

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 29th June 1999
at 10.00 a.m.**

Present:

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

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, leave of absence has been given to the Chief Minister who is away on government business and to the hon. member for South Douglas, Mr Cretney, and the hon. member for Onchan, Mr Cannell.

**Patient's Medical Background – Independent Professional Review –
Question by Mr Houghton**

The Speaker: We turn then to our order paper and to item number 1 on the order paper and I call upon the hon. member for Douglas North, Mr Houghton.

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

Has an independent professional review been ordered into the medical background of the late Mrs M Skelly; and, if so

- (1) when will it commence;*
- (2) who will conduct this inquiry; and*
- (3) will the report be published?*

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

Mr Karran: Vainstyr Loayreyder, I can confirm that the department has authorised an independent professional review in relation to the late Mrs Skelly. The initial procedure involved the nomination by the United Kingdom's Joint Consultants Committee of two suitably qualified, independent medical practitioners to undertake the review, the nominations having been notified to the department in February of this year.

The review commenced in March with details of the clinical records and X-ray films relating to the late Mrs Skelly being sent to the two members of the inquiry team.

The review is being undertaken by Dr G C Markham, consultant radiologist from Whiston Hospital, Prescott on Merseyside, and Dr M P Peake, a consultant chest physician from Pontefract General Infirmary.

As regards the final part of the question, I should perhaps explain that the review is being conducted under the provisions of the National Health Service's procedure which deals with the investigation of complaints relating to the exercise of clinical judgement by the hospital and medical staff. Under the terms of the relevant National Health Service circular it is not customary to publish such a report, which is confidential to the director of public health. The department would, however, be requested to write formally to the complainant with a copy of a letter to the consultant concerned where appropriate. Any action that the department might take arising out of the review would be explained, although where clinical matters are concerned discretion lies with the director of public health as to the extent of the information being released.

Mr Houghton: Mr Speaker, may I ask the hon. member if he would very kindly review his decision as to the fact whether the whole report will be made public or not at the appropriate time, and may I also ask when will the family of the late Mrs Skelly be interviewed for the evidence that they wish to give to this hearing?

Mr Karran: Vainstyr Loayreyder, on the first issue, this would be an issue for the director of public health. I am sure that for the director of public health it would not be in his interest to try and cover up any misdemeanour as far as that is concerned and I would hope that common sense would prevail to make sure that everything that would be of benefit would be made public, but I do believe there has to be a certain amount of discretion as far as that is concerned.

May I just say that we have had an apology from Dr Peake for the delay in response which only came in the other week and her apologies were down to extreme pressure of work.

I would say, as far as the interviewing of the family is concerned, I am not sure whether that would be of any benefit to the inquiry in the fact that the information will be in front of the doctors as far as the medical records of the late Mrs Skelly are concerned.

Mr Singer: Mr Speaker, can I ask the hon. member will the inquiry investigate why, during a period of 11 months and with Mrs Skelly's condition rapidly deteriorating, the NHS consultant did not offer to send her for a second opinion, as he was unable to diagnose any illness? Will that be part of the inquiry?

The Speaker: We do not want to conduct the inquiry here. The hon. member for Onchan.

Mr Karran: Vainstyr Loayreyder, I am in a very difficult position as far as not turning this sad affair into something that is broadcast over the airwaves.

I would say as far as the issue is concerned there was a mistake made, it was rectified within four days, and I am led to believe that it would have had little or no effect on the outcome of the unfortunate death of the lady in question.

Mr Houghton: Mr Speaker, may I ask the hon. member once again would he seriously consider reversing his decision and having the family of the late Mrs Skelly interviewed as part of the inquiries? This was promised by the department and I would ask this again.

Further, bearing in mind that the late George Watterson's death involved a locum consultant surgeon and this case involves a locum consultant radiologist, may I ask that all speed is now taken to ensure a positive and factual result is documented before contractual arrangements can be scrutinised with regard to the employment of locum consultants at the hospital by your department?

The Speaker: Hon. member, you may ignore the first part of that question because it has already been answered.

Mr Karran: Vainstyr Loayreyder, I would prefer to say that, yes, as far as I am concerned as the health division I have no problems as far as whether, within reason, information is made freely available, and as far as I am concerned I would hope that there has been no manipulation as far as these doctors interviewing who they want, seeing who they want, talking to who they want, and I am assured that that is the case. As far as I am aware, it has not been a matter of the department's wish as far as stopping them seeing whoever they want.

I will refer the hon. member's views to the department as far as interviewing the family is concerned, but I have to say once again that under the present procedures it would have been a matter of looking at the medical records of the lady concerned and the fact would be that they would look at those records, anything that would have been there they would have seen. Unless the family is disputing those records are correct, I do not know what it would do to serve the inquiry, but I am happy.

But I must make it quite clear, the department has not turned around to the two independent medical people and made any sort of requests to them. They have been free to do what they want to do.

Revised NHS Complaints Procedure – Introduction – Question by Mr Quine

The Speaker: Item 2, hon. members, and I call on the hon. member for Ayre, Mr Quine.

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

Does your department intend to honour the undertaking made five years ago to introduce a revised National Health Service complaints procedure?

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

Mr Karran: Vainstyr Loayreyder, in responding to the hon. member it is important to emphasise that this issue relates to the proposed introduction of a revised National Health Service complaints procedure. In this respect the hon. member will recall that the original intention of the department was to take into account the revised complaints procedure being introduced in the United Kingdom's National Health Service, with effect from 1st April 1996, as the basis on which the Isle of Man version would be produced. Unfortunately the new procedures in the United Kingdom were found not to be totally satisfactory from either the patient or the service point of view. As a result a review was called for. Notification of this was subject to a statement in Tynwald by the minister in March 1997.

My department has since learned of the United Kingdom Department of Health's intention to seek a formal external evaluation of its complaints arrangements and it has indicated that it will take some two years to be completed.

However, my department remains keen to progress the issue so far as the Island's complaints procedure is concerned and is currently undertaking an internal consultation exercise to determine the most effective replacement of the existing complaints arrangements. I should, however, make it quite clear to the hon. member that the introduction of a more formal procedure generally will invariably have an effect on resources and they will have to be met.

In conclusion, I would reiterate that the department is committed towards the introduction of an improved procedure in relation to complaints as far as the health service is concerned as soon as possible.

Mr Quine: Mr Speaker, is the hon. member aware that calls for revision of the NHS complaints procedures have been ongoing now for some 10 years, indeed the member himself made a call for revision of the procedure in May 1994, and would he agree with me that such an inordinate delay is unacceptable?

Additionally, would the member agree with me that, given the absence of a health service ombudsman and a community health council, the need for an effective National Health Service complaints procedure is both irresistible and urgent?

Mr Karran: Vainstyr Loayreyder, I am very aware of my calls as far as this is concerned and I am still as committed as ever. I think the hon. member was a member of Health for some time himself with the problem then like it is now.

On reflection one was maybe unwise when we were looking at the proposal for the implementation of the UK scheme here, which was proved to be blatantly impotent as far as being effective is concerned, that there was a resource implication of something like I think it was £70,000. On reflection maybe we should have spent that £70,000-odd on bringing that flawed scheme in, but at the time I believed that I could have spent that money on many other issues that are raised week in week out in this hon. chamber. So that could be a legitimate argument, that one should have brought the flawed scheme in.

But the commitment is there. I have got a meeting within the next fortnight. Somebody has been picked that I would like to see as chairman of a complaints procedure. I believe that it is of paramount concern that we do have a complaints procedure, but what I am not prepared to do is waste public money window-dressing, which many in this hon. House have got off to an art form.

Mr Singer: Would the hon. member not agree that his department has had five years to devise a scheme suitable to the Isle of Man which is not flawed, and can he therefore tell me why it has to be linked to the United Kingdom system for a National Health Service which is different to ours, and is it not a fact that his department is putting finance before people's rights and that he could have devised one in this period of time?

The Speaker: That is an opinion, sir, and I think the hon. member has answered all those three points. The hon. member for Ayre, Mr Quine.

Mr Quine: Thank you again, Mr Speaker. Would the hon. member agree with me that given that we are running well in excess of a hundred complaints a year in relation to the figures he has just circulated to members, there is an awful lot sitting in the window that needs to be attended to, and in the absence of a viable complaints procedure, and the department concede there is no viable complaints procedure in position, will his department create at least a community health council to provide complainants with assistance in pursuing complaints, albeit under a seriously flawed complaints procedure?

Mr Karran: Vainstyr Loayreyder, I would like to reply to the previous as well as this question in the fact that I think it is unfair to say that we have been five years messing around as far as a complaints procedure is concerned. I ended up being member for Health not five years ago but back in 1997 and I admit that one can take the blame to a certain degree as the member for Health under the ministerial guidance, but what I cannot say is that we have not learnt the lessons. We have learnt the lessons that we do not want to window-dress within my division, we want something that is effective.

I would like to turn to the hon. member for Ayre and he says about the hundred or so complaints. I think the hon. member wants to go back to previous questions about the throughput through Noble's Hospital and let us see the reality of the complaints that we are getting at the present time. I believe that he would be failing in his duty as the member for Ayre if he had complaints from constituents in his area and he could do a better job than any community health council would ever do.

Mrs Hannan: I wonder could the member for Health confirm that there is indeed a complaints procedure, that people can make complaints to the health services? Can he confirm that?

Mr Karran: Vainstyr Loayreyder, yes, there is. The hon. member is quite right. But I want to see it improved. I think it is important it is improved and it is more effective.

I do get somewhat disappointed by members in this hon. House that have had the opportunity to try and do something about it, who have not done anything about it in the past, complaining about us in the future.

I welcome the question because I do believe it is something that is a priority and I welcome it being aired today by the hon. member for Ayre, but it is a point that there is one there, but it is not satisfactory as far as I am concerned.

Mr Quine: Could I invite the hon. member to address the specific question of whether or not his department will consider the early introduction of a health council? May I ask him to address that.

Secondly, could he give us an assurance that his department, in looking at this new complaints procedure, will remove the distinction which is between what I may term ordinary complaints and complaints which may give rise to litigation, because there is obviously a great deal of difficulty in any member of the public pursuing a complaint when these artificial distinctions, borne on insurance matters, are to the fore?

Mr Karran: Vainstyr Loayreyder, as far as I am concerned if the individual says that he wants to go through the legal side, that is a separate issue. If they are wanting to go through

my side, I can not see that the department would ever try and hide because it is not in my interests to cover up incompetency within the department.

What is important is that I think the hon. member needs to ask, maybe in three months' time, to see whether we have got anywhere as far as his complaints procedure is concerned.

But I would say that as far as this issue is concerned we are as committed as the hon. member, we want something that is effective, but it is no use me spending tens of thousands of pounds on something that will not work but will look good and will fan my vanity, because that is not in my interests as far as looking after the people of the Isle of Man is concerned.

MEA Customer Accounts – Printing – Question by Mr Houghton

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

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Minister for Trade and Industry:

- (1) *Where are Manx Electricity Authority customer accounts printed out; and*
- (2) *what is the annual cost?*

The Speaker: I ask the Minister for Trade and Industry, the hon. member Mr North, to reply.

Mr North: Mr Speaker, the MEA's customer accounts are printed in-house at the Ballacottier headquarters. They are printed on standard laser printers and the costs of doing so forms part of the everyday administrative costs of the authority. The printers are used for other routine tasks as well as for billing runs and the cost of this particular part, which is very small, is not separately identifiable.

Mr Houghton: Mr Speaker, I must press this issue by asking the hon. minister what is the savings differential in the cost of printing the accounts in-house as against the costs when they were printed at the Treasury and who made this decision to change, please?

Mr North: Mr Speaker, the previous system was based on two dedicated mainframe programmes originally written in the early 1980s by the information systems division of the Treasury and based at Central Government Offices for the former Electricity Board and Douglas Corporation electricity department.

The fundamental reason for the development of the new system was that the old one was not Y2K-compliant but there were many other reasons to change from what had become a rather dated system which was comparatively cumbersome, unsophisticated and labour-intensive and it just made, again, sense to move it in-house to the MEA.

Mr Houghton: Mr Speaker, may I ask can the minister give a categoric assurance that this move to transfer the printing of MEA accounts from the Treasury to in-house arrangements at the MEA is not yet another covert step towards eventual privatisation of this authority?

Mr North: I think I can give that categoric assurance to the hon. member. I was interested to see his comments as reported in the local press today and what he is concerned about, and he is quoted as saying, 'I do not know of any other members of the Keys who

would support the MEA becoming a private company.' What I would say is I do not know of any members, including this one, that was looking for the MEA to be privatised.

Mr Houghton: Hear, hear.

Mr Henderson: Mr Speaker, could the hon. minister then explain why this new system appears not to recognise customers' discounts when paid on time at Post Office counters?

Mr North: Mr Speaker, I have no idea.

Noble's Hospital Outpatient Clinics – Parking Restrictions – Question by Mr Shimmin

The Speaker: Item 4, hon. members, I call upon the hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

Would you be prepared to introduce a simple scheme for persons who are attending outpatient clinics at Noble's Hospital, allowing them to display a date-specific notice of the appointment on their windscreens which would exempt them from disc-zone parking restrictions for the length of time they are in the hospital?

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

Mr Brown: Thank you, Mr Speaker. The restrictions associated with parking on the highway adjacent to Noble's Hospital and the problems encountered by persons attending outpatient clinics at Noble's is a matter that has been raised by both patients and the Department of Health and Social Security. It is a matter for which my department has some sympathy for those attending outpatients and for which we are endeavouring to find a solution which includes consideration of a date-specific notice. However, one of our main concerns is to try to contain any potential abuse that could occur.

Another proposal that is presently being considered in relation to disc zones generally, which could assist in resolving the problem in relation to Noble's Hospital, is the introduction of scratch pay cards. The idea I am considering would be to introduce a system of pay cards in appropriate disc zones to enable drivers to choose to stay longer than the initial free period by utilising a pay card to extend their permitted parking time. The pay cards would be purchased in advance from appropriate outlets, and I hope to be in a position to make a final decision before the end of the summer. Thank you.

Mr Shimmin: Mr Speaker, I would like to thank the minister for his answers. I would point out that when outpatients visiting the hospital have received parking tickets the police then have endeavoured to remove the cost for those parking tickets. This is a time-consuming element and we would be grateful if corporate government could work together to resolve this as soon as possible, as the matter has been overhanging for some time. Could the minister outline whether he hope to report on all aspects of what he has reported this morning by the end of the summer or just with regard to the scratch cards?

Mr Brown: Mr Speaker, as far as the decisions to be made, it will include the consideration of the options available to us to enable there to be a little bit more freedom in the use of some of the disc zones. One of the complaints that I have received quite regularly is that people feel that the disc zones have created islands within Douglas where people who

visit family or friends cannot in fact stay long enough without having to move on, and this would give that option.

I can confirm that the department, as the hon. member has said, in conjunction with the police, have a procedure which means that if a person who overstays their time and then receives a fixed penalty notice, provides a confirmatory note in relation to their visit to the hospital, that can be cancelled. However, I do not believe that this can be a long-term acceptable situation and it is purely an interim measure as far as I am concerned, and, yes, I hope to be able to introduce some new systems that will assist people in different areas where they wish to stay longer or need to stay longer.

Mr Duggan: Mr Speaker, could I ask the minister, when the old ward block is demolished could you not utilise that area for parking for people who visit the hospital?

The Speaker: The minister to reply, if it is within your province, sir.

Mr Brown: Yes, as I am sure the hon. member will be aware, Mr Speaker, my department has no control at all over the site because that is, of course, owned by the Department of Health and Social Security. I am sure the member for Health, the hon. member for Onchan, Mr Karran, who has heard you make the point, will also take that on board in any considerations they have for the site.

Mr Karran: Vainstyr Loayreyder, would the minister not agree that it would be better for his department to bring in a simple scheme for this one cause of great concern to people, like the hon. member's question, of allowing the Department of Health and Social Security to issue some sort of disc for that day or that morning or afternoon of the appointment. This would be a lot simpler and he is only confusing the issue, and could the hon. member assure the hon. member for South Douglas that we hope they have the diabetic clinic there, in that area, so there will be no chance of putting any car parking there? It will not be totally demolished.

Mr Brown: Mr Speaker, my department, by utilising part of the highway, is endeavouring to help those who need to visit Noble's Hospital. We also have to make sure that if we are going to be able to assist with the limited on-street car parking that is available, we have to ensure that there is no abuse of that, otherwise it would be blocked up all day and then people would have a greater difficulty if they were visiting Noble's. So the systems that we are looking at give us options of a way forward.

I would say that, as I understand it, there is extremely limited, if any, parking provided by the DHSS on their own land for the public. So it is not just a matter for my department and I am sure the member for Health, Mr Karran, is also conscious of the need for them to play their part.

A Member: Hear, hear.

The Speaker: Hon. members, items 5, 6 and 7 are for written answer and I understand the answers have been circulated to you.

Residence Bill – Tabling – Question by Mr Karran for Written Answer

Question 5

The hon. member for Onchan, Mr Karran, to ask the Chief Minister:

Will your government table a Residents Bill for first reading at the next sitting?

Answer

I anticipate that a Residence Bill will feature in the legislative programme for 1999-2000 which will be included in the 1999 Review of Policy and Programmes.

