

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 1st February 2000
at 10.30 a.m.**

Present:

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

The Chaplain of the House of Keys took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies from the Lord Bishop this morning, who is off the Island on church business.

Shops Bill 1999 – Attorney-General’s Letter Circulated

The President: Before turning to the agenda paper, I just would ask you to note that a letter has been circulated from the learned Attorney-General in respect of the Shops Bill which will be pertinent to the next reading.

Social Security Bill 1999 – Third Reading Approved

The President: Turning now to the agenda for the day, we have as first business the third reading of the Social Security Bill and I call upon the hon. Mrs Christian to move.

Mrs Christian: Mr President, in moving the third reading of the Bill I will just summarise its purpose. It simply provides an enabling authority for UK legislation on social security matters to be applied to the Island by orders made by the department and subsequently approved by Tynwald. Those powers are currently provided by the Social Security Act 1982, and this Bill consolidates and updates that legislation and it provides for the department to apply an order with immediate effect with it then being approved by Tynwald at its next or next-but-one sitting if it is to remain in force. I beg to move that the Bill be read a third time.

Mr Radcliffe: I beg to second, Mr President.

The President: Does any hon. member wish to speak to the third reading? If not, I will put the resolution that the Social Security Bill be now read a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Public Health (Amendment) Bill 1999 – Second Reading Approved – Clauses
Considered**

The President: Turning now to item 2, I call upon the hon. Mr Crowe to take the second reading of the Public Health (Amendment) Bill.

Mr Crowe: Thank you, Mr President. The purpose of this Bill is to make changes to part IV of the Public Health Act 1990, the Local Government (Miscellaneous Provisions) Act 1984, the Building Control Act 1991 and the Food Act 1996.

With regard to the Public Health Act 1990, the principal effects of these amendments will be to enable the conditions of a waste disposal licence to be in force in relation to a waste disposal site after the licence has been terminated; enable the department to make charges in respect of waste disposal licences; enable the department to ensure that a waste disposal site is safe before accepting the surrender of a licence; enable the department to make charges for the disposal of all waste delivered to it. It will impose a duty of care on persons handling or in possession of controlled waste to ensure that it is handled and disposed of properly. It will require local authorities to arrange for the collection of household and commercial waste within their district and enable local authorities to recycle waste.

The Building Control Act 1991 is amended to strengthen the powers of local authorities to deal with dilapidated or neglected buildings in the interests of amenity.

The amendment to the Local Government (Miscellaneous Provisions) Act 1984 simplifies and extends the power of a local authority to serve a notice requiring open land to be tidied up.

The objective of amending part 2 of schedule 2 to the Food Act 1996 is to give the Department of Transport statutory powers to operate the knackery at East Baldwin. Until the statutory power rests with the Department of Transport it cannot be legally transferred to the Department of Local Government and the Environment.

The final amendment deals with terminology: we now have a director of public health and not a community physician; environmental health inspectors are now known as environmental health officers. Mr President, I beg to move the second reading.

Mr Delaney: I beg to second, Mr President, and particularly would draw members' attention to the maintenance of open land, a subject which touches us all and all the people we represent and the people that we know who have complained so many times about areas of abandoned vehicles and debris and things which offend through the eye the rest of the general public. I think that is a very important matter, as all disposal of waste is or any public health, but that one particularly will go a long way to satisfying the public when this Bill finally completes, and I hope it gets full support.

Mr Lowey: Mr President, two counts. The main provider of waste disposal things is the department itself and the mover of the Bill, I think, used the phrase 'duty of care' on the providers of waste disposal. How can he square the fact that the environmental health officers within the department that actually regulate the tips are themselves using and operating? How can in fact the people who enforce it also be the ones that provide it? And is there not a clash of loyalties there that leaves the division blurred and it should be much more clearer? And can he assure me that this Bill - because he touched on it very lightly - gives the department the right to impose charges for the disposal of waste, and is this the vehicle that will be used to charge people for the incinerator and the way in which they are going to be paid? In other words, is this the mechanism and, if it is, then it should be clearly spelt out that it is, and that this Bill will be used to charge the people when the incinerator comes in for the payment of disposal of their refuse.

Mr Kniveton: Mr President, this Bill can be read to cover a number of objects, but in essence I believe it is the tool that is the introduction of a new tax or rate based on the 'polluter pays' theory - that is for rubbish, of course. I cannot say that I oppose that principle but I am a little disappointed that the department finds it necessary to appear to hide this principle under

the heading of this Bill. I would have liked it to be done more openly. So, as with the Sewage Bill, which I took through this Council, I think we have to remember that the most operative word is 'may' - 'may' as far as charges, 'may' make a charge, but only with the approval of Tynwald.

I can accept all the basis of licensing for tips regarding opening and closing and, most importantly, when closing at the end of the life of a tip. I am pleased that it would appear part of the object of this Bill is to ensure that the DoT, of which I am a member, will have powers to operate a knackery at East Baldwin. I did not realise that we did not have those powers because we are doing it, of course, at the moment! But I understand that until the statutory power rests with the DoT, then it cannot legally be transferred to DoLGE. They can have it any time, because we do have a lot of problems with it and I am sure we will be glad to see it pass over to them some time.

Otherwise, as I stated at the first reading, I particularly welcome the second part of the Bill, the part referred to by the hon. Mr Lowey regarding ruined, dilapidated or neglected buildings, procedures for restoration or demolition. Hon. members may recall that I gave as an example Port Erin open-air swimming pool. It is still there in a terrible mess and I look forward to, one day, the likes of that being caught into this Bill. Obviously I do support the Bill. Thank you, Mr President.

Mr Waft: Mr President, I have a few concerns over this Bill mainly with regard to the financial implications to local authorities and the fact that there is nothing at all in the Bill to get any indication as to what part of the disposal costs will be passed over by way of charges to local authorities. It is rather vague in that area. So we are talking about an open cheque book, really, for local authorities to wait and see what the charges are going to be and what part of those charges are going to be passed over by the department. I think it was last year that assurances were given that only part of the disposal costs would be passed over, but there is no indication what those costs will be and the concerns are that the assurances that were given to phase those charges in over a three or four-year period do not appear to be in this Bill anywhere, and the budgetary provisions that will be necessary by local authorities to provide for financing any unknown costs for the future seem very onerous on behalf of the local authorities concerned.

So I would like assurances that the disposal costs will be passed over in part only, but I would like an indication as to what that part would be and the length of time necessary for those local authorities to implement those costs to the ratepayers concerned.

Mr Radcliffe: Mr President, I do not have a great deal to say. The question of costs and the passing on of them to the people who the refuse is collected from, I think, is going to be a fairly important one because we are talking about an incinerator at a cost of £40-odd million and the intention has always been, as I understand it, to pass part or quite a lot of that cost on to the people whose refuse is going into the place.

I would ask the mover to see if there is any assurance whatsoever that users will not be asked to pay total costs, because the costs of running this thing eventually is going to be tremendous, and if the householder has to stand all of that on top of the other rates which he currently pays, particularly in the town areas, it is going to be a hefty burden.

In relation to clause 4 (4), where it talks about segregation maybe being required, does the mover see the day coming when it will be required that waste will be segregated into two if not three separate portions - the glass, for example, for which, of the people we know, some use the bottle banks but there are an awful lot who do not, and there is the likes of garden trimmings and so on which again people try and ram into the dustbin, not always successfully because you see them trailing out all over the place as you drive along roads here and there, and I wonder if the mover could say whether the department has any plans in the immediate future for requiring total sorting of household waste before it is collected.

Mrs Christian: Mr President, just to say a lot of this is enabling, and ultimately, in terms of policy for charging, it will be a matter for Tynwald to decide, I would suggest. If they are not happy with it, then Tynwald has the power, through representation of members, to alter the structure.

With regard to the question of segregation of waste there will be nothing that will drive that more than the cost. I am quite sure that if people had to pay if they do not separate it, then that is an incentive to deal with separation. Separation of household waste is practised in many other places and it is not that onerous and burdensome, and if it is determined that at some point the enabling power should be used, then I feel quite sure it will be driven by cost as much as anything as far as the consumer and the producer of waste are concerned.

The President: Reply, hon. member?

Mr Crowe: Thank you, Mr President. Firstly let me thank the hon. Mr Delaney for seconding the motion and his comments on abandoned vehicles on open spaces.

Coming to the hon. Mr Lowey, the question of being the regulator as well as the person who organises the waste disposal and collection, in the negotiations that are currently taking place a waste management board is being set up which will be independent of the Local Government Board and which will do the regulation to make sure that when the incinerator is set up there is a separate regulator to administer the terms to enforce all the regulations that need to be enforced, so that will devolve from the Department of Local Government. He is quite right in saying that this gives the department the right to charge for waste collection and it also gives local authorities the powers to charge. This is the mechanism to charge for waste disposal but, as the hon. Mrs Christian says, all of the charging has not yet been determined; this is an enabling Bill, and the charges will be determined by Tynwald after due consultation with the local authorities.

Coming onto the hon. Mr Kniveton, he again mentioned this is the 'user pays' principle and he is quite right in that and, as I have mentioned, the charges will have to be borne but there is no determination as to the level on which local authorities will bear or the consumer will bear - that all has to be determined in the future.

The hon. Mr Waft also brings this question up about the financial implications for local authorities, and of course they do need adequate time to phase the changes in and to make budgetary provisions.

The hon. Mr Radcliffe again talks about the costs, and it is an important thing. As to his comment on clause 4(4) the segregation of waste, again it is to give clear powers for segregation of waste and it can be composting waste or glass or paper, so again there is a

recycling forum established with the local authorities and the department and they are looking at all of this because, again, as the hon. Mrs Christian recognises, and we all recognise, cost will drive the impetus for separation of waste. If people are faced with whether to recycle or compost or pay for waste collection and disposal they will be driven, I believe, by moves to recycle and reuse the waste.

