not enough is spent on pointing to the two items, alcohol and cigarettes, which are the greater killers.

Young people will bring alcohol from home, but that can be seized by the police. They will sneak it out of the house, and I have great sympathy with the scenario put forward by the hon. member for Ramsey when he says about the police taking children home and the parents being abusive to them. You cannot endorse that, but you also cannot change the attitude of some parents and you are never going to change their attitude. But I am sure that the responsible parent will be taking action against their own children to try and ensure that they do receive the education, whatever way the parents wish to give it, to try to explain to them the dangers of alcohol.

As far as Mrs Hannan's comments were concerned, I think we are not talking about somebody one day over the age of 18 thinking, 'I'm going to go into an off-licence now and buy alcohol and hand it to the children one day under 18.' I think we are talking about all adults and we have got to have an age somewhere and so this is purely aged over 18.

Mr Brown is quite correct, and it is a case that I agree with, that the majority of children, young people, are supplied by friends or even strangers. They say to these people, 'Will you go and buy some alcohol for me?' The off-licence or the pub cannot do anything against supplying these older people, but hopefully we are going to break the chain here in that when they have bought that alcohol or that older person has irresponsibly brought it from their home, we will break the chain so that it cannot be handed to that young person and if they do, then action will be taken against them.

So I hope, Mr Speaker, that members will support this clause.

The Speaker: The motion is, hon. members, that clause 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3 and the short title, sir.

Mr Singer: Thank you, Mr Speaker. Clause 3 provides a short title for the Bill and I move the third and final clause of the Children and Young Persons (Protection from Tobacco and Liquor) Bill 1998.

Mr Downie: I rise to second, Mr Speaker, and reserve my remarks.

The Speaker: 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. That concludes our

deliberation of the clause stage of the Children and Young Persons (Protection from Tobacco and Liquor) Bill.

Hon. members, the House will now stand adjourned till 2.30.

The House adjourned at 1.11 p.m.

National Lottery Bill – Second Reading Approved

The Speaker: We continue with our order paper, hon. members, with item 12, the National Lottery Bill for second reading, and I call upon the hon. member for Onchan, Mr Corkill.

Mr Corkill: *Gura mie eu*, Mr Speaker. As it was I who moved the Public Lotteries (Amendment) Bill in 1992 as a member of the Public Lottery Trust in order to stimulate the flow of income from the Manx lottery, it seems ironic that I am now bringing forward a Bill to replace the Manx lottery with the United Kingdom lottery, but with the purpose of enabling more funds to be available to the Manx Public Lottery Trust and to retain duty on the Island.

In moving this second reading of the National Lottery Bill, in order to help members it may be worthwhile if I give some background information, a short bit of history leading to the Bill which is before us today.

For many years the holding of lotteries has been restricted by law. However, in 1980-81 the then government decided that it wished to promote a national lottery following the success of the millennium lottery in 1979. The proceeds were to be paid to charities. Thus the Public Lotteries Act 1981 came into being. After a number of successful public lotteries, it was suggested that some method should be adopted to avoid the possibility of political interference in the choice of charities selected. The Public Lottery Trust was therefore established as a registered charity with independent trustees. The object of that trust is to distribute the proceeds of public lotteries.

Early in 1992 the Council of Ministers agreed to a proposal of the Treasury that a number of amendments should be made to the Public Lotteries Act 1981 in order to address falling revenues. I then took a Bill through the Keys, and I think it is worth repeating the comments that I made at that time, and I quote - and this is the amendment Bill: 'Mr Speaker, this Bill which would, if successful, amend the 1981 Public Lotteries Act, is really designed to give the Treasury more flexibility in its approach to lotteries and reflects changing circumstances. I believe there is a public demand for an all-year lottery and there is the prospect of a large United Kingdom public lottery in the not-too-distant future. This flexibility would enable Treasury to adapt quickly to market conditions and greatly assist many Island charities and individuals. All moneys from the charities stay on the Island. By allowing public lotteries on an all-year-round basis and tickets priced to these market conditions, members will be helping Treasury rejuvenate the lottery, thus providing more funds for charities and, I think, more interest for the customer who purchases the lottery tickets.'

During the debate on the Bill members expressed concern about the possible effects if the United Kingdom lottery went ahead and that there would be a net outflow of funds from the Island. Well, of course, we know now, hon. members, that we were right, and not only ourselves but other jurisdictions such as the Channel Islands have suffered at the expense of the United Kingdom lottery despite tickets not being on sale on the Island.

In the House of Keys in February 1996 the hon. member for Rushen, Mr Corrin, asked if income to Manx charities and the Manx National Lottery had been adversely affected since the commencement of the United Kingdom lottery. The answer my predecessor gave was: 'Yes, profits have declined and the United Kingdom National Lottery is one of the factors.' A further question was asked in the Keys by the hon. member for Michael, Mr Cannan, in June 1997, and Mr Gilbey, replying on my behalf, said: 'The Treasury does not believe that the Isle of Man lottery tickets can successfully compete with the United Kingdom National Lottery. The Treasury believes that incorporation into the United Kingdom lottery is the best way forward financially to benefit the Public Lottery Trust.'

We are all well aware of the need to provide funds to the Public Lottery Trust, and that is why a sum was included in this year's budget to fill the gap whilst talks which had been initiated in 1996 continued to take place with the United Kingdom authorities. Those talks had been with individual bodies, but Treasury officials finally attended a meeting of all parties at the Home Office in March 1998 with representatives of the Home Office, the lottery operator, Camelot, the lottery regulator, Oflot, the United Kingdom Department of Culture, Media and Sport and an officer of the United Kingdom Treasury Solicitor's Department to establish whether sales of United Kingdom National Lottery tickets could be extended to the Isle of Man.

At that meeting the Director General of Oflot agreed in principle that the licence under which Camelot operates the United Kingdom lottery could be amended to allow sales on the Island if local legislation was passed to adopt regulatory controls of sales identical to those in the United Kingdom under the United Kingdom National Lottery Act. In view of the fact that representations have been made to members by bookmakers who have offices on the Island which are at present able to accept bets on the outcome of the draws held by Camelot, I wish to stress the word 'identical', because section 18 of the United Kingdom National Lottery Act does not permit bets on the outcome of the Camelot draws. Officers of the Treasury were specifically asked whether Isle of Man bookmakers took bets on the lottery and when this was affirmed they were told by the Camelot Head of Parliamentary Affairs that it would be necessary to stop this practice if sales were to go ahead. The Director General of Oflot stated that adoption of section 18 of part 1 of the United Kingdom Act would outlaw this activity. It is, I believe, not an issue we can negotiate on. If we wish to have a share in the United Kingdom lottery we cannot avoid the restrictions for fixed-odds betting being placed on local bookmakers.

I would also point out that until the United Kingdom National Lottery emerged, this was not a source of revenue to local bookmakers and at last year's budget I did reduce the local betting duty from 8 per cent to 6 per cent to try to improve the local situation in anticipation of international telephone betting and the United Kingdom National Lottery.

The Isle of Man Government would also be required to appoint the United Kingdom Director General to regulate sales on the Island so that there is a system in place identical to the United Kingdom. Camelot's head of business development has confirmed that the company is prepared to introduce sales of the draw tickets on the Island but they would not envisage sales of instant tickets being introduced in the short term.

The principal object of the Bill is to enable the promotion of the United Kingdom National Lottery in the Isle of Man and, if the Bill passes, the Treasury will next need to negotiate with Camelot, the lottery organiser, and make an order for Tynwald approval, specifying which

parts of the United Kingdom lottery are designated legal. Such an order would also set the percentage of tax raised by Manx ticket sales to be paid by the Isle of Man Treasury to the Public Lottery Trust.

The Bill provides for Treasury to receive through the Customs and Excise Agreement the 12 per cent tax levied on ticket sales. At this stage of the negotiations it has not been possible to achieve a percentage of the profits direct to the Isle of Man of the distribution to various United Kingdom commissions specifically created by the United Kingdom to handle the profits. The deeds and constitutions of those commissions require to be amended to permit this, and the United Kingdom has not yet been prepared to effect this. We for our part will thus have to be content with the taxation at this stage, although we shall endeavour to persuade those bodies to amend their constitutions to permit distributions to the Island.

The United Kingdom National Lottery has a high profile and is always under scrutiny. I have no doubt, therefore, that the proposal to extend it to the Island will engender an interesting debate and I beg to move the second reading.