**Non-Contributory Social Security Benefits – DHSS Savings –
Question by Mr Henderson for Written Answer**

Question 6

The hon. member for Douglas North, Mr Henderson, to ask the member for Health and Social Security:

As a consequence of the changes over the last three years in Manx law on entitlement to non-contributory social security benefits, what savings does your department anticipate -

- (1) in this financial year;*
- (2) by the financial year 2004-05; and*
- (3) by the financial year 2010-11?*

Answer

None.

National Health Service – Complaints – Question by Mr Quine for Written Answer

Question 7

The hon. member for Ayre, Mr Quine, to ask the member for Health and Social Security:

- (1) In each of the years 1995 to 1998 inclusive, how many recorded complaints regarding the National Health Service were received in the following categories:*
 - (a) oral complaints about clinical matters;*
 - (b) written complaints about clinical matters;*
 - (c) oral complaints about non-clinical matters; and*
 - (d) written complaints about non-clinical matters; and*
- (2) in each of the specified years, how many of the inquiries into the complaints -*
 - (a) have been concluded;*
 - (b) were found to have some substantiated ground for the complaint;*
 - (c) were found to have no substantiated ground for the complaint; and*
 - (d) have not been completed?*

Answer

The following tables set out the detailed information sought, subject to the limitations at sub-paragraphs (i) to (iii) below:

**NHS COMPLAINTS
HOSPITAL SERVICES/FAMILY PRACTITIONER SERVICES/COMMUNITY SERVICES**

(1)

Year	Complaints Received				Total
	Oral Clinical (i)	Written Clinical (ii)	Oral Non-clinical (i)	Written non-clinical (ii)	
1995	n/k	29	n/k	52	81
1996	n/k	47	n/k	60	107
1997	n/k	36	n/k	77	113
1998	n/k	38	n/k	46	84

(2)

Year	Complaints Received			
	Concluded	Substan- tiated (iii)	Not substan- tiated (iii)	Not completed
1995(ii)	14	0	6	0
1996(ii)	28	4	11	0
1997	108	35	64	5
1998	82	14	61	2

(i) Oral Complaints

Having regard to the size and complexity of the health service, it is inevitable that there will be verbal expressions of concern from some service users over certain aspects of the service, in a variety of circumstances, e.g. hospital wards, GP surgeries, patients' homes, et cetera.

The vast majority of these are settled on the spot without recourse to detailed investigation. Complainants are encouraged to formalise their concerns in writing wherever informal action fails to resolve the problem. For this reason it is not customary to record oral complaints.

(ii) Written Complaints

Information regarding written complaints in respect of community services is unavailable for the years 1995, 1996 and up to May 1997.

Information regarding the outcome of complaints in respect of hospital services is unavailable for 1995 and 1996.

(iii) Outcomes

In terms of substantiated/unsubstantiated complaints, those dealt with under the informal procedures within family practitioner service arrangements, i.e. by the independent conciliator, are settled by agreement between the two parties and not classified.

Legislation re the Age of Consent for Homosexual Relations – Leave to Introduce Not Given

The Speaker: That takes us on to item 8 on our order paper and again I call upon the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to move:

That leave be given to introduce legislation to provide for the age of consent for homosexual relations to be 18 years of age.

This private member's Bill is about having a proactive instead of a reactive legislature. We can wait until we are dragged before the Court of Human Rights by one of our citizens trying to give our small nation a bad name again, trying to make out that we are so intolerant when that is not the case.

If we want to give ammunition to our enemies who want to blacken the name of our small nation, go ahead and run away from addressing this issue today. The simple question that needs to be asked is what other section of our society, who can do something legal, have to wait until they are 21 in order to do so? How do we intend to defend this against claims of blatant discrimination against a minority group within our society?

The age of adulthood is 18. If you are deemed to be an adult at 18, then you should be able to have any legal relationship you want at that age.

There will be two groups in this House today: firstly, those who will act like national politicians and put the Island's interests first and be honest with their constituents and tell them that we cannot defend the law as it presently stands, having a different age of so-called majority for this section of the community, and secondly, those who will play to the section of the community who will never vote for us again because of the way we vote on this issue today, although I believe that they are small in number now, compared to many years ago.

I do hope that members on the other side will spare us the excuses and the fig-leaves for running away from addressing this issue. I do hope that we will not hear such silly remarks that the gay community do not want the age lowered. Most of those people who are very pro-homosexuality want the law to stay as it is because it will make it virtually indefensible if we are ever dragged to the Court of Human Rights. It will make it fairly easy for them to have the age of consent lowered to 16 because once again our enemies will be able to promote the idea that we are homophobic and intolerant.

I hope that we will see the majority of this House give leave to introduce this Bill. I hope that we will allow common sense to prevail and show that the majority of this House and national politicians making decisions in the best interests of our nation and not just worrying about where their votes will come from for the next election. Vainstyr Loayreyder, I hope that we will see common sense today. I beg to move.

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

The Speaker: Hon. members, the motion is that printed at item 8 on your order paper, that leave be given to introduce legislation to provide for the age of consent for homosexual relations to be 18 years of age. Those in favour please say aye; against no. The noes have it.

A division was called for and voting resulted as follows:

For: Messrs Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Braidwood, Shimmin, Mrs Hannan, Messrs Bell, Karran and the Speaker - 10

Against: Messrs Gilbey, Cannan, Quine, Brown, Houghton, Henderson, Duggan, Mrs Cannell, Messrs Downie, Singer and Corkill - 11

The Speaker: So, Hon. members, there were 10 votes cast for, 11 votes cast against. The motion therefore fails.

Mr Houghton: Hear, hear.

Bills for First Reading

The Speaker: We move on to items 9 and 10, hon. members, and I call upon the learned Secretary.

The Secretary: The Companies (Transfer of Functions) Bill, Mr Braidwood; the Villa Marina Bill, Mr Gilbey.

Town and Country Planning Bill – Council Amendments Considered

The Speaker: We turn then to item 11 on our order paper, the Town and Country Planning Bill for consideration of the Council amendments, and I call upon the hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. Hon. members of course have before them the report from the Legislative Council and they will have noted that there are amendments proposed to two clauses: clause 40 and schedule 1 to clause 2. With your permission, sir, I will deal with them in the order in which they appear on the sheet attached to the order paper.

So dealing first with clause 40, hon. members will appreciate that clause 41 and 42 relate to a consultative body and 43 relates to representation for what we could perhaps term amenity groups.

In relation to 41 the Council propose that it should be for the Council of Ministers to establish the consultative committee and for the Council of Ministers to determine which organisations relating to the environment, to the economy, planning development should be represented. Hon. members of course are aware that as the Bill left this House these matters were with the department.

Going on to what you might say is the third item in relation to clause 40, the impact of that third item in relation to clause 40 which of course relates to page 35, line 7 on the green bill, the impact of that suggestion from Council is to require the department to have regard to the views of the consultative body. This is proposed to be effected by deleting the words 'pursuant to such consultations' and substituting the words '(whether pursuant to such consultations or otherwise)'. In other words if on their own initiative they submit views, those views will be considered. If such amendment provides comfort, then it creates no difficulty for the department.

As regards the fourth item in relation to clause 40, this requires the department by order or regulation to provide for the designation of voluntary organisations concerned with the environment and to have regard to representation from such bodies. Now, the practical effect of the Council amendment is marginal to say the least, but again the department has no problem and we can concur with that suggested amendment.

So first of all, sir, in relation to Council proposals to amend clause 40 I beg to move:

That the Council amendment to clause 40 be agreed.

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

Mrs Cannell: Mr Speaker, I would just like to ask the hon. member to reaffirm my understanding of the proposed changes submitted here today regarding the consultation process, which is to be undertaken, as I understand it, by a consultative body, which could be any group or any organisation within the Isle of Man. Is my understanding correct and would this include the advisory council, the advisory group, which have formally submitted views to the department with regard to planning applications? Will they still have a role to play in relation to this change? Will they still be able to come forward, make a submission to the department and know that the department will take note of what they say and will have to respond to it? Will they still have a role to play?

Mr Henderson: Mr Speaker, my hon. member from Douglas East, my good colleague Mrs Cannell, has amply demonstrated my concern for this which is the fact that prior to this Act coming in we did have an advisory planning council that did have some sort of quasi-role with the hon. member's department. If he could just clarify for me that this clause actually gives back some of the advisory role in some form or another, as the original Bill may have been actually read as taking some of that away. If he could clarify those points for me I would be most grateful.

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

Mr Quine: Thank you, Mr Speaker. We are of course moving away from Council amendments, but I am pleased to take the opportunity to explain the import of clause 40.

Clause 40 provides for two bodies, if you wish. First of all under clause 41 and clause 42 it provides for a new body and that is a consultative body in respect of which, if the Council amendments are approved, the Council of Ministers will appoint people representing or having a view in relation to the environment, the economy and planning development. That is a consultative body and the department would be able to consult with them and I would envisage that that would primarily evolve around the preparation of secondary legislation and occasionally primary legislation. That relates to what I think we all understand by the term 'strategic planning': the longer-term planning, the procedures. That is new, that is not in place now, that is additional.

In terms of the second provision, which of course is covered by clause 43, the position there is that we do have ADCO at the moment. It is an umbrella body. There are elements who contend that they have not been properly represented because of the divergence of interests under the umbrella of ADCO. So what it is proposed to do here, as hon. members will be aware by looking at clause 43, is that there will be recognition of certain bodies who are concerned with the environment and those bodies, having been given recognition, will have a

right of input into the planning development process, what I think most of us would relate to as planning applications and matters of that nature. So instead of the one there would be a recognition of more than one. So that is clause 40.

So I hope that explains as succinctly as perhaps I can at this point in time the import of clause 40. So there is the body which is related to strategic planning. There is the provision to have an accreditation, if you wish to use that term, of bodies concerned with the environment, so they can have input into the development planning process, and that will come forward through secondary legislation and in this hon. House, in another place at least, those matters will be adjudicated upon.

So again, sir, I beg to move that the amendments proposed by Council to clause 40 be agreed.

The Speaker: Hon. members, the motion is that in clause 40 the amendments circulated to you on the white paper from the amendments made by the Council be accepted by this House. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Then, hon. member for Ayre, we deal with the second part of the amendments made by Council in schedule 1 on page 42.

Mr Quine: Thank you, Mr Speaker. We are of course here, sir, dealing with clause 2, or more specifically the schedule which is introduced through clause 2, and this deals with the development plan, a term which embraces both the strategic plan which has yet to come into being and of course area plans which are in being or some are in being. Schedule 1 to clause 2, which is the schedule to which these amendments are proposed, sets out the development plan procedures.

Now, the first amendment is perhaps what we could term typographical. In paragraph 3 of schedule 1 'paragraph 1(2)' should read 'section 45(2)(a)'. I think that is fairly straightforward and that relates to the notice to be published advising the public of a draft plan.

The second part which is a matter of more substance, the second amendment was initiated by the department in fact, following comments made in this House when the Bill passed through this House. Paragraph 6 of schedule 1 deals with the adoption of a draft plan. The Bill, if passed by this House, provides that following the public inquiry the department may adopt the plan with or without modifications. If it adopts it with modifications, then as the Bill provides at the moment, there would be a requirement to repeat the procedure virtually in toto, therefore going into another very lengthy exercise that could take well in excess of a year. So there were comments about that as the Bill passed the House.

The amendment proposed by Council provides for a somewhat truncated procedure in dealing with the situation where the draft plan is modified. This requires for publication of a notice, a minimum notice of 21 days for objections or representations but peculiar to the modifications that are proposed, and then of course the department takes its decision on the adoption of the Bill, so it speeds the process up, but allows input in relation to modifications that the department propose.

I think that is quite straightforward. Certainly, as I say, it was a matter which was recognised as being a valid point during the passing of the Bill here. The department has no difficulty with that and I would therefore beg to move:

That the Council amendments to schedule 1 be agreed.

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

The Speaker: Hon. members, the motion is that the amendments made by the Council to schedule 1 and thereafter as printed on your white paper be accepted by the House. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Shops Bill – Second Reading Approved

The Speaker: We turn then to item 12 on your order paper and I call upon the hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. The Shops Bill that you have before you today is promoted by the Department of Trade and Industry. The principal objects of the Bill are to repeal the existing regulation of shops hours on Sundays under the Shops Act 1985, to prohibit the opening of all shops on Christmas Day and to introduce new employment protection provisions for shop workers in respect of work on Sundays, to regulate the hours which shop workers may be required to work under their contracts of employment.

Sunday trading has been a recurring theme in public debate in recent years. The existing law in the 1985 Shops Act has attracted criticism from all quarters and the Isle of Man Office of Fair Trading fully acknowledges the anomalies which presently exist.

May I respectfully refer hon. members to the schedule before them. This schedule shows the imbalances and unfairness of the existing legislation with which retailers have to comply. The large chain stores and supermarkets have a great advantage over small local traders. The large retailers can open all day, every day, 24 hours a day, as can banks, building societies and travel agents. In reality these major stores and services do limit their opening hours to the needs and demands of their customers. However, the small retailers and those who sell dedicated goods cannot utilise this trading advantage due to the present unfair restrictions. For example, a florist cannot open outside limited hours even on Mothering Sunday, but a garage or a supermarket can sell flowers or any other type of goods. A toy shop, a pet shop - these again are restricted, but not the supermarket or garage who can and do sell these types of goods on Sundays.

The law is unfair and disadvantages both consumers and traders. We do not want to see the long-term closure of small traders because they cannot fairly compete, and in fairness to the major stores, they acknowledge the need for the composition of traders for the overall climate provided that is required for successful trading.

To assist some small traders the Office of Fair Trading has for the past 11 years sought the approval of Tynwald for a temporary exemption for some categories of traders selling goods by retail of clothing, footwear and sports goods for the period Easter Sunday to the last Sunday in October. The introduction of this order has at least temporarily tried to improve the imbalance, but why only these categories? The reasons are historical. I believe the Chamber of Commerce originally had input into the suggestion but had to accept just the three categories stated, as any attempt to widen the categories would have nullified the Act. Hon. members are only too aware that this annual exercise is not the answer. It was only meant to serve as a temporary measure.

The present Shops Act 1985 enables all shops to open on Christmas Day between 2 p.m. and 5.30 p.m. and certain categories of shops who supply medicines, newspapers, books, fancy goods, motor fuels, foodstuffs, meals or refreshments to open all day Christmas Day if they so wish. The 1999 Shops Bill will prohibit all shops from opening on Christmas Day, and in view of the concerns expressed by hon. members when previously debating this issue, this Bill includes effective employment protection: measures to ensure that shop workers are not adversely effected by the repeal of the existing legislation.

The provisions of the earlier Shops Act of 1985 relating to rest periods and maximum hours a shop worker can be obliged to work have been retained as part of the new Bill, but in addition the Shops Bill will confer on all shop workers in employment at the time the legislation comes into force the status of protected shop worker. This status is only lost if and when a worker opts in, that is, serves notice that he or she will work on Sundays.

Other shop workers will also be protected. Employers will be required to give all shop workers who are or may be required to work on Sundays, excepting those who are employed only to work on Sundays, a written statement setting out their rights to opt out of working Sundays and not to be dismissed or indeed subject to any other detriment. Employees who object to working on Sunday may then serve an opting out notice on their employers which will give them the status of opted out shop worker, that is, they will acquire that status three months after they have served the notice. Once the notice comes into effect, any term in a contract of employment which requires that employee to work on Sunday will become unenforceable.

The special employment provisions within the Bill will be enforced by the Department of Trade and Industry's existing inspectorate.

Having created these protective categories of protected shop worker and opted out shop worker the Bill provides that a dismissal will be unfair and any detrimental treatment, for example demotion, refusal of promotion, variation in working hours, unreasonable refusal to allow time off for sickness, will be unlawful if the reason is that the shop worker being protected or opting out refused or proposed to refuse to do shop work on a Sunday, or a particular Sunday or the shop worker gave or proposed to give an opting out notice to the employer. An aggrieved individual may seek redress at the Employment Tribunal which will have powers to make a declaration of the rights of the individual and to award compensation.

Hon. members will note that no qualifying period of continuous service will be required for an individual to exercise these rights and no age limit has been applied. In fact these measures reflect similar provisions to those which have been enacted in the UK and which have experienced no problems with the legislation.

Hon. members, the Office of Fair Trading is committed to providing an equitable market place for all of our Island's retailers. The Bill will ensure a fair trading arena for all those retailers. I believe the introduction of the Bill is a positive one. The Bill will enable traders to open, but opening will not be a legal requirement, it will be an option for traders. I firmly believe that competition and market forces will prevail and a balance will be struck.

We are, hon. members, nearing the millennium, which in itself will be a time when we will be looking to celebrate and, yes, probably spending more than we should. Advances in technology will encourage customers to order and purchase goods via the internet, which

again will have a detrimental effect on local retail trading. We as political representatives should be doing all that we possibly can to encourage consumer and trading confidence to remain on our Island. We should be providing the environment which enables consumer and traders to make their own choices, whilst we at the Isle of Man Office of Fair Trading will endeavour to ensure that the goods and services that are available will meet the appropriate safety and trading standards.

Mr Speaker, I beg to move the second reading of the 1999 Shops Bill.

Mr Houghton: Mr Speaker, I beg to second.