I think that covers all the points so I beg to move the second reading.

The President: Thank you, hon. member. Hon. members, the resolution is that the Public Health (Amendment) Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses, sir. Clause 1.

Mr Crowe: Mr President, clause 1 widens the powers of the Department of Local Government and the Environment when licensing waste disposal activities - for example, tipping or incineration - principally enabling conditions to be attached to a disposal licence so as to require works to be carried out to the site after the licensed activities have ceased as well as before they begin or while they are continuing. It also enables the department to serve a notice on the owner or occupier of a site where licensed activities have ceased, requiring him to take action to comply with conditions of that kind. Mr President, I beg to move clause 1.

Mr Delaney: I beg to second, Mr President.

Mr Lowey: Mr President, again the mover of the Bill - and why I voted against the Bill - mentioned the incinerator and it will be devolved; that I understood. But that still leaves the fact that the department is responsible for landfill tips, which it in the main operates and will continue to operate after the incinerator comes in, because there will be some inert waste which will need to be disposed of. Now, landfill tax was introduced in the UK four years ago, and I can recall at the time saying we should be introducing something similar into the Isle of Man and building up a fund of money so that when the cost of incineration and the way in which we are going to deal with waste which happened should happen, and the department has chosen not to do it. I have just got a feeling even now we are anaesthetising the general public out there and they are going to wake up one day and find they are going to be getting £5 a week plus on top of the rates, because the mover of the Bill, Mr President, has already said that these are enabling powers. The reality is that local authorities have those powers now. They charge you for refuse within their rates, so there is nothing new from that. There is a new charge for a power to the department to charge who will then pass that on to the local authority, who will inevitably pass it on to their customers, so I do not think we are doing this. . . what did they say? Something about by stealth - government by stealth? I feel we are doing this softly softly not to frighten the natives, and they are going to wake up one day when it lands on their laps and then they are going to say, 'This is the Bill which you've approved without any sort of debate at all'. Now, if that is the case I come back to this particular clause: the department is still the enforcing the agency over itself, notwithstanding the incineration, and that cannot be right.

The President: Care to reply, sir?

Mr Crowe: Mr President, I thank Mr Lowey for those points. As well as the department operating tips, there are private tips as well, and this is to make sure that when licensing private operators they do make sure that they adhere to disposal licences and that they are strictly controlled, so there is that fact as part of this clause as well. I have taken this point

about being the regulator and being the operator, and I know we are talking about this waste management board which will look at all waste for incineration, landfill and the whole lot - it will all be separated, it will all be devolved, so the waste management board will look after all that.

I think I would disagree with the hon. member when he is talking about government by stealth. I think we are completely open as to what is happening. It is getting a wide debate and I think this whole subject is in the public arena and it is of vital importance to everybody because we all create waste, we all have a responsibility to see that waste is disposed of properly and that it is properly charged for as well.

As to the charging which will go to the end user, again this still has to be agreed and debated, and I think there will be full consultation with everybody with all the local authorities concerned. Mr President, I move that clause 1 stand part of the Bill.

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

Mr Crowe: Mr President, clause 2 gives the department a new power to make charges for applications for a disposal licence, for certain other applications, variations et cetera in connection with the disposal licence and for the exercise of certain functions of the department in connection with waste disposal - for example, monitoring and inspection. It also enables the department to suspend a licence where charges are unpaid.

Sub-clause (1) inserts a new section 62A in the Public Health Act 1990. Sub-clause (2)(a) gives the department power to suspend a disposal licence for unpaid charges and requires it to lift the suspension when the charges are paid.

Sub-clause (2)(b) is a consequential amendment. Mr President, I beg to move clause 2.

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

Mr Lowey: Could I ask the hon. mover why the department thought it was necessary to take these new powers? What was wrong with the existing powers?

Mr Crowe: Mr President, yes, at present there are no charges for applications for disposal licences, so this is a new power to give the department power to make charges. There are certain things where there is a cost of doing this, and it is only right and fair that charges should be made for applications.

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

Mr Crowe: Clause 3 restricts the power of the holder of a disposal licence to surrender it by requiring the department's consent, which is not to be given unless the site will be safe. The licence-holder and any present or past owner or occupier of the site is required to give the department any necessary information to enable it to decide whether or not to consent.

Sub-clause (1) replaces the Public Health Act 1990, section 62(3), which gives the holder of a disposal licence an unrestricted power to surrender the licence with new provisions regarding the department's consent.

Sub-clause (2) specifies the penalty for an offence under Section 62(6). Mr President, I beg to move clause 3.

Mr Delaney: I beg to second.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr Crowe: Clause 4 and part 1 of the schedule make new provision for the collection of waste by local authorities and the department. It gives the local authority power to make charges for collecting household waste. It also makes new provision for limiting local authorities' duty to collect - for example, in remote areas - and it gives them power to provide transfer stations. It gives the department power to collect household or commercial waste of prescribed descriptions as well as industrial waste.

Sub-clause (1) substitutes a new section 65 in the Public Health Act 1990. Section 65 (1) requires all local authorities to collect household and commercial waste from all premises in its district unless the premises are so remote that the cost would be unreasonable, or the occupier can be expected to dispose of it himself, or the department would have to collect it under sub-clause (3) of this clause. Section 65(2) provides that the department is to decide any dispute over collection between the authority and the occupier. Section 65(3) gives the department power to arrange for the collection of any household or commercial waste of a prescribed kind and prescribed by regulations made by the department subject to Tynwald approval. Section 65(4) enables the local authority or the department to require an occupier to store recyclable waste in a particular way. Section 65(5) imposes a duty on the local authority or the department to charge for the collection of commercial waste and gives it a power to charge for the collection of household waste. At present there is only a power to charge for collecting commercial waste. Section 65(6) entitles the local authority or the department to take legal action to recover any charge from the person who requests it to take the waste away or else from the occupier of the premises. Section 65(7) gives the department power to collect industrial waste from premises at the occupiers request on payment of agreed charges. Local authorities are given a similar power but only with the department's consent. Section 65(8) enables the department or a local authority to contribute to the cost of storing or processing waste before it is collected. Section 65(9) provides that waste, once collected, belongs to the collecting authority until it is delivered for disposal when it belongs to the department.

Sub-clause (2) restates the existing power of a local authority to provide amenity sites for the deposit of household waste with a difference that all persons may be charged for deposit, not just persons resident outside the authority's district.

Sub-clause (3) introduces part 1 of the schedule to the Bill which makes minor amendments, including extending the local authority's power to require waste to be put in bins for commercial as well as household waste and removes the requirement that special bins for recyclable waste must be provided by the local authority free of charge.

Paragraph 2 gives local authorities power to provide transfer stations at which waste collected can be kept temporarily pending its delivery to the department for disposal, and gives

the department, with Treasury concurrence, power to contribute to the cost. Mr President, I beg to move clause 4 and part 1 of the schedule.

Mr Delaney: I beg to second, Mr President. May I ask - it is a small thing but I know other members may have had some experience and this is the appropriate clause to raise it: there is one discrepancy that I see in relation to local authorities having the power to collect waste and private operators collecting waste. Where the private operator - and the Attorney-General may be able to clear this - collects the waste, there is no obligation on them to inform the local authority if requested on which premises they collect waste from privately. Consequently, certainly in the built-up areas like Strand Street, other people are putting the waste into other people's bins and this is a common occurrence, and I thought this may have been picked up in another place, but if there is no obligation on an independent collector to inform or to have to make known where he is collecting from, this problem will continue. Maybe the mover would know, but I ask the Attorney-General, are there any plans to bring that into operation so that we all know whose bin, whose waste is going in so that somebody is not paying for somebody else's disposal, particularly with the points raised by my hon. colleague, Mr Lowey, because that will lead to that?

Mrs Christian: Mr President, I wonder if the mover could just clarify a point. There is a provision in here that where a property is so remote it would be unreasonably costly to collect the waste; will those properties be subject to the same rates as other properties and, presuming that such an occupier would be left to dispose of the waste as they see fit, are there going to be any restrictions on how they do that? Many old properties and farms have their own compost provision or dump the tins or bottle or glass - I just wonder whether there are now going to be controls over how they dispose of that waste if it is not collected by the local authority.

Mr Lowey: Really, the hon. member Mrs Christian repeated too: does the rate charged for a service not . . .? It is a bit like the water rate: they will give you it for so long. Well, you have to pay whether you get the service or not, and as the local authority is the one that is going to decide whether it is remote or not. . . And the self-disposal - that really does bring it in because a lot of remote properties did have their midden and little tip, but that, of course, has all been stopped for watercourses and all the rest of it. Are you going to regulate them out of existence whilst pretending to them that they have the way and the wherewithal to do it if it is within reason? I think they are two valid points under this particular clause.

Mr Radcliffe: I return again to the question of the powers to charge for collection and I note that they are entitled to charge for local residents to use amenity sites, or could be, and the hon. mover said earlier on, unless I misheard him, that charges would be subject to Tynwald approval, but I cannot find anywhere in the Bill that Tynwald will have any say in what charges may or may not be, and I have my doubts as to whether that is really the case or not. I think the authority can just put the charge on and that is it - flat and final.

I will not belabour the point about the isolated properties; I do know from experience that there are some properties a refuse vehicle would never go anywhere near. I know of one steading which is over a mile from the main road and no way will a refuse wagon go to collect down there, and these people have always and will continue to have to look after the disposal of waste for themselves. The main point is this Tynwald approval.