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

Mr Downie: Mr Speaker, hon. members, I rise really to move that the debate be adjourned to the 26th January 1999 sitting, and in doing so I would put on record at this time that I am a supporter of the National Lottery. I do not have a particular axe to grind with any of the parties involved, either the bookmakers or Camelot themselves. I have been brought to this position because I have received quite a number of letters. Amongst my constituents there are quite a number who are involved in the bookmaking profession, and I have received a substantial petition which has been signed by over a thousand people and I will read the basis of it: 'We have been made aware that it is the intention to introduce the British National Lottery to the Island and understand that United Kingdom bookmakers are prohibited to bet on this event. We, however, would like to retain the choice to continue to place bets on the lottery in the same way that we have done for several years and with our local bookmaker shops.'

Now, I accept what the Treasury minister has stated in moving the Bill, but in fairness these people were deprived, as were lots of local people deprived, of an opportunity to purchase lottery tickets locally, and what the bookmakers did was find that there was a way of providing a system where there were four numbers drawn in the National Lottery and that could be used as the basis for a side bet. I think we have all heard from various bookmakers' outlets in our constituencies that this appears to form the basis now of about a quarter to 30 per cent of their annual takings.

Setting that aside and accepting that, being bookmakers, if they do lose this source of revenue, I am sure they will not be long finding another one or something else to take bets on - that is the whole nature of the business - what I am concerned about, hon. members, is that it would appear across the board that quite a few of them have not had the opportunity of perhaps airing their views, and I understand from one who came to see me on Sunday that he was not quite sure what section 18 of the Lottery Act meant if this Lottery Bill was introduced into the Isle of Man.

I do not want to hold the Bill up unnecessarily but I would ask the Treasury minister today if he can see his way to supporting an adjournment debate, having some dialogue with local bookmakers and, if a way cannot be found to get round section 18 of the UK Lottery Act, well,

so it must be, and I would be prepared to accept that. I would just like the opportunity for the bookmakers to come along and make their case. Another avenue that I would like to see pursued is that it may be helpful if some of these local betting shops can become outlets for the sale of lottery tickets, and what they have lost in one area they may gain in another.

So I think there are lots of areas for dialogue with regard to this particular issue. As I say, I am standing here today not as somebody who is opposing the Bill but as a member who would just like an opportunity for their point of view to be put. It is a serious issue for them. It will affect their revenue considerably and I think out there there are a lot of local people who think that they should have this opportunity of doing what they want and not come under the rule of Camelot and I think, by having the dialogue, they will be able to get it off their chests and, if the situation cannot be altered because of section 18, well, that is it; at least I have done my bit and I have tried to encourage people to get together and see if there is a way forward to talk it out. Thank you, I beg to move:

That debate be adjourned to the 26th January 1999 sitting.

Mr Braidwood: Mr Speaker, Mr Downie has covered a few of the points I was going to raise, and first of all I would like to say I am pleased that this Bill will enable the UK National Lottery to be introduced and promoted on the Island. However, as the Treasury minister has mentioned, he has received correspondence and I think all hon. members in this House have received correspondence from licensed bookmakers and the employees of those bookmakers, expressing concern that the fixed-odds betting in the Island will cease if the National Lottery is introduced. As Mr Downie pointed out, this accounts for about 25 per cent of their turnover and, if this is lost, it could result in job losses.

The Treasury minister received a petition this morning of round about 1,700 signatures and, as Mr Downie said, that was to retain the choice and continue to place fixed-odds bets on the National Lottery. Now, again, I can second Mr Downie's amendment because it might be able to give the opportunity for the Treasury minister to re-open discussions with Oflot, with Camelot and probably the Heritage Secretary to see if the fixed-odds betting can run in tandem with the UK National Lottery, as is the case in the Irish Republic. I have spoken to Mr Jennings and Mr Whittaker, who is the Managing Director of Stanley Leisure, and made them aware, if this is not at all possible, then I could not jeopardise the National Lottery being introduced into the Island and they fully understand this view. So I would hope that the Treasury minister will be able to go back and reopen discussions.

Mr Corkill: Mr Speaker, in addressing the motion to adjourn, I would just like to make a number of points because I would not want it to be thought that Treasury was railroading this Bill through without proper consultation. Certainly, when the lobbying started from the bookmakers I received letters halfway through last week, and it was only at the end of the week when I actually addressed the issues within those letters, because of a certain other gentleman from the adjacent isles who was occupying government's time at that time, that I was surprised and therefore I took it upon myself to enquire within the department to see what discussions and what contacts had been made between my officers of the Treasury and bookmakers on the Island, and certainly as long ago as March of this year one of the well-known bookmaking firms was quite clear about what this section 18 of the United Kingdom Act would imply with regard to the fact that fixed-odds betting would no longer be permitted. So I cannot believe that there is any element of surprise to the local bookmakers.

Now, I do appreciate that they have adapted to certain conditions which have occurred because the United Kingdom Lottery has gone ahead and we have not had a lottery this last year and they filled a gap, but I also believe that most of the people who would wish to purchase the £1 weekly tickets that the Camelot lottery is probably do not frequent betting offices. (**A Member:** That's true.) I am not making a judgement that that is right or wrong, but a lot of people do not. Having said that, there are people within the community who prefer to go to a licensed betting office and place a bet or a wager in that way, and that is fine. I do not believe that people who wish to spend their money in that way will desert the bookmakers. I think that the situation would probably adapt again and they would find some other way forward.

What I would be concerned about with an adjournment is that this Bill would be unnecessarily delayed. I am not wishing to prevent proper scrutiny - obviously that is the duty of the House - but I would like to point out to hon. members that we are losing a great deal of duty week in, week out, whilst we are in this limbo or intermediate position, and therefore I believe that members do have the information before them with regard to making a decision on this issue as to whether fixed-odds betting should be finished with.

Now, I would also point out that in the Channel Islands lottery, for instance, they do not allow it there because the government of Jersey and Guernsey do not wish to see their lottery undermined, and this is the same process within the United Kingdom. What this Bill is about is importing in its entirety the UK National Lottery purely so that we can maintain and preserve the duty that people are paying for this Island as opposed to the adjacent island so that we have a share of that duty in much the way that we do under the Customs and Excise Agreement and in much the same way as with football pools that have gone for many years. It is from this base of argument, from the fact that we do share duty on football pools - that is how the Treasury has gone to the various bodies that have been referred to in the United Kingdom, and that is how we have made our case.

I do believe, and I did mention in my opening remarks, that it is not possible to negotiate this item in favour of the local bookmakers, and I do believe that we are at risk of spoiling what I think is the best deal that Treasury has been able to come up with with regard to this National Lottery.

I, like the mover of the adjournment, do not have a strong view in terms of betting. Some people choose, some people do not. I, for one, have never bought a UK lottery ticket, although members of my family have, and it must be many, many years since I set foot in a betting office.

So I do hope that members will just see the issues, decide how they feel about them, but not support an adjournment. But in rounding up my remarks on the adjournment, I would like to point out that Treasury is not in a hurry to rush towards the clauses and rush this Bill through and, between now and when the clauses are moved in this hon. House, I can continue the dialogue with the local bookmakers to see if we can achieve better understanding. But having said that, I would not like members to think that there is a way round this fixed-odd betting scenario because I believe that that will have to go if we want the lottery, and that is the equation that we will have to address sooner or later.

The Speaker: I was pleased, hon. member, that you said you were rounding up because it is a five-minute adjournment debate at the present time. Mr Singer, the hon. member for Ramsey.

Mr Singer: Thank you, Mr Speaker. I do not believe the Treasury are trying to railroad this through, but it was interesting what the hon. minister said, because I agree with him that the outlets are totally different. You have got outlets of fixed odds and you have got outlets where people are going to be betting at 14 million to 1, so you are certainly not going to get the same kind of people who are buying tickets. I would not agree with the hon. member for Douglas West. I do not think that the betting shop would be the right place for the lottery tickets to be sold, for that very reason.

But I cannot see how we are undermining the UK lottery by allowing the fixed odds to continue, because we will probably see here an increase in the number of tickets sold to Isle of Man residents, because whatever is bought abroad now you are certainly going to get an increase when people can buy them on the Island. So there is going to be an increase both to the Treasury here and to Camelot in the long run. So I wonder if the hon. minister could at some time outline Camelot's objections, why they are insisting that fixed-odd betting should be banned. I do not believe it does reduce their income; I do not believe that it will reduce their income.

If I could ask also, the hon. minister has referred to clause 2(4) where we are talking about orders specifying the exceptions, adaptations and modifications subject to which the United Kingdom lotteries legislation applies to the Island. It would be interesting to hear from the hon. minister, if he says that nothing can be changed, why we actually have this order that says that we can specify these exceptions, adaptations and modifications. Thank you.