Mr Singer: Mr Speaker, the introduction of this Bill has become an obsession on the part of the Office of Fair Trading and in fact if the Bill does become law it might well be opportune to add a clause to change the department's name to the Office of Unfair Trading and I say this because I am of the opinion that the chairman and the mover of this Bill, the hon. member Mrs Crowe, is totally incorrect in saying that this Bill will create a level playing-field for all traders. In fact the acceptance of the Bill as published before us will cause undue pressure to be placed on proprietors of small businesses and on employees in all retail businesses.

In business terms it is a desirable objective that businesses should be able to compete on an equal footing, but this Bill only allows such competition to occur on the terms of the large players. It has always been my opinion that on a small Island a free-for-all is not desirable and we have seen that this causes an imbalance and the demise of the small business and I think that future business developments, with the influx of multinational conglomerates, will only emphasise and exacerbate this problem.

Quite rightly we are prepared to introduce policies to protect the Island, whether it is by introducing derogation on certain food products or insisting on the work permit system. What this Bill is doing is allowing the multinational businesses who have chosen themselves to set up on the Island to dictate business terms to Island-based companies and businesses.

More important to the retail industry of the whole of the Island, not only Douglas, is a need for proper and thoughtful planning to protect the essential shopping areas throughout the Island's towns and villages and retain the presence of employment opportunities.

To completely deregulate the system suits the Office of Fair Trading because they can then unload the responsibility of investigating and policing complaints of businesses not complying with the law. However, to believe that by adopting the English system lock, stock and barrel, and certainly by reading the terminology of the Bill this appears to have been the case, the Department of Trade and Industry is assuming that this suits the situation within the Isle of Man and the views of its people. That is extremely presumptuous and insulting.

Over the years the protection of workers wishing to have Sunday free from work whether for religious reasons, family reasons and in fact for their own personal reasons, has been eroded. Their rights and protection have been removed.

The argument has been put forward that the Bill before us is what the consumer wants. What is not said is that many of the people referred to as consumers are also the retail shop workers. If we take the case of the smaller business, the proprietor-run business, the shop that opens Monday to Saturday, providing the community with a service, if that business was not there there would be inconvenience and even hardship to many in the community who are old,

who do not have transport or who are unwell. These small businesses will be under pressure to open on a Sunday, having been open for six days, to ensure that they retain business that will otherwise transfer to other shops.

It is correct of course to say that the shopkeeper will have a choice whether to open or not, but that choice will be governed by a conscious decision to accept a reduction in the viability of the business in order to observe Sunday as a day of rest or for whatever reason. The viability of the business clearly controls the employment of staff for the accepted working week and a reduction in viability puts jobs at risk.

Is Sunday a day that is different? Is Sunday a day that should be different? In terms of the majority of branches of Christianity, Sunday is a day of rest, the day for religious observance, and unfortunately the respect for those who wish to follow the religion of this land is being more and more eroded. There is the insidious creeping malaise of rejecting traditional values, the need for family involvement and accepting under the terms of so-called political correctness that anything is morally acceptable, whether it offends a minority or the majority, and that one is intolerant if one sticks to one's principle of biblical or family values.

We also have the regular comment that the continental Sunday combines Sunday shopping with churchgoing. On close inspection this is a total myth. Whilst there is deregulation in Spain, southern Ireland, Portugal and Sweden, there are controls in Denmark, Italy, Norway, Germany, Austria, Switzerland, Greece, the Netherlands, France, Finland and Belgium. So the free-for-all continental Sunday is a myth. What the Department of Trade and Industry is promoting is now the British Sunday.

That is all I wish to say on the religious viewpoint, that people who wish to observe their religion should be entitled to do so without fear of repercussions in their family or working life. This Bill does nothing to help those people but is actually working against them.

The 1985 Act reduced the protection given to workers. The 1999 proposal is completely removing any rights at all. The hon. proposer, Mrs Crowe, is introducing the oppressive employer and the workhouse mentality into the Isle of Man employment field.

Mr Cannan: That is good stuff.

Mr Singer: No automatic right to have Sunday off work, although Mrs Crowe, the workhouse manager, (*Interjections*) has appeared to demonstrate her compassion, for which workers throughout the Island will show her awe and reverence: 'Yes, you can have Christmas Day off.' I suspect, however, that the actual promoter of the Bill, the hon. minister Mr North, probably had to use all his powers of persuasion to get the concession of Christmas Day from Mrs Crowe. (*Laughter*) In all seriousness, though, I have to ask about the need to recognise also the importance of Good Friday. This is a very important day in the Christian calendar and the feeling that the employee should not have to ask for that day off.

If I can now refer to the actual terms of the Bill and its professed protection of the worker, of course the opposite will happen as time goes by and employees change jobs and new workers enter the market. We have the so-called protected worker who is in retail employment at the time of the Bill becoming law and who can refuse to work on a Sunday. We then have the worker who is not protected who will have to seek the concession from the future employer after the Bill has been enacted. The unprotected worker on their initiative will have to present

the employer with an opting-out notice et cetera, and to believe this technical jargon - and the Bill is written in such a way to give the lawyers a field day - and that it offers protection is nonsense in the real world and a naive view. Practically speaking the protected worker has notional rights until that worker wishes to change jobs and even then it is not difficult for an employer to find another reason for dismissal for objecting to working on a Sunday. I understand that B&Q have adopted a contract of five out of seven and that is working five days out of seven. Sunday is compulsory if they say so and you are informed of this at the interview process. You also have to work Tynwald Day: you have no choice Tynwald Day if they tell you to work then. So I believe that those facts are true, and therefore for the unprotected worker who goes for an interview and has to pluck up the courage to say, 'Yes, I would like the job but I will not work on Sunday' knowing that another interviewee for that same position will work on Sunday will in many cases know that they will not be appointed to that position. In the real world I have no doubt that discrimination and harassment will occur.

So I say to hon. members this Bill offers no protection to the worker who for whatever reason does not wish to work on a Sunday. This lollygagging Bill promoted by the DTI and the Office of Unfair Trading is heavily weighted in favour of the large multinational employer and against the worker and of course the small retailer.

I received a copy of a letter sent to the Office of Fair Trading from a major experienced and extremely successful retailer in Ramsey, a Manx business but one which is small in terms of the multinationals, and I would like to quote a small section of the letter which sums up the problems that will be encountered here on the Island and reflects what has happened across the water after deregulation: 'I do not believe from a practical point of view that the government is capable of introducing proper safeguards for employees. The situation in the UK would tend to support this viewpoint, as there has been considerable manipulation by the large plcs regarding employees service contracts and large numbers of experienced and skilled staff have been lost to the industry as a result of people being forced to work on Sundays. As a result the industry now contains a large number of part-time inexperienced employees.'

I would also like to refer to the findings of a survey by property consultants Healey & Baker in the UK. Their survey showed that 22 out of the top 25 shopping centres are open on Sunday, although there is little extra profit in it for retailers. Sunday trading brings in an average of about 37 per cent of Saturday sales. Retailers say that sales are being poached from shops that stay closed and from town centres where few shops stay open. As more shops open they are failing to realise extra profits. In fact 45 per cent of the shops that opened reported no increased profits. Sunday trading is mainly rearranging the same level of weekly expenditure rather than generating extra spending.' And the senior partner at the consultants summed up the report by saying, 'Sunday trading may not lead to increased profits for retailers but those that are not open run the risk of losing out.'

To put that report into the Isle of Man context, yes, it may seem attractive in the shortterm to many consumers to be able to spend all Sunday shopping, but the Isle of Man consumer may well find out that there will be a demise of many local shops in their areas and consequent unemployment.

The report was correct in saying that the multinational retailers are seeking to grab a larger piece of a cake which does not increase in size. Thus the small retailer will be blackmailed into a seven-day opening, with all its social consequences.

It is also apparently a fact that across the water Sunday may be a busy day but Monday trading is greatly reduced.

However, all I have said does not imply that everything in the garden is rosy. In June 1997 the Board of Consumer Affairs issued a paper indicating the anomalies that exist in the present 1985 Act and we have this schedule that has been sent round today, and I could not agree more. Where I do disagree is with the hon. chairman's contention that to correct these anomalies you throw everything out. I believe that we should be looking at this 1985 Act, identifying and amending the glaring anomalies that are present, taken in context with the change in style of retail trading on the Island, not in the UK, but on the Island. However, the 1985 Act is not all bad, as we would believe it is. It is important to notice of course that clause 26 of this Bill completely repeals the 1985 Bill. (**A Member:** Hear, hear.)

I think the decision we have to make is quite clear. If we believe that total deregulation is good for businesses on the Island and will not in the longer term affect the consumer's choice, then vote for the Bill. If we believe that this Bill gives the necessary protection both to the retail smaller businesses and to the shop workers rights both in the short- and long term, then vote for this Bill. I believe that neither of these criteria is complied with and voting for the Bill at this stage is endorsing those criteria as being correct whatever amendments may subsequently come forward at the clauses stage.

I must repeat that I believe it is totally misleading to imply that everything in the 1985 Act is bad and that the complete Act should be repealed. What is needed is an initiative from government or the backbenchers to establish a committee to take a close and honest look at the 1985

Act -

Mrs Crowe: Another one.

Mr Singer: - to retain what is good and to amend what is bad and I would ask hon. members to consider that step as the right way forward.

I would ask hon. members to vote against this 1999 Shops Bill because it is a Bill which not only can cause the ruination and demise of many smaller and essential businesses providing a service to residents all over the Island but as time progresses it will remove the rights and protection of retail shop workers in the Isle of Man. Thank you, Mr Speaker.

Mr Brown: Mr Speaker, I am somewhat shocked after the last speaker who I thought had a broader vision of life, and clearly the group's policy on this has been put forward by the hon. member in the views he has put forward. I find it amazing how everybody always gets het up about shops being opened or closed. Not one mention from the hon. member that the cafes are open, restaurants are open, taxis are running round the Isle of Man, buses are running round the Isle of Man, people are working all over the place. Not one mention of that. But you try and open a shop - 'Oh, dear me, the poor shop worker.'

I will make it clear now I have a retail outlet and I would be unlikely to open on a Sunday unless I felt there was a need to do that, for example like a recent incident where there was a

major event on in the town and we could not open because the law does not allow us to open, but the paper shops were open, the cafes were open, the pubs were open, but the poor shop cannot open. The supermarkets were open.

The hon. member for Ramsey, Mr Singer, made the case on behalf of his group about the whole situation with regard to how the poor shop retailer, the small one, is going to be destroyed by this Bill. Absolute garbage. (**Mrs Crowe:** Hear, hear.) The small retailer is going to be destroyed by the 1985 Act -

Mrs Crowe: Is being destroyed.

Mr Brown: - because the 1985 Act permits the multi national to open. And let me give you an example, an example I have mentioned here before: Shocks. Does anyone remember Shocks in Strand Street? A small family business that used to sell videos and CDs and tapes and things like that, and about four doors away there is a place called Woolworth's. I think it is a multinational. It could open all day Sunday selling videos, CDs, tapes and so on, but Shocks, the small local family business, could not open until 2 o'clock. You tell me where the discrimination is.

The 1985 Act, whether you like it or not, is wrong. It is discriminatory, it works against the small businesses and it works against the freedom of people to choose and that choice is, 'Do I open or don't I', and that is what the new Bill is going to do.

The new Bill provides protection for staff and employees that is not provided in any other industry. Does anybody go down the road and see the building sites working on a Sunday? I wonder if they have got protection on how many hours they can work. I wonder if they have got protection on when they are needed. I bet they have not. Not a mention of that: it does not matter.

I just wonder where people are coming from on this one. I cannot understand the logic of the argument, and I am a Christian and I will choose what I want to do. I do not need to be told whether I should go to church or whether I should open a shop. That is my choice and I believe that is the choice of the people of this Island, what they want to do. We are here to protect their freedoms, not dictate how they live.

The decision this House should be making is quite straightforward, and we will hear all sorts coming out about, 'Oh well, let's open a little bit here and let's do that. Let's send it to the committee because that will stop it.' There is a straightforward decision before this House and they have only got to make their mind up: either everybody opens or nobody opens. That is the decision you have got to make. How on earth can you sit here and play about pretending, and that is all you are doing, pretending that the 1985 Act is fine, it might need a little bit of adjusting? It needs throwing out.

People are going to stand up here and tell us why the poor shops should not open. Let us talk about choice. The hon. member for Ramsey made the point that the shops are going to have to open on a Sunday. Rubbish! Let me give an example. In Ramsey many of the shops decide to shut on a Wednesday. Has anybody been to Ramsey on a Wednesday? Hardly a shop open. Why? Because it is their choice. Go to Castletown. They are shut on a Thursday afternoon. Why? Because it is their choice.

What are we talking about, saying that Sunday if we allow the shops to open is going to bring total dismay to our society and yet we do not worry about anything else in it? We have people working for government who have no choice but to work on a Sunday. It is part of their work schedule. Nurses, policemen, firemen. They have not got the protection that is coming in this legislation. So I think members should just think about this and bring a bit of sense into it because I have to say, with great regret to my friend and colleague the member for Ramsey, I could not believe what he said. I honestly could not believe what he said.

The simple choice before you is all open or none open and do not mess about, as they did over the 1985 Act, for which I was on the committee trying to sort this problem out and we had a heck of a problem. We spent two years sorting this out and what happened? A member of the committee came to this House after we all agreed it and amended it because he did not like what he did not want, but he is happy to run his own business on a Sunday and does not worry. So why doesn't he give that same right to everybody else?

I am sorry, this is about the right to choose, the right for people to choose whether they go to church, the right to choose their rights over their own religion, and the right for shops to be treated like any other business in the Isle of Man. Pubs can open. Cafes can open, but we are not worried about that. I wonder why.

Finally I would just say I have been to the United Kingdom where the shops have opened and when they were not open the places were absolutely dead and since they have amended their legislation those same towns and villages have come alive because Sunday has become a day when the family can go out together because of the change in working trends. Everybody is working through the week, we all have different pressures, and Sunday has actually become a day for recreation, and it depends what you determine as recreation, but I certainly do not believe that allowing shops to open all day Sunday is going to bring about the demise of Christianity in the Isle of Man. I do not believe that at all and I certainly do not agree with the vast majority of the comments that have been made by the hon. member for Ramsey. I hope members will support the legislation here and will just make the change that is right, because that is what we are here to do, to provide a fair provision in law, and that is what this Bill is about.

Mr Duggan: Mr Speaker, it is always a contentious issue, the shop hours. In 1984 I came forward to the House to scrap the shop hours because I pointed out in Scotland they had no shop hours and there were no problems, hon. members.

What Mr Brown is referring to regarding the member of the committee is that it was actually Mr Delaney that moved that amendment and it actually gave freer shopping hours in the summertime. So it was an improvement on what we had previously.

The very old Shop Hours Act many years ago was full of anomalies where you could not sell certain things in grocer shops. We scrapped a lot of them, and the 1985 Act was a big improvement, even Mr Brown will have to admit that, from what we had previously.

The 1985 Bill which we came forward to the House with was a compromise. The churches were very much against scrapping the Shop Hours Act altogether, so it was a compromise. We spent 18 months to two years and I remember at the end of the final reading Mr Brown turned round and because of Mr Delaney's amendment he would not support the Bill, and I was very disappointed with Mr Brown at the time.

So Sunday is a special day but I think we have got to move with the times and I think really speaking I support, for a temporary period maybe of 12 months, scrapping the shop hours altogether to see how it goes. I think people, like at Christmas Day, are all shut. You have only got to round the towns and you will see the shops will be shut, and it gives freedom of choice to the public and also to the shopkeepers and I think we should, really speaking, go along with this new legislation as proposed, but maybe for a temporary period of time.

Mr Corkill: Mr Speaker, I do not wish to say too much to this Bill except that I wholly support the comments made by the member for Castletown because I do believe that the major issue in this debate is one of discrimination, and I am amazed that with such a law in place that discrimination has not been challenged in the courts, challenged in the highest courts available to those people being discriminated against, and I think it would be very unfortunate if that was to happen in the future.

There is another point I would like to make and that is in relation to the trading standards officers who are agents of the Office of Fair Trading in terms of the present law and the way they are expected to interpret it because one of the issues relates to I think the expression is principal business, and with so many retailing businesses being mixed businesses these days how on earth does an officer of the Office of Fair Trading determine what that principal business is? In my own profession which is pharmacy how does one make the decision? And I was challenged by a trading standards officer on one occasion some years ago whose view was that my principal business was in fact cosmetics and perfumes et cetera, but in fact my principal reason for business and the principal stake of perhaps 80 to 85 per cent of the business was in fact dispensing prescriptions, national health prescriptions, but the outside view of that business, because of the display in the business, was that the principal reason for business was in fact the retailing side. So how does one ask an officer of fair trading to make that determination? How does he determine what is a toy shop and what is a fancy goods shop?

I think it is very illuminating that the hon. member for Rushen, the Chairman of the Office of Fair Trading, has produced this chart for us this morning because in debates on this in the past we have alluded to all the discrepancies and here it is in black and white and you can see how absurd it is when you go for a pair of shoes and the shop is closed, so you go to a supermarket and you buy what you want. If that is not detrimental to small business I do not know what is, and I think that the suggestion that this Bill will actually speed up the process of UK multiples closing small businesses is one that requires further scrutiny (**A Member:** Hear, hear.) because there are two sides to this debate. But in terms of what the hon. member for Castletown has alluded to, if a small retailer wants to compete with that UK retailer, at the moment he cannot do so, and I think that that is most unfortunate.