Mr Waft: Just a quick one, Mr President. With regard to the regular burning of rubbish on particular sites, when a complaint is made to the department they are told that the individual has to keep a diary of such events and report it. That does not seem to be the best way of going about resolving the problem, asking someone to keep a diary and prove that there is a detrimental effect on the individual in that area. I just wondered whether there was any thought of the introduction, later on, of clean air regulations on the Island. Thank you, sir.

The President: Reply, hon. member.

Mr Crowe: Thank you, Mr President. I thank the hon. Mr Delaney for seconding and for his point about this question of shopkeepers finding their bins in Strand Street or wherever being filled by other people. That is something that I am not aware is in this Bill.

A Member: It is not.

Mr Crowe: It would be very hard, I would think, to regulate. I am sure it is something called - is it fly-tipping they call it? Maybe the Attorney-General might cast some light on this.

Mr Delaney: I think he is caught out!

The Attorney-General: I am afraid, Mr President, my experience is not great in so far as fly-tipping is concerned.

Mr Delaney: Fly-fishing! *(Laughter)*

The Attorney-General: I am far more comfortable with fly-fishing, but in any event I should have thought, Mr President, that if a private contractor were to be licensed pursuant to a disposal licence it would be a condition that might be imposed by the department -

Mr Delaney: Thank you, Mr President. That is what I want.

The Attorney-General: - and that condition could be enforceable if it suited the department. That is the only thing I can suggest, Mr President.

Mr Delaney: Department regulations. Thank you.

The President: Any further comments?

Mr Crowe: Yes, thank you. The hon. Mrs Christian talked about remote properties, and of course this is a new power that has been put in the Act but, as far as I am aware, this is something that would have to be unreasonably withheld, shall we say. At present all local authorities are collecting from remote households, but I think they are putting in a provision that if somebody lives far away from the normal bin collection rounds the local authorities would have to have power to make the householder responsible for disposing of it by himself or else the department would have to collect it and make a reasonable charge. If the owner had to dispose of it it would probably go to an amenity site or something of that nature. As to whether there would be a rateable adjustment, again that is something that the householder would have to argue with the local authority.

As to the hon. Mr Radcliffe on Tynwald approval for charges, this comes under. . .

The Attorney-General: If I may?

The President: All right, hon. member?

Mr Crowe: Yes.

The Attorney-General: If I may assist the hon. member, Mr President, I think the power to ensure that Tynwald approval is given is actually contained within the principal Act, the Public Health Act 1990, section 94 of that Act, which provides that the department may by regulations prescribe any matter under the Act and the regulations under section 94(3) of the principal Act shall not have effect unless they are approved by Tynwald, and that section, Mr President, is preserved by this amending Bill.

Mr Crowe: Thank you. Just following up the hon. Mr Waft's point about clean air regulations, it is not something that I currently am aware of or that the department are aware of.

I beg to move that clause 4 stand part of the Bill.

The President: Hon. members, I will put the resolution that clause 4 along with part 1 of the schedule do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe, Mrs Christian, Mr Delaney and Mr Crowe - 7

Against: Mr Lowey - 1

The President: The voting, hon. members: 7 votes have been cast in favour of the resolution, 1 vote against. The resolution carries. There is just a point here, hon. members, in relation to schedule presentation. We have a schedule which relates to section 4 and section 9, and I would have thought, in drafting it would be quite simple to keep those two apart and relate them to the appropriate sections instead of embodying them in the one schedule.

The Attorney-General: Yes, thank you, Mr President. I will pass that comment on.

The President: Proceed onto clause 5, sir.

Mr Crowe: Clause 5 imposes a legal duty on anyone producing or handling controlled waste to prevent its unlicensed disposal, any breach of regulations relating to special waste or the import or export of waste or the escape of the waste, and provides for the issue of a code of practice. Sub-clause (1) inserts a new section 71B in the Public Health Act of 1990. Section 71B(1) imposes a duty on anyone producing, handling or disposing of controlled waste to take all reasonable steps to prevent its unlicensed disposal or any breach of regulations relating to special waste or the import or export of waste or the escape of the waste. Section 71B(2) exempts the occupier of a dwelling from this duty in the case of household waste produced by the dwelling. Section 71B(3) enables the department to make regulations requiring anyone subject to the duty imposed by (1) above to keep records and provide copies of them. The regulations will require Tynwald approval. Section 71B(4) makes breach of the duty under (1) above or of regulations under (3) above an offence, and the penalty is determined in clause (2) below. Section 71B(5) enables the department to issue a code of practice giving guidance and complying with a duty. Section 71B(6) requires such a code to be laid before Tynwald and enables it to be produced in a court which, in considering any matter relating to the duty of care, has to take the code into account.

Sub-clause (2) specifies the penalty for an offence under section 71B(4) regarding failure to comply with a duty of care or failure to comply with requirements as to documents in relation to controlled waste. Mr President, I beg to move clause 5.

Mr Delaney: I beg to second, Mr President.

Mr Lowey: It is only one for clarification, really - I think I know the answer but I think just to get it on the record: when it says on information 'a fine', does it mean it is unlimited or does that mean there is a limit but we do not know what it is? It says there in (2), in schedule 4, £5,000 or £1,000 and then 'On information A fine'. I presume that is unlimited. I have not seen the phrase used before and I am sure it has been, so I just want clarification on that one because it should be unlimited.

Mr Crowe: Mr President, with regard to the hon. Mr Lowey's point I would guess, or I would assume, that a court of law would determine what a fine would be as it is not cited, so it would be determined by the courts.

The Attorney-General: If I may, Mr President, just to confirm that I entirely agree with the hon. member Mr Lowey's interpretation of that. When we see the words 'a fine' it means that there is no limit to the fine.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Crowe: Clause 6 enables the department to charge local authorities for disposing of any waste, including household waste, delivered to the department under the Public Health Act, section 67.

Sub-clause (1) removes the requirements of the Public Health Act, section 67(4), that where the department permits another person to use any waste disposal site or plant it may not make a charge in respect of household waste, and (b) requires a local authority to pay the department reasonable charges for the disposal of all types of waste it delivers to the department. At present this is limited to commercial and industrial waste.

Sub-clause (2) is a consequential amendment. I beg to move clause 6, Mr President.

Mr Delaney: I beg to second.

Dr Mann: Mr President, I refer to previous members who have raised the question of whether these charges would be subject to Tynwald approval, and I take note of the amended Attorney's view on that matter, but we do not know how, for instance, the incinerator is going to be finally financed, and one control that we could introduce into this Bill to limit the extent of the charges to local authorities could well be that such charges should only be related to the running costs of the plant and not to its capital cost. Now, if one could introduce that, it would at least have a limiting power before we start, because this charge could well get quite out of control. I had a mind to amend this but, because of the complexity of the issue, I think if I may have permission to introduce it at third reading to see if we could actually place on record that these charges should be related to the running costs of any plant involved, because any default or disagreement will be determined by arbitration. Now, if in advance arbitration has to be based on the running costs and not the capital costs -

The President: As to your intentions, sir, I can assure you it would be in order to so move.

Dr Mann: Thank you.

Mr Lowey: That brings me into the one of arbitration. The mover has stressed that it will be Tynwald that will decide the costs, but here we are inserting the authority under this clause and any question under this sub-clause as to what charges are reasonable. So if there is a dispute they will go to be determined by an arbitrator, but I thought Tynwald was going to be the arbitrator. Now we are having an independent arbitrator getting involved in the settling of the charges. Now, that is contrary to what the mover of the Bill said, that Tynwald was the arbiter and was the decider of the charges. Now, you cannot have it both ways, I would suspect. Either Tynwald does become the final arbiter or an independent arbiter has been set up and his decision will be final.

Mrs Christian: Mr President, it might be helpful if the mover can. . . I think there are two issues here. There is the wording of the actual clause as it sits in this piece of legislation. There is also the wider principle that Tynwald can determine overall charging philosophy, and that could underpin what happens as a result of this clause. I accept that the hon. member Dr Mann would seek to have that more precisely embodied in this piece of legislation, which is something that will be considered next week. I presume that that would need Treasury authority because it is a financial change to the Bill but it is certainly one to be debated. But I wonder if the hon. mover could indicate what the provision in the regulations is in relation to the underlying philosophy with regard to charging or whether that would be determined by a vote in Tynwald or expression of opinion of Tynwald to determine the philosophy of the charges in relation to this.

The President: Reply, hon. member.

Mr Crowe: Mr President, the hon. Dr Mann has raised this question about charges and the question of who will pay for the costs of the capital and the running costs. It is apparent that in all capital schemes the cost generally is charged to the end user, so it would be, to my mind, that if you separate the running cost from the capital cost obviously central government are going to have to bear the whole burden of the capital cost. Now, maybe that is what people may want. If there is not power left to charge the whole of the capital and running costs to the user at the end of the day, then that power obviously would be restricted if in Dr Mann's amendment it was agreed that it would be limited solely to the operating costs rather than the capital costs which would, as I said, be borne by central government. Now, as to whether it is a financial motion and would have an impact on the Treasury, that is something probably the hon. Mr Radcliffe would like to comment on.

Mr Radcliffe: Mr President, I would make little comment because this is one which has not been considered, obviously, by Treasury or its officers anyway. I would say that if the amendment is successful at the next stage of the Bill there will be certainly time for Treasury and its officers to consider it before it appears before the other place again, and any comments that may require to be made can be made at that time, I would suggest, Mr President.

Mr Lowey: Could I ask the hon. mover just to address the point that I made about Tynwald being the arbiter and arbitration? I would appreciate that, sir.

Mr Crowe: Yes, Mr Lowey, I was going to pick that point up again. The hon. Mrs Christian did as well, regarding arbitration and Tynwald, as to where the powers lay and how one sat with the other. It is something I will take away with me and I will just come back next week when we do the third reading and clarify so that there is no doubt. I beg to move clause 6.