Mrs Cannell: Mr Speaker, I rise in support of the Bill at second reading and I would merely like to add to that support a request that, when the minister does partake in talks with Camelot, he also puts a case for the outlets to be specified by the Isle of Man as opposed to Camelot. Now, I would expect that the minister will say, 'It is up to Camelot, Camelot will specify, and the outlets will probably be akin to those of the United Kingdom. But I think we are in a slightly different situation here. I have had quite a large number of newsagents contact me, for instance, over the last couple of weeks, and they are concerned that if they are unable to provide the lottery outlets in their shops they potentially could lose business. So I think it is important that we support our local retail units in this regard.

Just briefly on the amendment to adjourn, I was a little undecided over the lunch period but I have finally come to the conclusion that I do not think it would be beneficial to adjourn at this moment in time. I would not like to see negotiations and talks with Camelot scuppered in any way because of an unnecessary delay. (**Mr Gilbey:** Hear, hear.) However, I do welcome the comments by the Treasury minister in relation to continuing the dialogue with the bookmakers, and I think praise should be afforded to him (**Mr Cretney:** Hear, hear.) for being prepared to do that, because that indeed is the right and proper thing to do.

But just finally on that, of course we must not forget that the bookmakers introduced this betting system in the absence of the Island being able to provide or to be included in the Camelot lottery situation, and so there was a gap there in the market. The bookies were very quick to pick up on that gap and to proceed and to continue to make money, and I am very

happy that they did. A little concerned that over three years of being able to run this particular special kind of lottery for the Island has been the basis for them to expand their businesses, as I have been informed, or to go into borrowings of great deals of money in order to improve premises and to engage extra staff. I find that a little hard, really, to swallow, that being good business people - as bookies are, because bookmakers are in the business of making money, not losses - they would base all of their prospective business plan on something which could only ever be temporary - that is, that the people of the Isle of Man have, since the National Lottery started, been pushing for Camelot's provisions to be extended to the Isle of Man. So it was only a matter of time when we would be able to provide this for the local people.

So a little unpersuaded by the lobby from the bookmakers, but certainly I welcome the fact that there will be continuing dialogue and again I would ask the Treasury minister not to forget our local retail outlets here when he embarks upon further negotiation. Thank you.

Mr Cannell: Mr Speaker, I am rising to oppose the adjournment this afternoon. I feel we have a golden opportunity here to start the way to satisfy what is a very genuine expression of interest by the Manx public and I think we are probably, with the greatest of respect, a little fortunate that we do not have our other Onchan colleague here (**Mr Houghton:** Hear, hear.) because I am sure he would be beating the drum in Manx week particularly that we do not need to be associated with anything connected with the United Kingdom, particularly a lottery fund. But I feel the Manx public do and they have shown by voting with their feet, by buying the tickets, and I am sure that research has been undertaken to show that, far from there being a diminution of tickets, if in fact they are sold legally locally, there would be a substantial increase, and I am most keen to see that the trustees and the operators of the old Manx National Lottery trust will actually be able to come back from the dead, virtually, here because they were sunk lock, stock and barrel by the creation of the UK lottery to the point where in fact it was necessary, virtually, to subsidise it in the past year to try to keep the handouts to the local charities which have been so good over the last few years.

So I am very keen, speaking to the adjournment, to avoid that because I think there is an overwhelming cry from the public to be able to, for want of a better expression, 'get in on it' and I think the main thing is not particularly that they wish to be associated with gaining money for charitable purposes from the main lottery but rather that they are not deprived of the opportunity to try to come up with a golden win, which used to be Littlewoods and Vernons and everything else and, as the receiver of a £6.45 pools cheque win last week, I suppose I am not qualified to speak on it - I have mentioned it to the Inland Revenue, by the way. (*Laughter*)

We have a chance here to start this opportunity rolling. I am quite scared that if we do not grasp it now, it could slip from our fingers. We would have a lot of answering to do then to the Manx public as to why that circumstance occurred. Let us not let it go here. There is the possibility, as the hon. mover of the Bill has said, that further discussions may allow us to access the lottery.

One thing I do not think we have done too well on PR is the fact that it is duty only we are going to be gaining and not a method of putting rare schemes up to fund all sorts of nefarious outlets over here. That may come, let us hope that it does, and I have the Chief Minister's assurance that the Council of Ministers, and of course through the hon. Treasury minister, would in fact continue to press for that to be the case, but it does not knock us out altogether from getting some of the lottery money apart from the duty. It gives us the opportunity to

actually get money providing the local outlets can apply through their affiliated organisations in the United Kingdom. I am speaking personally; I can think something like the Auto Cycle Union, of which there is an Isle of Man branch - it is called the Centre - and which would have access through the ACU in Rugby; the Red Cross might, St John's Ambulance might, many worthy causes in the Isle of Man could do it by that method, and I understand one or two have been quick enough to see the opportunity and already have benefited from it.

So let us not let this slip away. I too have sympathy with the revenues of the local bookmakers. I cannot see how in fact they are going to go into an inferior position, because the revenue they have been getting has only been from something that was created comparatively recently and, as someone else has said, there will be other opportunities.

As regards the outlets for selling the tickets, of course, perhaps the hon. mover of the adjournment debate, Mr Downie, may well agree that the post offices may well be some of the places that would be chosen as outlets for the lottery, and the newsagents, of course, would almost be a natural place to have them, like they are elsewhere in the United Kingdom, though it is amazing to think when you go to Liverpool Airport that there is not an outlet there, considering the traffic that is going through there. But I do not think there is any problem with that. I cannot see how the newspaper shops would lose business because they have not got the business to start with, and the only way they can lose business is if some of the customers going to lottery outlets would actually do the rest of their shopping on those premises. I do not think that is likely.

So that is where I am at at the moment. I oppose the adjournment and I hope we do take this first step today with the National Lottery Bill and answer a very great and expressed need of the Isle of Man's public.

Members: Hear, hear.

Mr Brown: Mr Speaker, I can understand, naturally, the correspondence we have had from the people who are the bookmakers in the Isle of Man, but I think the simple question before us is, is there a need to adjourn progression of this legislation? The simple answer to that, I think, is quite straightforward: the answer is no. The reason is again quite straightforward: this is enabling legislation. It enables the Treasury to bring the UK lottery into the Isle of Man by order at some future date and therefore, if we take on board the point that has been raised by the people with regard to the betting offices, it does not stop, if we progress with this legislation today and its clauses, any other dialogue that is going to be needed, if that is necessary, and I am sure that it is necessary. It does not cause any problems in that way because this legislation is unlikely to have passed all the way through the branches before the end of February or March and have its Royal Assent by then; you have then got the point with regard to regulations, and I doubt if anything at all that would be raised by the betting office people would actually require an amendment to the primary legislation, even if they were successful in persuading Treasury, who are then successful in persuading the British Lottery to actually make some changes, because if that is the case, then, to take the point the hon. member for Ramsey made, clause 2 where it says the order is subject to such exceptions, adaptations or modifications as necessary, I think quite clearly, if there is any change negotiated, then the order can be amended to reflect that change.

So I would say, 'Let us get on with the legislation'. There is still quite a way to go in terms of getting the lottery operating in the Isle of Man. I think we are all straightforward; the people of the Isle of Man - the vast majority anyway - are in favour of having the lottery because they are spending their money off the Island, through different agencies, friends and so on, and we, as the Isle of Man Government, are receiving no income. It is much better, if we are going to have people spending their money off the Island, that it is spent on the Island for the same purpose and at least then the Isle of Man gets income through its tax on sales and therefore it is far better for us to do it that way.

The other point I would say is that, as for the difference in terms of the betting offices and the point that was raised by the mover that it may be that we should allow the sales to be in the betting offices, I would only say that I would be happy for that as long as it was everywhere else in terms of other public places, because many people never ever go near a betting office, and in fact for many different reasons would not want to go into a betting office but may be happy to go to the post office or to the local store or whatever.

So I would hope members at this stage would reject the adjournment and let us get on with the Bill. It still gives plenty of time for discussion between Treasury and the betting offices without causing any detriment to either side.

Mr Cannan: Mr Speaker, I wish to, first of all, oppose the adjournment and I echo the sentiments expressed by the hon. member for Onchan, Mr Cannell: the vast majority of the people of the Isle of Man not only want the lottery to be here instead of the difficulties they have in arranging to buy their lottery tickets through the United Kingdom, friends, relations and so on - they want it here, the money is going off the Island - but above all, now that the Lottery Bill is before this House, the perceived expectation of the public out there in - your favourite phrase, Mr Speaker - the blue yonder is that this Bill will be brought in as soon as possible. People are hoping that this Bill will receive a troublefree passage, that Camelot will install their machines, and it is up to Camelot, while they hold the licence, to install the machines where they think best -

Mr Cannell: Put one in here. *(Laughter)*

Mr Cannan: Absolutely. The benefits to the Island are there for the whole Island, because those who do not have the facility to buy a lottery ticket in the UK but wish they had will be able to do so once the machines are in the various newsagents or sub-post offices - in rural areas newsagents and sub-post offices are generally in the same building anyway.