Now, there is a simple choice. I think it is very unfortunate that over the years Sunday has been eroded as a special day (**A Member:** Hear, hear.) but it has happened and I think the reality is, and I know from a number of businesses that I am aware of, Sunday is their second busiest trading day of the week, and for the hon. member for Ramsey, Mr Singer, to suggest that the same level of business is merely distributed and other days of the week are quiet, it may be true to an extent but the fact is the shift has already occurred. It is not as if changing the law is actually going to redistribute the spending pattern of that week.

Now, some years ago the opportunity, I believe, was lost in as much as I would have preferred to have seen less retailing on a Sunday, full stop, apart from really basic issues like the purchase of petrol maybe, but then you look at the Act and you see that travel agents are exempt, so you can go and book a package holiday but you cannot buy a bunch of flowers. The whole thing really is an anachronism and I think the argument on Sunday retailing has been lost already. The issue of trying to preserve Sunday totally went out of the window a long, long time ago, and I think that is regrettable. So the legislation that we should be looking at which is in front of us today deals with the reality and deals with the present situation which is that a lot of people do go shopping on a Sunday already. It is a matter of removing the discrimination but, very importantly, making sure that those people who wish to worship, who wish to have a family time, who wish to keep Sunday special are able to do so, that that is their choice, and I certainly would not support any Bill where those protections were not in place. Having been in retail myself I know how important Sundays are in terms of rejuvenation of the spirit and family life et cetera.

But at the end of the day the hon. member for Ramsey mentioned that he thought that in some situations Mondays were quiet. There are people in business who might prefer to have Mondays free and trade on a Sunday. That is their choice. I think that that is perhaps not a good choice because I would prefer them to keep Sunday special.

But people, I believe, have already made a lot of these decisions and I think it would be wrong for this House to impose what is out-of-date legislation or to try and amend legislation which has been tried before, to tinker around the edges when the fundamental issue is do we deregulate or do we regulate? If we regulate as we do at the moment it should be fair and across the board. I do not think it is realistic to regulate to the point where all shops are shut on a Sunday now. We have lost that. What I do think is fair is to take out the discrimination and I think it is long overdue, this legislation, and I am sorry that it has taken so long for it to get onto the floor of this House because I think the arguments are quite simple and can be fairly well cleared on a simple vote. It is a matter of you regulate everybody or you do not regulate at all. It has to be fair. Thank you, Mr Speaker.

Mr North: Mr Speaker, my name has been mentioned on several occasions already in this debate as the promoter of this legislation. I have a longstanding opposition to opening all day on Sunday and I may be the promoter and my hon. colleague on the department who is also Chairman of the Office of Fair Trading knows my views, but that did not stop me facilitating this Bill coming to the floor of this House for debate and I think that is how it should be, but that does not change my opposition to it as a longstanding opponent of this.

We have seen the extremes perhaps this morning. I have to say from my sometimes reading of it and as a former retailer myself that there are none so blind as those who do not see or wish to see, and this Bill really, I suspect, creates more problems than it solves, and I am not in any way doubting the honesty and the integrity of the member, the Chairman of the Office of Fair Trading, to actually try and solve the problem, because the 1985 Act, as the hon. member for Castletown has said, certainly is a mess. Now, there are other ways perhaps of doing this.

Now, we are talking about competition. If you look into the next few years, and somebody has already mentioned about large retailers, and I know just a little bit about this particular business, on the Isle of Man we only have 74,000 people, and I do not care what anybody

says: there is only so much money to go round. As the hon. Chairman of the Office of Fair Trading has already said, yes, e-business, internet trading is increasing and everything else, but it is down to sales per square foot. Now we have businesses on the Isle of Man, national chains, who have square footage on the Isle of Man which is far, far in excess of anywhere else in the British Isles for this size of population. That has been allowed by the planners out of all proportion to our population. It should never have been allowed in the first place. As the hon. member the Minister for the Treasury has said, 'It has happened: so what?' Well, the shift has already occurred, he said. I believe that if you open it completely now, within five, perhaps 10 years the large retailers will be opening at the weekend, Friday, Saturday and Sunday and they will stay open 24 hours a day (*Mrs Crowe interjecting*) - if the hon. member will just listen - and they have to have the turnover to justify that. They will get the turnover to justify that by having the help of this particular Bill. This is one major step forward for the major retailers, a major step forward. That is what they want. They know in any particular category on the Isle of Man what is sold. They know how many nuts and bolts are sold in a year and they know that if they can get, by opening for another three, four hours on a Sunday, another 10, 15 per cent of that overall business they weaken the existing competition.

And let us not kid ourselves that it is on prices any more. It is not on prices at all. That has been proved in survey after survey. It is not on prices, it is convenience. That is what people are shopping for. Convenience is number one. I saw a list from a survey the other day. I think there was a list of five in that survey and number five was price. All right, it depends which business you are in; it does vary.

The hon. member my friend from Castletown - what was that lovely phrase that he used? 'Absolute garbage.' Well, he sees it one way, I see it another, and he said, 'Well, on building sites they can go and work all day.' They cannot.

Mr Brown: They can.

Mr North: There are planning conditions on a lot of building sites for environmental reasons. They are not allowed to work on a Sunday. It is in the planning conditions. Certainly it is on some of the building sites in my constituency because we had it stopped on a public holiday just two or three weeks ago. So it can be stopped. In my opinion there is obviously an argument for being open on a Sunday and we need to get rid of these stupid anomalies, but it is not a case of an open door free-for-all.

Mr Henderson: Mr Speaker, it is a very interesting debate and various issues have been raised. I must express my astonishment at my hon. colleague from Castletown in his outburst with regards to various comments being made -

Mr Duggan: He is always like that.

Mr Henderson: - and I can assure him I am standing here as a complete independent individual without a script and anything else to express my views with regard to the Shops Bill and I can assure him no-one is pulling my strings or anything else. So he has nothing to worry about. (*Mr Karran interjecting*) (*Laughter*) Nevertheless there were some issues that he did raise with regard to this and he gave a very good example with regard to Shocks record shop. His example was, 'Oh, Woolies opened up down the street.' He forgot to tell us another multinational opened up round the corner in the new Strand Shopping Centre and that is what

caused the demise of a well-respected local small business. So I just hope hon. members will take that on board. That was one multinational too far.

I would also like to establish that if people wish to stand up in this hon. House and input into the debates I think that is fair and democratic. Just because we may be part of one group or another group, so be it, but I can tell you what, and I can tell Mr Minister from Castletown, that even if I was not in a group I would still be here now standing on my feet sticking up for the people that are going to be affected by this Shops Bill, no matter what.

So let us have a look at what we have got, a Bill that brings us virtually 365-day working 24 hours a day, a Bill that causes our Sundays to become less special, family values eroded in my opinion. It is the one day I can think of that gives some consistency in the working week, and I take on board what the hon. member for Castletown said with regard to shift workers and nurses and police and all the rest of it. I spent 20 years as a nurse and I know exactly what shift systems and those kinds of working hours can actually do to your life and also to your family commitments. Yes, people go into them voluntarily and it is a career, but you do have to accept the downside of that and sometimes it can be considerable, and professionals who do accept the downside put up with some tremendous pressures and stresses by working those weekend shifts or the night shifts through the weekend. There is no question of that and if they had the option not to work on the weekend, believe you me, they would not do it.

As far as I can see another aspect is that this Bill appears to bring the demise of Good Friday for some reason. I do not know where that disappeared to.

Then we talk about opted-out workers, opted-in workers, opted every way workers, and the pay and conditions problems from that I can see are going to be amazing.

As far as I can see a charter for scrooges, a Bill that makes a huge shift on the onus to the employee to enforce their own rights of employment if they dare. That is the secret: if they dare. And we are not talking about lawyers and assertive individuals of the higher echelons of our community who may well be able to speak out for themselves, we are talking about the ordinary people of this land, the ordinary folk on the street, and it is those that are going to have the most difficulty with this and, believe you me, trying to stick up for your own employment rights can be extremely difficult.

This kind of clandestine legislation will be the end of our traditional Sunday as we know it. It will pave the way for continuous working over a shift system. It will disrupt families and not help the stable and enriching environment our children need. People need proper time off for their own health if nothing else.

This Bill really puts the cart before the horse in other ways and certainly in legislative terms. Here we have further provisions which may have real potential to erode the rights of employees, as I see it, and yet we still do not have the statutory recognition rights for workers in the Island, offering them the recognition that we should be having for our employees coming up to a new millennium. We are not quite as caring and sharing a society as we could be on that score.

This Bill will put staff on a less defined level of protection. No matter what we hear today they will have that and a more precarious footing. I cannot see someone who values a job arguing with an employer. They know what will happen and so does everyone else here. It is

extremely difficult to try and put your case forward if you are classed as an ordinary shop worker with no clout in a small business. If you try putting your case up we know what is going to happen: 'If you do not like working here, then you know what you can do.' So I have got no hesitation as to what is going to happen. An employee now has to ensure their own rights of employment. Well, that is just unbelievable and I can see that the way that they are going to be manipulated in the coming months if this Bill is passed can only be to their detriment.

Now, hon. members, I feel certain that the hon. mover of this Bill, Mrs Crowe, will make certain statements in her summing up and I can hear it now: 'Mr Henderson, the new member. Mr Henderson does not understand.' Well, unfortunately Mr Henderson does understand because I have been at the sharp end of industrial relations and representing staff for more years than I can remember. So I know exactly what is going to happen.

Mrs Crowe: Well USDAW like it.

Mr Henderson: Well, it is a pity Mrs Crowe did not come and have a chat with me before

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Mrs Crowe: Well, I chatted with your superior, Mr Moffat.

Mr Henderson: - and I could have given her some enlightening news on the front of recognition and the problems that employees have.

Mr Karran: There is always a first.

Mrs Crowe: Well, I consulted the unions.

Mr Henderson: The only safety measures in this Bill that I can see point at clauses 18 and 19, pointing the staff towards a strange and unusual apparatus called the industrial tribunal. Now then, what is that? It is one of the most complicated things you can possibly imagine, Mr Speaker. If you can imagine and as hon. members might imagine, if they are a shop worker and they have been used to selling produce all week and they are dismissed the week after for not working on a Sunday and some employer who has just parked his Mercedes round the corner says to them, 'Oh, you can apply to an industrial tribunal.'

Mrs Crowe: What rubbish; absolute rubbish.

Mr Henderson: It does not mean anything to the normal man in the street and when you look into it it is a process that becomes so daunting and intimidating that they soon give up or it becomes too stressful for them to continue down that line, and I can assure you, Mr Speaker, and hon. members, having taken many people down that line it is considerably daunting and stressful for anybody to go through and make a representation to that kind of level, and that is what we are being alluded to today as the safety clause in the Shops Bill. Well, I can tell you now it is not much of a safety clause because to me it is a hindrance for the common man in the street and it causes nothing but strife, and at the end of the day I would also like to point out I did ask the hon. Minister for Trade and Industry several months ago questions specifically on industrial tribunals and their make-up and so forth and even the minister had to agree that there were shortcomings and in special reference to any compensation. It is great for a shop worker to know he can apply to this wonderful set-up if he is being victimised or whatever pressure is put upon him and go through an informal court case and be told at the end of it that he might get a couple of thousand pounds' compensation out of that. Big deal, and as my friend in Onchan said, 'Wick, wack, wookey-woo for him.'

What about his family at the end of the day after a dismissal like that? And the other thing is if he has been paid any benefits throughout the period of unemployment they will be clawed back by the DHSS as well. So the amount of compensatory award will become more menial by the minute as the clawbacks keep coming in, and that is the kind of redress that has been put before this hon. House today, saying, 'Oh it's wonderful: they're well protected, no problem.' Well, I can tell you, Mr Speaker, hon. members, there is a big problem and trying to go down the industrial tribunal route to solve an issue is fraught with dangers and difficulties and quite often it will be so stressful for somebody they cannot even contemplate it, and I have had loads of people who have opted out of that situation or got halfway down the line and given up.

This Bill is to much too soon. The other aspect is where does this leave the small business? I really do wonder. We have heard how marvellous it is going to be, but I think I have alluded to the hon. member for Castletown's example: one multinational too far, and I think you will find out that is why the family had to shut the business in the end. We have lost so many small businesses through this Island in the past years. I have seen Strand Street change year in and year out, another small business gone and so on. Who are going to be the real beneficiaries here, Mr Speaker, hon. members? The ordinary people? The small businesses? I think not.

Mr Shimmin: Mr Speaker, for some of us relatively new to this House this is the first time we have gone through a full lengthy debate on this issue. I realise others have gone through it many times before. The points have been made. I would just highlight some of the issues that have been pertinent to my decision-making.

I think it was Mr Brown, the member for Castletown, who said that we either deregulate or we restrict further. It seems to be a fairly straightforward choice. To deregulate causes many of us a certain level of concern: the Christian angle, the family angle, the make Sunday a special day. It is something where most of us would prefer our own families to have time with the families on a Sunday. So I do not think there is any universal right to hold those views within this House.

It is different. It should be retained as being different. But difference means many things to many people and unfortunately we can no longer fit everybody into a comfortable shoe size and say they all have the same expectations.

We have talked about multinationals and small businesses. We are aware that patterns of consumerism have changed considerably over the years. And why have the large multinationals come to this Island? Because the Island is doing well, because there is money on the Island to spend in these shops, because there is a demand from the consumers to have some of these opportunities. We are soon to have a large multinational company arriving on the Island who are well known for their business practices and I am sure that come Sunday opening they will be exploiting the market to try and take what available market there is out there. Will people use it? Of course they will. All those people like us in this chamber who say that Sunday should be special will still take the opportunity of using those areas that are open on a Sunday.

I think Mr Brown's comments regarding all those other sectors of the community and society that have to open on a Sunday or can open on a Sunday highlight the unsuitability of the current legislation. Whether it be from businesses, whether it be from farms, whether it be

public sector workers, people have historically had to work on Sundays. That causes an effect on the family. I think what will mitigate against the worst impact if this Bill goes through is the fact that now, stronger than ever before in the Isle of Man, it is a market for the employee because employers have a difficulty in attracting suitable staff to fill all the amount of work that is required.

When I grew up on the Isle of Man as a young person the opportunities throughout the summer months for employment were considerable. There is an army of young people out there who sadly have already made their choice about how special Sunday should be, who are very keen and eager to take employment opportunities of a weekend in order to have income, have their independence. I believe regardless of the right or wrong of this Bill the reality is that the majority of employers will still employ regular working staff during the week and of a weekend will choose to bring in, as is often happening in the multinationals now and the supermarkets, young school people doing their A - levels who want the independence of getting some finance. So they are the only untapped source of employment we have left on the Island.

The present situation is not satisfactory. We must do something. For those who believe that it should be retained as a special day I acknowledge their right and their sincerity, but I believe that the vast majority of the people who we represent have moved on. Elsewhere churches have adopted a different attitude to this issue because they realise that it is not in isolation the fact that shops are open or are not open. The churches have to find ways of attracting people to their various religions.

My concern on this is more to do with the workers' rights, an area which is traditionally relatively low paid or very low paid. They are the people who have limited room to argue with employers. I would ask the mover of the Bill, in summing up today or at the clauses stage, to give a clarification as to why apparently the 1985 Act put the onus on the employer to safeguard the rights of employees. Can she confirm whether that has now been reversed and in this Bill the onus is on the employee to enforce his or her rights?

I would also ask the mover of the Bill when somebody chooses to be an opted-out worker and they have to give three months' notice, during which time I believe they would have to work on Sundays if requested by their employer, will the appointed day order take into account this part of the Bill so that anybody who chooses to become an opted-out worker can do so with a lead-in time so that they were not forced compulsorily to work on a Sunday? I would find that very iniquitous, if somebody for whatever reason chose to opt out and then found themselves compelled by our legislation to work a three-month notice period.

I also am dismayed that, as much as historically we have been a tourist Island, I do believe that the sacrifice of Good Friday is done purely on the tourist concerns and the requirements of certain sectors to offer facilities to the visitors to the Island during that weekend. I do believe that there is scope for making a stand to reflect the Christianity which is still throughout the Island affected in many different ways by many different people, but I do believe that we are sacrificing something of our decency if we were to further sacrifice Good Friday.

I have been impressed by many of the speeches. I am uncomfortable. I find that for myself I would have no difficulty in voting to close shops on a Sunday. (**Mr Gilbey:** Hear,

hear.) I am not here in my own capacity. I have sounded out, as many people have, the views of the people that I am here to represent and I am saddened to an extent but the overwhelming view I have had to come to is that the vast majority of people expect certain opportunities to express their freedom of choice, and I believe unless things change substantially going through the clauses stage I at this stage reluctantly will have to go and support the deregulation of the shops hours.