The President: May I put the resolution, then, hon. members, that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Crowe: Clause 7 enables local authorities as well as the department to recycle waste and gives the department power to provide financial assistance for the purpose.

Sub-clause (1) inserts new provisions in the Public Health Act, section 73, which gives the department power to recycle waste. Section 73(2) gives local authorities similar powers to the department to recycle waste which they collect. Section 73(3) enables the department to provide local authorities with financial assistance for that purpose.

Sub-clause (2) makes it clear that a local authority's duty to deliver to the department waste that it has collected under the Public Health Act, section 65 does not apply to waste which is recycled under section 73(2). Mr President, I beg to move clause 7.

Mr Delaney: I beg to second.

Mr Waft: I would just like to say, Mr President, I am particularly impressed with subsection (3), 'The department, after consultation with the Treasury, may give financial assistance towards expenditure incurred by a local authority in the provision of plant or equipment to be used for any purpose mentioned in subsection (2).' As the mover will probably know, the Onchan Commissioners did start separating waste some years ago and the department, through the local authority, did issue separate bins at that time and the subsequent collection of garden waste eventually ended up in the tip. Unfortunately it did not really come to anything. If the department was able to finance some expenditure to have some commercial end product of waste I am sure local authorities would appreciate that and would go a long way towards recycling and reusing waste as is the policy of the department, so I am very happy to see that put in this Bill, Mr President.

The President: Reply, sir?

Mr Crowe: Thank you, Mr President. I thank Mr Waft for his point about the separation of waste and I was aware of this trial scheme that Onchan Commissioners did do a few years ago. I think, as we get closer to the incinerator and the costs it will entail, it will focus people's minds and local authorities on recycling and reuse, and I think it is something that, as we said earlier, will get greater impetus, and there is this recycling body which the department and local authorities have. It is a body that meets regularly. So I can only hope that these sorts of recycling initiatives take off. Thank you, Mr President.

The President: I will put the resolution, hon. members, that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Crowe: Clause 8 makes a minor amendment to section 71A of the Public Health Act of 1990, which enables the department to make regulations controlling the import and export

of waste. Section 71A was inserted by the Public Health (Amendment) Act of 1995 and is required to enable the UK's ratification of the Basle convention to be extended to the Isle of Man, which is essential if waste which cannot be disposed of on the Island is to be shipped to the UK for disposal. Under section 71A regulations can apply only to waste of categories to be prescribed by the regulations. The amendments enable them to be made to apply either to all kinds of waste or to prescribed categories only. Mr President, I beg to move clause 8.

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

Mr Lowey: I cannot resist the temptation - in (a), if you read it, it says 'In subsection (1), for the words from "waste" onwards substitute "waste";'. It does seem to me that that is a waste! However I have not got the 1990 Act. I am sure there are words that need to be omitted from 'waste' and so I will take that as read, but it does seem at first reading it does take a bit of swallowing.

The President: Respond, sir?

Mr Crowe: No, I think that. . .

Mr Delaney: It would be a waste of time! (*Laughter*)

The President: I will put the resolution, hon. members, that clause 8 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9 and part 2 of the schedule.

Mr Crowe: Clause 9 and part 2 of the schedule make a number of amendments to the Building Control Act 1991 principally to strengthen the powers of local authorities to deal with dilapidated or neglected buildings in the interests of amenity. It also increases the maximum fine for failing to comply with certain notices served by local authorities.

Sub-clause (1) substitutes a new section 24 in the Building Control Act of 1991. Section 24(1) enables a local authority to serve a notice requiring a building to be repaired or restored if it is detrimental to the amenities of the area. The following changes are made: firstly, the powers apply where the building is neglected or unfinished as well as one which is ruinous or dilapidated; and secondly, the notice can be served on the occupier, not just the owner, but the occupier is not given the option of demolishing the building. Section 24(2) enables a local authority to serve a notice requiring a demolition site to be cleared up. The only change is that the notice can be served on the occupier, not just the owner. Section 24(3) modifies the Local Government Act of 1985, section 58, which contains standard provisions relating to notices served by local authorities so as to require a notice served on the owner to specify both the works of repair and the alternative works of demolition and to give the local authority default powers to demolish as an alternative to carrying out the works of repair. Section 24(4) provides that where a notice is served on a person as owner and he has ceased to be the owner, he has to notify the local authority within 21 days and tell it the name and address of the new owner or else he is conclusively presumed to be the owner.

Sub-clause (2) introduces part 2 of the schedule which makes minor amendments to the Building Control Act of 1991. Paragraph 3 requires estimates of the waste likely to be produced by any demolition and the proposed method of disposing of it as well as particulars of the building and the demolition works to be included in a notice of intended demolition to be given to the department under section 26. Paragraph 4 deals with directions by the

department following notification of an intended demolition. The Local Government Act of 1985, section 58, is applied so that there is a right of appeal against a direction. Non-compliance is an offence and the department is given power to carry out the works in default. Paragraph 5 validates the fees which have been prescribed for depositing plans under the Building Regulations 1993.

Sub-clause (3) increases the maximum fine for failure to comply with a statutory notice served by a local authority from £1,000 to £2,500. Mr President, I beg to move clause 9 and part 2 of the schedule.

Mr Delaney: Mr President, I would like to second this but I must raise this point too. We all know from bitter experience that in the original Act, in relation to the local authorities having power to go in after if they were not complied with to do something themselves, their problem was that they could not get reimbursed for the works that they carried out with all the powers in the land, and I am concerned that this really does not go any further and I am sorry, although I support the Bill, to see that there are not powers for the local authority, when they get messed about as they are continually, and that is why they do not enforce this, to actually have the land, if the Bill is not repaid, virtually sold at auction or something else so they can get their money back for the work that has been carried out, because Douglas Corporation - there are many derelict buildings, and I am sure other local authorities have, but they are reluctant to do anything because of the difficulty of getting reimbursed if they do not have the work carried out by the owner and they have to carry it out and that is why it is not done. That is a simple fact of life. I wonder if the mover could let me know if they discussed this in this Bill.

Mrs Christian: Mr President, I can understand the reason for this particular clause in the Bill and recognise that in town it possibly seems more pressing than it does in the rural areas. How this will be interpreted in rural areas remains to be seen, but it does seem to me a bit of an irony that sometimes local authorities and planning procedures with intransigence of attitude prevent people from adapting rural properties to make them viable in today's world and they then fall into a state of neglect and dilapidation. So it will be interesting to see how this is implemented. If we become very tidy we might see the demise of the tholtan! I do not mean today's tholtans, but new tholtans may not be created because we demolish everything and tidy it all up, which in some senses would be a pity because they are a mark of the history of an area and so on. So whilst I can see an underlying requirement for this but more particularly in town areas, it will be tested, I think, in rural areas against the view of the local authority, where people do want to make buildings sound but, because of agricultural and other economics find that their former uses are no longer viable uses.

Mr Lowey: I would like the mover to tell me, how does this strengthen the existing legislation? If it is replacing and not strengthening it, it does seem to me to be a bit of a waste. I will give two examples, Mr President: first of all, the Bayqueen Hotel, which is lying there. We know the owner and it would appear to me all this new Bill does is that not only can you get at the owner but you can get at the tenant. Well, if the tenant is a caretaker that is imposed by the original owner, where further are you? And we still have that building affecting the community, and there is an example of what I would call urban regeneration that has blighted Port St Mary for a long time. The other place is in my own village, where they say in section 24 'ruinous buildings etc'. We have Rushen Abbey in our constituency and that is a bit of a ruin. Now, I would hope they are not going to knock . . . If the authority wanted that all tidied up,

would they be permitted under this Bill to . . .? I should imagine historical sites will take precedence.

I do take the point Mrs Christian makes: there are many places in the countryside which could actually stand, that have had lives, families, brought up in them and they are not allowed to because of some overall plan that somehow we are going to blight the countryside. If it was good enough for people to live there and eke out a living in the past I can see a regeneration of the countryside by allowing some of those to be - it is a horrible word to say - 'redeveloped,' but given a new lease of life. It all depends on the word that you want to use; it becomes emotive, but I do not believe that we play the best part by just saying 'knock it down' and prevent it for ever from taking place, and I just think that we ought to be a bit more sensitive to the needs of the countryside and I do not think this clause, while it is necessary in some instances, is the all-purpose answer to it, but to come back to the point I made at the very beginning, where does this clause strengthen existing legislation, or does it weaken it?

The President: Reply, sir?

Mr Crowe: Mr President, first of all I thank the hon. Mr Delaney for the point he made about local authorities being reluctant to take action against the owners of derelict buildings because of the inability to collect charges. I would again defer to the learned Attorney-General here, but to my mind it must be either a debt that they can attach to the property or a civil debt that they could claim through the courts.

The Attorney-General: Mr President, if I may, I think possibly this situation is likely to occur most frequently where the building in question is abutting on a highway or otherwise could pose a danger to people walking by or to users of vehicles and so on on the highway, and the point I think here is that not only may the owner of the property, which could well be a company controlled and managed outside of the Isle of Man, be served with the notice, but also the occupier, and the occupier could be a tenant, a corporate tenant again. The problem always, Mr President, is that the tenant could be an insolvent company or an individual who simply cannot pay the cost of renovating and so on. Now if the notices are served on the owner and no response is made, then the tenant is the next person in line. If the local authority determines that there is a real danger in the building itself, then it may carry out the work itself and it might be a risk that the local authority has to take on, because it may be that it feels 'Well, we have to remove the danger and hope to recover the cost later. If both the owner and the occupier are insolvent, I am afraid the local authority is going to be out of pocket, but it may be that it is not good enough for the local authority to say they cannot or will not do it, because if the building falls down the local authority itself may be in some danger.