So they will be beneficial, and I was disturbed when the Treasury minister said that he was not pushing this Bill, or would not be pushing it perhaps as fast as he would like, or the introduction perhaps of the regulations to have the machines set up in the Island. I hope that is not the case because, as I say, the public outside perceive and want the National Lottery as soon as possible for the general public and the general welfare of the Island.

Mr Rodan: Mr Speaker, I rise to oppose the adjournment, but for entirely different reasons than we have just heard from the hon. member for Michael, Mr Cannan. I oppose the adjournment because I think it is most important that we do have the second reading debate today and debate the principles that lie behind this legislation. Now, there are important principles that have not as yet been aired - and quite rightly not, because this is an adjournment debate - but there are principles that should be aired in this House and not gone

by default. Practically every speaker so far has indicated that there is a great demand on the part of the Manx public for this lottery and I have no doubt they are right, but it should not be this demand and the progressing of this Bill that should allow any proper debate on the principles to go by default.

Now, I am very content for the Treasury Minister, if there are particular problems relating to the implementation of this Bill and the consequences for certain persons like bookmakers. . . The minister has given an assurance that before the clauses stage, any concerns of that sort will be addressed. It should not be that we adjourn the whole debate till January (is it?) as the hon. member Mr Downie is proposing, because that presupposes that the Bill is accepted, the principles are all in place, we are quite happy to go with the legislation without having debated the principles and there is just a little bit of tidying up before we come back and, in the words of Mr Cannan, get this legislation through as quickly as possible. It is simply for the reason that we must have a debate on the principles on the second reading that I would oppose the adjournment debate.

Mr Duggan: Mr Speaker, I support the Bill and I do not think we should adjourn either, like other members have said. The minister has pointed out, hon. members, that more or less we support this and forget the local lottery - that is more or less what he has said here this afternoon. It is okay saying he is going to talk to them, but he has outlined to the House that if you want this lottery it is pointless talking really to the local bookmakers, I feel. There are quite a few people I know of where they do the National Lottery; unless you get four numbers and even then you may only get £10 or £15, maybe £100, a lot of people do go to the local bookmakers and, if they get three numbers up, I know one chap that got £1,700 for his quid and another fellow got nearly £4,000, and there are quite a lot of locals that do like to have a flutter on the local one. This is the problem.

The Speaker: Hon. members, we have had a motion made for adjournment. The hon. mover of that adjournment is currently not with us, so can I put the motion that the debate be adjourned to the 26th January 1999 sitting? Those in favour please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mr Braidwood - 1

Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Mrs Cannell, Mr Shimmin, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, Gelling and the Speaker - 21

The Speaker: The motion for adjournment fails, hon. members, 21 votes against and 1 for. I would just point out in relation to the hon. member for West Douglas, Mr Downie, he did tell me this morning, and I agreed, that he does have a department commitment for half an hour and he has left to do that. The timing is just unfortunate the way it is. So we continue, then, to the second reading of the National Lottery Bill. The hon. member for Onchan, Mr Cannell.

Mr Cannell: Yes, I am not sure that this is the right opportunity, Mr Speaker, but I am sure that there will be those who will enlighten me if that is not the case. But one point which I did not feel disposed to make during the speech to the adjournment debate does concern one

of the individual clauses. Now, you may guide me perhaps as to whether it would be more opportune to leave it until those individual clauses come up.

The Speaker: The choice is yours, sir.

Mr Cannell: But I do feel very strongly about the revenue which is likely to accrue from the successful passage of this Bill through, as would appear likely, because what we are facing the opportunity of seeing is the collection of a tax as duty from the product of the Isle of Man's element of the sales of the Camelot lottery and I am just a little bit concerned that, although the hon. Treasury minister is the proprietor of the Bill, the grabbing of the duty may well be the last that we will see of it. I do not mean in totality but I am just worried about the proportion of the duty which will be returned to the good causes and how they see that panning out. I suggested recently that not less than 95 per cent be given to good causes of the money which is accrued but met some opposition on that, but I certainly would not like to see it any less than 50 per cent.

Mr Singer: Just two points, Mr Speaker. The hon. minister said in his introduction that there was no intention of introducing scratch cards at the present time. I would certainly like to put my view in that we should not be considering introducing scratch cards at all, because that is the one element of the lottery that will attract young people to go and buy these tickets and spend money that often they have not got and they get the money from somewhere. So I would like the minister to feel that he can be more specific and say that we have no intention at any time of introducing scratch cards, and I do think that that would probably have the support of the public.

The other question is just to repeat one item I asked before: if the minister can outline, in the discussions that did take place with Camelot, what actually were Camelot's objections in insisting that fixed-odd betting be banned because, as I say, in my view I do not see how fixed-odd betting clashes with buying a normal lottery ticket? Thank you.

Mr Rodan: Mr Speaker, I rise as someone who is and has been concerned about the demise of the Manx lottery and the perilous decline in the funding of so many local worthwhile causes and charities, and that feeling is widely shared in this House. I too have gone along with the received wisdom that the sooner we rescue the situation by allowing in the UK lottery the better, but the reason it is so important to have this second reading is to debate some principles and go back, really, to first principles and what we are doing in relation to this particular piece of legislation.

I think we have to think very carefully about the implications in other areas of this legislation. We, as a parliament, jealously preserve the constitutional right of this Island and of ourselves to legislate for ourselves and resist very strongly all notions of being legislated for by another parliament in the adjacent Isle. Now, what this Bill, of course, is doing almost in its totality is applying legislation which has been debated and argued and voted upon in a different parliament and applying to the Island by order. Clause 2, of course, refers to 'The Treasury may by order apply to the Island as part of the law of the Island, subject to exceptions. . . any provision of the United Kingdom lotteries legislation.' That legislation, of course, is defined later on in the clause as 'any Act of Parliament, or instrument of a legislative character made under an Act of Parliament, relating to the National Lottery,' and so it goes on.

The principle of what we are doing we should not undergo lightly. It is as well we are aware of what we are in fact doing.

Now, we will have the opportunity to debate the orders themselves, orders will be made and possibly those orders may well modify any enactments consistent with the United Kingdom lotteries legislation, but at the end of the day we are implementing here in the Isle of Man lock, stock and barrel, and we have seen the evidence this afternoon because of the UK legislation relating to Camelot, UK legislation. Now that is the first principle.

The other principle is that, yes, there is a public demand for the UK lottery, we are all well aware of this, but it is just as well we go back to first principles and in fact look at the effects that the UK lottery has had in the United Kingdom before we decide to import their legislation to this Island. There has been research done that shows that much of the spending on lottery products comes from lower income families, and arguably these are the very families who can least afford to be paying money into Treasury coffers. It is arguably cash that should be going on essentials and we should be asking, before we do anything, should the poorer sections of our community in this Island be subsidising the provision of high opera in the United Kingdom? We are entitled to ask that.

There is concern as well on the effects on the distributors and the outlets. There are figures reported in the United Kingdom on the percentage of the retail spend that is diverted into lottery products and away from other high street business trading. There are many traders, especially those in rural areas who are, as we all know struggling to compete with mail order giants and large multiples, and although an installation of a lottery terminal may well bring more people through the door of those lucky enough to have the terminal - and, like other speakers, I would appreciate perhaps a bit more information as to who is envisaged in this Island as being the lucky recipients of terminals - even then the retailer is not really rewarded for the sale, and the effect on those who are not chosen for terminals can be very severe indeed, and for all traders, of course, more money going to Camelot is less money staying at home, notwithstanding that we have our share of some of that that is destined for Camelot.

But I think it would be as well - and I will quote from a constituent who has expressed this very well on the principles of what we are doing by bringing in the UK lottery, and they say this in relation to the effects on society as a whole, if I may just quote from his letter: 'Perhaps the most insidious result of the lottery is the effect it has had on society. For many the idea that hard work and endeavour is the way to success has been replaced forever by the notion that a quick flutter will bring untold wealth. The entrapment of many into this ideology is frightening and it augers ill for the future of the Manx nation if we were to go down this road. Charities in the UK are already reporting frightening increases in gambling addiction, even among schoolchildren. To cap it all, the number of so-called winners of the lottery who have had their lives totally wrecked by so-called success has to make us question the wisdom of state-sponsored gambling on this scale.'

Now, these sentiments you will sympathise with, Mr Speaker, yourself, but it is a valid point of view and it is a point of view that is held by many in this Island. I am not portraying myself as their spokesman but it is right that this point of view be given expression in this hon. House before we make a major decision on going down this particular route and with this particular legislation, which inevitably is entailing the wholesale importation into Manx law of

legislation which has been debated, voted and decided upon in a parliament of an adjacent jurisdiction. Thank you.