Mr Karran: Vainstyr Loayreyder, I have had a record of being quite concerned over the opening of shops and the regulations as far as Sunday is concerned, and I have to say that I was glad to hear the hon. member for West Douglas's input because we seem to be coming back to some sort of reality again apart from his points about welcoming comments in this debate today. I have to say that as I was very, very reluctantly maybe not going to vote for this Bill at second reading stage, after listening to the crass hypocrisy in this hon. House in this debate I will have to support the second reading as far as this Bill is concerned. I find it absolutely appalling. You would think there was a job going for a vacancy for a Bishop the way people around here have spoken. Now, at least some people had the decency to say, 'Well, there is a general election coming up in two years' time as far as this is concerned.'

I wonder how much of the debate today and the concerns are personal against the hon. member for Rushen and how much of it is true reality. I have listened to this debate and I am concerned about this piece of legislation as far as employment protection is concerned and I will be seriously considering whether there needs to be a tightening up as far as that employment protection is concerned, but I see the self-interest, the complete inconsistency in this hon. House of some members, that now they are all card-carrying socialists. Maybe it is the difference between now they might be locums and before they were employers and now there is a difference in this hon. House as far as their viewpoint or their aspects as far as what is good as far as the Isle of Man is concerned.

I hear the talk about the multinationals and, 'Oh, isn't it awful?', and yet these same members will be standing up complaining about the fact that the cost of living in the Isle of Man is much dearer than the adjacent island -

Mrs Cannell: Go on the boat.

Mr Karran: - the inconsistency of some of the people in this hon. House of how they talk in here as far as hoping that they will get that section of the minority vote that will vote for them and how they would talk if they were in the local pub in their constituency. I find it quite saddening and no wonder people outside this hon. House have criticised us so badly.

The present law is a mess. There is no doubt about that. One of the reasons why some of us have been concerned about the present law being changed and liberalised is to protect the workers in this country and we have battled for years. I remember quite well when we got the first maternity leave for women and we thought we had done well getting six weeks, until the agricultural lobby got - what was it? - 14 weeks for horses (*Laughter*) and we realised then that we had a long way to go, and I am glad to see in those years that was a lot of improvement in protection, and we have still got a long way to go as far as that is concerned.

I think the hon. member for West Douglas is quite right. One of the major factors as far as the abuse is concerned is whether we have full employment or whether we do not, and I am saddened that in this hon. House we hear much rhetoric about many issues but we do not

see much action on population control to make sure that there is full employment for our own people instead of leaving ourselves wide open to being a doormat, as history has proved our country to be so often in the past.

I will give the second reading to this Bill. I was rather concerned about doing so because I am concerned about the employees' protection, but seeing I have got such new converts that have not only seen the light as far as their uplifting as far as their Christianity is concerned, it would be interesting if somebody did a survey of how many were in church last week but also because of their conversion as far as employment protection is concerned. So I shall support this Bill today and I hope that we will not hear the usual double-talk that is in this hon. House, the way that no-one wants to address these issues. The present Bill is a mess. There is no doubt about that.

I will support the second reading, but I am not happy with employment protection. I have to admit one point that I agreed with the hon. member for North Douglas on was that I am concerned about the tribunals, but I am not going to throw this Bill out at the second reading stage because there are anomalies and do a runner so that one can see that somebody else has to take the responsibility of making sure there is workable legislation so that I can hopefully curry favour with vocal minorities.

I will support this Bill at the second reading stage but I will seriously consider about the committee stage, but I will say that I am supporting this Bill with some assurance now that I see such an amount of concerned MHKs about employment protection. I am glad to see that, as well as the fact that they have seen the light as far as Sunday is concerned.

Mr Rodan: Mr Speaker, I think we should ask a basic question. What will this change in the law mean in practice? What will actually change and how will Sundays in the Isle of Man actually be different than they are at present? Well, we have it spelled out for us in that those shops that are not allowed to open at the moment might choose to open, not will but might choose to open, and here they are, they are all listed in this paper that the Office of Fair Trading has circulated, and what it will mean is that florists, pet shops, video shops, clothes shops, do-it-yourself shops might choose to join supermarkets, book shops, convenience food outlets, petrol stations, might join them in opening on a Sunday. Whether they do of course, as has been spelled out in debate, will be a matter of commercial judgement by them and it is the same sort of commercial judgement which their larger competitors like the supermarkets make in deciding not only whether they should open on a Sunday but whether they should come and set up in the Isle of Man to trade.

Now, the hon. member for Middle, my colleague on the Council, Mr North, made the point, I think, basically that there was only so much of the cake to go around, that there are 74,000 people in the Isle of Man and that it is a question of sharing the cake, but I would dispute this. I would say that it is a case also of growing the market. The economy is growing, people are earning more disposable income, and I can assure him that the question of supermarkets or other large stores opening in the Isle of Man and apparently devoting more shelf space than would seem to be required for 74,000 people reflects nothing more than they see an opportunity to grow the market in the Isle of Man. That is their commercial judgement, and I can assure him also that it is not the planners, as he stated, or implied anyway, that are forcing retail supermarkets to open big stores. It is nothing to do with the planning system to ensure that that happens. Again a commercial decision has been made by these businesses

that it is in their commercial interest to do so, and again he made reference that the opportunity for small traders and small businesses to open on Sunday will really be a commercial judgement that will come to nought because what shoppers and consumers are looking for is convenience, one-stop shops. They are not just looking for convenience, they are looking for service, and this is where the small retail outlet can score, in offering quality service and personal service, and with the commercial judgement of that retailer as to whether Sunday represents a good opportunity to score over his large competitors with personal service, why should small businesses not have that particular opportunity?

Mr Duggan I think it was who made reference to the fact that in Scotland shops had been open for many years without noticeable ill effect to society, and he is absolutely correct. After all this is the land where people are reputed to be unenthusiastic about spending money. This is the land where *The Scotsman* newspaper has published on a Sunday, and I can assure members that the level of religious subservance in that country is not noticeably less than elsewhere in the UK, England and Wales in particular, which took years to catch up and make the same decision to completely deregulate for a Sunday.

Much of the debate this morning has been concerned with making a case against this legislation, this Sunday trading Shops Bill in relation to Sunday trading that bears no relation to the present reality. The present reality, as the hon. member Mr Corkill pointed out, is that much of the argument that has been made about Sundays being sacrosanct, and well-made arguments and valid arguments, time has moved on, those arguments no longer apply and the present reality is the outdated 1985 Act and the reality is that when we pass a modern 1999 Act very little will actually change, very little will change. We will wake up the following day to find Sundays little different. Thank you, Mr Speaker.

Mr Quine: Mr Speaker, perhaps I could make three preliminary points for the benefit of the hon. member for Onchan, Mr Karran. First of all I was in church last Sunday. Secondly, I am not in the running for the position of Lord Bishop - I am from the wrong denomination - and thirdly, I am not a card-carrying socialist.

Mr Karran: We know that.

Mr Quine: Mr Speaker, I think we need a more analytical approach towards this issue, and I am not suggesting that other members have not analysed aspects of it, but it appears to me that reform of the trading times for shops needs to address four requirements or aspirations, if you wish to express it in that way: there is a need to accommodate the legitimate requirements of the consumer; there is a need to protect the shop worker; there is a need to ensure so far as possible a level playing-field for traders; and fourthly, there is a need to preserve the special status of Sunday, whatever that may mean to different people.

Now, I accept that there are glaring anomalies in the existing legislation but the question to me or the question I have been waiting to be answered, and I listened very carefully for the hon. mover to address it, is in specific terms whether or not they can be addressed without entering into deregulation, and she did not address that. She circulated to us a list of the anomalies, which I will revert to a little later, but she talked around that. She did not give us the specific explanation as to why we cannot address the existing evils, if that is the word, the existing anomalies, by simply addressing the 1985 Bill and what we need to do with that, and that is important because if we take the path of this new Bill we are accepting an entirely

different principle towards shop opening hours. It is a question of throwing the whole thing out and saying, 'Open house: get on with it', and in that scenario of course, as several members have said, it is the big retailer that will benefit, ultimately it will be the big retailer that will benefit. I have no doubt in my mind about that. I am just reflecting on a news article recently that was giving a demonstration of two towns, admittedly not in the UK, but two towns, and a very large international moved into one town. Not only was there a decimation of the town but the neighbouring town was decimated. These are the situations, albeit in a very reduced situation, which we are facing here but I am afraid we are not going to or are not wishing to recognise it until it is upon us.

So to me the principal question is can these anomalies be addressed short of entering into deregulation? And I have heard the cries of woe: 'Oh we've had this committee, we've had that committee.' Well, my analysis of the situation leaves me still unconvinced that we cannot address this problem in a more balanced fashion than resorting to complete deregulation, and make no mistake about it: voting for the second reading today we are voting to throw out any former regulation, it is open house.

Now, again I have no difficulty, I readily accept that a significant number of our community visit shops on Sunday. For some it may be the most opportune day in the week to do their shopping, for others visiting shops may be a process of socialising or a process of entertainment. So be it; that is a matter for them. And it is certainly not by my book unreasonable that these people's aspirations should be met, subject - these matters are always subject to important consideration - to the shop worker being protected, trading taking place on a level playing-field so far as we can put it on a level playing-field and, last but not least in the minds of many people, the special status of Sunday by whatever definition you wish to attach to that phrase; that should be protected. Now, to my mind this does not appear to be unachievable within the principles on which the 1985 Act was founded, and let me just try to demonstrate that.

Surely if it is a question of providing this level playing-field, removing this alleged discrimination, surely then we could have a limited number of hours available for Sunday, which is quite distinct from the other days in the week, let us say five hours for argument's sake, a limited number of hours on a Sunday, let them choose their hours, let them promulgate their hours outside their shops. Now, that is going to certainly maintain a level playing-field, they are all being treated similarly. It is going to, I would suggest, accommodate to a large extent the needs of the shop workers, they are not going to be tied down and be tied into a Sunday for the full day as they would on any other day of the week. It is going to accommodate the legitimate expectations of the shoppers, the consumers, and of course, as I say, from the point of view of the churchgoer, the special nature of Sunday.

Now, that is something short of sticking with what we have got, with all its anomalies, and going for complete deregulation. That is something which I would suggest is available to us by coming down the middle and adopting what we so often refer to in this hon. House and elsewhere as a Manx solution. Surely we can look at least in detail at an approach of that nature.

I might just, before I go on, say that, having looked at this list which I am grateful to the hon. mover for circulating, I am more convinced than ever that the approach I have just mooted to you is attainable. Having looked at that list I am more convinced than ever and it is

very useful indeed for us to focus on this particular list and particularly in relation to the proposition I have just put to you.

Of course there would still be a small number of service providers that would need to be subject to a special or a general or a specific exemption. That is nothing new, that is no problem, and I certainly cannot envisage any great difficulty in identifying those suppliers by virtue of the essential nature of the service that they provide, surely that is not difficult, and there might be of course, in fact I am sure there would be, still some need to look afresh at aspects of the employment legislation to meet that slightly different scenario. But what I am convinced in my own mind is not necessary is to throw out the broad principles upon which the 1985 Act is founded and adopt a free-for-all situation, albeit, as the hon. member for Garff has said, at this point in time it would initially represent little change on what has taken place. It is what it would develop into that would be my concern.

To my mind the Office of Fair Trading has approached this exercise from the wrong position. They appear to have adopted the view from the outset that to establish a level playing-field it has to be all or nothing. I do not believe that that is the situation. I do not believe it has to be all or nothing. Secondly, they appear to have approached it on the basis that deregulation is desirable as a matter of principle, as a matter of a change of policy towards the regulation of shops, and I do not believe that that is warranted, I do not believe that that is in the public interest.

It is simply not acceptable, as a product of my analysis of the situation, to cast aside regulation because the Office of Fair Trading finds a problem with the existing situation. Problems are there to be addressed and answers to problems are to be found, and it is certainly not justification to say that it presents a difficulty to the Office of Fair Trading, it is a chore to the Office of Fair Trading, in trying to enforce these matters. Whatever the scenario there will be a need for enforcement and enforcement with discretion.

I do not wish at this stage to deal with the Bill per se. Indeed I hope the Bill does not proceed to require further consideration, but I think it would be unnecessary for me at this stage to deal with aspects of the Bill. I think from my point of view at this juncture it would be sufficient to say that I cannot subscribe to the premise on which this Bill is founded. As this is the second reading we are here voting on the principles that lie behind this Bill and the principle is very simple, the principle is one of throwing out, discarding regulation in any form by saying, 'Come in, open house, get on with it and may the biggest man win', because that is what would happen.

I simply mention again in passing, however, that the amendments to protect the worker, and I am sure the hon. member for Onchan will be pleased to hear me say this, are at best complex and they lack practical currency, there is no doubt about that, and at worst they are cosmetic, legalistic exercises that would prove to be worthless in practical terms. The call for initiatives by the employer and the employee paint an unrealistic scenario and from that aspect alone, should we proceed further with this Bill, then great attention will require to be given to that.

I cannot support this Bill. It moves to a principle, a straightforward new principle, of deregulation: every man for himself. That I cannot support. It does not recognise the essential requirements which we should be about to address. It does not recognise or take on board in

a meaningful way the accommodation of the legitimate requirements of the consumer, it does not take on board the protection of the shop worker, it does not create the level playing field, and it does not preserve the special status of Sunday. But we can achieve it by taking a more pragmatic approach and addressing it through the 1985 Act and I believe that we should reject this Bill at this stage.

Mrs Cannell: Mr Speaker, I have listened with interest to the debate so far and it is quite obvious to me that there is a difference of opinion in relation to this and of course there is also the additional embarrassment experienced by the Board of Consumer Affairs each year when they have to come forward looking for flexibility within the shop hours. What I can say, though, is that I think we have to be very mindful of what has happened in the United Kingdom with regard to retail provision, the situation that has resulted in lots of small traders going to the wall, a situation whereby there has been an influx of out-of-town retail shopping centres who have been open seven days a week, some of whom are open 24 hours a day. Now, that has not come up yet in this debate, but because of the deregulation situation within the United Kingdom you can open for 24 hours a day. Is that what we want for the Isle of Man? Is that going to suit the Isle of Man? Is it going to suit the consumer, is it going to suit the employers, the employees? Is it going to make us happy? I would suggest that it is not. We are for ever bemoaning the fact during other debates that the Isle of Man is different. We are different. It is our differences in some respects that make the Isle of Man attractive.

And so what do we have? We have a Bill here which quite rightly has been described by the previous speaker as an open house, a total deregulation. Here we are, we are lifting all the restrictions, all the requirements, you are on your own, you can do what you like, you can open or not open: the choice is yours.

The speaker from Castletown earlier on -

Mr Brown: Member for Castletown.

Mrs Cannell: - member for Castletown, I beg your pardon, Mr Speaker, the *member* for Castletown earlier said -

Mr Brown: Know your standing orders.

Mrs Cannell: - that you either voted for regulation or you voted for deregulation, that it was either one or the other. Well, to my mind life is not quite that simple. Life is not black and white, life has got a lot of grey areas to it, and in reality we are not faced with a situation where we do regulate or we do not regulate, other than we are being asked to support or not the principles laid down within this particular Bill.

As a member of the Department of Trade and Industry who has been given delegated responsibility for retail matters, I take the provisions laid down within this Bill very, very seriously, but moreover, looking at the medium to long-term sustainability and future viability of the retail industry concerns me and concerns me greatly. That feeling is shared by my minister and as a result we undertook a retail survey.

Now, I can inform hon. members today that the report was received at the weekend from a consultant who we hired, that is, the Department of Trade and Industry, in relation to the results and the analysis of the survey and I have to say it makes some stark reading. It is unfortunate that we are being asked today to discuss and vote upon a Bill which will have an

incredible impact upon retail in the Isle of Man for the short, medium to long-term viability and sustainability of that trade, without having before us the results of the department's initiative with regard to the survey, because I believe that what is revealed within that survey will help to provide additional information which I believe hon. members should have before them, and I apologise for the lateness of this report reaching the department but the lateness has not been an area for which we are responsible, it has been a series of things, but nevertheless we have it and the Department of Trade and Industry now has to consider all the findings within that report and start to look, consider and determine and develop future policy for the retail sector, and I fear that if this Bill is passed today in its present form we will have a great difficulty in developing and considering some of that policy which will impact upon retail and employees and the consumer.

To have an open shop or not to have an open shop. It has been said that the decision lies with the employer whether or not he wishes to open. The hon. member for Ramsey earlier said that a small retailer would be forced to open in order to be able to continue to feed his consumer and rather than risk his consumer going somewhere else to a shop that is open on a Sunday. The hon. member for Castletown of course rubbished that. But what I would say is that, although there is a freedom for the retailer to open or not to open, there is a compulsion within the Bill for the small retailer to open whether he wishes to or not. There is a compulsion there because if you leave it open and it is all to do with market forces, then it is the smaller business, and the smaller business has been identified within our survey findings, who will suffer. It is the smaller business person who is suffering now through a series of situations, a number of things, which I believe we as a government should be looking to and looking to addressing in order to maintain the viability of the smaller trader. Indeed Ireland has recognised the importance of the smaller shop and has passed legislation in order to protect to a degree a smaller shop, a smaller retailer, who faces unfair competition from bigger companies as a result of conglomerates, mergers et cetera, and I think we have to be mindful of that.

We are faced with the prospect of an out-of-town development with Tesco's coming and there have been great cries of that, how it will affect the Isle of Man, because let us be honest with ourselves: we are an Island of a given population and the cake is only so big, the cake will only go around so many people. If you make more accessible to the cake, then the cake will go quicker, the cake will go much much quicker. So there has to be a balance struck.