Mr Waft: Just a matter of clarification, Mr President. With regard to the local authority issuing directives to the owner of the building for its demolition, we all know that to have a building built it has to go through the planning process and a lot of problems can ensue. The fact that you are going to demolish - it could be quite a substantial building - does that have to be referred back to the department from the local authority for that extra undertaking?

The President: The hon. learned Attorney, could you relate to it?

The Attorney-General: Yes, I think, Mr President, that if there is a situation like that, the ultimate power for the local authority is actually to demolish the building. That may be, at the end of the day, the cheapest way to solve the problem. Of course, we all know then that there

is a problem where you have unsightly gaps appear in a terrace or something like that. It is very difficult for me to give a general answer, I think; as ever, each situation has to be looked at on its merits, but the great thing about this Bill is, it is giving an added armoury to the local authority to deal with dilapidated buildings.

Mr Crowe: Mr President, yes, just picking up that point and answering the hon. Mr Lowey's point, as the learned Attorney-General said, it does give an added armoury to take action against the owner or the occupier, and again there is a new provision which makes sure that the owner, if he sells the property, has to tell the name and address of the new owner to the local authority. It is built in; there are extra provisions, so it does strengthen the powers of the local authorities. I know he has mentioned again also the question of historical sites, which again I am sure would be protected from any reaction by a local authority under the Ancient Monuments Act or whatever it is.

Turning to the hon. Mrs Christian about the question of tholtans in the countryside, again I take the point as to the question of trying to reuse buildings rather than demolish them, so with those comments I would conclude, Mr President.

The President: Hon. members, I will put the resolution that clause 9, along with part 2 of schedule 1, stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10.

Mr Crowe: Clause 10 simplifies and extends the power of a local authority to serve a notice requiring open land to be tidied up. The clause substitutes section 14 in the Local Government (Miscellaneous Provisions) Act of 1984. Section 14(1) enables a local authority to serve a notice on the owner or occupier of a garden or other open land to clear it up if it is detrimental to the amenities of the area. The main change is to exclude a building, wall or fence adjoining or near to any highway which can now be the subject of action under the Building Control Act of 1991, section 24, which was referred to in the previous clause 9. Also the detailed provisions as to appeals and non-compliance are omitted and these are now covered by the Local Government Act of 1985, section 58. Section 14(2) provides that where a notice is served on a person as owner and he has ceased to be the owner, he has to notify the local authority within 21 days and tell it the name and address of the new owner or else he is conclusively presumed to be the owner. This is a new provision. Section 14(3) enables a notice under section 14 to be combined with a notice under the Building Control Act, section 24, and for appeals against combined notices to be heard together, and this is also a new provision. Mr President, I beg to move clause 10.

Mr Delaney: I beg to second, Mr President, and while believing all the matters raised by Mr Lowey and other members in relation to charges are important, I believe this is the most important part of this Bill that everyone will see a benefit from, but there is one little rider on that: I am very conscious, particularly after watching a programme on the TV, 'Neighbours from Hell', about people who moved into a country village in Britain, the Vale of the White Horse, and then were complaining and suing their neighbours because noise made by their cockerels - The neighbour happened to be a farm - and the site of their drills and things that were from the farm that were adjacent to the property, and it did really amuse me at the time. I hope we do not ever see that in the Isle of Man because the countryside is one thing and the town is another, and people who move into the countryside should not be allowed this sort of ability to somewhat blackmail the farmers into doing something about it, something that is part

and parcel, as I see it, of the agricultural scene, and I hope that does not arise, but as we get more and more people into the Isle of Man who are not from rural societies I have a feeling we may get one or two cases in the future - not the short-term, but the long-term future.

The President: There is some wording here perhaps the hon. member could help me with: I am perplexed by the expression, 'vacant or other open land.' What is it?

Mr Crowe: Well, Mr President, 'vacant' is obviously without anybody on it at all, so -

Mr Delaney: Like a field.

Mr Crowe: Yes, I think an example is rather like what is happening up on Douglas Head at present where there is a problem with completely open land. It is not being used for any agricultural purposes, there is no tenant on it. Maybe, does that. . .

Mr Delaney: Help!

The Attorney-General: I think that section 14 is concerned with whether the amenities of the neighbourhood are going to be seriously injured, and I think that the hon. member Mr Delaney put his finger on it insofar as there are all sorts of different areas of land in the Island and different standards, different amenities in each district. We might have an entirely rural district where one could come new to the area and say, for example, that one objected to the good old farmyard smells and so on -

Mr Delaney: Noisy tractors.

The Attorney-General: Noisy tractors and so on. I cannot imagine that any local authority, and certainly not a court, would consider that that would be a nuisance or would destroy or injure the amenities of the neighbourhood. In other words, different standards, different rules apply, whether you are considering the countryside or the town. Something which is perfectly acceptable in the countryside might not be acceptable at all in the town and vice versa, so, Mr President, I think that the local authorities are the guardians of their own areas. They know what is reasonable and what is not reasonable and I would be optimistic that this section would be applied properly and with due regard to the particular amenities of each neighbourhood.

Mr Delaney: I wonder, Mr President, if you can see what I can see - a load of newcomers arriving in Ballaugh and closing down the agricultural industry!

Mr Crowe: I think that concludes clause 10, Mr President.

The President: Right, sir. I will put the resolution, hon. members, that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr Crowe: Clause 11 gives the Department of Transport, which is currently operating the knackery at East Baldwin, statutory power to do so in order that the function can be formally transferred to the proposed waste management board when that is set up.

Sub-clause (1) adds a new paragraph 9 to part 2 of schedule 2 to the Food Act 1996, giving the department an express power to operate a knacker's yard.

Sub-clause (2) substitutes the term 'Department of Transport' for 'Properties Department', and 'Properties Department' was a shorthand term used in the Food Act of 1996,

schedule 2, part 1, which relates to the provisional licensing of slaughterhouses. The term is now inappropriate as the 'properties' function of the department, formerly part of the Department of Highways, Ports and Properties, was transferred to the Department of Local Government and the Environment in 1994, so this is a tidying-up on the name. Mr President, I beg to move clause 11.

Mr Delaney: I beg to second and ask anybody else if they want a knacker's yard because it has been backwards and forwards to the LGB and anyone else who was not prepared to take it!

Mr Kniveton: As I said earlier, Mr President, I was not aware that the department did not have the full authority to operate as such. I presume this is now correcting the situation and we are just about ready to take it off the Department of Transport, which I am sure will be welcomed.

Mr Crowe: Yes, Mr President, it is to tidy up the name DHPP, which was the Department of Harbours, Ports and Properties. The properties bit owns the knacker's yard and it is really to rephrase it as the Department of Transport, sir. Thank you, Mr President.

Mrs Christian: Mr President, does this description apply to the current provision at Litt's? Is that described as a 'knacker's yard?' And presumably this does not alter the powers or the way in which it operates or what sort of animals it takes or...?

Mr Crowe: No, it just gives them express powers, Mr President, in answering that. It is a slaughterhouse for the disposing of animals otherwise than for human consumption; that is the definition of a knacker's yard, sir.

Mrs Christian: Any animals?

Mr Crowe: Yes, I am sure it is.

Mrs Christian: Goats from Laxey?

Mr Delaney: I can tell you some horrifying stories about Litt's!

Mr Crowe: Which we do not want to hear, Mr Delaney. Mr President! Can I move clause 11 before...?

The President: I will put the resolution, hon. members, that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, sir.

Mr Crowe: Clause 12 amends any legislation using the terms 'community physician' and 'environmental health inspector' to accord with modern usage.

Sub-clause (1) substitutes the words 'director of public health' for the words 'community physician' wherever they occur in legislation.

Sub-clause (2) substitutes the name 'environmental health officer' for the words 'environmental health inspector' wherever they occur in legislation. Mr President, I beg to move clause 12.

Mr Delaney: I beg to second.

The President: I will put the resolution, hon. members, that clause 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, clause 13, short title and commencement.

Mr Crowe: Mr President, clause 13 gives the Bill its short title and provides for its commencement.

Sub-clause (1) gives the Bill its short title.

Sub-clause (2) provides for the Bill to come into force on an appointed day or days. Mr President, I beg to move clause 13.

Mr Delaney: I beg to second.

Mr Waft: Could I just ask, Mr President, whether the department has any idea when they want to go ahead with this Bill on the appointed day order, and which year? Are there any ideas about that?

Mr Crowe: I have not got a proposed date for that, but I will make some inquiries and come back on the third reading.

The President: I will put the resolution, hon. members, that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Acquisition of Land (Amendment) Bill – Second Reading Approved – Clauses Considered

The President: We turn next, hon. members, to the Acquisition of Land (Amendment) Bill and I call upon the hon. Mr Radcliffe to take the second reading.

Mr Radcliffe: Thank you, Mr President. This Bill is intended to improve in fairness and to provide better flexibility on the rare occasions when the compulsory purchase of land is necessary. The Bill is based mainly on reforms made mainly in England and Wales in their legislation. The improvements will hopefully, sir, do away with one or two bones of contention, shall I say; it is intended to be much fairer not only to the landowner but also to those who have no interest in the land but are on the land - people who are living in houses on the land in question. The whole purpose of process of compulsory acquisition is designed to balance the public interest, which requires land to be made available at a fair price when it is needed for public purposes, for the private interests of landowners whose rights are not to be overridden except where necessary, and then only after due process and on payment of fair compensation.