Mr Shimmin: Mr Speaker, one of the first duties I had when I came into this hon. Court was to be placed on the Public Lottery Trust, and it is probably the most worthwhile and enjoyable committee I have served on during the last two years.

Little has been said today about the former Manx lottery, and it is sad for all of us to see its demise over the last few years and it has whittled away until we know the current events for this year. As trustees, we have had a difficult job as to whether we should support the UK lottery being brought to the Island or whether there was an opportunity for the Manx lottery to be reborn under a different guise and to become more effective to generate income. That is not the job of the trustees, that was empowered with the Treasury they looked at options about trying to run a Manx lottery, and it was the decision that there is no mechanism which could compete with the rewards available to certain winners from the UK lottery.

That decision, which was taken not to rekindle the Manx lottery, was a sad day for this Island but it was a sign of the times and, as much as I commend the previous speaker, hon. friend Mr Rodan, for Garff, the difference here is that this is our choice. We have not entered into this because we have been instructed to; we have gone out to fight for the people of the Isle of Man to actually be able to attract this sort of operation onto the Island. There are concerns. Anything which offers untold wealth to individuals is obviously a magnet for certain individuals who will be easily led, and there will be abuses of this and people may suffer from overstretching their budgets, but that is true of anything available to any members of the public or society. What we have is a massive opiate for all the people of the UK, all the people of the Isle of Man if it is brought onto the Island; it is their once-in-a-lifetime chance of a quick fix where they will not have to work for the rest of their lives, and there is something certainly unsavoury to me about that. The comment that the former speaker said, 'What happened to hard work and endeavour to benefit the individual and society?'

Mr Quine: Well, they joined the Keys. *(Laughter)*

Mr Shimmin: But this is something which the people we represent have given us a clear mandate for. Certainly the majority of the people that all of us talk to would prefer to have it on the Isle of Man. The concerns are many, and I think it is right for the former speaker to raise some of those concerns. I believe there is an overwhelming support in this House and an overwhelming support in public to actually see us move ahead with this legislation and move to the more detailed circumstances. I obviously have a vested interest and understanding as to what proportion might be allocated to the trustees, and also there is the concern about the distribution of tickets and whether the Treasury minister is able to say whether that has been given serious consideration yet or not, I would appreciate.

The Manx lottery served us well, times have moved on, there is an expectation and a demand for this on the Island and, hopefully, the moneys that are brought to the Island through this operation will be reinvested in the many charitable organisations. It has been stated here today the demise of the Public Lottery Trust. There is still money available; we are still allocating. We had a meeting this week where we allocated over £20,000 to worthwhile causes. It is not defunct. It has had better times, but certainly it has never stopped trying to

give moneys to the people of the Island for worthwhile causes. This hopefully will be the mechanism to allow that to be done on a wider scale for more causes. Thank you.

The Speaker: I call upon the hon. Mr Corkill to reply to the debate.

Mr Corkill: Thank you, Mr Speaker. Many of the issues have been raised during the debate which have been debated by members within Treasury, and my hon. colleague Mr Cannell from Onchan raised the issue of the revenue and whether it was going to disappear into Treasury for ever and never be seen again, and one can hear the echo, 'Like everything else'. But that is not the case because in the deliberations that went on as this Bill is being prepared and drafted for the House to consider, certainly it was considered necessary that, when the order will be laid before Tynwald, these sorts of issues would be recognised and then transparent and free for all to see. I am not going to say today what that percentage will be, but what I will say is that there is a mechanism within the Bill to make that happen. I think that is quite important, and certainly it is something I think that members of Treasury wished to see when the Bill was being drafted.

The hon. member for Ramsey, Mr Singer, said that he held no support whatsoever for scratch cards, and this is an interesting comment because the former Manx Public Lottery, of course, was that very thing. It was a system of scratch cards. But certainly there is no interest from myself and I do not believe there is any real interest from the operators to include scratch cards, and I said in my opening comments 'at this stage'. The future would be for others to decide. This is enabling legislation and maybe people in the future may wish to see scratch cards. I for one do not. I do not believe it is the policy of the other members of Treasury although we have not debated this at great length within Treasury, but it was decided and acknowledged that we should not have scratch cards. So I am at one with the hon. member for Ramsey with regard to his comment in that respect.

The issue of fixed odds betting which was discussed to some extent during the adjournment debate, and whether we can renegotiate a situation whereby we can allow it and placate the bookmakers - it would seem that bookmakers are possibly less popular than politicians today, and what I would like to say with regard to this situation is that I do not believe that a renegotiated position is feasible. At the end of the day, tickets are being purchased by people in the Isle of Man already so, looking at it purely commercially, if you have got the customers, you have got the business anyway, why increase the overheads? And it is my worry that we may well defer a situation over this issue which we would then not be able to change but we could actually lose the negotiated position that we have at the moment. If Camelot was to agree, then that would be a different situation but, looking at the minutes of meetings between my officers and the different bodies within the UK, it is quite clear that that position is not there, and one can understand that commercially because once the bookmakers in the Isle of Man had that situation, then I am sure there would be a very strong lobby within the United Kingdom, and Camelot have a situation negotiated with the United Kingdom Government which protects them in this respect. I just do not believe that it is an option we can easily get away from, and it is unfortunate from the bookmakers' point of view.

Now, the hon. member for Garff, Mr Rodan, raised the very important issue of parliamentary and constitutional situation. But of course it is our choice. We do it in a number of areas in this House and in another place where we embrace particular parts of United Kingdom legislation, apply it to the Isle of Man and in fact that is a choice taken and that is

what is before us today, a choice of whether we want to do this or not. And at some stage, if this legislation is not longer required in the future, no doubt some hon. member will perhaps repeal the legislation, but it is a matter and I am quite content that the constitutional issue, which is not for me alone to discuss, is safe.

He went on to raise some other important points based on what the effect in the United Kingdom has been. Now, there has been an effect in the United Kingdom and there is this issue of lower income people supporting high opera, which is the example that we see sometimes and I am sure that has happened by contributions from people from the Isle of Man already. We are dealing with an existing situation and I do not believe that this legislation in reality is introducing the UK lottery to the Isle of Man; it is already here. (**Mr Gilbey:** Hear, hear.) What we are doing is introducing legislation which enables us to have that duty paid for by Manx residents.

The hon. member for Garff also went on with regard to retail impact, as my notes put it down, and that those who have terminals are better off than those who do not and therefore it is important to know where those terminals are. This is a far cry from when we had the Manx Public Lottery where Treasury could not encourage people to become agents. (*Interjections*) It was very difficult to actually get the number of agents and that was one of the reasons why it started to decline: people lost interest in actually selling the tickets. Those who did stick by it - their loyalty was much appreciated -

A Member: They still earned nothing.

Mr Corkill: Now, with regard to where the retail outlets will be, that will be a matter for Camelot. It is not a matter for the Treasury. That will be the effect of this legislation, and if members do not like that, well, it is one of those things that you either support this way forward or you do not. If you support the way forward with this way of getting the duty back to the Island, then the retail outlets will be affected in this way.

Another comment that the hon. member raised was this dislike of state-sponsored gambling. I have had one or two letters in the same vein and I completely understand how people feel in that respect. As someone who does not buy lottery tickets himself, I have a similar feeling towards state-sponsored gambling. But the reality is, we have it. We have a situation which I believe needs controlling. If I had been a member of this hon. House many years ago, I would never have supported a state-sponsored casino. I do not know whether I would have actually voted for a state-sponsored millennium lottery, but at the end of the day those issues were dealt with a long time ago and people buying tickets for the UK National Lottery is a day-to-day thing for many people on this Island already and I believe that we have a duty to them to actually bring this 12 per cent duty back to the Island so that it benefits the Public Lottery Trust.

I would thank the hon. member for West Douglas, Mr Shimmin, for stating what the Public Lottery Trust is all about. In the same way that he became a member of that trust on coming into this House, so did I some years ago and I enjoyed my time on the Public Lottery Trust but of course, although it was not many years ago, there were more funds there for distribution at that time. And I think in my heart of heart, the same as a lot of other people, it would have been nice to have seen the rebirth of a Manx local lottery, but the people of the Isle of Man made that decision. They did not buy the tickets; they are buying the National

Lottery tickets. That is their choice. The legislation is our choice, hon. members, and there are pluses and minuses. It is a situation which raises to the surface certain moral arguments, and they are valid on both sides, I believe. But I try to take a pragmatic view, I support this Bill, which is why I have put my name on it when it surfaced from Treasury. The Council of Ministers have endorsed it and I believe it is what the people of the Island expect.