I agree with the hon. member for Ayre.

Mrs Crowe: Surprise, surprise!

Mrs Cannell: I for one do not want to be someone who is saying here today that I do not think that the shops should open. I believe if a shop wants to open it should be able to open irrespective of what it is trading. I am not saying Sunday should be a total day for religious study and time with a family. People are working, people are working much longer. Sometimes Sunday is the only day in which one can nip out and buy a few groceries or whatever else. But in recognising that traders should be able to trade if they so wish on a Sunday I cannot on the other hand say, 'Well, you can trade whenever you like because we are totally going to remove the regulations which require that you trade within a given period of time or you sell a certain amount of goods that are identified.' I very much favour a flexibility, a compromise, because it would be a compromise, but a flexibility whereby all the shops could open, as was

suggested by the hon. member for Ayre, for maybe a five or six-hour period throughout the course of the Sunday and they can open when they like, whether it is a continuous five or six-hour period, whether it is a couple of hours in the morning and the rest in the evening, whatever. It would be up to the individual business and the proprietor what they did and if indeed they opened at all. That to my mind is a fairer trading ground, if you like, for the industry. It is more flexible, it has more flexibility in for the employee and I think it is a compromise but I think it would be a good compromise.

Finally, I would just like to ask the hon. mover whether or not during her consultation - and I would expect her to say that she has had consultation, indeed I know that she has with the Chamber of Commerce - she has had any consultation with the trade unions, more specifically Mr Bernard Moffatt, whether or not he has had any exchanges with her -

Mrs Hannan: Why him?

Mr Brown: Why him?

Mrs Cannell: - and what his views were with regard to the employment protection, and on the employment protection I would just like to remind hon. members that during the opening remarks by the hon. mover it was stated that the employment rights which were in the 1985 Act have been retained within this new Act, so there is nothing new there for the employee other than the employee has to serve an opting out notice on his employer if he does not want to work on a Sunday. That to me is bureaucracy gone mad. But with regard to the rights, the rights are retained from the 1985 Act into this Act, so there is nothing new there.

I cannot support the Bill at this reading. If, however, it does find support I will be consulting with my colleagues in the group, as the hon. member for Castletown so referred, with a view to a select committee to look at this, with a view to - and I can hear sighs from the hon. mover, but, Mr Speaker, it is my understanding of political matters in the Isle of Man that the parliament is free, when it is unsure about something, to appoint a select committee and that select committee then scrutinises the legislation or the proposed legislation in such a manner as sometimes the full parliament is unable or cannot afford time to do so, and so therefore select committees on occasion are invaluable and anybody who serves on them does do a good job, and it might be at some point that such a committee be established with a view to bringing through the flexible matter that I have referred to with regard to the provision of five or six hours during the Sunday on which any retailer can open if he or she chooses to do. If that is not supported, then there will definitely be amendments because I am not happy with the Bill, but as we are being asked to prove or otherwise the principle, then in principle I must vote against.

Mrs Hannan: Vainstyr Loayreyder, the long title of the Bill makes it clear that this Bill is to abolish the regulation of shop hours on Sunday to make new provisions for the rights of shop workers as respects opening on Sunday et cetera and for connected purposes, so the point made by the previous speaker is incorrect: it makes new provision for the rights of shop workers as respect to opening on Sundays.

I would just like to cover what is a traditional Sunday. We have heard comment today about what a traditional Sunday is and how it should be protected. The member for Onchan suggested that maybe some of us have not been to church on Sunday, but let me just go through some of the areas that I know of people that do go to church. So they go to church

and following on from church they leave church and they go to the paper shop to get their papers -

Mrs Crowe: Exactly.

Mrs Hannan: - and it is not necessarily *The Sunday Telegraph* or *The Observer* or whatever they are going to buy, it could be the *News of the World* or it could be anything else like that. They then go to a cafe for lunch. They have not got petrol in their car so they call in the garage and get petrol in their car. They go on a run to Peel and they call in the ice cream shop because a huge number of people come to Peel to buy their ice cream on a Sunday. They then might like to not go home yet 'We'll go to a cafe.' So they go to Brown's Cafe or whatever. They then think, 'Oh well, we'll go to a pub and have a soft drink before we end up going home,' or they go to a restaurant. Who serves these people that have been out on this wonderful day after they have been to church? Who serves them? Who actually protects the people that are serving them? I would suggest that there is not an awful lot of protection and we are not shouting for increased protection for these people today. (**Mr Karran:** Hear, hear.) There is a huge number of people who work on a Sunday, a huge number. We have police, we have farmers, we have nurses, doctors, fire workers, lawyers - only very recently we passed a duty advocate scheme - pharmacists, and we see on the list that pharmacists can be open 24 hours a day, not just Sunday, but all the way through the week and in some places they actually do open 24 hours and that is for the convenience of the public being able to go and buy their prescribed medicines when and where whenever they can. Prison officers also work on a Sunday. So also do some factories. We are not looking to protect them, but what we are doing today by deregulating the shopper hours is to protect people, and this has been my concern all the way down the line, that there should be protection for people, they should have a choice, and I believe that this legislation puts that choice into place.

We cannot force people to use the machinery that is available. There are many people who are employed who do not have a contract of employment. They know very well that they do not have a contract of employment but they do not push this with their employers, and I think maybe that is what we should be trying to enforce more, contracts of employment, to give people the rights and the protections in the workplace, and I would suggest, especially to Mr Henderson, if this procedure, this introduction of these new provisions on the rights of shop workers, were not in this legislation, he would be suggesting that this machinery was put into this legislation. (**Mr Henderson:** Hear, hear.) Well, it is there, and that is why I believe that we should in actual fact be supporting it.

But the shops now have a choice. While we say here that these newsagents and bookshops and pharmacies can be open 24 hours a day, they do not open 24 hours a day. As the member for Castletown said, they have half-days, they have lunchtime openings, but they do not have the freedom to open on Sunday if they wish.

When it comes to Christmas Day I know shops in my area will be a little bit concerned about not being open because shops do open in Peel on Christmas Day now and certain people who tend to run out of things do use this shop - certainly the one shop that I am thinking of at the moment - and I think that will be missed on Christmas Day for various reasons. They also have videos, they have many foodstuffs. So that will be missed on Christmas Day.

I do not believe that amending the 1985 Act, as was suggested by the member for Ayre would solve the problems that we have before us. I believe that there should be choice, unless we are suggesting, even by a select committee, that all shops should be shut on a Sunday. We have the member for Ramsey suggesting that there should be no shops.

Mr Singer: Nonsense!

Mrs Hannan: We have then the member for Ayre coming in and saying four or five hours, then the member for Douglas East saying five or six hours, and we are really then back to what is suggested in the 1999 Shops Bill which is if they wish to open they can. We are not insisting. I do not believe there is any provision within this legislation that says they must open, because not all the shops that have a provision under the 1985 Act choose to open, but the choice is there. Why on one or two days a year should shops not be open if they wish to open? The choice should be with them and I believe that the problem of the Shops Bill has been addressed by the Department of Trade and Industry and I welcome that. *(Mrs Cannell interjecting)* It was said the Bill is promoted by the Department of Trade and Industry. It actually says on the legislation under 'Explanatory Memorandum'.

Mrs Cannell: It is a procedural matter.

Mrs Hannan: It might be a procedural matter, but it is promoted by the Department of Trade and Industry.

Mr Quine: You cannot believe everything you read.

Mr Cannan: You cannot believe everything from that department.

The Speaker: You have the floor, hon. member.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The member for Ayre suggested that this problem had not been addressed properly. Could I say that the Department of Trade and Industry has been in place 2¹/₂ years. That particular member was a minister for 2¹/₂ years and he certainly did not solve the housing problems that we have got.

Mr Quine: Thank you.

Mrs Hannan: With regard to the report on shops, the member for Douglas East suggested that she has only just got this report in front of us but she can certainly let us have this report before we get to the clauses stage. We have got until October to get that report.

I would accept the comments made by the Minister for Trade and Industry with regard to planning and these larger shops being able to come in. I am extremely concerned about the development of Tesco. I believe that that will have a much greater impact on shopping in the Isle of Man than to deregulate the shops hours.

I support this legislation and I support the new provisions for the rights of shop workers in respect of this deregulation of shops hours and I hope that members will support this legislation today and I hope that members will discuss this Bill when it comes to the clauses stage on this floor. We have time. There is no shortage of time in discussing legislation properly. It does not need to go to a committee. One of the things which has happened over the last couple of years is that we have question after question after question and we do not have legislation to discuss. Now with our next sitting we will have legislation to discuss and I hope we get on and we discuss it properly.

Sir Miles Walker: Mr Speaker, ever since getting notice from the Chairman of the Office of Fair Trading that she was intending bringing the Shops Bill forward - and I suppose that was some 15 months or perhaps more ago - I have to say I have been searching for reasons to oppose the legislation and I think I wrote to her following her letter and indicated as such, and I was doing that because I believe somewhere in here that Sunday is different, it is special and should be regarded as such. (**A Member:** Hear, hear.) Then, when you really think about it and look for substantial reasons to oppose this Bill, I have to say, hon. members, there are not any. I wish there were, but those arguments that have been propounded this morning are certainly not substantial and they have reinforced my view that to try and keep Sunday special just by keeping those business premises that are listed on this sheet that has been supplied to us all open on a Sunday morning is infantile. I do not believe that is the case and I have to say I am sorry to say it. I am one that felt that the 1985 Act was the good old Manx compromise. I have to say that suited me and it seemed to me that there was a provision within that Act which said that orders could be brought forward to Tynwald which would allow some latitude and further openings and so on. We have had a lot of experience of that and we did find that when a case was made to open more shops, say at Eastertime or in the summer and at Christmas, Tynwald took a pragmatic view of that, I think, and for a number of years passed those orders quite comfortably.

Recently that has become more difficult and there has been a change of opinion. Now, it seemed to me that the change of opinion was not because members thought that these shops should stay closed. It was because we should not allow these to open without all the others, and that is the case, I think, that has been made and has developed.

Now, many of us might like to look back to the good old days with rose-tinted spectacles, and if I look back to the '50s, probably people in my profession, that is, people in the farming industry and retailing off vans, not out of shops, were some of the very few people that were working on a Sunday. There was certainly no demand for taxis. People had Sunday lunch at home and would not have thought to go out to a restaurant or a cafe, or even, bother me, a pub.

Mr Duggan: They could not afford it.

Sir Miles Walker: Those days were then and we have moved on and our community will not, even if we would wish it, move back to what we had and some of us enjoyed in those days. Time and days are different. As individuals some of us might not like it. As legislators I think we have a different situation. Can we turn the clock back by the use of an Act of Tynwald with legislation? I would suggest, hon. members, we cannot and it is time that we recognised that and accepted that.

It would be a much more interesting debate if we were not talking about shops, and I accept that we are, but if we were talking about trading establishments in the broader term being open on a Sunday and would there then be enthusiasm for curbing the activities of all the people mentioned by Mr Brown when he was on his feet and Mr Duggan and others, a much more exciting debate and there would be much more public interest in it as well.

So why the concerns about the shops? Why the concerns? I share those concerns. It seems to me that something is going to be different and yet when you look at it closely there is not going to be very much different. Most of us had a corner shop within our vicinities and

accepted they would open on a Sunday for papers and the things that had been forgotten. That has changed. We have now got filling stations with their associated shops open all hours, not only selling petrol and vehicle accessories but foodstuffs are a major part of their trade and of course they also get into T-shirts and those other things that are in demand in the summertime. It seems to me wrong to say to somebody, 'Well, they can sell them, but, I'm sorry, you've got a pure clothes shop: you can't sell them', and I think I accept those arguments that have been put forward. There are now so many anomalies within the trading arena activity within this Island that I believe the time has come to accept that that is the case and not try to inhibit trade by legislation which we should honestly believe, hon. members, will not work. As individuals we may not like it very much. As legislators I do not think we have any choice, if we are going to be honest.

The employer-employee relationship and that balance is indeed an important one and there will always be arguments of whether it is weighed in one person's direction or another. I have to say it is my view that the best way to retain that balance is to make within this Island a vigorous economic community so people have some choice and if they do not want to work on a Sunday or they do not want to work in retailing they can do something else. I believe that that has to be the best and most sensible way forward.

It is not possible, in my view, to rely on the planners to inhibit an incomer or an addition to our retail sector. I believe that is an unfair responsibility to place on the back of the planners. If we really do believe that we should be controlling who is on this Island, who is trading, whether they should expand, whether there should be the introduction of somebody new, then we should face up to it and bring in legislation like they have in the Channel Islands, a regulation of undertakings Bill or Act. Heaven forbid. It was tried there. It does not work. The politicians are on a hook. They would like to get rid of it but there are so many people who feel that it gives them a bit of comfort that they cannot. I would suggest, hon. members, the best way in this particular activity is to let market forces and market demand set the pitch.

Mr North: Beef from outside, lamb from outside.

Sir Miles Walker: So the planners have a role to play. They should certainly designate the retail areas. What goes on within those retail areas I believe is a matter for those market forces.

So there are three reasons, really, that have been put forward to vote against this legislation today and they have been propounded by a number of speakers in different ways. I think the first one is that this legislation will play into the hands of the large trader. I have to say I just do not believe those arguments. I think what is happening at the moment is playing into the hands of the large trader -

Mr Brown: Hear, hear.

Mrs Crowe: Of course it is, absolutely.

Sir Miles Walker: - and I have not heard a reasoned argument to suggest that that is not the case.

The second reason is that the employee may be required to work against their will. As I say, there are provisions within this Bill and they may not be stringent enough for members. They are probably too stringent for others. But in my book the way to get that balance right is

to keep that choice in the marketplace for the employee, and the employer, God bless him, who often gets forgotten and I think we should think about him when we are talking about this particular Bill.

The third one is that the special status of Sunday should be protected. That is the one that I have a lot of support for, but I do not believe that if we accept this Bill that special status will be undermined any more than it is at the moment. That special status of Sunday is something for the community. It is something for the people. It is not for us as legislators. Mr Speaker, like you, I chose as my career a job which would make we work on a Sunday and I still do, but I believe in my own little way I keep Sunday special for myself and my family and those associated with me, and that is a matter of individual choice, it is a matter for our community, and I think we should recognise, as legislators, as representatives of those people, that they are changing times and that the legislation that is proposed today will not undermine that thing which I think we are all concerned about. That is up to us. It is not up to us as legislators. Thank you, Mr Speaker.

Mr Braidwood: Mr Speaker, it has been a very interesting debate, but, like the proposal that Mr Karran was proposing initially, I knew before this debate started we would be divided into two camps: those for, those against. People have put their arguments, but I must admit, when I look at the leaflet that the Office of Fair Trading sent round, to me it is the small shops that are restricted.

Mrs Crowe: Exactly.

Mr Braidwood: They cannot compete with the multinationals, so why aren't we giving them an alternative for them to compete? They might not be able to compete on price, but it is said they can compete on service. The hon. member for Middle has said that on the retail survey, price only came fifth on the list, people look for other things.

I can remember years ago that people were wanting multinationals to come to the Island because they looked at prices of items in the UK and they were a lot cheaper than those in the Isle of Man. Finances have changed, the Isle of Man has grown commercially, financially. Individuals now have more expendable income and that is why the multinationals started to come over to the Isle of Man.

We can see that a lot of the supermarkets, convenience food shops which sell videos or rent videos or sell pet food or whatever can trade up to 24 hours in a day and people have a choice.

Mr Karran mentioned people who attend church on a Sunday. You do not have to be a good Christian to attend church on a Sunday. There are many people, I am sure, who attend church on a Sunday for absolution for actions they do for the next six days. It comes down that we have to live in the real world, we have to have a level playing-field.

Families get together on a Sunday. Families go shopping on a Sunday. They are all together to choose because I know when I used to go out I would take my family along. They want to see what you are buying, they want choice as well.

It has been mentioned about contracts, people who can opt in, opt out for Sunday working, but we have to look at the unemployment level in the Isle of Man. It is 0.7 per cent. I think it was Mr Singer, the hon. member for Ramsey, who mentioned at B&Q you can work

five out of seven days. It has also been mentioned, I think by Mr Karran, the hon. member for Onchan, that a lot of students will be employed on a Sunday because other people will not want to work. The students will have some additional money to spend.

As far as I am concerned, it will be a commercial decision by the retailer who will be able to play on a level playing-field against the supermarkets. You have to give him that choice. At the present time he keeps closed or he can open. He does not have to open, so if we do deregulate, it is again a decision by the employer.

Sunday, it has been mentioned, has a very special status, but it is up to the individual to choose what he does on that Sunday, and as far as this individual goes, I will be supporting the second reading of the Shops Bill.

The Speaker: Now, hon. members, I appreciate that we are in the middle of an important debate. I do not know how long the hon. member would require to reply.

Mrs Crowe: Five minutes.

The Speaker: Shall we try to finish off this particular section of our debate?

Members: Agreed.

The Speaker: In that case I call upon the hon. member for Rushen, Mrs Crowe, to reply.

Mrs Crowe: Thank you, Mr Speaker. I am conscious of the time and that it is one of your special days, but if I could just address some of the comments that have been made by the members.