As I said, sir, the exercise of compulsory power is totally unpopular and it is rarely used. The compensation payable under the code is fair to owners but is not over-generous and it has not taken properly into account the interests of persons other than owners, particularly, as I have said earlier on, persons displaced who have no interest in the land. Now, this Bill is intended to make the use of compulsory powers more palatable. They will never be totally palatable, we have got to try, but to make it more palatable by enhancing the rights of owners and now occupiers of land to compensation.

I beg to move, Mr President, that the Acquisition of Land (Amendment) Bill be read a second time.

Mr Waft: I beg to second, Mr President.

Mr Lowey: Mr President, I think in essence anything that will ease the situation I am in favour of, so the broad thrust of it I am in favour of. The only query I have is in clause 6, and clause 6 actually 'provides for compensation to be re-assessed where planning approval is granted for the development of land acquired compulsorily, which was not taken into account on the original valuation.' Is there a time limit on that? I can foresee people saying, 'When we gave the land' for whatever purpose or 'We had it taken off us' for a certain purpose and it has not taken place, and there has been an enhanced value after 20 years, the owners coming back and saying 'Thank you very much, that is now a vital piece of the jigsaw in another development; can I have my original valuation reassessed?' I would just like to know, is there a time limit on the revaluation? Otherwise you are in a position - we do not tax retrospectively - here of enhancing retrospectively, so the principle has been established. How long does that go on for? You can see the point I am making, how it can be 20 years down the road and it can then be said, 'Hang on, you got that for gardens and now we are building office blocks' or whatever the technology will be of the day, and that is much more valuable.' So there has to be a time limit, I would have assumed, on it, but I do not see anywhere where that is prescribed in the Bill.

The President: Reply, sir?

Mr Radcliffe: Thank you. I thank Mr Lowey for his qualified support, Mr President. Dealing with clause 6, the note I have in front of me says the clause 'provides for compensation to be re-assessed where planning approval is granted for the development of land acquired compulsorily, which was not taken into account in the original valuation.' Compensation is to be reassessed and the claimant or his estate pay the difference if within 10 years of the service of notice to treat planning approval is granted, so there is a time limit there.

Mr Lowey: Yes, there is.

Mr Radcliffe: It does not go for ever.

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

Mr Radcliffe: Thank you, Mr President. Clause 1 alters the rules relating to the assessment of compensation for compulsory purchase: (1) an extra payment of 10 per cent of the value of the land is to be made on account of the acquisition being compulsory, so there is a 10 per cent bonus there anyway; (2) the special value of the land to a particular purchaser may be taken into account; (3) compensation based on the cost of equivalent reinstatement may be withheld until reinstatement takes place; and betterment of the vendor's retained land, as well as injurious affection, may be taken into account.

Sub-clause (1) replaces section 5 of the 1984 Act, which sets out the rules for assessing compensation. Rule 1 is valuation on the basis of market value, and there is a 10 per cent bonus there because the land has been acquired compulsorily. The special suitability of land for a given purpose is not to be taken into account if its use or acquisition would require the exercise of statutory powers - for example, a reservoir or a highway - and at that stage its

value to an ordinary purchaser is the test; it is not what happens totally afterwards, it is the land as we look at it on the day of valuation, plus this 10 per cent. Any increase in the value of account of an illegal activity - for example, a use causing a nuisance to adjoining land - and we almost go back to the previous Bill we had in front of us such as derelict vehicles and things like that parked on land or overcrowding and so on - this is to be disregarded. Where land is used for a purpose for which there is no market - for example, a church - and the owners intend to build new premises elsewhere, the compensation is to be assessed not on the market value of the property but on the basis of equivalent reinstatement - that is, the cost of building a new church. So the site may not be worth a great deal but, in taking into account the cost of replacement in another place, the equivalent reinstatement cost is encompassed in this particular part of the Bill. I am trying to keep up with myself here, Mr President, because there are so many little parts in the whole thing.

In the new section 5(2) this provides that no account is to be taken of any work done or interest created simply for the purpose of increasing the compensation payable - for example, if the owner of a property was to carry out an expensive refurbishment after the acquiring authority has obtained authorisation to purchase compulsorily or if he grants a tenancy at a rent far above what the land would normally fetch so he does not get all that enhanced payment.

Section 5(3) provides that a householder can claim either the new 10 per cent addition under rule 1 or a home loss payment but not both, and this is a new provision.

Section 5(4) is a new provision enabling an authority to withhold payment of compensation assessed on the basis of equivalent reinstatement until it is actually required, and this prevents an owner taking the money and banking it indefinitely without taking proper steps to replace the building so some would say 'Well, I am going to be paid x thousands of pounds, but I am not going to hurry; 10 years time will do. I will just bank it and retain the interest' or whatever. This cannot happen under this new section 5(4).

Paragraph (b) is a new provision where the works to be carried out on the land will increase the value of the retained land - for example, in the case of a new road if access to it will enhance the value of the land. The compensation can be reduced by the amount of the betterment.

Sub-clause (3) is consequential. At present the whole of the works and not just the part of the land required from the claimant are to be taken into account and assessed in depreciation of his retained land. This will now apply to assessment of any betterment of his retained land as well. Mr President, I beg to move that clause 1 stand part of the Bill.

Mrs Christian: I beg to second.

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

Mr Radcliffe: Thank you. This clause introduces a system of home loss payments to compensate householders for the upheaval of moving house as a result of purchase by a public authority, whether compulsory or by agreement. The home loss payments are payable to tenants as well as to owners and they are based on reforms introduced in England and

Wales by the Land Compensation Act of 1973. Section 23A sets out the basic scheme of home loss payments.

Subsection (1) gives a residential occupying entitlement where the house or premises is compulsorily purchased and for the last 12 months before he leaves it has only been his main residence or he has been an owner occupier or tenant.

Subsection (2) provides that the acquiring authority may, but need not, make a discretionary payment to a residential occupier if the premises have been his only or main residence and he has been in owner-occupied for less than 12 months before he leaves.

Subsection (3) provides that an occupier is not to get a payment if he leaves before the authority is authorised to acquire the premises.

Subsection (4) provides that an occupier is to have the same rights where a public authority acquires his property by agreement as per it acquires it compulsorily. In this case the critical date for the purpose is the date of agreement to purchase.

Subsection (5) deals with the case where the property is owned by or let to trustees of a trust and occupied by a beneficiary under the trust. In that case the trustees' interests are treated as his.

Subsection (6) deals with a case where the property is owned by or let to a husband; his wife has rights of occupation of it as the matrimonial home and she is living there and he is not. In other words, if a husband has taken off and the wife is still left in occupation she is going to be the beneficiary, so the thing is treated then as a home loss payment or a discretionary payment, and that goes to the wife.

Section 23B specifies the amount of payment under section 23A and provides for claims and payments.

Subsection (1) provides for the amount of a home loss payment is £6,000.

Subsection (2) provides that as a discretionary payment of such amount the authority can give as it thinks appropriate but not exceeding £6,000. However, Treasury is enabled to vary the amount by order, subject to Tynwald approval.

Subsection (4) enables the Treasury to make regulations to supplement section 23 as to claim procedures and claims and special cases.

Subsection (5) requires Tynwald approval to orders and regulations. I beg to move that clause 2 stand part of the Bill.

Mr Kniveton: I beg to second.

Mr Crowe: Mr President, can I just draw the hon. mover's attention to the home loss payment which has been determined at £6,000? He also mentioned that this was based on, I think, UK legislation of 1973. Would he just confirm that that is not the figure in the UK 1973 legislation and presumably is based on resettlement of removal costs and legal costs and has been evaluated as an amount arrived at at £6,000 on the assumption, and perhaps you could let me know what the assumption was for that £6,000 amount?

Mrs Christian: Mr President, in terms of subsection 2(3), the question of giving up occupation and the timing of that, is it fair to assume that if a person had to give up the

occupation of the property - for example, under the Mental Health Act or under some other statutory provision, that the house was not fit for occupation or whatever, that would not in these terms be regarded as giving up the occupation of the property and that they would still be associated with that property?

The President: Reply, sir?

Mr Radcliffe: Thank you. If I can deal with the last speaker first, Mr President, in subsection (2) there is power for a discretionary payment and I would think it would be very hard to acquire a property who in special cases would fail to make that discretionary payment. The power is there to do it and I think it would certainly be exercised.

In reply to the hon. member Mr Crowe, the compensation home loss payment - at the moment, if I understand it, in England and Wales the payment is £1,500 whereas we are proposing in this Bill that the payment should be four times that, and of course it can be varied by Treasury and, subject to Tynwald approval, that can happen. So I think that we are ahead of what is allowed in other areas. I dare say we are talking about different situations, we must be, but the power is there again to vary any amount certainly under subsection (1), and I think that the assumption is we are four times as generous as they are in other areas of the United Kingdom. This compares very favourably and, in addition, the extra power is there for discretion. I beg to move.

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

Mr Radcliffe: Clause 3, Mr President, introduces a system of disturbance payments for tenants and others and provides that compensation is to be paid on a total extinguishment basis for a business tenant aged over 60. At present disturbance compensation is only payable to the owner after the interest in land as an addition to compensation for the land itself. So this is a totally new payment again.

Section 23C sets out the circumstances in which a person is entitled to a disturbance payment and provides for discretionary payments in certain cases. I would ask members to note that it applies wherever land is acquired by an authority with compulsory purchase powers, whether it is acquired compulsorily or by agreement.

Subsection (1) gives a right to a disturbance payment to any person who is displaced from property as a result of the acquisition of any interest in land by an authority which has compulsory purchase powers - for example, where a property fronting on a road is purchased for road-widening and, say, a weekly tenant is given notice to quit.