Now, with regard to the comment Mr Cannan, the member for Michael, said, that he hoped that I would not deliberate too long and speak too long to the bookmakers, it seems one cannot win either way, and maybe that is why I do not bet. But certainly there is not intent to hold up the Bill because we do need to prepare the subsequent order for Tynwald but in that interim period I will have that dialogue with bookmakers to see what their problems are, but I really have to say I do not see a way of satisfying their concern.

I think those are most of the points and I would ask hon. members to support the second reading of the National Lottery Bill 1998.

The Speaker: Hon. members. the motion is that the National Lottery Bill be now read for a second time. Will those in favour please say aye. Division called.

Voting resulted as follows:

For: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell and Gelling - 22

Against: The Speaker - 1

The Speaker: Hon. members, the motion carries with 22 votes cast for, 1 vote cast against.

Granting of Royal Assent to Bills – Report of the Constitutional and External Relations Committee Received

The Speaker: Turning then to item 13, the granting of Royal Assent to Bills, I call upon the Chief Minister, the hon. member for Malew and Santon, to move.

Mr Gelling: Mr Speaker, I beg to move:

That the Report of the Constitutional and External Relations Committee on the Granting of Royal Assent to Bills be received and the recommendations as supplemented by the Council of Ministers be endorsed.

In February of this year the House resolved that the Constitutional and External Relations Committee of the Council of Ministers report not later than November of 1998 on the introduction of a Bill to provide for advice to Her Majesty on granting Royal Assent to Bills passed by the Council and Keys in Tynwald assembled to be exclusively tendered by Her Majesty's Government in the Isle of Man and for connected purposes. This was an amended version of a motion tabled by the hon. member for Onchan, Mr Karran, who sought the introduction of such a Bill. The question considered by the Constitutional and External Relations Committee is the limited one set down in the resolution. The issue was not constitutional development in a wider sense and it was not about any other aspect of constitutional advance. The question relates specifically to Royal Assent procedures.

This is a relatively simple question and the answer, too, is relatively simple. The proposition in the hon. member for Onchan's motion was that, in granting the Royal Assent, Her Majesty would be advised exclusively by the Government of the Isle of Man. As there would be no possibility of a United Kingdom Government or Privy Council veto or adverse recommendation, this would mean in simple terms independence in the field of primary legislation.

As things stand at present with our constitutional relationship, the United Kingdom has few responsibilities for the Island, but these do include being responsible for the overall good government of the Island and being accountable internationally for us and for what we do. Now, these are serious responsibilities and clearly so long as they continue, the United Kingdom has to retain some residual power.

For the United Kingdom to grant legislative independence to the Isle of Man would remove the most important and effective lever which the United Kingdom Government retains to protect their position and their responsibilities. I would suggest no responsible UK Government would agree. In their position I am sure we would not agree. I for one would not place myself in a position where I was responsible for somebody internationally, if I had no say over what that body might do.

Every constitutional advance that we make has to be made with the agreement of the United Kingdom Government. It follows that every advance must make constitutional sense to the United Kingdom Government. This particular proposition does not meet that criterion. There is no possibility of the United Kingdom agreeing and there is no possibility of a Bill which proposes such a change in Royal Assent arrangements itself getting Royal Assent. The Constitutional and External Relations Committee has therefore recommended against the introduction of the proposed Bill.

Let me add just two caveats to that recommendation. First, the proposition may make sense as part of a future package of constitutional change in which the United Kingdom is no longer responsible for the good government of the Island and is not responsible for us internationally. The proposition could be reactivated in those circumstances, I would suggest. Secondly, the Council of Ministers, when they considered the recommendation of the Constitutional and External Relations Committee, felt they wished to see some further exploration of the possibility of Bills identified as being of a purely domestic character being dealt with by means of a fast-track procedure for the granting of Royal Assent to Bills on the strength solely that those Bills had been passed and signed in Tynwald. The Council of Ministers propose that the Constitutional and External Relations Committee should explore this possibility further to establish its feasibility.

Within the report we have set down for the information of members some notes on our present consultation arrangements with the Home Office on government Bills. We have also contrasted our situation with the less autonomous arrangements which have been agreed for the Scottish Parliament. We are here indebted to the Clerk of Tynwald for providing information on these arrangements. The learned Clerk has written to me to correct some minor errors in paragraph 2.4 of the report but, as he states in his letter, the substance of the paragraph is, however, correct and the distinction we draw remains valid.

The wider issue of constitutional development remains under consideration and we hope to introduce members to that consideration early in the New Year. In the context of this present report, however, this is a separate issue.

Mr Speaker, the Constitutional and External Committee comprises yourself, Mr Speaker; Dr Mann; the hon. member for Garff, Mr Rodan; the hon. member for Rushen, Sir Miles Walker; and myself. I am grateful to my fellow members, for their assistance on this and other matters and that committee will be taking a lead in the wider constitutional debate in the New Year.

In the meantime, and in isolation, the particular proposal that we have considered, that we seek to secure a position where Royal Assent is granted to Bills passed by Tynwald on the basis of advice exclusively tendered by the Isle of Man to Her Majesty, is not achievable at this time. But what the Council of Ministers feel is worthy of further consideration is the possibility of securing a better arrangement for Bills of a purely domestic character, and it is that recommendation which I place before the House this afternoon. So, Mr Speaker, I beg to move.

Sir Miles Walker: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: Thank you, hon. member. The hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. It is unfortunate that the hon. member for Onchan, Mr Karran, is not present today, because I feel that he would have quite a substantial bit to say on this particular subject.

Having read the report and also taking on board the recent developments within the Isle of Man and the Channel Isles over the last week, I have to say that I am somewhat disappointed with the report. I believe that the original mover of the motion, which led to the Constitutional and External Relations Committee looking at it, had very good intentions behind his move or his desire to see greater independence for the Isle of Man. It was, all of it, born out of very good intentions. I think it is unfortunate, when the Chief Minister was moving this particular item, that he made reference to the fact that there was possibly something wrong with the wording or that the wording was so limited as the committee felt hindered, I suppose, into looking at the situation with any greater detail or depth.

What I find disappointing is that the report itself dismisses independence for the Isle of Man in relation to this, and I find that this is quite a serious assertion to make by a group of eminent parliamentarians of the Manx Government, that it simply dismisses it. Yet in the recommendation it softens the blow somewhat by saying that there could be a case to be made for looking at certain pieces of legislation which have a domestic flair to them.

What concerns me is the present constitutional position of the Isle of Man at this moment in time. To that end I find it alarming to read within this report that the only legal advice which has been sought in relation to the matter that was before the committee was from the Attorney-General's Chambers. And I do not need to remind hon. members that the Attorney-General is a Crown appointment, it is not an Isle of Man appointment, and so therefore the Attorney-General is responsible for reporting to the Crown on the Island's affairs as well as

advising government on the affairs of everywhere else, and that gives me reason to be very worried about the position that we find ourselves in now.

Equally, in the report reference is made to seeking advice from the Chief Secretary. Again, the Chief Secretary's first allegiance is to the Home Office; it is not to the Isle of Man or the Isle of Man Government or even the Chief Minister, and that was clearly demonstrated earlier on this year - (**Mr Houghton:** Absolutely.) - when the Edwards review we heard third-hand, not directly. We were not tipped off that it was going to be requested but we heard about it indirectly through the UK media, and at that time members were very alarmed, aggrieved and disappointed with the total apparent disrespect with which the Island and its legislature were treated. I think we have to keep all of that borne in mind when we are looking at this particular item, which is the Bill, because of its dismissive attitude in certain respects.

What I would like the Chief Minister to seriously take on board and consider, whether or not it is for this committee to consider, but I would like him to seek an independent legal evaluation and advice on the Island's present constitutional position - not the Attorney-General's Chambers, not the Chief Secretary to the Isle of Man Government and the Home Office, but independent legal advice, because I do not believe that it is against the constitutional position of the Isle of Man to be able to pass Bills without the need of the Royal Assent. I do not believe the assumptions and assertions that have been made in this report, although I am being asked to endorse it, and yet the legal expertise and the guidance that has been sought has been very much one-sided, I would suggest.

What I would like the Chief Minister to do is to work up an agenda for a working party to look into the Island's present constitutional position for many reasons: for the reasons laid down in the feeling behind the moving of this original motion by the member for Onchan, Mr Karran, but also to further protect our back, I would suggest, in case we are in a position not too far down the road where we are not in agreement with what the Home Office proposes, the UK Government proposes, and we feel that we should be going another way. I do not believe it is in the interests of the Isle of Man as a whole to be going down, hands tied behind their back, sending delegates from the Isle of Man or whoever to go down and report like a schoolboy going to his headmaster to see whether or not he has completed his homework, which are the requirements under the present suggested arrangement.