We began the debate with Mr Singer. Mr Singer, it is not an obsession. It is the remit of the Isle of Man Office of Fair Trading to provide a fair trading arena for all traders. It is not an obsession. That is what we are there to do.

Mr Singer, you had obviously written your speech before reading the schedule and list of anomalies that I have pointed out. As it says quite clearly - and another hon. member, the hon. member for East Douglas, made mention of it - shops might be able to open for 24 hours a day. Shops can now open for 24 hours a day and I shall bore you by reading exactly who can open for 24 hours a day: any newsagent, any bookshop, a fancy goods shop, a pharmacy, all supermarkets, convenience food shops, petrol stations, garden centres, cafes and restaurants. They do not choose to open 24 hours a day, and if, as the hon. member for East Douglas mentioned, she feels that Tesco will endanger small traders, well then, let small traders have the right to compete equally. (**Mrs Hannan:** Hear, hear.) That is what we are looking for. That is why we have supporters from the major retailers on the Island in this House, not to give themselves support, but to support the small traders on the Isle of Man. They do not wish to see an unfair trading arena for their colleagues.

I thank the hon. member for Castletown for his support and for the good sense he spoke. Logic was his theme, and I cannot even begin to think what the logic was in the hon. member for Ramsey's first speech because the theme only removed him from the need to make a decision: a suggestion that the Bill may need to go to committee. We have already heard this Bill has been to committee on numerous occasions. The last committee sat for two years and then came back with the 1985 Shops Bill, and what is it? Riddled with anomalies that disadvantages many small traders on the Island.

The hon. member for South Douglas, Mr Duggan, mentioned Scotland. Once again, we know that the God-fearing Scots have had no problem at all with Sunday trading.

Mr Brown: You can't play the bagpipes in Edinburgh.

Mrs Crowe: Mr Corkill gave mention of the unfairness once again and that Sunday shopping nowadays is not a chore, Sunday shopping is a leisure activity that families choose to take part in. One has only got to wander round one of our major stores on the Island on a Sunday who is open if one actually wants to purchase some item of do-it-yourself, like some nails, because the majority of people in there are choosing, looking, not necessarily buying, but it might be the only day that their family is together so that the teenager can say, 'That's the kind of colour wallpaper I'd like, Mum', or 'That's the kind of bed I'd like', because that is perhaps the only day the family is together.

Now, the hon. member for Middle, Mr North, the Minister for Trade and Industry, whose department has responsibility for the retail industry, I do really feel should be showing support to the retailers. He cannot turn the clock back. The major stores are here and they are going to continue to be here and I welcome them. Market forces will dictate what size of shop operates. Niche marketing will be the thing of the future. We shall have large retailers surrounded by niche marketing, small trader-owner shops that will supply particular goods or particular services to that part of the market.

Where were we before we had the major stores? Was all shopping done on the Isle of Man? Indeed it was not. What happened was we all went off to Liverpool and the cash tills in Liverpool were ringing with Manx money because anyone who wanted a wedding outfit or special occasion or whatever it might be, off they went on a shopping trip to Liverpool. No-one does that nowadays. Everyone can get whatever they want on the Isle of Man. It is ridiculous. We do not want to go back to the days when we had no large shops on the Isle of Man.

The hon. member for North Douglas, Mr Henderson, was speaking about union support and about the protection for shop workers. This is tried-and-tested employer protection. We have consulted with everyone. I am no expert in employment legislation and I know I can pick up the telephone to speak to my friend Mr Moffatt on any point that I wish and he will explain it to me in full. As it happens, USDAW were consulted and were perfectly in agreement with the support for this legislation, and one has to point out, with all this talk of protection for shop workers - in fact Mrs Hannan, the hon. member for Peel, made mention of it - the legal aspect of employment is not the most important element in an employee relationship, no more than the legal aspect of divorce is a principal part of marriage. One has many firms with no legal agreements between their workers that work in a very satisfactory manner. This will not happen with this Bill in place, but we have got to get these legal perspectives in perspective.

The hon. member for West Douglas, Mr Shimmin, has asked me to answer a couple of points about the complex employment legislation, and I wondered, as the hon. member Mr Karran, also requested some clarification, if it would be helpful to members I would be quite happy to hold a briefing to explain the employment legislation, which I know is complex and I know the unions will come and help me out to present it to members so that we know quite clearly what we are voting for and against, but I make that provision. I have no opportunity to do it at this moment, but indeed I will address it either by a small briefing session or by Mr Shimmin coming down personally to the office and sorting out that complex issue.

He also mentioned about Good Friday. Now, the reason we did not include Good Friday in this particular legislation is the fact that newspapers are published on Good Friday and once again we did not want to go back to the anomalous situation where we have newsagents open, garages open, because those who sell newsprints are legally required to be open when a newspaper is produced. That is the reason that Good Friday is not included, although, as I say, I dare say, many of the shops will close if they so wish, as indeed they did this year.

The hon. member for Garff again made mention of the fact that a lot of members in the House seem to have thought that this legislation was in some way to help large traders. They will not be helped by this legislation because at the moment the 1985 Act says that they can open whenever they wish to open. The people that this Bill will encourage and help is the small trader, the small Manx trader.

Now, I must take a moment to address the comments made by the hon. member for Ayre, Mr Quine, because I have already addressed them on numerous occasions. He mentioned four items that the Bill should address. Shop worker protection - the Bill has addressed that. A level-playing field for all the trade - the Bill has addressed that. The rights of the consumer - the Bill has addressed that. And keeping Sunday a special day - one can address that oneself, Mr Quine. We cannot legislate to make people go to church, even though I may wish to do so. Harridan as I am, I cannot force the people to go to church. *(Interjections)* We actually have nine services in my parish on a Sunday, so we can start going to church at seven in the morning and finish at six at night, so amongst our churches we have no problem with going to church.

We have addressed the anomalies of the 1985 Bill which you dismissed in 19 minutes. For nineteen years the Office of Fair Trading have been trying to address the anomalies that are built into this 1985 Shops Act. You made the suggestion which you have made on many occasions and which we have told you time and time again is unenforceable. We have a free-for-all. We have a shop. We have got a newsagent. He will open seven till 12 noon. Now, the other newsagent will open two till five. Now, we will have a garage here in Peel. Now, the garage in Peel can open five till seven, so if you run out of petrol in Peel you are stuck, but the garage on Peel Road in Douglas can open whatever hours. It is a nonsense. I would need 20 trading standards inspectors to enforce that, if everyone notified us of their hours that they were going to open. We want an enforceable piece of legislation. That is just an absolute nonsense to say that traders could post hours and some would be open then, some would be open then. It would be ridiculous, absolutely ridiculous.

We have looked, Mr Quine, at every option, not one or two. The suggestion made was that we had done this job carelessly. I can tell you we have not. From the day I took the chair at the Office of Fair Trading I was determined that I would try and sort out the anomalies. We have a meeting every month to address these anomalies. We have had unions, retailers, traders, consumers, the Chamber of Commerce, all consulted. Hon. members of this House, we had 19 weeks' consultation when this Bill came out, so we have taken on board everyone's views, tried to accommodate them, and do not forget: the Office of Fair Trading has its trading standards inspectors whose professional remit is to regulate the retail trade, so there is no-one in a better position to give advice than they are.

Now, the hon. member for East Douglas, Mrs Cannell, made mention of the retail survey. Well, we must not cloud our vision. Whatever the retail survey says has nothing whatsoever to

do with this Bill. (**A Member:** Hear, hear.) If the survey suggests there should be no major stores on the Isle of Man and we as a government decide that that is what we want and we close down every major store that is on the Island at present, or they are only allowed to be 20 square foot or 200 square foot, whatever, it has nothing to do with this Bill. There will be still small traders disadvantaged if you do not let this Shops Bill progress, and also you made mention of a committee. If you do

not -

Mrs Cannell: Mr Speaker, a point of order.

The Speaker: Pardon.

Mrs Cannell: Would it not be advisable for the hon. member to direct her comments through the Chair -

The Speaker: Hon. member.

Mrs Cannell: - as opposed to direct -

The Speaker: Hon. member.

Mrs Cannell: - you, you, you?

The Speaker: Continue, Mrs Crowe, you have the floor.

Mrs Crowe: Right. We were talking about the retail survey and the shops closing, Mr Speaker, on the Island. I am sure if the government chose that to be the case, that is what would happen, it would have to be debated, but what we are looking at today is how we can help the disadvantaged traders on the Isle of Man, that is what we are looking at today, and if the decision is made not to vote for this Bill to progress, then there could be no small select committee to send the Bill to if it is decided that the wish of the House is for it to go to committee again.

I thank Mrs Hannan for her sensible support, and once again there was made mention of Tesco, and I can tell you that Tesco under the present legislation will be able to open 24 hours a day every day of the week if it so wishes. I have had many discussions with Tesco and at present they are not planning to do that, but I do not know what the future might bring and neither do the other traders on the Island.

Now, my colleague, Sir Miles Walker, summed up the situation really in that we have many aspirations to maintain the fact that Sunday is special, but that is within oneself. I go to church on a Sunday. Sunday is a family day for me when all my family come round, but that is my wish. I cannot enforce that. I cannot dictate that people go to church. What we are discussing in this House is legislation and not aspiration. We may all aspire to go to church and to bring our children up in the way of godliness, but what we are talking about today is legislation. We have to legislate to be fair to the traders of the Isle of Man, all traders, not just a few.

Mr Speaker, what this House has to do today is make a decision, make a decision on whether we wish to give to the small traders the rights now enjoyed by large multinationals and I must say I am delighted with the support that the large retail companies on the Island have given to progressing this Bill for their smaller colleagues. Thank you, Mr Speaker.

The Speaker: Hon. members, the motion is that the Shops Bill 1999 be read for a second time. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Cannan, Rodan, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Duggan, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Bell, Karran and Corkill - 15

Against: Messrs Quine, North, Henderson, Mrs Cannell, Mr Singer and the Speaker - 6

The Speaker: Hon. members, there are 15 votes cast for and 6 votes cast against. The Bill therefore passes its second reading.

Now, hon. members, we have two further measures on our agenda paper for second reading this afternoon and I am aware that we have an engagement to go to. Can I suggest that we return for 3 p.m?

Members: Agreed.

The Speaker: Agreed, hon. members.

The House adjourned at 1.15 p.m.

Betting Offices Bill – Second Reading Approved

The Speaker: Hon. members, we have moved through our order paper as far as item 13, so we then turn to item 13 on the order paper, the Betting Offices Bill for second reading, and I call upon the hon. member for Ramsey, Mr Bell.

Mr Bell: Thank you, Mr Speaker. This Bill sets up, in parallel with the existing system of licensing of betting offices, or betting shops, as they are more commonly called, a system of licensing of international telephone betting operations.

Whereas once bookmakers took bets only from punters in their locality, a large part of the business of bookmakers in the British Isles is now with punters in other parts of the world who place bets by telephone or fax or, increasingly, by the internet. Bookmakers are developing that kind of business in the Isle of Man, but the existing legislation controlling betting offices - namely, the Gaming, Betting and Lotteries Act of 1988 - is not suited to regulating such business. In particular, the number of betting offices in the Island is limited by the 1988 Act to 10, and the establishment of international telephone betting operations, which consist principally of call centres, has correspondingly reduced the number of betting shops available to ordinary punters. Furthermore, the controls on betting offices are more appropriate to small-scale cash betting than to large-scale credit betting, in particular the lack of audit procedures such as apply to the casino.

The Bill preserves the existing system of betting shop licensing under the name of public licensed betting offices and sets up a parallel system of restricted licensed betting offices whose characteristics are as follows: (a) the licensee is authorised to effect betting transactions on the licensed premises only with persons outside the Isle of Man and the United Kingdom - conversely, a public betting office is limited to betting transactions with persons within the Isle of Man and the United Kingdom; (b) regulations may lay down special rules for the conduct of restricted betting offices and provide for the appointment and functions of an accountant to supervise their operations; (c) the number of restricted licensed betting

offices will be limited to 10 in addition to the 10 public licensed betting offices - that is, betting shops - currently allowed, but both those maxima may be varied by the Council of Ministers; (d) no-one will be allowed to hold more than one restricted betting office licence; (e) the fee for a restricted betting office licence will be £25,000 a year, compared with £700 for a new public betting office licence or £100 for a renewal of a public betting office licence; and (f) the Department of Home Affairs will have a veto over the grant of a restricted betting office licence and there will be no appeal against the refusal for such a licence.

This Bill will enable the gaming commissioners to establish a more formal regulatory regime for international telephone betting and in a small way contribute to the diversification of the Island's economy, creating new jobs and extra tax revenue for Treasury in the process. I beg that this Bill be read a second time.

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

The Speaker: Hon. members, is there no member wishing to speak? In that case, the motion is that the Betting Offices Bill receive its second reading. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Douglas Head Bill – Second Reading Approved

The Speaker: We turn then to item 14 on our order paper, the Douglas Head Bill, again for second reading. This time I call upon the hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker, hon. members. In moving the second reading of the Douglas Head Bill, I thought it may be beneficial for members to receive an explanation as to the history and ownership of the land at Douglas Head.

Parts of Douglas Head have been open to the public for over 150 years. Its history, in many respects, mirrors that of the mass tourist industry of the Isle of Man. The growth of that industry from the 1860s onwards led to the development of Douglas Head and the beach below it, Port Skillion, with the laying out of public walks and the provision of a hotel, a camera obscura, an open-air theatre, an inclined railway from the harbour, a tramway to Port Soderick and many other attractions. With the decline of the industry these attractions fell into disuse, a process accelerated by the two world wars, and many were removed. The public walks are still maintained, however, and the camera obscura will soon be renovated.

The open spaces on Douglas Head, once all part of the Nunnery estate of the Goldie Taubman family and now in various ownerships both public and private, and the position is complicated by the terms of a deed made on 17th May 1870 by Major J S Goldie Taubman relating to the large parts of that land. So far as those terms are still in force they relate to the land coloured green on the map referred to in the Bill, which is called the 1870 deed land, which is in clause 1 of the Bill. Under the 1870 deed, Major Goldie Taubman granted to all and every, the inhabitants of and persons residing in Douglas, full right and liberty forever hereafter at their pleasure on foot to enter on, walk over and recreate themselves on the land in question, and he declared that he had no rights to build on or enclose any part of the land but with reservations of rights of quarrying and to convey land for government purposes. The 1870 deed land excluded the site of the Douglas Head Hotel, an area smaller than the area shown on the map, for reasons which I will explain later.

The rights granted to the inhabitants, which were of doubtful validity at common law, were vested in the Douglas Town Commissioners, who were the predecessors of the Douglas Corporation, in trust to the inhabitants by the Local Government Act of 1886, section 144. The commissioners were, by section 209, given power to make byelaws for the land as if it were a common recreation ground, subject to the consent of J S Goldie Taubman, his heirs and assigns. Those provisions were re-enacted in the Local Government (Consolidation) Act of 1916, sections 204 and 315. The validity of the rights and restrictions created by the 1870 deed was confirmed by the High Court in 1977 in a case involving Yates and Douglas Corporation, a decision which settled some questions but raised others still unanswered relating to the ownership of the land.

Douglas Corporation acquired parts of Douglas Head at various times. The beach at Port Skillion was left to it by the will of Robert Archer, who died in 1900, for the use and benefit of the town of Douglas. An area to the north-east of the Head Road was conveyed to the corporation in 1909 and a further area to the south-east was conveyed to it by the War Office in 1910, both upon trust for the purposes of a pleasure ground or place of public resort or recreation. The site of the incline railway lying between them and running down to the South Quay was acquired by the corporation from the liquidator of the railway company in 1956.

Part of the land in the 1909 conveyance was sold to the harbour commissioners in 1933, the sale being authorised by the Douglas Corporation, following which the Douglas Head Quarry Act of 1933 was introduced. The land in the 1910 conveyance was, in addition, subject to the rights and restrictions of the 1870 deed. A building on it, formerly an amusement arcade known as the Palladium, was sold by the corporation in 1985 and was freed from the 1870 rights and conditions, the 1910 trust and the bye-laws affecting the land by the Douglas Corporation, the Douglas Head Act 1985. The areas now owned by the corporation are shown edged blue on the map and referred to in the Bill as the blue land.

Other parts of Douglas Head belong to the Department of Transport and the Department of Local Government and the Environment, and parts of the 1870 deed land to the west of the Head Road are in private ownership. Part of the land to the east of the Head Road which were not conveyed into private or public ownership belong to the trustees of the Goldie Taubman estate. These are shown edged red on the map and referred to in the Bill as the red land. Following the recent death of the late Leslie Vondy in 1998 there was doubt as to who owned the red land; however, it is now understood that new trustees have been appointed, to whom notice of the proposals has been given.

There have also been doubts as to the powers of the trustees to dispose of the red land. An approach by the Department of Highways, Ports and Properties, as it was then, to acquire part of the red land was rejected in 1991 by the then trustees on the grounds that they had no power to write or to convey the property. The rights, restrictions and trust affecting the various parts of Douglas Head have held up various developments in the past, and in 1993 and 1985 had to be overcome by special Acts of Tynwald. Unless provision is made by statute, they are likely to delay or prejudice the renovation of the camera obscura, which is on part of the red land, by the Department of Local Government and the Environment, a project involving considerable public expenditure and which could be put at risk by doubts arising from the 1870 deed. The red land consists largely of steep slopes and cliffs. It would be desirable in the interest of visitors if it were owned by a public authority, which could carry out works to protect

them from hazards. The doubt over the powers of the Goldie Taubman trustees to convey any of the red land is, however, unresolved, and this problem would be overcome by its vesting by statute in a public authority, subject of course to a payment of compensation.