Subsection (2) excludes the right covered in subsection (4) where the claimant is not in lawful possession of the property - for example, if he is a trespasser or where he is or would be entitled to disturbance compensation as the owner of an interest acquired.

Subsection (3) further excludes the right where the claimant ceased to occupy the property before the authority is authorised to acquire the premises - for example, if he ceased to occupy the property before the authority authorising the purchase had come into being or the date of the agreement to purchase.

Subsection (4) enables the acquiring authority to make a discretionary disturbance payment where the right to a payment is excluded by subsections (2)(a) or (3) of this particular clause.

Subsection (5) provides that interest is payable on a disturbance payment from the date of displacement to the date of payment at the statutory rate of interest from entry on land to payment of compensation fixed under section 30.

Section 23D specifies the amount of a disturbance payment.

Subsection (1) provides that the amount is the cost of moving from the property plus, in the case of a business occupier, any consequential losses.

Subsection (2) provides that in calculating any consequential losses the availability of the property and alternative accommodation are to be taken into account.

Subsection (3) provides that disputes are to be settled by arbitration under section 3 in the same way as other disputes over compensation for compulsory purchase.

Subsection (4) provides that entitlement to a disturbance payment is subject to section 7A(3), which is covered in clause 5, if the property has been adapted to meet the needs of a disabled claimant. The payment is to include the cost of comparable adaptations to his new property, so a person could have a house well-equipped for themselves as a disabled person. If the property was acquired they would get compensation to reinstate all the aids again in whatever property they moved to.

Section 23E provides that where small business premises are acquired compulsorily and the claimant is over 60 years - I suppose I could be said to have an interest in this one! - his disturbance compensation is to be calculated on a total extinguishment basis - that is, for the total loss of his business, not on the basis that he must relocate if he possibly can.

Subsection (1) sets out the entitlement to compensation on this basis and the conditions are that the claimant is carrying on a business on the property, that it is acquired compulsorily and he has to quit as a result, he is over 60 when he quits, the compensation payable to him as owner of or occupier does not exceed a certain figure, he has not sold the good will of the business and he undertakes not to start up again elsewhere. In those cases he is to be paid disturbance compensation on a total extinguishment basis - that is, that he could not reasonably relocate the business.

Subsection (2) sets out the undertakings which the claimant must give, and they are similar to what a trader will give when he sells the good will of the business.

Subsection (3) provides the sanction for breach of the undertakings which will be required to be given in section 2.

Subsection (4) deals with the case of a partnership. All the partners must be over 60, so you could not have one in a partnership over 60 and all the rest a considerably lesser age and all claiming this payment; that could not happen. In the case of a private company, any shareholder with 50 per cent or more of the shares must be over 60 and any other shareholder must be either over 60 or the husband or wife of a shareholder who is over 60. The company and the shareholders must give the undertakings required in subsection (2).

Subsection (6) provides that the same entitlement applies in the case of a disturbance payment under section 23 above.

Subsection (7) specifies the prescribed amount for the purpose of (1). It will be fixed by order of the Treasury subject to Tynwald approval, and this differs from what is pertaining in England and Wales where entitlement depends on the property having an annual value not exceeding a prescribed amount, which could be £18,000. So we are different again and, I would suggest to hon. members, much more generous than they are in other parts. I beg to move that clause 3 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mrs Christian: Mr President, in the reference to persons over 60 the implication is that people over 60 may prefer to say 'This is the end of the line and I'll take the higher compensation payment and go,' but does the clause give any flexibility? In the way I read it at line 22 it seems to me almost compulsory that they set this requirement to cease business. Is there any flexibility in it? If a person over 60 wanted to relocate and continue with their business at a different level of compensation can they do it, or does this subsection actually preclude that?

Mr Crowe: Just following up that point about a person aged 60 and with the total extinguishment of the business, as the hon. Mrs Christian has said, that business person might want to continue in another business, and I notice on line 34 of page 7 it is talking about 'that he will not within the Island, for such time as the acquiring authority may require, directly or indirectly engage in or have any interest in any other trade or business of the same or substantially the same kind as that carried on by him on the land acquired.' So in effect it is a restraint on any future trade that he might contemplate, and I know it is a condition for such time as the acquiring authority may require, but has any thought been given as to how many years this might apply to? Again, a person over 60 would be facing retirement but he may wish to have an interest in some other business.

Mr Waft: I would just like clarification on that same issue, Mr President. The reasons actually that require somebody to directly have an interest in any other trade or business substantially as carried on by him on the land acquired.' 'He will not within the Island for such time . . .' I was just wondering why that was necessary.

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. Well, I cannot really tell the hon. member as to why it is necessary. As I understood, the question asked was about moving into a different type of business: if one was a retailer of domestic goods and then moved into a trade as a retailer of food or something like that; I think that was the question you were asking - why are they debarred from setting up a totally different business? I honestly cannot, from the notes I have, tell you that. Perhaps the learned Attorney may be able to clarify that particular part. I would be grateful if he has any comments.

The Attorney-General: Mr President, as I understand the Bill, what we are concerned with in section 23E is the case of a person who is carrying on a trade or business and who has attained the age of 60 and is subject to the possibility of compulsory purchase. Now, in order that he or she can obtain the enhanced compensation which is payable under section 23E,

certain conditions must apply, and one of the conditions is that the person concerned must give an undertaking and the undertaking, is set out in subsection (2). Now, the undertakings there are very similar to those which one would give if one was selling the goodwill of a business to a third party - say, if you had a grocer's shop and you were selling out to someone by agreement, you would say to him or her, 'Well, yes, I'm giving up my business, I'm going to receive the purchase price for my business and as part of that I will agree that I won't set up in competition down the road on the next corner,' and so on. Now, I think that the theory and the justification of section 23E is that if you are going to get the enhanced compensation you must be treated as if you were selling your business voluntarily to a third party. In other words, you must be treated as if you are giving up the business either completely or for such reasonable period of time as a purchaser might expect. Just developing that, a purchaser of your business might say 'Well, I'm quite happy that you agree not to set up in competition for, say, five years.' So that is the sort of thing that would be taken into account under section 23E(2). So I hope that that explains the differences between someone who is over 60 and is giving up his business completely as a result of this compulsory purchase and the other person who is subject to a compulsory purchase notice.

There was one very important question raised by the hon. member Mrs Christian: does someone have to give up? Does someone have to give the undertaking? Well, of course I do not think that that is the case. If you do not give an undertaking not to set up in competition or to establish a new business, then that is fine, that is your right, but it just means you will not get the enhanced compensation under section 23E.

The President: Do you wish to raise another point?

Mrs Christian: Mr President, I am grateful to the Attorney-General for his interpretation of that. I am just concerned by the word 'shall' on line 22, because it says that if on the date on which you give up possession you have attained the age of 60 compensation to that person, as mentioned in paragraph (b), 'shall, so far as attributable to disturbance, be assessed on the assumption that it is not reasonably practical for that person to carry on. . .'. Now, if it said he may be assessed on the basis that he is carrying on or he may opt to be assessed on the basis that he is not and accept these conditions I would feel more comfortable, but how does 'shall' fit into the optional position?

The Attorney-General: Well, Mr President, if I may, I think that the 'shall' - in other words the duty - to assess compensation in that way is only triggered off if the person who has the business does something voluntarily, which in this case is give the undertaking which is required in subsection (3). So in other words, if you do not voluntarily give the undertaking, then the compensation situation under clause 23E is not triggered off. So to that extent the person is protected. In other words, if you do not want to have this enhanced compensation that is your right, because you will actually not give the undertaking which is required.

The President: Reply, sir?

Mr Radcliffe: Thank you. I am obliged to the Attorney-General for clarifying some of the points raised there, sir. I do not think there is anything more to be said and I would like move that clause 3 stand part of the Bill.

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

Mr Radcliffe: Thank you. Clause 4 provides that where the authority has taken possession of a claimant's property he will, instead of having to wait until the compensation is agreed or settled by arbitration, be entitled to receive an advanced payment of 90 per cent of the estimated compensation.

Section 30A gives the right to an advance of payment on account of compensation. Subsection (1) sets out the circumstances. Subsection (2) requires the request to be made by a person entitled to compensation to be in writing. Subsection (3) provides that the advanced payment has to be 90 per cent of the compensation as agreed or, if not agreed, as estimated. Subsection (4) requires the payment to be made within three months of a request made under subsection (2). Subsection (5) requires the authority to increase the advanced payment if it considers that the original estimate of compensation was too low and that the authority is requested to make an additional payment. Subsection (6) provides that if the final compensation as agreed or settled is less than the total of advanced payments made, the claimant is to repay the difference, and if it turns out that he was not entitled to an advanced payment he must repay it all. Subsection (7) deals with the case where the property is mortgaged and the advanced payment is to be reduced by the amount of the mortgage. Subsection (8) provides that if the land is comprised in a settlement and advanced payment is treated as capital money and, as such, is payable to the trustees of the settlement and reinvested. Subsection (9) requires the authority to register the advanced payment in the deeds registry or the land registry. Subsection (10) provides that so long as the advanced payment has been registered so that a purchaser of the land has notice of it, the authority is only liable to pay the purchaser the amount of the compensation due to him less the advanced payment. Subsection (11) provides that where an advanced payment has been made, the acquiring authority can vest the land in itself by deed poll after paying the balance into court. Subsection (12) applies the above procedure to cases where the authority compulsorily acquires the right of the land under section 32 instead of acquiring the land itself. I beg to move that clause 4 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Radcliffe: Thank you. Clause 5, Mr President, makes special provision for disabled claimants whose property requires special adaptations. Section 7A alters the rules for compensation and disturbance payments in relation to such property. Subsection (1) provides that compulsory purchase compensation for a dwelling adapted for a disabled person is to be calculated in accordance with rule 4 in section 5 - that is, on the basis of the cost of equivalent reinstatement instead of market value if the claimant chooses. Subsection (2) introduces a special rule for disturbance payments where the property has been adapted for a disabled person, and subsection (3) provides that a payment is to include the cost of similar adaptations for the claimant's new accommodation. I beg to move that clause 5 stand part of the Bill.