Mr Brown: Have you been reading the Beano?

Mrs Cannell: I have better things to read than magazines.

I think it is important - it is imperative, in point of fact - that we do establish our present constitutional position and have a proper independent legal interpretation of what that legal position is. I feel that we should be doing that sooner rather than later and preferably before any such meetings happen in the month of January next year with Lord Mostyn or whoever else in the United Kingdom.

I am disappointed. I will not be voting to support the endorsement because I feel it is far too dismissive and misses the true value which was intended by the original motion. Thank you.

Mr Rodan: Mr Speaker, as a member of the select committee which produced this report, it is with some reluctance, I have to say, that I accept the conclusion of the report, but

accept it I do because it is no more than a statement of the current reality and the current constitutional position, at least as interpreted by the UK Government.

What I would like to comment on is the paragraph in the report on page 2, the further paragraph as proposed by council, that the committee will examine further the possibility of there being a streamlined fast-track procedure for the granting of Royal Assent to Bills, on the strength of those Bills having been passed and signed in Tynwald where such Bills are domestic in nature and have no implications off-Island or for the Island's international obligations. Now, this is a very worthy objective and it might even be regarded as obtainable, but I have to say that I regard it as somewhat wishful thinking on the part of the Council of Ministers - nonetheless worthy as an objective, but certainly wishful thinking. The reason I say that is that we must go back to the basic situation, which is that the basis of our constitutional relationship with the UK remains the Kilbrandon report of 1973. The Kilbrandon report was confirmed as being the basis of our relationship in the eyes of the UK Government, and that is how I would qualify my last statement. No less than a week ago today when in the House of Lords, Lord Williams said as follows: 'The latest paper that I have on the constitutional relationship between the Channel Islands, the Isle of Man and Her Majesty's Government was published in 1973. It is the report of the Kilbrandon Commission, which I commend as fascinating reading. We are responsible under international law for the islands' international relations and for their defence. They have a domestic competence and they have no representation at Westminster. The present relationship seems to work well.' And in a further comment in reply to Lord Renton, a member of the Kilbrandon Commission, who rose to his feet to confirm that the islands have democratic self-government while enjoying the full protection of the United Kingdom, with the advantage of being represented by the United Kingdom in almost all international affairs, Lord Williams stated that as, the noble Lord Renton had just indicated, 'the islands have domestic competence and authority as to their own legislation, subject to the override that Her Majesty's Government have the residual powers in respect of the overall good governance of the islands. This was stated in the Kilbrandon report and, I am happy to repeat, remains the true constitutional analysis.' Remains the true constitutional analysis, Mr Speaker.

So what does the Kilbrandon report, this true constitutional analysis, actually have to say in respect of matters like Royal Assent, the subject of our debate this afternoon? Under the section headed 'The Protection of the United Kingdom's Domestic Interests' Kilbrandon says 'The need for intervention in the affairs of the islands to protect the United Kingdom's domestic interest in the absence of international treaty obligations is likely to be rare, but relationships are so close that it would be possible for practices to develop in the islands, particularly in the commercial field, that would be detrimental to the well-being of the British Islands as a whole. The possibility that intervention in the affairs of the islands to protect United Kingdom interests may be needed has therefore to be envisaged.' He goes on to say - this was in 1973 - 'The Isle of Man has already seen this as a problem. Its proposals for a division of legislative competence between Parliament and Tynwald and for a division of insular legislation for the purposes of signifying the Royal Assent were in part at least directed to ensuring that the United Kingdom Government could not, to suit its own domestic purposes, arbitrarily set the dividing line between the domestic affairs of the Isle of Man and those which transcend the frontiers of the Island.' Mr Speaker, this is the proposition today from the Council of Ministers that we are invited to progress, and the remark is made that that particular concern expressed

in 1973 arose largely from dissatisfaction with actions taken by the UK Government in the field of broadcasting, which was a very live issue at that time.

Kilbrandon also states, 'Cases where there is irreconcilable conflict of view may still arise. In such cases we are firmly of the opinion that the United Kingdom has and should retain the right to decide and that Parliament has and should retain the right in the last resort to legislate for the islands. So long as the Government - this is the UK Government - retained executive responsibilities for the conduct of the islands' relations with foreign countries, Parliament must retain a reserve power to legislate in the last resort to ensure that effect was given to international treaty obligations. Precisely similar considerations applied in relation to domestic matters. So long as the United Kingdom had a responsibility for the good government of the Island, it was essential that the United Kingdom retain its residual power to legislate if need be, on matters that were domestic to the islands.'

Lastly, Mr Speaker, that view is reiterated, 'So long as the UK remains responsible for the international relations of the islands it must have powers in the last resort to secure compliance in the islands with international agreements. We see no possibility of circumventing this by making a division of responsibility for international relations. The United Kingdom's ultimate responsibility, if it is to be retained, must extend over the whole field of government.' So we can see, Mr Speaker, that this question of Royal Assent is just but a feature of our constitutional position as defined in Kilbrandon, the up-to-date statement on the matter in the eyes of the Home Office, and the question of inability to recommend Royal Assent on our own behalf by Her Majesty's ministers in the Isle of Man as opposed to the UK arises solely because, as the report explains, we are not an independent state. Now, this particular problem will disappear on attaining independence.

So let us not kid ourselves that it will be easy in the meantime to either identify Bills that are domestic in nature with no implications off-Island or implications for the Island's international obligations, first of all easy to identify them or easy for the United Kingdom to concur with such identity of them on our part, given that the Kilbrandonism leaves us in no doubt whatsoever that they have the legislative competence to legislate in Parliament in London over our heads. It is there in black and white.

It was seen nearly 30 years ago by Kilbrandon that this question of removing Royal Assent was totally inconsistent with the UK's right to retain the power to legislate on our domestic affairs. Now, the answer to this has got to be, as the hon. member for East Douglas, Mrs Cannell, indicated, a fresh constitutional commission, a fresh inquiry into what has gone on since 1973 to reflect developments. If the authoritative statement on the matter, which Lord Williams points to with some degree of pride and satisfaction, is the Kilbrandon report of 25 years ago, then it is high time that matters were looked at again. So that is the answer.

There have been developments since 1973 when Kilbrandon reported, which might, in fact, despite what I have just said, give some substance to identifying a fast-track procedure for Bills domestic in nature. There may be some possibilities, and the reason I say that is because in the Kilbrandon report a statement was made that has now been superseded by events, but was taken quite authoritatively at the time, and that related to the question of delegated powers to the Lieutenant-Governor. It says, 'We regard as unacceptable Tynwald's suggestion that it should have the power to revoke extensions of the UK legislation to the Isle of Man and, so far as it relates to the proposal for a division of legislative competence, the

suggestion that there should be a division of islands legislation into that for which Royal Assent would be given us now by submission to Your Majesty in Council and that for which Royal Assent would be given by the Lieutenant-Governor under delegated powers. Provision for the grant of Royal Assent by the Lieutenant-Governor would not be open to objection in principle if machinery were to be devised, as was done in the case of Northern Ireland under the 1920 constitution, for reserving a Bill for the signification of Your Majesty's pleasure when this was desired. We doubt, however, whether such an arrangement would make a significant contribution to the efficient despatch of business.'

Now, we know, Mr Speaker, that in 1981 was made the order in Council whereby some categories of Tynwald legislation was submitted to the Lieutenant-Governor to grant assent on behalf of the Sovereign. That happened a mere eight years after Kilbrandon said that it could not be done or at least no objection in principle, but doubt whether such an arrangement would be efficient.

So there are possibilities, I suggest, and possible avenues, of which that was an example, where what was said at the time of Kilbrandon need not necessarily be the case today, and the uncertainty and complexity of the situation was stated by Kilbrandon himself. We have noted that there are areas of uncertainty. The authorities on all the islands agree that the exercise of the powers limited by the convention of Parliament does not legislate without the islands' consent in respect of purely domestic matters, and then Kilbrandon asked 'But what are purely domestic matters? How binding is the convention? In what circumstances is it proper for the Royal Assent to be refused to insular legislation? It seemed to us in any case that the issues could be conclusively determined only by a court of law, and that is a very important point and I hope it is one that government will focus on - that the uncertainties identified in Kilbrandon in 1973, the authoritative statement in the eyes of the UK Government on our constitutional relationship remain to be tested in law.