In addition, Heritage Homes Limited are undertaking the development of a block of flats on the site of the former Douglas Head Hotel for which planning approval was obtained in 1998. A conveyance of the development site, dated 3rd September 1971, by R J Bacchus Goldie Taubman to Heron and Brearley Limited included a provision purporting to be made under the 1870 deed, declaring that the development site, amounting to one acre, and not merely the actual site of the hotel, was excluded from the rights of access conferred by the 1870 deed. The validity of that declaration is open to question, and statutory provision is desirable in order to confirm the title of the developers and the legality of the developments.

The Bill, as you will be aware, hon. members, is promoted by the Department of Local Government and the Environment and its purpose is to put on a statutory basis the rights and interest of the public and the Douglas Corporation relating to Douglas Head and to provide for the vesting in the department of certain land at Douglas Head. The land affected is described in the Bill and shown on a map which has been deposited in the General Registry. Copies may be inspected at the General Registry, the Clerk of Tynwald's office and the offices of the Department of Local Government and the Environment, Murray House in Mount Havelock.

Clause 1 relates to the rights of the public created by a deed of 1870 to walk on and use for recreation certain land at Douglas Head described in schedule 1 and the restrictions imposed by that deed. It also enables the corporation, with the consent of Tynwald or the department, to release those rights or waive those restrictions over part of the land.

Clause 2 vests part of that land in the department. It also declares that adjoining land owned by the corporation is to be held as public open space and enables parts of the land affected by this clause, described in schedule 2, to be disposed of with Tynwald approval, except where transferred as public open space.

Clause 3 gives the corporation powers to make bye-laws over the whole of the land to which clause 1 relates and limits occupiers' liability in respect of the land.

Finally, clause 4 and schedule 3 are supplemental. I beg to move that the Douglas Head Bill be read a second time.

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

Mr Shimmin: Mr Speaker, I thank the mover of the Bill for the clarity of the information provided to members and the legal opinion and difficulties experienced in direct ownership of these areas of land. My only concern with the issue of this Bill is really with regard to, once again, the apparent disagreement or different interpretation offered by the corporation to that of the view of the Attorney-General and the department. I would therefore ask the mover of the Bill to clarify whether it has been checked that the camera obscura siting, which is apparently being . . . Moneys paid out for lease on that land have been paid to the corporation for some time; I believe that has been clarified, but certainly if the mover of the Bill could outline the reservations expressed by the corporation and whether any satisfactory agreement has been reached at this stage? Thank you.

Mrs Cannell: Mr Speaker, I thank the hon. mover too for supplying us with a copy, some of which he has actually read out in his presentation this afternoon. Can I just ask, in relation to the Goldie Taubman trustees with regard to the red land shown on the map here, it does say that the ownership, or the powers of the Goldie Taubman trustees to convey any of the red land, is however unresolved. I wonder if the hon. mover has any more information on that, on how best to resolve it in a way that would be satisfactory to all.

Also, in number 9 on the explanatory document here, it refers to Heritage Homes Limited and the fact that they are actually developing a block of flats on the former Douglas Head Hotel site. They assert, according to this information, that the land which is now in their ownership amounts to more than just the land that the hotel is situated on, and they are asserting that the land amounts to one acre. Now, again it says the validity of that declaration - this is in relation to the one acre - is open to question, and statutory provision is desirable in order to confirm the title of the developers and the legality of the development. I just wonder, if members approve this today and it goes through to clauses in October, how that is going to be sorted out, really. Do Heritage Homes at the moment have some sort of clout in saying 'Well, we have an acre of land here, which could actually stretch into possibly some of the land that is set aside for the recreational use by the public,' and if not, if this Bill is passed, is it going to make it easier for Heritage Homes to be able to establish where their rights are in relation to the ownership of this one acre?

Again, I echo the concerns of my colleague for West Douglas in relation to the concern expressed by the Douglas Corporation, why we always seem to be coming at loggerheads with the local authority on various issues. We seem to be making a habit of coming here, considering future things, future legislation et cetera without the blessing of the local authority, and I wonder, has there been a communication breakdown here and what their views are, really.

Lastly, I just want to assure myself that the public will still have access to all of this site as they have previously enjoyed for many, many, years and that under the new provisions of the Bill, irrespective of who looks after what, the public will still have a right of access and freedom of movement which we enjoy today. Thank you.

Mr Gilbey: Mr Speaker, I will leave the hon. mover to answer the detailed questions that have been put, but I must refer hon. members to the briefing note, and it says the whole purpose of this is to enable people to continue enjoying the public area, which is compromised by the complex nature of the ownership and by doubts surrounding the various rights and restrictions which were imposed on it by the then owner in 1870. The object of the Bill is to bring some clarity to the situation and permit essential maintenance works to be carried out without legal difficulties.

All we are doing is making sure that what could be a very complex and difficult legal situation, regarding which there could be great arguments and the only ones who would benefit are lawyers, is perfectly simple and clear so that people understand it. If I could take a simile, it is rather similar to what this hon. House has agreed in the past, which is that the rather complicated land registry system we have in the Isle of Man should be superseded by a simple one.

Now, the document also makes it clear that the rights for the public to walk over the land and the restrictions of enclosing or building on it are stated in clear terms instead of the very complicated legal position at the moment. It makes it clear that essential works can be carried out, which is surely a good thing - how can anyone object to that being made clear? The corporation's powers to make byelaws are confirmed, so we are taking none of the powers from the corporation. The terms on which the land owned by the corporation is held are clearly set out in the place of existing trusts and conditions. Now, trusts are always subject to argument and difficult interpretation. Again, all that is happening is to clarify the situation. And the remaining land held by the Goldie Taubman family and not disposed of is transferred to the Department of Local Government and the Environment, who will pay compensation on its acquisition. So they are the only people who are actually losing anything and I suspect they will be very glad to get compensation for land that really is of little use to them. There is very clear Tynwald approval required for anyone to dispose of this land, except in the case of the transfers to the Manx National Heritage or the public authority for providing recreational facilities. I honestly cannot see how anyone can argue with the proposals here which are aimed at clarifying a very complicated situation and take no powers away from anyone, and I hope that this hon. House will support this Bill.

Mr Karran: Vainstyr Loayreyder, unfortunately I was not able to be here for the moving of the Bill. Can the hon. mover just make sure that he clarifies what is the dispute, if he has not already, with Douglas Corporation over this? Will he, as a courtesy, invite representatives of Douglas Corporation into the Millennium Room with ourselves and do us a presentation? I think that would not be an unreasonable request. That is the only concern I have with this Bill and I do hope that the mover can facilitate my suggestion of inviting them in with their representatives and then let us hear what their concerns are, instead of always having to hear it third hand and maybe not getting the actual facts that gives them any concerns about this legislation.

Sir Miles Walker: Mr Speaker, the hon. mover was very clear in his explanation to this House when he said the purpose of the Bill was to clarify the rather complex present ownership of this area of land. Now, presumably the catalyst there was the camera obscura, the need to do something and the clarification of the ownership of the land underneath that particular building. So I can understand the need, perhaps, to prepare legislation to clarify the ownership of this land. What I have difficulty in understanding is why, in order to clarify the ownership of the land, should it be vested in the government? Why not vest it in the corporation?

If, as I understand it, there is a clear proposal that is acceptable, perhaps, for the land under the camera obscura to be let under a long lease - and I have no idea what the details of that may be but I do remember in past days the Attorney-General advising me that a long lease of perhaps 99 years was, after all, tantamount to ownership - I think those were the words he used - it seems to me that perhaps a case has not been made for putting this land into government's ownership. If the purpose of the conveyance of land is to put it into government's ownership and it is a headland of high outstanding and natural beauty, then maybe it should be vested in the Manx Museum and National Trust. Perhaps that is the right place for it but it seems to me that that is not the case that is being made. The case is being made that here is rather a complex situation of land ownership and, in order to clarify it, it

ought to be vested in the government, and I have to say I find that argument somewhat flawed. I listened to the view of the Minister for the Department of Local Government - if I may say, the rather plausible view - that here we have a situation that needs clarifying and the easiest way to clarify it is to vest it in the government, and after all - (*Mr Gilbey interjecting*) the corporation is not going to lose any of its responsibilities over this land because they will still be able to put bye-laws on it.

So it seems to me that the reasons for vesting it in government rather than clarifying it and vesting it in the corporation have not been made clear, and I would look to the hon. mover, if he could, to try and persuade me that the case is there for government to own. I have a deep-seated concern that we as a government ought to be concerned with those issues of national importance and we should leave our local authorities, complicated as the structure may be at the moment, to look after the local government interests, and I think there is a danger, with this sort of legislation, of us being drawn into those local government issues which would be better left to others.

So I am not opposed to this Bill but I do not think the case has been made as to why this land should be vested in the government rather than in the local authority, and if it is to do with the land under the camera obscura then I am sure that another solution can be found.

Mrs Hannan: Vainstyr Loayreyder, there has been some comment made about the land under clause 1, deed land and all the rest of it, and under sub-clause (5) it says, 'A deed under subsection (4)' ('The Corporation may by deed for any necessary and proper purpose specified. . . (a) release the rights conferred by subsection (1), or (b) waive the prohibition in subsection (2), in relation to. . . the 1870 deed land. . .') 'shall not have effect unless it is approved - (a) by Tynwald, or (b) by the Department. . .' To my mind it seems that this land can be disposed of. I might be wrong in my actual reading of this Bill because it is quite complicated and we have not had it for very long to be able to consider it. What concerns me is that we are putting it into a Bill which seems to me to be - well, it is certainly changing the structure of the ownership of this land. It is under a trust; it is under a deed. Some land is owned by the different bodies, and what concerns me is that once this has happened to this Bill - and I might be reading it wrong - it can be then disposed of either by the local authority or by the department with just Tynwald approval. I know, when we have had land transferred to us in the past under the Calf of Man Acquisition Act, there was a clause put in there where it said it was inalienable; it could not be disposed of. I am not sure by this legislation whether the land now is protected. I know it said that it did away with the deeds and the deed land and put it under this one Bill, but what concerns me is that, as the previous speaker is saying that government has now got control of it, this is where the legislation has come from to do certain things. My understanding was not only the camera obscura but also the MEA cables coming in, and so it concerns me that to facilitate this we have now got this legislation which does different things to this land, and certainly the deed land is going to be acquired; that is my understanding from the trust and they are going to be compensated.

But this same story could be told about any area of land in the Isle of Man which has been treated in exactly the same way: given to the local authority or the local authorities purchase it or there is some question mark over it. We have the same in Peel; we have the same with regard to what we used to call the Town Park, which is land on the headland which was in different ownership. It is now in public ownership by the local authority, but somebody

might decide that they want to do something different with that, make a case to the Department of Local Government and the Environment, put it under one Bill and then that sort of thing can happen, and this is what concerns me, that I think there should be some clause in to protect the land so that it does not get. . . I know the member moving it said it was for recreation, but I am concerned that we do not get major developments in these areas. We have already had a hotel, now we have got flats on Douglas Head in the same way as they were trying to do that in Peel on our headland, certainly on land that was prized by the local people. Therefore I am confused by this legislation and I would like clarification as to the protection of this land once it has been made into the Douglas Head Bill under these various areas coming together. Is this land given protection and does another Act, another Bill have to be brought forward for any land to be disposed of, or can the owner, government, the local authority do things with the land just on the say-so, maybe, of a reference to the department? I would like clarification on that before I support it and certainly before I consider the clauses at the next stage.

The Speaker: I call upon the hon. member for Douglas West, Mr Downie, to reply to the debate.

Mr Downie: Thank you, Mr Speaker. The whole situation revolving around the Douglas Head Bill is a very complex issue and that is why we need legislation. If it will assist members I will only be too pleased to arrange for the legislative draftsman and the parties involved to make a presentation both for Keys members and to members of Douglas Corporation.

If I can take some of the comments in reverse order, as it were: Mrs. Hannan, the hon. member for Peel, indicated that she had not had long enough to consider the Bill. Well, I am sorry because I am aware that this Bill was distributed to members four weeks ago and I think, given it is only one-and-a-half clauses, it is not too difficult to understand. Everybody knew I was taking this Bill and there has been no comment made to me or nobody has come along and asked me for a particular definition; I have been available to make information available to all members.

The object of this Bill is quite clear: because it is so complex, what we are trying to do here is to roll all the different parcels of land up into one common ownership, and if somebody comes along laying claim there is an opportunity then to consider compensation but, at the end of the day, if it is all brought in under a common ownership, which would be the Department of Local Government and the Environment, there is then absolutely no problem in them transferring it to the respective local authority or to the Manx Museum, or any other body referred to in clause 2, to keep in good order. There will then be bye-laws produced which will then need to be fully endorsed by Tynwald, and at the end of the day Tynwald Court will have the final say as to what goes on up on Douglas Head.

The hon. member for Rushen, Sir Miles Walker - I would ask him if he would accept that part of the problem is the clarification of the ownership of the land. I have already explained that it is much easier to vest it in government and then move it out, because that is how the land was acquired in the first place. The old local government department took the land on and it then gave it out to the corporation by the creation of the old Douglas Head Bill and that is how this thing has been in being, really, since 1880, 1890 with the Douglas Commissioners, so what we are doing, really, is going through a situation here where history is actually repeating itself and what we are doing is clarifying the situation, all the grey areas, and then whoever

takes the land on in the future will know that they are going to have it to look after without let or hindrance and there is nobody going to come back and be making any sort of claims, and I would have thought that is the most progressive way to go forward. As I say, there are options available in the Bill and also in the Bill there is reference made to the Recreation and Leisure Act, which can allow the respective local authority a proper vehicle to have its bye-laws and everything else moved.

To return to the debate itself, my hon. colleague, the member for West Douglas, Mr Shimmin, expressed concern over the corporation's interpretation. I agree that some members of the corporation see it entirely different from the people who advise us in the Attorney-General's Chambers and I am afraid it ever will be the case. If during the course of the summer recess the corporation want to contact myself, I am only too willing to arrange a meeting to see if we can resolve some of our differences, but my opinion is our differences are miniscule, really.

As far as the camera obscura goes there is question over the ownership of the land that it sits on. My information is that the family who leased the camera obscura from the corporation for a number of years actually did not pay a rent, they paid a licence fee and I think when the Department of Local Government took the camera obscura on they continued making a very reasonable fee payment to the corporation in a similar manner as the Heaton family did, and things have just gone on. It was not a proper rent; I am not aware if there are any agreements in place or anything which would show that a particular party has right and title for that piece of land, and this is an area that we need to get clarification on, particularly before we start to spend vast amounts of government money in refurbishing the camera obscura.

Mrs Cannell made reference to the Goldie Taubman Trustees. There are new trustees appointed and they will be quite within their rights to come forward with a claim for compensation if they feel that their position is threatened in any way; in fact, they may even welcome this legislation because in actual fact it gives them the opportunity to get out of this very complicated situation, when you have people who are sitting up there with land in their ownership which is of little or no value and at the end of the day they have a duty of care if anybody falls over the cliff, so I think in everybody's interest it has got to be looked at in that sort of perspective.

As far as the building works go which are currently being undertaken by Heritage Homes, I would repeat that the validity of the declaration is open to question and I am not entirely satisfied, neither are the people who have been advising me legally, that the conveyance of the development site back in 1971 by R J Bacchus Goldie Taubman to Heron and Brearley included a proper provision declaring that the development site was not merely the actual site of the hotel. That is up to question and that needs to be sorted out because if the hotel complex is built we want to know whether people have the rights to come and peer through bedroom windows and all the rest of it, so it needs clarifying.

One issue that was always a problem with the corporation: years and years ago they used to run these minstrel shows on Douglas Head. They could never actually charge people for being up there because everyone in that area had the right to ramble, and that really has escaped as far as I am concerned and that has possibly been an impediment to some of the developments that could possibly take place. Now, I can give a categoric assurance to this

House today that in moving this Bill the main objective is to keep the ancient rights. As far as I am concerned, this area is a very important area in Douglas and people should have the rights to ramble on it and to recreate themselves and that should be addressed in the modern-day terminology.

I thank Mr Gilbey for his support. He has only reaffirmed what I have said: that the main purpose of the Bill is to clear up all the particular ownership issues but primarily to make sure that the people have the access to the ancient rights.

Mr Speaker, hon. members, I beg to move that the Douglas Head Bill 1999 be read a second time.

The Speaker: Hon members, the motion is that printed at item 14 on your order paper, that the Douglas Head Bill be read for a second time. Those in favour please say aye; against no. The ayes have it. The ayes have it.

Scottish Parliament – Opening – Invitation to Speaker

The Speaker: Hon. members, as we draw this particular legislative session to a close I would like to inform you that as your presiding officer I have received an invitation to attend the opening of the Scottish Parliament in Edinburgh and will be attending on your behalf on Thursday of this week.

The House will now stand adjourned until Monday the 5th July in St. John's.

The House adjourned at 3.44 p.m.