Mr Lowey: I would like to comment and say that I welcome the positive discrimination towards the disabled and I welcome the Treasury's concurrence with that.

Mrs Christian: Mr President, if there is a weakness in this - and it is a welcome move - it is that where a property has been adapted for a disabled person the compensation only will reflect that if it is occupied by a disabled person at the time. It would be preferable, in my view, if when compensation is paid for disabled facilities, then the person who is compensated should have to provide them in another property wherever they use that compensation money. However, perhaps that is a little bit complicated in this matter, but one assumes that if it is occupied by a person who is disabled then they would obviously require the next property to have the necessary facilities. It is just a pity that there is a little loophole there which might allow a property which has the facilities to be replaced by one which has not.

Mr Waft: Mr President, with regard to the disabled, if the disabled person has to move by reason of compulsory purchase to an area that does not have facilities that are provided within the community of the present position that the disabled person was in - for instance, on a bus route, nearby to shops et cetera and amenities - the disabled person, irrespective of the amount of aids and adaptations built into the new premises, might be in a situation that is not compatible for a disabled person to live. Thank you, Mr President.

The President: Reply, sir.

Mr Radcliffe: Mr President, well, I personally think the clause is pretty fair. As in any legislation, specific cases may arise where there is difficulty. I would expect that the authority making the payment would take, particularly with a disabled claimant, everything into account and be perhaps more generous than they would be to a normal claimant. I think, in the interests of being fair and seen to be fair, that would be the case. I would beg to move that clause 5 stand part of the Bill.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Radcliffe: Thank you, Mr President. This clause provides for compensation to be reassessed where planning approval is granted for the development of land acquired compulsorily which was not taken into account in the original valuation. This is based on provision introduced in England and Wales in 1991. A new section 8(5A) provides that the compensation is to be reassessed and the claimant or his estate pay the difference if within 10 years the service of notice to treat planning approval is granted and the valuation did not take into account the possibility that such development may be permitted. So there is a time bar on that, 10 years, and I hope that answers the query that the hon. member Mr Lowey had earlier on. I beg to move that clause 6 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7 and the schedule, please.

Mr Radcliffe: Thank you, sir. This clause repeals the provisions in the schedule which lay down special rules for the compulsory purchase of unfit property. These are now obsolete

and the ordinary rules of valuation are adequate to prevent over-valuations. The Housing Act of 1955, section 12(3), provides that where a local authority serves a notice requiring a house which is unfit for habitation to be repaired and the court decides it cannot be repaired at reasonable expense, and the authority compulsorily purchases it, the compensation is to be 10 times the rateable value of the house instead of its market value. The Housing Act of 1955, section 23, as amended by the Housing Act of 1959, provides that compensation for compulsory purchase of land in the claims area is to be 10 times the rateable value plus an allowance for any money spent on the property in the past 10 years. The Housing Act of 1955, section 40 in schedule 3, modified the rules for compulsory purchase of land otherwise than in a clearance area for new housing. The valuation is to ignore any increase in the value on account of overcrowding or poor repair. I beg to move that clause 7 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 7 along with the schedule do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Radcliffe: Thank you, sir. This clause clarifies the law regarding compensation where the value of the land not acquired for a statutory purpose is depreciated by the works carried out on the land which is so acquired. It is made clear that the right to compensation applies whether the land in question was acquired compulsorily or by agreement. Section 7 of the 1984 Act provides that compensation is payable for the depreciation of land caused by the execution of the works on land acquired by the public authority. For example, if property A has a rear access over a private road running through property B and property B is compulsorily acquired for public works, the owner of property A is entitled to compensation for the reduction in the value of his land caused by the loss of the access.

Sub-clause (1) inserts a new section 3 in section 7 to restate the case law according to the English equivalent or the predecessor of section 7, making it clear that the right to compensation arises not only when land is compulsorily acquired for public works but also where it is acquired by agreement.

Sub-clause (2) defines the term 'the special Act', which is used in the 1984 Act to refer to the enactment which authorises the acquiring authority to acquire land compulsorily. In the case of compulsory purchase this means the relevant Act of Tynwald - for example, the Government Departments Act of 1987, which authorises any department to acquire land together with the resolution of Tynwald authorising the compulsory purchase. I beg to move that clause 8 do stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 8 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, sir.

Mr Radcliffe: Clause 9, Mr President, gives special powers for the acquisition of land which is not required either for the public service or for the exercise of a department's statutory boards functions but which Tynwald considers should be in public ownership. Compulsory purchase powers are normally available only where the land is required for the purpose of the

exercise of statutory functions. The Department of Local Government and the Environment, as successors to the Government Property Trustees, have power to acquire land compulsorily for the public service - for example, to provide office accommodation as under the Government Property Trustees Act - but otherwise there is no general power to acquire land; let me give an example: Rushen Abbey, perhaps. There is no general power to acquire land simply because it is required to be in public ownership.

This clause inserts a new section 3A in the Government Property Trustees Act of 1971 which provides that the Department of Local Government and the Environment may acquire land, with the sanction of a special resolution of Tynwald, either by agreement or compulsorily, and this covers the rare instance where land is required not so much for the public good but as a special interest for the Island itself or something like that. I beg to move that clause 9 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mrs Christian: I think, Mr President, we should welcome this particular clause. I think it comes about as a result of realising a weakness in the present legislation and, whilst it is not one that should be used too lightly, I think it is a useful provision in terms of pieces of land which ought to be in the nation's ownership.

The President: I wonder if I could ask the hon. member if this clause completely undermines the rights of ownership? The hon. Mr Delaney.

Mr Delaney: Actually, my question, Mr President, was similar to the one you have asked: exactly where the private owner does stand as regards land that he has long-term plans for and the government decide they require it for some other necessary means, as they see it. When negotiations turn out, who is actually going to be right? Is might right? The government want it, so 'We are going to have it,' or will the private landowner certainly have, when it comes to the compensation, his future plans for that piece of land in planning terms?

Mr Lowey: I have come to the conclusion that I will have to support this but I do think the key is in the second line, 'exceptional nature' or any exceptional circumstances' - not one of convenience. This is the thing that worries me. The worry is that, of course, in the present administration we are all enlightened and we are all very good, but if you put that legislation in power and give it into the hands of perhaps people who are not quite so enlightened it could be used as a convenient tool for battering people over the head. I think, if it is for 'exceptional nature or any exceptional circumstances', the interpretation of 'exceptional' - and I am using it in the literal sense - is that it should be an exceptional case. I can think of two areas: Rushen Abbey has been used by the mover; I think the Sound is another one where it is of importance to the nation, in my view, and there should come a time where, if unreasonableness was the order of the day - I am not suggesting that it was, but if it was - then I do think the country should have the ability then to say 'Well, yes, this is an exceptional case and in the national interest,' and so on.

Mr Waft: Mr President, I would just underline what has been said but I am just concerned about the national interest, whether it would always be in the national interest to do A, B or C and who would interpret that. Is there any appeal process for the owner of the land to decide in his interests to go against any decision that has been made out with any process of judiciary review of the situation?

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. The powers under this particular clause would not be used lightly anyway. It would have to be specific interest, but in this whole clause it has to go before Tynwald, and Tynwald, as always, will give the right, I would suggest, to an owner to appear at the Bar and argue his case. So the safeguards are there, I would suggest, that he will not be just pushed into a situation and have no redress whatsoever. Tynwald is the final arbiter and Tynwald, I would suggest, would not treat lightly an application to appear at the Bar in relation to a particular piece of land. (*Mr Delaney interjecting*) I would suggest the safeguard is there. Tynwald has to approve and the person would certainly have the right to appear at the Bar and plead the case. I beg to move, sir.

The President: I will put the resolution, hon. members, that clause 9 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10.

Mr Radcliffe: Thank you, sir. Clause 10 makes consequential amendments to the Acquisition of Land Act 1984 and makes a transitional provision.

Sub-clause (1) is consequential on clause 1.

Sub-clause (2) inserts in the interpretation section definitions of terms used in the new sections 23A and 23C.

Sub-clause (3) provides that the amendments in clauses 1 to 7 will not apply to a compulsory purchase authorised or a purchase agreed before the commencement of these provisions. In the other place an amendment was laid which I am sure hon. members have a copy of, and that removes any doubt as to whether the Villa Marina was included or excluded under the terms of this particular Bill, and there is now a certainty that the Villa Marina is not to be included under the terms of the Bill and certainly it is the subject of separate and different legislation so I am quite happy to accept that amendment and I would beg to move that clause 10 as amended stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: Just on a point of clarification - again I wonder if the hon. member can help me: the Villa Marina is excluded; what about other negotiations that are taking place for compulsory purchase?

Mr Radcliffe: As I understand it, sir, just specifically the Villa Marina was excluded under the terms of this amendment as laid before the other place. Perhaps the learned Attorney would help out on that?

The Attorney-General: Mr President, under sub-clause (3) of clause 10 it makes it perfectly clear that this Bill does not have retrospective effect. In other words, if there are negotiations or a compulsory purchase procedure already ongoing, then this new regime will not apply to that.

The President: I will put the resolution then, hon. members, that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr Radcliffe: Thank you, sir. This clause gives the Bill its short title and provides for its commencement on an appointed day or days. I beg to move that clause 11 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

That concludes our public business for the day and we will move on to our private sitting as set out on the order paper.

The Council sat in private.