So, Mr Speaker, Kilbrandon in many areas is out of date; 25 years on a lot of those uncertainties identified then are even more uncertain now. The issues have started, it would appear, to come to a head this year, but it is still the definitive statement and, until that is tested in law or superseded by a fresh statement on the position, then this report is quite right to say that it is no more than a statement of the facts that the Island is a Crown dependency and not an independent state and that the problems that we wish would go away and that we did not have to answer the guarding Royal Assent and, if the hon. member for Onchan were here, he would tell us how it was a symptom of gun boats in the harbour and rolling over and playing dead. (*Interjections*) All these matters which the hon. member for Onchan holds most sincerely - when you strip away the rhetoric underlying it all, it boils down to this, that we are not an independent state and the UK Government regards this as the statement of our position, that is how it remains and that is what this document here confirms and that we are asked to support today. Thank you, Mr Speaker.

The Speaker: Hon. members, our constitutional position may very well be governed or surrounded by convention. The hon. member who has just resumed his seat has referred to an answer given by Lord Williams of Mostyn in another place. I too have read that response and I would point out to this hon. House that the Crown is responsible for the good government of the Island and care needs to be taken when reading responses. I call upon the hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The third part of the report referred to by the previous speaker does look at a situation where the committee of the Council of Ministers will further examine the possibility of their being a streamlined, fast-track procedure, and I support that. The member also mentioned Kilbrandon and he also mentioned that Kilbrandon was 25 years ago. That is a fact. I was also going to make the point about Royal Assent, but you have made that. It is the Crown and it is a Crown dependency that we are. Kilbrandon might have mentioned the United Kingdom Government at that time, but Kilbrandon also mentions a number of things, some contradicting others. It skips about from one thing to another. One paragraph can be read saying one thing, another paragraph can be read saying another thing, and I think possibly that both the UK authorities and our parliament probably look at one to support their position and the other looks at another to support their position. But Kilbrandon has not been tested. It is not legislation; it does not lay down the situation as it was; it could not because of this saying one thing on one paragraph and another thing on another. It was not even agreed communique from one authority to another. It was this commission that was set up to look at and take evidence and, yes, it can be used and it has been used and it will continue to be used until there is something else. But why do we want to lay something down at this moment?

This is what I cannot understand. Why at this moment? Twenty-five years - a lot of water has passed under the Kilbrandon bridge. We have changed. If Kilbrandon came back and looked at us now he would say there is nothing, hardly anything the same. Yes, Tynwald is the same, the Keys is the same, the Legislative Council is the same. We still have a Speaker. We now have a President of Tynwald - Kilbrandon did not mention that. We now have a Chief Minister - Kilbrandon did not mention that. We have a Council of Ministers - Kilbrandon did not mention that. We have departments of government - Kilbrandon did not mention that. Why look at something cased in aspic and say that is what we are at that particular time? What I am saying is that the UK Government will use that to support one particular case. We have moved on since then and we have been allowed to move on since then.

The public members have talked about independence, but I would like to say, 'Independence from whom?' I think we might like to get out from under the shackles of the United Kingdom Government that they have actually taken over in recent times and they have actually usurped the position that was in being or evolving into, and really I think they have tried to smack us down into something in the region of 50 years ago, but we have moved on since then and I do not think we should be contained in this aspic settlement.

I would resist a commission into the constitution unless things go from the position that we are in now because of what has happened to us over the last year and the UK Government trying to cement its position, having the UK control us instead of the Crown. It is the Crown that we are a dependency of, whatever name we wish to put on it, but our relationship is with the Crown and I think possibly, if we are wanting to take anything up, we should take that relationship up with the Crown and say, 'We are not happy with the way that things are progressing.' I think it is the United Kingdom Government that have come in on the side.

So it is this evolution that I think we should be protective of, this evolution and not this revolution that some members are suggesting we should be getting into, but we have moved on such a long way since Kilbrandon, and it is no good saying 'Kilbrandon will not allow us to

do this' - we have done a lot of things that Kilbrandon did not even think that was possible for us, and therefore I would support the recommendation added to this report that we should be looking at further ways and I would hope that this committee, the Constitutional and External Relations Committee of the Council of Ministers, will continue to look at this and move us forward in an evolutionary manner. Therefore I support the report. Thank you, Vainstyr Loayreyder.

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

Mr Gelling: Thank you, Mr Speaker. Well, first of all the first speaker to the debate, after the movement of it, was the hon. member Mrs Cannell, who said that if Mr Karran had been here he would have had something to say about it. Well, I have had several phone calls since this morning about what he said on Manx Radio, so I can imagine it would be somewhat similar. However, Mrs Cannell is disappointed in the report, but I think once again what I am trying to say is that the Constitutional and External Relations Committee is made up of responsible people, the Council of Ministers are responsible people and we have brought to this House a responsible report. It is factual. It is not saying, 'Yes, we should do this' when we know we cannot do it; we are saying to this hon. House that at this moment you cannot move into anything other than what we have got, except maybe fast-track, because we are not independent. The bigger issue is there to be actually tackled, and I would like at this time to say to the hon. member, 'It has not been dismissed.' Mrs Cannell says 'We have dismissed independence.' Now, at this time the Constitutional and External Relations Committee have been dealing with presidence at the July Tynwald, The Royal Assent which we have got, the constitutional position of the Attorney-General, Chief Secretary and the Chief Financial Officer and aspects of independence, and a seminar is now well on the way, being organised for the spring for all members on that very point of the greater independence. This is the way we have been working, but this report is covering that one aspect, and that was Royal Assent. That was the remit, that was what was proposed and that is what we have reported upon.

I do despair a little at times when our Chief Secretary once again comes under criticism. I do not think some members actually realise - they underestimate it - the loyalty and the hard work of our Chief Secretary (**Members:** Hear, hear.). That has been shown more and more this year, and I would say I have absolute faith in that man's ability and his loyalty (**A Member:** Hear, hear.), and when you look at the situation as to who is advising the Governor, can I suggest you would rather it be a civil servant from the United Kingdom? At the moment His Excellency makes the signature, the Royal Assent and he takes advice from the Chief Secretary, who is there for that purpose, the Attorney-General and myself. He makes the decision after taking advice. Now that is far better than it used to be, because it was never done in the Isle of Man; it was done across the water. Now surely this is one of the advances and this is what has happened; as my hon. colleague who was on the committee, has said, there have been advances from Kilbrandon, some advances which he himself did not actually see; he could not see it could happen, and we will continue to advance in that process of constitutional change, and we said at the policy debate 'Constitutional advance is not done in a sudden dramatic manner; it is done in a way that you move forward, and peg down and we go forward and we have moved a long way since Kilbrandon.

I thank Mr Rodan for his support and I think from his contribution you can understand he is someone who keeps us all on our toes in the committee. We are not sitting there, as was

reported, ministers and Chief Ministers with these fancy titles and all we do is lie down and belly up and all this. That is not the case. This is a committee where we have got Dr Mann, Mr Speaker, the hon. member for Garff, Mr Rodan; this is a committee who is looking at this whole case of independence and, as Mr Rodan said, Royal Assent is just one of those factors, and that is the factor upon which we are reporting today.

Mr Speaker, there are those who have got mind sets that every time we mention anything at all of this, there are those who are resisting independence. We keep repeating that that is our objective, to move to further autonomy, and that is what we will be doing. I can assure hon. members that we will continue to discuss these matters, debate them, and in the spring we will have a seminar in which all the inputs of members can be put at that time on this very subject.

I would like to thank Mrs Hannan for her support. I know she is also eager to see advancement in this particular area, and I think again we have to be careful when we say about testing Kilbrandon. At the moment we are working round an area of Kilbrandon. We take the best bits and use them as we like it. The United Kingdom obviously do the same. If we actually go to them and say, 'We want a new established situation of our constitutional position', we might get something that we do not like, and then it is going to be increasingly difficult, I would suggest, to be able to move forward as we have been doing in the past. As I said in my introduction, I wonder sometimes because I said quite clearly that the wider issue of constitutional development remains under consideration and we hope to introduce members into that consideration early in the New Year. That is not dismissing independence, Mr Speaker, and I beg to move that the report on the granting of Royal Assent to Bills be approved, sir.

The Speaker: Hon. members, the motion is that printed at item 13 on your order paper. 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, Quine, Rodan, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Henderson, Cretney, Shimmin, Mrs Hannan, Messrs Bell, Corkill, Gelling and the Speaker - 15

Against: Mrs Cannell and Mr Singer -2

The Speaker: Hon. members, the motion carries, with 15 votes cast for and two votes cast against. Hon. members, that now concludes the business in front of us on our order paper. The House will now stand adjourned until Tuesday next, 1st December at 10 a.m. again in this chamber. Thank you, hon. members.

The House adjourned at 4.31 p.m.

CORRIGENDUM

Page K8 (House of Keys, 27th October 1998), column 1, line 8, for 'Mr Downie' please read 'Mr Henderson'.